No. 25-658

IN THE

Supreme Court of the United States

MATTHEW JONES, *et al.*,

Petitioners,

v.

AMBER M. KING, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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REPLY BRIEF FOR PETITIONERS

I. This Court has jurisdiction to review the question presented.

Defendants mischaracterize the question presented in an attempt to evade review. The question before this Court is the same question the Fifth Circuit answered below—whether Defendants are immune for the "plainly administrative" act of qualifying a venire by confirming the age, literacy, citizenship, criminal history, and residency of prospective jurors. *See Pet. App. 21a* (Ho, J., dissenting).

Defendants, however, misstate the question presented as whether they are immune for issuing and carrying out orders for "direct contempt." The Fifth Circuit declined to consider that collateral question, *see Pet. App. 16a–18a*, and Plaintiffs are not seeking review of it now. That question instead will be decided on direct appeal from the final judgment entered on November 14, 2025. Doc. No. 37.

Defendants also wrongly contend there are procedural barriers to this Court's ability to review the question presented. First, they argue that because the Fifth Circuit issued the mandate, allowing the district court to render final judgment, review of the Fifth Circuit's decision is now foreclosed. *See* Response at 5, 7–9. But this Court has repeatedly recognized that the issuance of the mandate, whether because a stay was not requested or because a stay was denied, does not defeat the right to seek review in this Court. *See United States v. Villamonte-Marquez*, 462 U.S. 579, 581 n.2 (1983); *Aetna Cas. & Surety Co. v. Flowers*, 330 U.S. 464, 467 (1947); *cf.* 5th Cir. I.O.P. 8.9

("Stays to permit the filing and consideration of a petition for a writ of certiorari ordinarily will not be granted.").

Defendants also suggest the "interlocutory nature" of the district court's partial grant of judicial immunity requires this Court to deny review. *See* Response at 8. Defendants rely only on *Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.*, 240 U.S. 251 (1916), a case not involving immunity.

Contrary to Defendants' suggestion, an order need not be the last order made in a case to be "final" and appealable under 28 U.S.C. § 1291. *Mitchell v. Forsyth*, 472 U.S. 511, 524 (1985) (citing *Gillespie v. United States Steel Corp.*, 379 U.S. 148, 152 (1964)). Relevant here, the denial of a claim of absolute immunity is immediately appealable because "the essence of absolute immunity is its possessor's entitlement not to have to answer for his conduct in a civil damages action." *Id.* at 525 (citing *Nixon v. Fitzgerald*, 457 U.S. 731 (1982)). Just as the district court's denial of Defendants' claim of judicial immunity was "squarely within [the Fifth Circuit's] jurisdiction," *see Pet. App. 5a*, it is also properly before this Court.

Finally, Defendants argue the order Plaintiffs ask this Court to review is currently pending before the Fifth Circuit. Response at 7–9. That is technically true, since the district court partially granted and partially denied Defendants' claim of immunity in the same order. *Pet. App. 22a–43a.* But the Fifth Circuit already reviewed the portion of that order denying judicial immunity for the sham juror qualification proceeding and therefore cannot review it again. *See United States v. Teel*, 691 F.3d 578, 582 (5th Cir. 2012) (recognizing the law-of-the-case doctrine

bars a court of appeals from reexamining an issue of fact or law that already has been decided in a prior appeal). So, whether the remainder of the district court's *order* is currently before the Fifth Circuit is immaterial. This Court has jurisdiction over the *question* presented here.

II. The Fifth Circuit adopted a judicial immunity test that swallows this Court's precedent.

Defendants' response to the merits of the question presented skirts the far-reaching consequences of the Fifth Circuit's decision. The majority below effectively held the setting of a judge's action is dispositive of whether that action is entitled to absolute judicial immunity. In fact, the majority criticized the dissent for "focus[ing] on what Judge King actually did" (perform the ministerial task of determining whether prospective jurors are residents) rather than what she could have done in the same setting. *See Pet. App. 13a n.40.*

This Court expressly rejects that approach. In *Forrester v. White*, the Court held: "It [is] the nature of the function performed, not the identity of the actor who performed it, that inform[s] [the] immunity analysis." 484 U.S. 219, 229 (1988). Further, to conclude that merely because "a judge acts within the scope of [her] authority, [her non-judicial acts] are brought within the court's 'jurisdiction,' or converted into 'judicial acts,' would lift form above substance." *Id.* at 230. Yet, that is precisely what the majority below concluded the Fifth Circuit's four-factor test compelled it to do.

Defendants argue that if this was error (it was), it does not warrant this Court's consideration because the

majority below merely "misapplied settled law." Response at 9. But the majority below did much more than misapply settled law. It instead created a new immunity standard under which even the most egregious misconduct (for example, taking bribes) is deemed "judicial" if it occurs in open court.

This new standard revises the Fifth Circuit's "familiar, four-factor test" to elevate one factor above the others—whether the act occurred in a courtroom. *See Ballard v. Wall*, 413 F.3d 510, 515 (5th Cir. 2005).

Contrary to Defendants' contention, this Court did not "endorse" such a revision in *Stump v. Sparkman*, 435 U.S. 349 (1978). In that case, this Court recognized that while it had "not had occasion to consider, for purposes of the judicial immunity doctrine, the necessary attributes of a judicial act," it had held a lack of formality did not prevent a proceeding from being judicial in nature. *Id.* at 360 (citing *In re Summers*, 325 U.S. 561 (1945)). The Court noted the Fifth Circuit also recognized that whether an act "arose directly and immediately out of a visit to the judge in his official capacity" is "*[a]mong* the factors" relevant to whether the act is judicial in nature. *Id.* at 361 (emphasis added) (citing *McAlester v. Brown*, 469 F.2d 1280, 1282 (5th Cir. 1972)). Here, in contrast, the Fifth Circuit determined it is *the only* factor relevant to whether the act is judicial in nature.

Next, as they did in the courts below, Defendants rely on article 35.21 of the Texas Code of Criminal Procedure in defense of their claim that "qualifying a venire" is a task that may only be performed by judges. That article provides: "The court is the judge, after

proper examination, of the qualifications of a juror, and shall decide all *challenges* without delay and without argument thereupon." Tex. Code Crim. Proc. art. 35.21 (emphasis added). While this provision refers to a juror's "qualifications," it has only ever been applied in the context of jury selection, where counsel are present to raise challenges to individual jurors. *See, e.g., Chambers v. State*, 903 S.W.2d 21, 27–30 (Tex. Crim. App. 1995) (affirming trial court's ruling on challenge for cause made *during voir dire*).

Further, the Texas Code of Criminal Procedure elsewhere distinguishes between "juror qualification" at the venire stage and during jury selection. For example, article 35.03 ("Excuses") explicitly empowers "the court's designee" to "hear and determine an excuse offered for not serving as a juror, including any claim of an exemption *or a lack of qualification*." Tex. Code Crim. Proc. art. 35.03 § 2 (emphasis added). Before a panel is seated for voir dire, therefore, the court may designate a non-judge to determine whether the prospective jurors are qualified to serve.

In his report and recommendation, the U.S. Magistrate Judge noted "Defendants' briefings are devoid of any cases applying [article 35.21] in the general assembly, as opposed to voir dire, context." *Pet. App. 63a n.61.* And, tellingly, the Fifth Circuit majority did not cite article 35.21 at all. Defendants' continued mischaracterization of that provision as requiring Texas judges to qualify the venire is unavailing.

Finally, Defendants again misconstrue the question presently before the Court, arguing: "The contempt

orders [Plaintiffs] seek to include within the scope of the Question Presented are also 'judicial acts' for which judges have immunity." Response at 10. The contempt orders are not within the scope of the question presented, and Defendants' repeated resort to an argument no one is making is simply misdirection.

CONCLUSION

The petition for writ of certiorari should be granted, and the judgment of the Fifth Circuit should be reversed.

Respectfully submitted,

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