25-6231 ORIGINAL

No.

IN THE

# Supreme Court of the United States



Jacob Bellinsky,

*Petitioner*,

v.

Rachel Zinna Galán, et al.,

*Respondents.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit (Nos. 24-1351 & 24-1352)

## PETITION FOR WRIT OF CERTIORARI WITH APPENDIX

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Original Petition: November 7, 2025
Corrected Petition: November 18, 2025

# QUESTIONS PRESENTED

1. Whether the Tenth Circuit's unpublished reversal—requiring federal courts to conduct mandatory *Sprint* analysis before invoking *Younger* abstention—underscores entrenched circuit conflicts that only this Court can resolve to ensure uniform application of abstention doctrine and preserve federal access for constitutional claimants in domestic-relations and protection-order contexts.

2. Whether a federal court may constitutionally alter a litigant's pleadings by inserting language the party never wrote to fabricate and thereby manufacture abstention grounds, and whether such falsification constitutes fraud upon the court rendering ensuing proceedings void as *ultra vires* acts beyond Article III authority.

3. Whether Article III judges are categorically exempt from the mandatory criminal-reporting duty imposed by 18 U.S.C. § 4, or whether the statute's plain text—applying to "whoever" without exception—requires judges to report known federal felonies, presenting an unresolved question at the intersection of judicial independence and Congress's authority to impose applicable reporting obligations.

4. Whether federal judges must recuse under 28 U.S.C. § 455(a) when they are subjects of congressional whistleblower investigations or impeachment inquiries arising from the very conduct at issue in pending litigation before them.

5. Whether a State Attorney General may lawfully represent individual-capacity defendants in § 1983 actions arising from ultra vires or unconstitutional acts committed in the absence of jurisdiction, where such representation creates irreconcilable conflicts between the State's institutional interests and the personal liability of its officials, depriving plaintiffs of a neutral and conflict-free forum.

## PARTIES TO THE PROCEEDINGS BELOW

Petitioner Rabbi Jacob Bellinsky was the Plaintiff-Appellant in the court of appeals proceedings (Nos. 24-1351 & 24-1352). Respondents were the defendants–appellees in the courts below and are identified as follows:

**Tenth Circuit No. 24-1351** (appeal from 1:23-cv-03163):

Rachel Zinna Galán; Steven James Lazar; Andrew Newton Hart; Terri Meredith; Ryan Paul Loewer; Bryce David Allen; Jeffrey Ralph Pilkington; Brian Dale Boatright; and the State of Colorado.

**Tenth Circuit No. 24-1352** (appeal from 1:23-cv-03461):

Rachel Zinna Galán; Steven James Lazar; Andrew Newton Hart; John Evan Kellner; Eva Elaine Wilson; Raif Edwin Taylor; Gina Parker; Gary Michael Kramer; Palmer L. Boyette; Theresa Michelle Slade; Michelle Ann Amico; Brian Dale Boatright; and the State of Colorado.

The Tenth Circuit resolved both appeals in a single combined Order and Judgment dated July 22, 2025, reversing the district court's abstention-based dismissals and remanding for further proceedings. Although the panel's decision vindicated Petitioner's position that *Younger* abstention had been erroneously invoked and that the *Rooker–Feldman* doctrine was inapplicable to independent federal civil-rights claims seeking retrospective damages, the panel declined to publish its decision or address several equally dispositive issues. Those unresolved questions—including judicial recusal under 28 U.S.C. § 455(a), the reporting duty imposed by 18 U.S.C. § 4, and the propriety of state-aligned representation of individual-capacity defendants—are now presented in this petition for review.

# LIST OF RELATED CASES

| SUPREME COURT OF THE UNITED STATES | | |
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| **Case No.** | **Case Name/Case Description** | **Status/Date** |
| No. _____ | *Jacob Bellinsky, Petitioner v. Rachel Galán, et. al*<br>Petition for a Writ of Certiorari<br>Lower Ct: United States Court of Appeals for the Tenth Circuit (Nos. 24-1351 & 24-1352) | Docketed: TBD<br>**PENDING** |
| No. 24-7195 | *Jacob Bellinsky, Petitioner v. State of Colorado*<br>Petition for a Writ of Certiorari<br>Lower Ct: District Court of Colorado, Elbert Co.<br>Case Number: 2024CV2<br>Decision Date: 09-25-24<br>Discretionary Court Decision Date: 01-13-25 | Docketed: 05-13-25<br>**Denied:** 10-06-25 |
| No. 24-7196 | *Jacob Bellinsky, Petitioner v. Rachel Zinna Galán*<br>Petition for a Writ of Certiorari<br>Lower Ct: Supreme Court of Colorado<br>Case Number: 2024SA214<br>Decision Date: 02-21-25 | Docketed: 05-13-25<br>**Denied:** 10-06-25 |

| UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT | | |
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| **Case No.** | **Case Name/Case Description** | **Status/Date** |
| No. 24-1352 | *Jacob Bellinsky v. Rachel Zinna Galán, et al.*<br>(Appeal of 1:23-cv-03461 Civil Rights Complaint –18JD False Criminalization Crime Sprees)<br>(10th Circuit, 2025)<br>**REVERSED/REMANDED 1:23-cv-03461** | Filed: 09-10-24<br>**Order/Judgment:** 07-22-25<br>**Rehearing Denied:** 08-11-25 |
| No. 24-1351 | *Jacob Bellinsky v. Rachel Zinna Galán, et al.*<br>(Appeal of 1:23-cv-03163 Civil Rights Complaint – Relocation of Minor Children Crime Spree)<br>(10th Circuit, 2025)<br>**REVERSED/REMANDED 1:23-cv-03163** | Filed: 09-10-24<br>**Order/Judgment:** 07-22-25<br>**Rehearing Denied:** 08-11-25 |
| No. 23-1409 | *Jacob Bellinsky v. Rachel Zinna Galán, et al.*<br>(Appeal of 1:23-cv-01799 State Court Removal Action of 2015DR7)<br>(10th Circuit, 2024) | Filed: 12-27-23<br>**Dismissed:** 01-26-24 |

| UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO | | |
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| **Case No.** | **Case Name/Case Description** | **Status/Date** |
| 1:25-cv-02062 | *Jacob Bellinsky v. Philip Jacob Weiser, et al.*<br>(Civil Rights Complaint – Injunctive and Declaratory Relief regarding Void State Orders) (D. Colo., Pending) | Filed: 07-03-25<br>**PENDING/ACTIVE** |
| 1:23-cv-03461 | *Jacob Bellinsky v. Rachel Zinna Galán, et al.*<br>(Civil Rights Complaint –18th Judicial District False Criminalization Crime Sprees) (D. Colo., 2024)<br>**DISMISSAL REVERSED & REMANDED** | Filed: 12-30-23<br>Dismissed: 08-23-24<br>Mandate: 08-19-25<br>**REOPENED** |
| 1:23-cv-03163 | *Jacob Bellinsky v. Rachel Zinna Galán, et al.*<br>(Civil Rights Complaint – Relocation of Minor Children Crime Spree) (D. Colo., 2024)<br>**DISMISSAL REVERSED & REMANDED** | Filed: 11-29-23<br>Dismissed: 08-23-24<br>Mandate: 08-19-25<br>**REOPENED** |
| 1:23-cv-01799 | *Rachel Zinna Galán v. Jacob Bellinsky, Plaintiff*<br>(Removal of 'State Court Action' [Crime Spree] in 2015DR7) (D. Colo., 2023) | Filed: 07-17-23<br>**Dismissed:** 11-21-23 |

| SUPREME COURT OF COLORADO | | |
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| **Case No.** | **Case Name/Case Description** | **Status/Date** |
| 2025SC549 | *Jacob Bellinsky v. Rachel Zinna Galán*<br>Petition for Writ of Certiorari to Colorado Court of Appeals (Relief from Colorado Court of Appeals July 17, 2025 affirmance in 2024CA355 of void relocation orders in 2015DR7) [Pursuant to Rule 60(b) Relief] (Colo. S. Ct., Pending) | Filed: 09-08-25<br>**Denied:** 11-17-25 |
| 2025SA97 | *Jacob Bellinsky v. Elbert County Court, Chief Judge Ryan Stuart, Senior Judge Dinsmore Tuttle, and People of the State of Colorado*<br>Petition Pursuant to C.A.R. 21<br>(Relief Sought for Senior Judge Recusal in 22M143 and Void Orders in Underlying Cases)<br>(Colo. S. Ct., 2025) | Filed: 04-07-25<br>**Denied:** 05-08-25 |

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|---|---|---|
| 2024SA214 | *Jacob Bellinsky v. Rachel Zinna Galán*<br>Extraordinary Appeal of Denial of Habeas Corpus Relief from Elbert County District Case 2024CV5 (Colo. S. Ct., 2025) | Filed: 07-19-24<br>**Denied:** 02-21-25 |
| 2024SC691 | *Jacob Bellinsky v. People of the State of Colorado*<br>Petition for Writ of Certiorari to Elbert County District Court Case 2024CV2 (Colo. S. Ct., 2025) | Filed: 10-31-24<br>**Denied:** 01-13-25 |
| 2024SA228 | *Jacob Bellinsky v. People of the State of Colorado*<br>Criminal Conviction Appeal of Case 2024CV2 [Pursuant to Rule 60(b) Relief] (Colo. S. Ct., 2024) | Filed: 08-09-24<br>**Denied:** 09-13-24 |
| 2023SA223 | *Jacob Bellinsky v. Jared Polis, Brian Boatright, Stephen Fenberg, & Julie McCluskie*<br>Emergency Sworn Petition for Extraordinary Relief Pursuant to Colorado's Constitution [Rule 60(b) Relief in 2015DR7, 2022C59, 2022M143, 2022M152, et al.] (Colo. S. Ct., 2023) | Filed: 09-01-23<br>**Denied:** 09-15-23 |
| 2022SA274 | *Jacob Bellinsky v. Rachel Zinna Galán, Jared Polis, Brian Boatright, Jeffrey Pilkington, Stephen Fenberg, & Alec Garnett*<br>Emergency Petition & Demand for Full Redress & Other Extraordinary Relief Due [Pursuant to USA & Colorado Constitutions & Rule 60(b) Relief in 2015DR7, et al.] (Colo. S. Ct., 2022) | Filed: 08-22-22<br>**Denied:** 08-23-22 |
| 2022SA274 | *Jacob Bellinsky v. Rachel Zinna Galán, Jared Polis, Brian Boatright, Jeffrey Pilkington, Stephen Fenberg, & Alec Garnett*<br>Petition for Responses & Adjudication on the Merits of Subject Matter of Original Petition & Demand for Full Redress and Other Extraordinary Relief Due [Rule 60(b) Relief in 2015DR7] (Colo. S. Ct., 2022) | Filed: 08-31-22<br>**Denied:** 09-01-22 |
| 2021SA245 | *Jacob Bellinsky v. Rachel Zinna Galán*<br>Petition Pursuant to C.A.R. 21 (Extraordinary Relief Sought for Underlying Void Orders in 2015DR7) (Colo. S. Ct., 2021) | Filed: 08-09-21<br>**Denied:** 08-12-21 |

| COLORADO COURT OF APPEALS | | |
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| **Case No.** | **Case Name/Case Description** | **Status/Date** |
| 2024CA355 | *Jacob Bellinsky v. Rachel Zinna Galán*<br>Extraordinary Appeal of Void Orders on Relocation of Minor Children in 2015DR7<br>(Colo. Ct. App.) | Filed: 03-01-24<br>**Affirmed:** 07-17-25<br>**Rehearing Denied:** 08-14-25<br>(Absent Jurisdiction) |
| 2024CA328 | *Jacob Bellinsky v. Rachel Zinna Galán*<br>Extraordinary Pre-Appeal of Conviction for Alleged Violation of 2022C59 PO in 2022M143<br>(Colo. Ct. App., 2024) | Filed: 02-21-24<br>**Denied: 02-28-24** |
| 2021CA634 | *Jacob Bellinsky v. Rachel Zinna Galán*<br>Appeal of Post-Decree Orders in 2015DR7<br>(Colo. Ct. App., 2022) | Filed: 05-04-21<br>**Opinion:** 08-04-22<br>(Withdrew Consent - Absent Jurisdiction) |
| 2021CA1062 | *Jacob Bellinsky v. Rachel Zinna Galán*<br>Appeal of Post-Decree Orders in 2015DR7<br>(Colo. Ct. App., 2022) | Filed: 07-19-21<br>**Opinion:** 08-04-22<br>(Withdrew Consent - Absent Jurisdiction) |

| STATE OF COLORADO: COUNTY & DISTRICT COURT PROCEEDINGS | | |
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| **Case No.** | **Case Name/Case Description** | **Status/Date** |
| 2025CV335 | *Rabbi Jacob Bellinsky v. Steven Vasconcellos, State Court Administrator*<br>Petition for Order to Show Cause Under P.A.I.R.R. 2 §5<br>(Colo. Denver District Court, 2025) | Filed: 04-28-25<br>Hearing: 10-28-25<br>**Denied: 10-28-25** |
| 2024CV5 | *Jacob Bellinsky v. Rachel Zinna Galán, et al.*<br>Forthwith Verified Petition for Writ of Habeas Corpus [Pursuant to State and Federal Constitutions and Our Laws and Precedence Made in Pursuance Thereof]<br>(Colo. Elbert Co. District Court, 2025) | Filed: 06-07-24<br>**Denied: 07-10-24** |
| 2024CV2 | *Bellinsky v. People of the State of Colorado*<br>(Appeal of Conviction in 22M143)<br>(Colo. Elbert Co. District Court, 2025) | Filed: 04-15-24<br>**Denied: 09-25-24**<br>(Opinion-Affirmed) |

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| 2023CV20019 | *Richard F. Spiegle v. Jacob Bellinsky*<br>(Court-appointed services in connection with void-2015DR7 – absent jurisdiction)<br>(Colo. Gilpin County Court, 2024) | Filed: 07-11-23<br>**Void Judgment Entered: 05-16-24** |
| 2022M143 | *People of the State of Colorado v. Jacob Bellinsky*<br>(Alleged Violation of Protection Order Case)<br>(Colo. Elbert County Court, 2024) | Filed: 11-28-22<br>**Closed: 04-08-24** |
| 2022M152 | *People of the State of Colorado v. Jacob Bellinsky*<br>(Alleged Violation of Protection Order Case)<br>(Colo. Elbert County Court, 2023) | Filed: 11-29-22<br>**Closed: 04-26-23** |
| 2022C59 | *Rachel Zinna Galán v. Jacob Bellinsky*<br>(Civil Protection Order Case in Connection with 2015DR7 – Obtained by Fraud and Perjury)<br>(Colo. Elbert County Court, 2022) | Filed: 09-26-22<br>**Closed: 10-07-22** |
| 2022C36810 | *Andrew Newton Hart v. Jacob Bellinsky*<br>(Civil Protection Order Case in Connection with 2015DR7 – Obtained by Fraud and Perjury)<br>(Colo. Jefferson Co. District Court, 2022) | Filed: 08-31-22<br>**Closed: 09-08-22** |
| 2017C000028 | *Jacob Bellinsky v. Steven James Lazar*<br>Temporary Protection Order<br>(Colo. Gilpin Co. Court) | Filed: 12-26-17 |
| 2015DR7 | *Rachel Bellinsky (n/k/a Rachel Zinna Galán) v. Jacob Bellinsky*<br>Dissolution of Marriage - Domestic Relations<br>(Colo. Gilpin Co. District Court) | Filed: 04-13-15<br>**Status: Void**<br>(Absent Jurisdiction) |
| 2014M00613 | *People of Colorado v. Rachel Tonya Bellinsky (n/k/a Rachel Zinna Galán),*<br>Criminal Arrest – DV – Assault in the 3rd Degree<br>(Victim: Jacob Bellinsky)<br>(Colo. Gilpin Co. Court) | Criminal DV Arrest: 12-11-14<br>Mandatory PO: 12-12-14 / 12-15-14 |

| **RABBINICAL COURT** | | |
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| **Case No.** | **Case Name/Case Description** | **Status/Date** |
| 75072301 | *Bellinsky, Jacob (Ya'akov Ben Chaim) v. Rachel Rische (k/n/a Rachel Zinna Galán)*<br>(Neve Tzedek Rabbinical Court, Zera Avraham, Denver, Colorado, 2015) | **Jewish Divorce**<br>Judgment Executed: 04-12-15 |

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## SECONDARY SOURCES

# PETITION FOR A WRIT OF CERTIORARI

Petitioner Rabbi Jacob Bellinsky respectfully petitions for a writ of certiorari to review the combined judgment of the United States Court of Appeals for the Tenth Circuit in *Bellinsky v. Galán*, Nos. 24-1351 (1:23-cv-03163) and 24-1352 (1:23-cv-03461), entered July 22, 2025, and the court of appeals' order denying panel and en banc rehearing on August 11, 2025.

In a single, unpublished Order and Judgment, the Tenth Circuit reversed the district court's dismissals and remanded Petitioner's two underlying civil-rights actions (1:23-cv-03163/1:23-cv-03461, Dist. Colo.). The panel found that the district court had erroneously invoked *Younger* abstention and misapplied the *Rooker–Feldman* doctrine, explaining that the latter was inapplicable because Petitioner's § 1983 claims sought retrospective relief for independent constitutional violations rather than appellate review of any state-court judgment. At the same time, the court ignored or mischaracterized issues repeatedly raised in the appellate record and in Petitioner's rehearing petition—(1) deliberate falsification of pleadings and fraud upon the court, (2) mandatory federal crime-reporting duties under 18 U.S.C. § 4, and (3) structural conflicts and recusal obligations under 28 U.S.C. § 455(a).

Despite clarifying abstention principles in a way that affects litigants nationwide, the Tenth Circuit declined to issue a published precedential opinion, also leaving unresolved fundamental conflicts over judicial accountability, recusal, and access to a federal forum. This petition seeks this Court's review of that combined Order and Judgment *(App. A)* and of the denial of Rehearing (*App. G.*).

## OPINIONS BELOW

The unpublished Order and Judgment of the United States Court of Appeals for the Tenth Circuit, dated July 22, 2025, disposing of Appeals Nos. 24-1351 and 24-1352 together, is reproduced in *Appendix A*. The Tenth Circuit's order denying panel rehearing and rehearing en banc, entered August 11, 2025, is reproduced in *Appendix B*. The orders and judgments of the United States District Court for the District of Colorado in *Bellinsky v. Galán, et al.*, No. 1:23-cv-03163, and *Bellinsky v. Galán, et al.*, No. 1:23-cv-03461, which the Tenth Circuit reversed and remanded, are reproduced in *Appendix C* and *Appendix D*, respectively.

## JURISDICTION

The Tenth Circuit entered its combined Order and Judgment in Nos. 24-1351 and 24-1352 on July 22, 2025. Petitioner timely filed a petition for panel rehearing and rehearing en banc. The court of appeals denied rehearing on August 11, 2025. Under Supreme Court Rule 13.3, the time to file a petition for a writ of certiorari runs from the date of the order denying rehearing. This petition is filed within 90 days of the August 11, 2025 denial of rehearing and is therefore timely. See 28 U.S.C. § 2101(c). This Court has jurisdiction under 28 U.S.C. § 1254(1), which authorizes review by writ of certiorari of judgments of the United States courts of appeals. Because the court of appeals disposed of both appeals in a single judgment, this petition properly seeks review of that unified decision in one filing, consistent with Supreme Court Rule 12.4 (multiple cases in a court of appeals "disposed of in one judgment" may be brought here by a single petition).

## CONSTITUTIONAL & RULE PROVISIONS INVOLVED

**U.S. Const. art. III, § 1**
The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.

**U.S. Const. amend. I**
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

**U.S. Const. amend. V**
No person shall be ... deprived of life, liberty, or property, without due process of law.

**U.S. Const. amend. XIV, § 1**
No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**42 U.S.C. § 1983**
Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State ... subjects, or causes to be subjected, any citizen of the United States ... to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

**18 U.S.C. § 4 (Misprision of Felony)**
Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined ... or imprisoned ... or both.

**28 U.S.C. § 455(a)**
Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

## STATEMENT OF THE CASE

This petition presents questions of extraordinary constitutional importance that reach beyond the facts of a single case. It concerns the integrity of the federal judiciary, the limits of abstention doctrine, and the ability of citizens to obtain a federal forum for redress of constitutional injury. In July 2025, the Tenth Circuit issued a *groundbreaking reversal* in Petitioner's parallel civil-rights appeals—clarifying that Younger abstention cannot be invoked without first conducting the mandatory *Sprint Communications* gatekeeping analysis. Yet the court rendered this precedent-shaping clarification through an unpublished order, leaving federal courts nationwide without binding guidance on how to apply abstention in domestic-relations-related § 1983 actions. (*Order & Judgment, App. A at 2–4.*)

### A. Groundbreaking Nature of the 10th Circuit's Reversal in Petitioner's Case

On July 22, 2025, the United States Court of Appeals for the Tenth Circuit issued a complete reversal and remand in *Bellinsky v. Galán*, Nos. 24-1351 & 24-1352 (10th Cir. July 22, 2025), fundamentally clarifying the operation of *Younger* abstention in domestic-relations-related § 1983 actions. In a single unpublished Order and Judgment, the panel held that the district court had erroneously dismissed Petitioner's constitutional claims under a misapplied abstention doctrine and reaffirmed that federal courts must conduct the mandatory gatekeeping analysis required by *Sprint Communications, Inc. v. Jacobs*, 571 U.S. 69 (2013), before invoking *Younger* in any context. (*Order & Judgment, App. A at 2–4.*)

This holding directly addresses—and in practice resolves—a long-standing

split among the circuits over whether domestic-relations matters are automatically subject to abstention or require a case-specific *Sprint* analysis. By confirming that *Sprint*'s three-category framework governs even when family-law or protection-order proceedings form part of the factual background, the Tenth Circuit restored the constitutional principle that federal courts remain open to § 1983 plaintiffs alleging completed violations of federal rights under color of state law.[1]

The panel's reasoning invoked *Nesses v. Shepard*, 68 F.3d 1003 (7th Cir. 1995), which recognized that a § 1983 claim alleging a conspiracy among judges and attorneys to deprive a litigant of constitutional rights is not barred by doctrines of judicial immunity or abstention when it alleges an independent deprivation of federal rights. (*App. A at 5.*) The Tenth Circuit's citation to *Nesses* underscores that its decision carries precedential significance on par with other circuits' landmark limitations on abstention—a reaffirmation that Article III courts cannot abdicate jurisdiction merely because constitutional violations occur against the backdrop of state proceedings.

Yet despite the significance of this clarification, the panel issued its decision

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[1] Legal commentators immediately recognized the decision's national significance. One analysis observed: "*Bellinsky v. Galan* is a noteworthy corrective to over-expansive abstention in the domestic-relations context. Attorneys facing abstention-based dismissals will find helpful language here emphasizing that 'routine' custody disputes typically lack the enforcement character needed to trigger Younger." Bellinsky v. Galan: The Tenth Circuit Re-Sets the Boundaries of Younger Abstention in Domestic-Relations-Related § 1983 Actions, *CaseMine Commentary (July 23, 2025).* https://www.casemine.com/commentary/us/bellinsky-v.-galan:-the-tenth-circuit-re-sets-the-boundaries-of-younger-abstention-in-domestic-relations-related-1983-actions/view

A second commentary emphasized: "The opinion serves as both a primer on the post-Sprint landscape and a cautionary tale against reflexive abstention in domestic-relations cases.... Although issued as a non-precedential order, the reasoning is thorough and likely to influence future cases in the Tenth Circuit and beyond." *Bellinsky v. Galan*: Tenth Circuit Reaffirms "Sprint Gatekeeping" for Younger Abstention, *CaseMine Commentary (July 24, 2025).* https://www.casemine.com/commentary/us/bellinsky-v.-galan:-tenth-circuit-reaffirms-%E2%80%9Csprint-gatekeeping%E2%80%9D-for-younger-abstention-and-tightens-rooker-feldman-in-domestic-relations-civil-rights-suits/view

as an unpublished order, depriving lower courts of binding guidance on a question that affects thousands of civil-rights litigants each year. Federal courts nationwide continue to dismiss § 1983 actions arising from family-law contexts—custody disputes, child-protection investigations, and protection-order proceedings—under flexible or reflexive invocations of Younger abstention. The lack of a published precedent perpetuates inconsistent standards and results in the systematic foreclosure of the federal courthouse doors to parents, families, and children seeking redress for genuine constitutional wrongs.

The *Bellinsky* reversal therefore implicates not merely one litigant's rights but the rights of tens of thousands of families annually who are denied a federal forum through discretionary abstention that this Court's *Sprint* framework was designed to prevent. The decision's unpublished status has already produced uncertainty within district courts throughout the Tenth Circuit—courts now citing the case informally yet treating it as non-binding. Only this Court's review can provide the nationwide precedential clarity required to ensure that *Sprint*'s mandate is honored and that constitutional claimants are not stripped of federal access by local practice or abuse of judicial discretion. *(App. A at 6; Rehearing Petition, App. G at 12–15.)*

**B. The Circuit Split the Reversal Addresses**

The Tenth Circuit's reversal in *Bellinsky v. Galán* did more than correct a single misapplied abstention order; it exposed a structural divide over whether *Younger v. Harris*, 401 U.S. 37 (1971), automatically bars federal review of constitutional claims that arise in or around domestic-relations proceedings. This

unresolved conflict—between circuits that apply *Sprint*'s mandatory gatekeeping test and those that rely on pre-*Sprint* precedent to impose automatic abstention—has produced inconsistent outcomes for similarly situated families and § 1983 plaintiffs nationwide.

### 1. Circuits Requiring Mandatory Sprint Gatekeeping

Several circuits now recognize that *Sprint Communications, Inc. v. Jacobs*, 571 U.S. 69 (2013), fundamentally narrowed *Younger* abstention to three exceptional categories:

(1) ongoing state criminal prosecutions,
(2) civil enforcement actions akin to criminal proceedings, and
(3) civil proceedings involving uniquely important state interests.

These courts hold that routine family-law or protection-order cases do not automatically qualify for abstention and require a case-specific Sprint analysis:

- **Second Circuit – *Falco v. Justices of the Matrimonial Parts***, 805 F.3d 425 (2d Cir. 2015): Held that matrimonial proceedings are not categorically subject to abstention; federal courts must determine whether the specific dispute falls within one of *Sprint*'s recognized categories.
- **Seventh Circuit – *J.B. v. Woodard***, 997 F.3d 714 (7th Cir. 2021): Emphasized that child-welfare and family-services matters require a fact-specific inquiry; abstention is improper absent a clear fit under *Sprint*.
- **Ninth Circuit – *Cook v. Harding***, 879 F.3d 1035 (9th Cir. 2018): Reaffirmed that *Sprint* demands threshold analysis; federal courts must resist the temptation to treat all domestic-relations disputes as presumptively outside

federal reach.

Together, these circuits have restored the discipline of limited abstention that this Court mandated in *Sprint*, ensuring that § 1983 claimants alleging completed constitutional injuries retain access to a federal forum.

**2. Circuits Applying Automatic or Reflexive Abstention**

By contrast, other circuits—including the pre-reversal Tenth Circuit—have continued to apply automatic or reflexive abstention in family-law-related § 1983 cases based on pre-*Sprint* authority.

In the Tenth Circuit, district courts relied on unpublished decisions such as *Morkel v. Davis*, 513 F. App'x 724 (10th Cir. 2013), to dismiss domestic-relations-related civil-rights actions under *Younger* without conducting the *Sprint* gatekeeping analysis. See also *Moore v. Sims*, 442 U.S. 415 (1979) (often cited broadly for deference in family-law contexts). In these jurisdictions, district courts routinely dismiss § 1983 suits at the threshold whenever a parallel or antecedent state custody or protection-order proceeding exists—effectively nullifying *Sprint* and foreclosing federal review of even independent constitutional claims.

**3. The Split's Consequences Are Profound and Systemic**

This divergence in doctrine has produced two Americas of federal access. In one, litigants who suffer constitutional deprivations in the course of state-family proceedings may obtain federal adjudication of completed harms, consistent with *Sprint*. In the other, plaintiffs raising identical constitutional claims are summarily dismissed under *Younger*—not because of any principled difference in law, but solely

because of geography.

The consequences are not abstract. Each year, large numbers of domestic-relations-related § 1983 actions are filed or attempted in federal courts. In automatic-abstention circuits, nearly all are dismissed without the jurisdictional analysis this Court has required since 2013, leaving parents, families, and children with no federal remedy for even egregious due-process or equal-protection violations. The Tenth Circuit's unpublished clarification in this very case illustrates the problem: while the panel correctly applied *Sprint* to reverse the dismissals, its refusal to publish binding precedent ensures that district courts remain free to perpetuate the very errors and abuse of discretion the panel identified.

The result is a nationwide denial of equal access to federal courts for families seeking redress for official misconduct in the domestic-relations context. The continued use of discretionary, automatic abstention in these cases is incompatible with *Sprint* and with the basic premise that abstention "remains the exception, not the rule." *Sprint*, 571 U.S. at 81.

4. **Why Supreme Court Review Is Urgently Needed**

The split now entrenched among the circuits determines not merely how federal courts allocate jurisdiction, but whether citizens alleging constitutional injury can obtain any federal forum at all. Despite recognizing the error below, the Tenth Circuit declined to publish its decision, leaving lower courts without binding guidance on issues that affect thousands of civil-rights litigants each year. District courts across the country continue to invoke *Younger* and *Rooker–Feldman*

reflexively in domestic-relations-related cases, dismissing otherwise valid § 1983 actions before discovery or adjudication on the merits.

Only this Court can restore uniformity, reaffirming that abstention is the rare exception, not the rule, and that § 1983 guarantees a federal forum for redress of completed constitutional violations regardless of subject matter. Supreme Court review is therefore essential to prevent the continued closure of federal courthouse doors to families and individuals seeking constitutional justice.

**C. Factual Background and Independent Federal Civil-Rights Claims**

The practical consequences of this doctrinal divide are embodied in Petitioner's own case. Rabbi Jacob Bellinsky filed two independent federal civil-rights actions under 42 U.S.C. § 1983—*Bellinsky v. Galán*, No. 1:23-cv-03163, and *Bellinsky v. Galán*, No. 1:23-cv-03461* *(D. Colo.)—each seeking retrospective monetary damages for completed constitutional violations committed by state officials and private actors operating under color of law. *(Compls., App. C & D.)* Neither action sought to alter, reopen, or enjoin any state-court decree; both expressly disclaimed such relief.

Petitioner alleged systemic violations of fundamental rights, including deprivation of parental liberty, denial of free exercise of religion, retaliation for protected petitioning activity, and obstruction of justice by coordinated state and private actors. These violations were extensively documented through verified filings and supporting exhibits submitted to federal authorities detailing felony-level misconduct.

Critically, these actions present independent federal causes of action governed by this Court's precedents in *Hafer v. Melo*, 502 U.S. 21 (1991), and *Scheuer v. Rhodes*, 416 U.S. 232 (1974): claims against officials in their personal capacities for past acts of constitutional deprivation. The factual overlap with family-court proceedings is incidental; the federal injuries stand on their own as completed constitutional violations actionable under § 1983. As the Seventh Circuit recently reaffirmed, federal courts must "distinguish between independent federal civil-rights claims for damages and claims that challenge domestic-relations proceedings themselves." *Hadzi-Tanovic v. Johnson*, 62 F.4th 394, 404 (7th Cir. 2023); see also *Marran v. Marran*, 376 F.3d 143, 154 (3d Cir. 2004) (holding that damages claims for completed injuries are not barred where the relief "does not interfere with state-court orders").

Nevertheless, the district court dismissed both actions under automatic *Younger* abstention, citing unpublished pre-*Sprint* precedent without conducting the required gatekeeping analysis. *(D. Colo. Orders, App. C & D.)* That error compelled Petitioner's appeal, resulting in the Tenth Circuit's reversal now before the Court. The panel held that the district court had erroneously invoked *Younger* and misapplied *Rooker–Feldman*—the latter inapplicable because Petitioner's claims sought retrospective damages for independent constitutional violations rather than appellate review of any state judgment. *(Order & Judgment, App. A at 4-6.)*

By confirming that Petitioner's actions were properly filed, independent § 1983 suits seeking damages for completed federal violations, the Tenth Circuit

vindicated the core principle that federal jurisdiction cannot be declined based on the mere subject matter of family law. Yet because the decision was left unpublished, its clarifying impact is confined to this case, leaving federal courts nationwide without binding precedent and perpetuating the very inconsistency and injustice this petition asks this Court to resolve.

**D. District Court's Systematic Misconduct & Resulting Jurisdictional Void**

The record demonstrates that the district court's conduct extended far beyond routine judicial error, amounting to systematic misconduct that rendered subsequent proceedings jurisdictionally void. The misconduct falls into three interrelated categories:

(1) concealment of documented felony violations in contravention of 18 U.S.C. § 4;

(2) refusal to recuse under 28 U.S.C. § 455(a) despite active congressional investigations naming the presiding judges; and

(3) affirmative alteration and mischaracterization of pleadings to manufacture abstention grounds.

**1. Failure to Report Felony Conduct Under 18 U.S.C. § 4**

Federal law imposes a mandatory, nondiscretionary duty on all persons—including judges—to report known federal felonies to appropriate authorities. Under 18 U.S.C. § 4, misprision occurs when a person, "having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority."

The Tenth Circuit has defined the offense as requiring: (1) knowledge of a felony; (2) failure to report; (3) an affirmative act of concealment; and (4) intent to conceal. *United States v. Baez*, 732 F.2d 780, 782 (10th Cir. 1984).

Here, Petitioner submitted verified, detailed criminal complaints documenting perjury, obstruction of justice, and other felony crimes by state officials and private actors operating under color of law. The district court reviewed those materials yet undertook no reporting or referral action under § 4. Instead, it stayed discovery, and fraudulently invoked abstention to dismiss the suits—actions that collectively concealed evidence of felony misconduct within the meaning of *Baez*.

A judge who knowingly suppresses evidence of felonies forfeits neutrality. Concealment of criminal conduct under color of judicial authority transforms the court from adjudicator to participant in the wrongdoing. Such conduct creates a structural defect, not a mere legal error. Because no appellate court has squarely addressed whether § 4 applies to Article III judges, the Tenth Circuit's silence on this issue perpetuates uncertainty over whether judicial officers are categorically exempt from the statute's universal command that "whoever" possesses such knowledge must report it. This unresolved constitutional question—whether judicial independence nullifies generally applicable criminal obligations—warrants this Court's review.

**2. Refusal to Recuse Under 28 U.S.C. § 455(a)**

Both Chief Judge Philip A. Brimmer and Magistrate Judge Scott T. Varholak continued to preside over Petitioner's cases while under active congressional

investigation for the same conduct challenged in the litigation. Petitioner had filed formal congressional whistleblower complaints (June 27, 2024) and filed multiple verified criminal complaints on the court record. Yet neither recused.

Section 455(a) imposes an objective duty: a federal judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." The inquiry is not subjective but asks whether "a reasonable person, knowing all the relevant facts, would harbor doubts about the judge's impartiality." *United States v. Cooley*, 1 F.3d 985, 993 (10th Cir. 1993); see also *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 860–61 (1988). Even the appearance of bias violates due process. *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 876 (2009).

The continued participation of judges under active congressional and administrative investigation for the same conduct at issue is incompatible with § 455(a) and the Constitution's guarantee of an impartial tribunal. See *Nichols v. Alley*, 71 F.3d 347 (10th Cir. 1995) (ordering reassignment where impartiality might reasonably be questioned).

By treating Petitioner's recusal motions as mere disagreement with rulings, the panel below disregarded controlling precedent requiring vacatur and reassignment in such circumstances. *Barnett v. Hall Estill Hardwick Gable Golden & Nelson, P.C.*, 956 F.3d 1228 (10th Cir. 2020). Failure to recuse in the face of such objective conflict constitutes a structural due-process violation that voids all ensuing orders. A judge may not act as both accused and adjudicator; proceedings so tainted are *ultra vires* and constitutionally null.

### 3. Fraud upon the Court through Alteration of Pleadings

The district court compounded these violations by deliberately mischaracterizing Petitioner's pleadings to create an illusion of abstention. Despite clear language limiting relief to retrospective damages only, the court inserted language suggesting that Petitioner sought "federal interference with ongoing state proceedings." This manufactured premise enabled dismissal under *Younger* and *Rooker–Feldman*—a textbook example of fraud upon the court. See *Bulloch v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985) ("Fraud upon the court ... is directed to the judicial machinery itself.").

Once a tribunal relies on falsified pleadings to justify abstention, every subsequent judgment is void *ab initio* for want of impartial adjudication. The Tenth Circuit's failure to confront this issue leaves unresolved whether federal courts possess constitutional authority to alter a party's pleadings to manufacture jurisdictional or abstention grounds—an abuse that undermines both Article III limits and public confidence in the federal judiciary.

### 4. The Combined Effect: Structural Breakdown of Judicial Integrity

Taken together, these violations—misprision, recusal failure, and fraud upon the court—represent a collapse of the structural safeguards that ensure judicial accountability under Article III. When judges conceal crimes, adjudicate their own alleged misconduct, and falsify pleadings to avoid jurisdiction, the resulting judgments are not merely erroneous but void. The Tenth Circuit's decision to reverse on abstention grounds without addressing these underlying violations leaves the

constitutional defect intact. Only this Court can clarify that statutory duties of reporting and recusal apply equally to judges, and that courts acting beyond those limits act ultra vires and without constitutional authority.

### E. Conflicted Representation of Individual-Capacity Defendants by the State Attorney General

The final issue concerns the Colorado Attorney General's conflicted representation of defendants sued solely in their individual capacities in Petitioner's § 1983 actions.

In *Bellinsky v. Galán*, Nos. 1:23-cv-03163 & -03461 (D. Colo.), the Attorney General's Office entered unified appearances for multiple defendants—including judicial officers and executive officials—each sued personally for unconstitutional acts committed under color of law in complete absence of all jurisdiction. The State filed joint pleadings and motions to dismiss on behalf of both public and private actors, asserting defenses that served Colorado's institutional interests rather than the distinct interests of the individuals actually named. This collapse of adversarial lines effectively placed the State on both sides of the caption, controlling the defense of persons accused of acting *ultra vires* and outside all lawful jurisdiction.

Petitioner repeatedly objected that this arrangement violated (1) the defendants' right to conflict-free representation and (2) his own due-process right to a neutral, independent forum. The Attorney General's loyalty was divided between protecting the State's institutional reputation and defending officials facing personal liability. That duality cannot be reconciled with this Court's precedents. In *Hafer v. Melo*, 502 U.S. 21 (1991), and *Scheuer v. Rhodes*, 416 U.S. 232 (1974), the Court held

that § 1983 personal-capacity suits "seek to impose individual liability upon a government officer for actions taken under color of state law" and that the State itself is not the real party in interest. When an official acts *ultra vires*—beyond the authority of the State—representation by the State's own lawyers is inherently conflicted.

The Tenth Circuit, however, disposed of this constitutional question in a single paragraph:

> "**Representation of Individual Defendants.** Rabbi Bellinsky also argues that the Office of the Attorney General for the State of Colorado couldn't represent the state employees when sued in their individual capacities.... We conclude that the district court did not err. Colorado law entitles state employees to representation by the Attorney General when sued in their individual capacities if the claim arises out of their official duties. Colo. Rev. Stat. § 24-31-101(1)(m). Rabbi Bellinsky cites no authority that would call into question the applicability of this statute." (App. A.)

That cursory treatment sidestepped the federal issue. The question is not whether Colorado has enacted a statute permitting such representation, but whether a State may constitutionally invoke its own law to override the federal separation between sovereign and personal liability recognized in *Hafer* and *Scheuer*. By elevating § 24-31-101(1)(m) over federal law, the panel subordinated the Supremacy Clause and allowed a State to dominate both defense and forum in federal civil-rights litigation.

Petitioner's rehearing petition demonstrated that this arrangement defeats the purpose of § 1983 itself—an enactment designed to provide a federal remedy when state institutions and state lawyers cannot be trusted to police their own officials. *(App. G at 15–20.)* Other circuits have condemned similar conflicts, holding

that government-controlled joint representation impermissibly merges institutional and personal defenses. See *Rodick v. City of Schenectady*, 1 F.3d 1341 (2d Cir. 1993); *Michaels v. State of New Jersey*, 150 F.3d 257 (3d Cir. 1998); *Franklin v. Zaruba*, 150 F.3d 682 (7th Cir. 1998). Those courts recognize that a sovereign may not simultaneously defend its own interests and those of the officials accused of violating federal law under its authority.

By endorsing the Attorney General's representation solely on the basis of a state statute, the Tenth Circuit deepened an existing circuit divide and sanctioned a practice that erodes both the adversarial integrity of § 1983 proceedings and the constitutional guarantee of a neutral, conflict-free federal forum. This question warrants review because it strikes at the core of federal accountability: whether a State may constitutionally control the defense of the very individuals accused of violating the Constitution in its name.

### F. Post-Remand Developments Demonstrating Ongoing Constitutional Crisis

The constitutional violations giving rise to this petition did not end with the Tenth Circuit's July 22, 2025 reversal; they have intensified on remand. Rather than proceeding to discovery and adjudication as the appellate mandate required, the district court has resurrected two-year-old fraudulent motions and continued to treat immunity and abstention as categorical barriers—contrary to the mandate and to controlling precedent.

On September 15, 2025, Chief Judge Brimmer entered orders in both remanded cases reinstating the defendants' 2023 motions to dismiss—motions

already shown to contain falsified representations and to rest entirely on the abstention theories the Tenth Circuit rejected (*Orders*, 1:23-cv-03163 Doc. 112; 1:23-cv-03461 Doc. 109). This resurrection violated the mandate rule, which obligates district courts to "implement both the letter and the spirit of the mandate, taking into account the appellate court's opinion and the circumstances it embraces." *Ute Indian Tribe v. Utah*, 114 F.3d 1513, 1520-21 (10th Cir. 1997); *Procter & Gamble Co. v. Haugen*, 317 F.3d 1121, 1126 (10th Cir. 2003). Petitioner's September 5 objections detailed that the reinstated filings were procedurally expired and substantively fraudulent, yet they were again accepted into the record.

Compounding the error, Magistrate Judge Varholak refused recusal and on September 18, 2025 denied Petitioner's motions to lift the discovery stays, despite no written opposition and thus confessed motions under D.C.COLO.LCivR 7.1(d). At that hearing, the Magistrate misapplied "String Cheese" balancing and treated immunity as an absolute bar to discovery at the Rule 12(b)(6) stage—contrary to Supreme Court and Tenth Circuit authority permitting targeted immunity-related discovery where facts are disputed. See *Anderson v. Creighton*, 483 U.S. 635, 646 n.6 (1987); *Crawford-El v. Britton*, 523 U.S. 574, 593 n.14 (1998); *Kerns v. Bader*, 663 F.3d 1173, 1180-83 (10th Cir. 2011); *Workman v. Jordan*, 958 F.2d 332, 336 (10th Cir. 1992). At the pleading stage, the well-pleaded allegations that defendants acted *ultra vires* and in the complete absence of jurisdiction must be accepted as true. See *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). By foreclosing discovery and crediting

the same immunity arguments already discredited by the Tenth Circuit, the district court effectively converted Rule 12(b)(6) into summary judgment without a record.

These events demonstrate an ongoing structural breakdown. The same judges whose prior orders were reversed for abstention error (amounting to abuse of discretion) now preside over the remanded proceedings while simultaneously being implicated in misprision, recusal violations, and record falsification. Their continued control ensures the perpetuation of obstruction: reinstatement of void motions, refusal to apply Local Rule 7.1(d), and suppression of discovery essential to proving *ultra vires* conduct and fraud upon the court. The situation mirrors Petitioner's Rule 72(a) objections and replies, which documented categorical denial of discovery, unequal rule enforcement, and continued disregard of the appellate mandate.

The constitutional crisis is therefore present and escalating. Without this Court's intervention, the District of Colorado will remain free to disregard the Tenth Circuit's reversal and to entrench a system in which judges under investigation adjudicate their own misconduct while suppressing the factual record. Supreme Court review is necessary to enforce the mandate rule, reaffirm that Rule 12(b)(6) does not permit dismissal of *ultra vires* claims without discovery, and restore the separation-of-powers guarantees essential to federal judicial integrity.

## REASONS FOR GRANTING THE PETITION

### I. Circuit Split on Sprint Gatekeeping Requires Resolution

The Tenth Circuit's unpublished reversal exposed but did not resolve a deep circuit split over whether *Sprint Communications, Inc. v. Jacobs*, 571 U.S. 69 (2013),

requires mandatory gatekeeping analysis before invoking Younger abstention in domestic-relations-related § 1983 actions. This unresolved conflict affects thousands of litigants annually and has produced inconsistent access to federal courts based solely on geography.

**A. The Circuit Divide**

Several circuits enforce Sprint's three-category framework, requiring case-specific analysis before abstention: the Second Circuit (*Falco v. Justices of the Matrimonial Parts*, 805 F.3d 425 (2d Cir. 2015)), the Seventh Circuit (*J.B. v. Woodard*, 997 F.3d 714 (7th Cir. 2021)), and the Ninth Circuit (*Cook v. Harding*, 879 F.3d 1035 (9th Cir. 2018)). These courts hold that matrimonial and protection-order proceedings are not categorically subject to abstention.

By contrast, other circuits—including the pre-reversal Tenth Circuit—have applied automatic abstention in family-law contexts based on pre-Sprint authority, effectively nullifying Sprint and foreclosing federal review of independent constitutional claims. District courts within these jurisdictions routinely dismiss § 1983 suits whenever any parallel state custody or protection-order proceeding exists.

**B. Unpublished Decision Perpetuates Confusion**

The Tenth Circuit correctly recognized that the district court erred by applying Younger without performing Sprint analysis, yet issued its decision as an unpublished order. This deprives district courts of binding precedent on a question affecting thousands of civil-rights litigants each year. Within the Tenth Circuit

alone, district courts continue to rely on unpublished pre-Sprint opinions to dismiss constitutional claims without analyzing Sprint's three categories.

Legal commentators immediately recognized the decision's significance, noting it "re-sets the boundaries of Younger abstention" and provides "helpful language" for litigants facing reflexive dismissals. Yet because the panel declined to publish, its corrective effect stops with this single case, leaving the very error it identified free to recur.

### C. National Importance

Each year, large numbers of parents and families file § 1983 actions alleging constitutional violations arising from family-court proceedings. In automatic-abstention circuits, nearly all are dismissed without the jurisdictional analysis this Court required in Sprint, leaving citizens with no federal remedy for due-process or equal-protection violations. This disparity—driven by geography rather than law—erodes the uniformity of federal constitutional rights.

Only this Court can restore Sprint's supremacy and ensure that abstention remains "the exception, not the rule." *Sprint*, 571 U.S. at 81. The Tenth Circuit's unpublished treatment of this foundational jurisdictional question underscores the urgent need for published, nationwide guidance.

## II. Fraud Upon the Court and Judicial Non-Recusal Present Structural Violations

The district court's conduct extended far beyond legal error, encompassing three interrelated structural violations: (1) falsification of pleadings to manufacture abstention grounds, (2) concealment of documented federal felonies in violation of 18

U.S.C. § 4, and (3) refusal to recuse under 28 U.S.C. § 455(a) despite active congressional investigations. These violations rendered subsequent proceedings jurisdictionally void.

**A. Alteration of Pleadings Voids Jurisdiction**

The magistrate judge inserted language into Petitioner's verified complaint that Petitioner never wrote—recasting independent damages claims as challenges to matters "in the state court." The district court then relied on that fabricated language to justify Younger abstention. This Court has long held that "tampering with the administration of justice" constitutes fraud upon the court and renders ensuing judgments void. *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246 (1944); *Bulloch v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985).

Article III does not authorize courts to manufacture jurisdictional facts. When a judge "goes beyond the power delegated," the resulting orders are ultra vires and void. *Valley v. Northern Fire & Marine Ins. Co.*, 254 U.S. 348, 353 (1920). The falsification here was outcome-determinative: it transformed legitimate § 1983 damages suits into apparent collateral attacks—precisely the predicate needed for abstention.

**B. Violation of Mandatory Crime-Reporting Duty**

Federal law imposes a nondiscretionary duty on all persons to report known federal felonies. Under 18 U.S.C. § 4, misprision occurs when a person "having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same." The Tenth Circuit defines the offense as requiring: (1) knowledge of a felony; (2) failure to

report; (3) an affirmative act of concealment; and (4) intent to conceal. *United States v. Baez*, 732 F.2d 780, 782 (10th Cir. 1984).

Petitioner submitted verified criminal complaints documenting perjury, obstruction of justice, and other felony crimes. The district court reviewed those materials yet undertook no reporting action. Instead, it stayed discovery and invoked abstention—actions that collectively concealed evidence of felony misconduct within the meaning of *Baez*. A judge who knowingly suppresses evidence of felonies forfeits neutrality and creates a structural defect beyond appellate correction.

No circuit has addressed whether § 4 applies to Article III judges. The statute's text—"whoever"—admits of no judicial exception, yet the question remains unresolved: whether judicial independence nullifies generally applicable criminal obligations imposed by Congress.

**C. Recusal Violations Under 28 U.S.C. § 455(a)**

Section 455(a) requires that any judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." The standard is not subjective; it asks whether a reasonable observer, fully informed of the facts, would doubt the judge's neutrality. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 860–61 (1988); *United States v. Cooley*, 1 F.3d 985, 993 (10th Cir. 1993). This Court has held that even the appearance of bias violates due process. *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 876 (2009).

Both Chief Judge Brimmer and Magistrate Judge Varholak presided over Petitioner's cases while under active congressional investigation for the same

conduct challenged in the litigation. Section 455(a) requires disqualification in "any proceeding in which [a judge's] impartiality might reasonably be questioned." The standard is objective, asking whether "a reasonable person, knowing all the relevant facts, would harbor doubts about the judge's impartiality." *United States v. Cooley*, 1 F.3d 985, 993 (10th Cir. 1993).

A judge cannot be both accused and adjudicator in the same controversy. *Nichols v. Alley*, 71 F.3d 347 (10th Cir. 1995) (reassignment required where impartiality might reasonably be questioned).When judges under investigation adjudicate their own alleged misconduct, the tribunal ceases to be "neutral and detached." *Ward v. Village of Monroeville*, 409 U.S. 57, 61 (1972). Proceedings so tainted are ultra vires and constitutionally void. Here, both Chief Judge Brimmer and Magistrate Judge Varholak were the subjects of pending congressional whistleblower and oversight inquiries concerning the same conduct challenged by Petitioner, yet they denied recusal and entered dispositive rulings later reversed.

**D. Ongoing Harm and Structural Due-Process Failure**

The harm is not historical but continuing: these same judges still preside over the remanded actions. Because structural bias infects every ruling, subsequent proceedings cannot cure the defect. Post-remand developments confirm this ongoing crisis:

On September 15, 2025, Chief Judge Brimmer reinstated the defendants' dismissed 2023 motions—motions already shown to contain falsified representations and to rest entirely on the abstention theories the Tenth Circuit rejected. This

resurrection violated the mandate rule, which obligates district courts to "implement both the letter and the spirit of the mandate." *Ute Indian Tribe v. Utah*, 114 F.3d 1513, 1520-21 (10th Cir. 1997).

Magistrate Judge Varholak refused recusal despite documented conflicts and denied motions to lift discovery stays that have now persisted more than 20 months after filing. The same judges whose prior orders were reversed now obstruct implementation of that reversal, demonstrating that recusal violations produce ongoing constitutional injury that compounds with each passing day. Proceedings so tainted are ultra vires and constitutionally void.

**E. The Tenth Circuit's Summary Disposition Leaves a Critical Gap**

The Tenth Circuit summarily rejected Petitioner's recusal arguments without analysis, contrary to its own precedents requiring explanation where impartiality is reasonably questioned. *Cooley*, 1 F.3d at 993. By doing so, the panel effectively authorized judges to sit in judgment of their own alleged misconduct.

More troubling still, the court denied Petitioner's rehearing petition without even polling or circulating it to the full court—meaning no active judge on the Tenth Circuit beyond the original three-judge panel reviewed Petitioner's substantive arguments concerning judicial misconduct, crime concealment, or mandatory recusal obligations. When a petition raises questions about whether sitting judges violated criminal statutes and ethical duties, summary denial without circulation effectively insulates judicial misconduct from any meaningful review. The panel's three judges—none of whom addressed the structural violations in their initial order—

became the sole arbiters of whether their colleagues' conduct warranted scrutiny. That arrangement violates the principle that no person may be judge in their own cause.

This Court's review is necessary to reaffirm that § 455(a) and the Constitution demand automatic disqualification whenever public confidence in judicial neutrality is at stake.

### F. The Tenth Circuit's Silence Perpetuates a Structural Due-Process Crisis

The panel below reversed on abstention grounds but declined to address fraud upon the court, § 4 violations, or recusal failures—despite detailed briefing and record support. This silence is not merely procedural; it is structural. When those charged with enforcing federal law instead conceal it, and then adjudicate cases involving that concealment, the Constitution's promise of due process and separation of powers collapses. The Tenth Circuit's summary disposition effectively sanctions a regime in which judges may falsify pleadings, conceal crimes, and adjudicate their own misconduct without consequence—a result incompatible with Article III and due process. Only this Court's intervention can reaffirm that these statutory duties apply equally to judges, that violations void jurisdiction ab initio, and that no judge is above the law.

## III. State AG Representation of Individual-Capacity Defendants Conflicts with Multiple Circuits and Violates Due-Process

The Colorado Attorney General's representation of defendants sued solely in their individual capacities created irreconcilable conflicts that undermined both adversarial integrity and due process. The Tenth Circuit's approval of this

arrangement, based solely on state statute, conflicts with multiple circuits and this Court's precedents.

### A. Personal-Capacity Suits Are Constitutionally Distinct

Under *Hafer v. Melo*, 502 U.S. 21 (1991), personal-capacity suits "seek to impose individual liability upon a government officer for actions taken under color of state law," while official-capacity suits are suits against the state itself. Because the state is not the real party in interest in a personal-capacity action, it has no lawful basis to provide counsel. When a state attorney general represents individual defendants, the state becomes both adversary and advocate—an inherent conflict violating due process.

The conflict is two-sided:

- For defendants, it undermines the Sixth-Amendment-based right to conflict-free representation recognized in analogous civil-rights contexts.
- For plaintiffs, it denies a neutral forum by converting a personal-liability case into one effectively defended by the sovereign whose policies and supervision are at issue.

### B. Other Circuits Recognize That Such Conflicts Require Separate Counsel

Multiple circuits recognize these conflicts require separate counsel. The Second Circuit (*Rodick v. City of Schenectady*, 1 F.3d 1341 (2d Cir. 1993)), Third Circuit (*Michaels v. State of New Jersey*, 150 F.3d 257 (3d Cir. 1998)), and Seventh Circuit (*Franklin v. Zaruba*, 150 F.3d 682 (7th Cir. 1998)) hold that government-

controlled joint representation impermissibly merges institutional and personal defenses when the state's own exposure or policies are implicated.

These authorities reflect a consensus that the structural distinction between the state and its officers cannot be ignored without eroding the fairness of § 1983 proceedings. The Tenth Circuit's contrary holding places it squarely at odds with those circuits and invites ongoing constitutional inconsistency.

### C. The Tenth Circuit's Ruling Misapplies Colorado's Statutory Framework and Federal Due-Process Standards

The panel below relied exclusively on Colo. Rev. Stat. § 24-31-101(1)(m), concluding that state law "entitles state employees to representation by the Attorney General when sued in their individual capacities if the claim arises out of their official duties." *(App. A at 6–7.)* But that statute cannot override federal constitutional principles. A state legislature may not authorize the Attorney General to act simultaneously as defense counsel for individuals and as the legal representative of the state whose liability exposure may diverge. Nor does such a statute cure the due-process infirmity that arises when a litigant faces the combined power of multiple defendants coordinated under a single state-controlled legal strategy.

By deferring to state law instead of applying federal standards governing impartial tribunals and conflict-free representation, the Tenth Circuit endorsed a system in which the State of Colorado effectively litigates both sides of a § 1983 controversy—an outcome irreconcilable with the purpose of the statute and the independence of federal courts. The Tenth Circuit's elevation of state statute over

federal constitutional principles deepens an existing circuit divide and sanctions a practice that erodes adversarial integrity in civil-rights proceedings nationwide.

**D. The Question Is Recurring and of National Importance**

State attorneys general across the country routinely invoke similar statutory provisions to defend personal-capacity defendants in § 1983 suits. The resulting conflicts pervade civil-rights litigation, enabling coordinated defense strategies that obscure personal accountability and burden plaintiffs with sovereign resources Congress never intended to oppose them. The issue is neither isolated nor theoretical: it determines whether § 1983 remains a viable mechanism for redressing constitutional violations by individual state officials.

Congress enacted § 1983 to provide a federal remedy when state institutions cannot be trusted to police their own officials. Allowing the state to control both defense and forum defeats that purpose. This Court's review is needed to restore doctrinal clarity and protect the structural purpose of § 1983—to hold individuals personally responsible for unlawful acts committed under color of state law. Absent such review, the Tenth Circuit's unpublished ruling will continue to insulate conflicted state-aligned representation from scrutiny, further eroding public confidence in the impartial administration of justice.

**IV. Exceptional Importance and Urgency**

The questions raised in this petition strike at the core of constitutional government: the integrity of the judiciary, the accessibility of the federal forum, and the rule of law itself. Together, they define whether federal courts remain open to

citizens alleging constitutional injury—or whether doctrines of abstention, concealment, and conflicted representation will continue to bar justice for an entire class of litigants.

### A. Nationwide Impact

The Tenth Circuit's recognition that Sprint gatekeeping applies to domestic-relations § 1983 actions has implications extending far beyond Petitioner's case, yet its unpublished status leaves every other federal court free to disregard it. Federal courts have for years dismissed domestic-relations-related civil-rights suits reflexively, denying court access and redress to thousands of families each year.

This Court's review is therefore required not only to ensure doctrinal uniformity but to vindicate the promise that federal jurisdiction remains open to those whose constitutional rights have been violated under color of state law.

### B. Structural Violations that Threaten Constitutional Order

The judiciary's legitimacy depends on the public's confidence that federal judges will decide actual cases—not manufacture them through falsified pleadings, ignore criminal evidence, or preside over matters involving their own misconduct. The record here demonstrates each of those structural breaches. When judges falsify pleadings, conceal federal felonies, or refuse recusal while under congressional investigation, they cease to act within Article III's grant of judicial power. The result is a jurisdictional void that no appellate waiver or procedural default can cure. The Tenth Circuit's silence on these questions, despite full briefing and record support,

perpetuates a regime where federal judges may adjudicate their own misconduct without consequence—a result the Constitution cannot tolerate.

### C. Ongoing Harm

Post-remand developments confirm the constitutional crisis: Chief Judge Brimmer reinstated dismissed motions contrary to the mandate, Magistrate Judge Varholak refused recusal despite documented conflicts, and discovery remains stayed more than 20 months after filing. The same judges whose orders were reversed now obstruct implementation of that reversal. Without this Court's intervention, the cycle of judicial obstruction will continue indefinitely.

The harms at issue are not theoretical. The same district-court judges who engaged in the conduct described here remain assigned to Petitioner's remanded cases. Every day that passes under that arrangement deepens the constitutional crisis and erodes the public's trust in the impartial administration of justice. This petition thus presents not only questions of law but questions of national conscience: whether the federal judiciary will enforce the limits that define its own legitimacy.

### D. No Person Above the Law

The questions presented strike at the core of constitutional government. This Court has repeatedly affirmed that "no man in this country is so high that he is above the law." *United States v. Lee*, 106 U.S. 196, 220 (1882). That principle applies with equal force to federal judges. Resolution is essential to maintain the balance between judicial independence and accountability under law.

## CONCLUSION

The petition presents fundamental questions about judicial accountability, constitutional protections, and the rule of law. The Tenth Circuit's unpublished reversal corrected abstention error but left unremedied a national circuit void by declining to publish the opinion, as well as structural violations that threaten the integrity of federal adjudication itself. These questions are of exceptional national importance and require this Court's immediate review to ensure uniform access to federal courts and reaffirm that statutory duties of reporting and recusal apply equally to judges. Without intervention, the guarantees of § 1983 will continue to erode, leaving litigants—particularly those in domestic-relations contexts—without a federal forum to vindicate fundamental rights.

For these reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted this 7th day of November, 2025,

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