

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

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EDUARD GASPARYAN,

Petitioner,

- v -

UNITED STATES OF AMERICA,

Respondent.

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

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**PETITION FOR WRIT OF CERTIORARI**

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## **QUESTION PRESENTED FOR REVIEW**

Whether the federal government “constructively possesses” property seized by state law enforcement—thereby conferring jurisdiction under Federal Rule of Criminal Procedure 41(g)—when state authorities expressly defer to federal prosecutors on the disposition of the property, federal prosecutors refuse to return it, investigate its provenance, dispatch federal agents to interrogate the owner’s family about it, and initiate steps to liquidate it to satisfy a federal restitution order.

## STATEMENT OF RELATED PROCEEDINGS

The proceedings identified below are directly related to the above-captioned case in this Court.

- *United States v. Eduard Gasparyan*, No. 2:22-cr-448-JLS, U.S. District Court for the Central District of California. Order denying motion for return of property entered March 13, 2025. Order denying motion for indicative ruling entered May 23, 2025.
- *United States v. Eduard Gasparyan*, No. 24-968, U.S. Court of Appeals for the Ninth Circuit. Order dismissing appeal entered February 19, 2025.
- *United States v. Eduard Gasparyan*, No. 25-1934, U.S. Court of Appeals for the Ninth Circuit. Memorandum disposition entered December 30, 2025.

**TABLE OF CONTENTS**

QUESTION PRESENTED FOR REVIEW ..... i

STATEMENT OF RELATED PROCEEDINGS ..... ii

TABLE OF CONTENTS.....iii

TABLE OF AUTHORITIES ..... v

OPINION BELOW..... 1

JURISDICTION..... 1

CONSTITUTIONAL AND STATUTORY PROVISIONS..... 1

INTRODUCTION ..... 3

STATEMENT OF THE CASE..... 5

    A.    The Parallel State and Federal Investigations ..... 5

    B.    The Seizure of the Rolex Watch and the Federal Prosecution ..... 5

    C.    The Federal Government’s Post-Conviction Assertion of Control  
          Over the Watch..... 5

    D.    The District Court Proceedings ..... 7

    E.    The Ninth Circuit’s Decision..... 7

REASONS FOR GRANTING THE PETITION ..... 10

I.    The Courts of Appeals Are Divided on Whether and When Constructive  
      Possession Confers Jurisdiction Under Rule 41(g), and This Case  
      Exposes a Gap in the Existing Frameworks ..... 10

    A.    The existing circuit approaches ..... 10

B.	The division is real and consequential, even though the panel offered an alternative holding.....	12
C.	The existing tests do not account for post-conviction federal control exercised through cooperative state agents.....	13
II.	The Ninth Circuit’s Decision Permits the Federal Government to Exercise Unreviewed Dominion Over Property While Evading the Procedural Protections That Congress Has Provided .....	15
III.	This Case Is an Appropriate Vehicle Despite the Ninth Circuit’s Alternative Holding .....	17
	CONCLUSION.....	18

**INDEX TO APPENDICES**

Appendix A:	U.S. Court of Appeals Ninth Circuit Memorandum Disposition (December 30, 2025)
Appendix B:	U.S. District Court Order Denying Motion for Return of Property (March 13, 2025)
Appendix C:	U.S. District Court Order Denying Motion for Indicative Ruling (May 23, 2025)

## TABLE OF AUTHORITIES

### Cases

<i>United States v. Artis</i> , 919 F.3d 1123 (9th Cir. 2019) .....	8
<i>United States v. Bacon</i> , 900 F.3d 1234 (10th Cir. 2018) .....	3, 8, 10, 13, 14
<i>United States v. Chambers</i> , 192 F.3d 374 (3d Cir. 1999) .....	3, 8, 10-12
<i>United States v. Howard</i> , 973 F.3d 892 (8th Cir. 2020) .....	3, 8, 10, 13, 14
<i>United States v. Huffhines</i> , 986 F.2d 306 (9th Cir. 1993) .....	7, 8
<i>United States v. Solis</i> , 108 F.3d 722 (7th Cir. 1997) .....	3, 8, 11, 12, 14

### Statutes

18 U.S.C. § 1349.....	5
28 U.S.C. § 1254(1) .....	1

### Rules

Fed. R. Crim. P. 41.....	8
Fed. R. Crim. P. 41(g) .....	1-4, 7-11, 14-18

### Constitutional Provisions

U.S. Const. amend. IV .....	1, 16
U.S. Const. amend. V.....	1, 16

## **PETITION FOR WRIT OF CERTIORARI**

Petitioner Eduard Gasparian respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

### **OPINION BELOW**

On December 30, 2025, the Ninth Circuit Court of Appeals issued an unpublished memorandum disposition affirming the district court's denial of petitioner's motion for return of property under Federal Rule of Criminal Procedure 41(g). Appendix A.

### **JURISDICTION**

The court of appeals entered its judgment on December 30, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

### **CONSTITUTIONAL AND STATUTORY PROVISIONS**

The Fourth Amendment to the United States Constitution provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated."

The Fifth Amendment to the United States Constitution provides, in pertinent part: "No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Federal Rule of Criminal Procedure 41(g) provides: “A person aggrieved by an unlawful search and seizure of property or by the deprivation of property may move for the property’s return. The motion must be filed in the district where the property was seized. The court must receive evidence on any factual issue necessary to decide the motion. If it grants the motion, the court must return the property to the movant, but may impose reasonable conditions to protect access to the property and its use in later proceedings.”

## INTRODUCTION

This case presents a question on which the federal courts of appeals have reached divergent conclusions: under what circumstances does the federal government’s post-seizure conduct establish constructive possession of property held by state authorities, thereby conferring jurisdiction under Federal Rule of Criminal Procedure 41(g)?

At least three circuits have recognized that constructive possession may supply Rule 41(g) jurisdiction. The Eighth Circuit adopted a two-pronged test in *United States v. Howard*, 973 F.3d 892, 894–95 (8th Cir. 2020). The Tenth Circuit adopted a similar standard in *United States v. Bacon*, 900 F.3d 1234, 1237 (10th Cir. 2018). And the Third Circuit held in *United States v. Chambers*, 192 F.3d 374, 376 (3d Cir. 1999), that the government’s inability to return property defeats a Rule 41(g) motion only where the government “had never had actual or constructive possession of the property at issue”—thereby incorporating constructive possession into the governing jurisdictional standard. The Seventh Circuit has engaged with the concept without definitively resolving it, assuming *arguendo* in *United States v. Solis*, 108 F.3d 722, 723 (7th Cir. 1997), that constructive possession could apply. The Ninth Circuit, in the decision below, declined to adopt constructive possession at all and held in the alternative that petitioner would not qualify even under the other circuits’ tests. App. A at 5–6.

Both holdings warrant review—but for the same reason. The existing constructive-possession frameworks were designed for the typical case in which the

question is whether state-held evidence was sufficiently connected to a federal prosecution. They do not account for the situation presented here: post-conviction federal control over property that was never evidence in any case, exercised not to advance a prosecution but to enforce a federal restitution order without initiating forfeiture or obtaining an order authorizing sale, with the express acquiescence of state law enforcement. The federal prosecutor refused to return petitioner's Rolex watch, investigated its provenance, dispatched agents to interrogate petitioner's family, and initiated steps to sell it—while the California Highway Patrol investigator holding the watch confirmed that the AUSA was “dealing with” it and that he did not “want to get in the middle of this mess.” ER-15–16, ER-20.

Under every existing test, this conduct escapes judicial review. That gap is inconsistent with Rule 41(g)'s equitable purpose and invites the federal government to exercise dominion over a citizen's property while disclaiming the jurisdiction of any federal court. This Court should grant certiorari to determine the proper scope of constructive possession under Rule 41(g).

## STATEMENT OF THE CASE

### **A. The Parallel State and Federal Investigations**

In 2022, the California Highway Patrol was investigating petitioner for vehicle theft, a state crime. Separately, the United States Department of Labor, Office of Inspector General was simultaneously investigating petitioner for unemployment-benefits fraud, an entirely unrelated federal crime. App. A at 1.

### **B. The Seizure of the Rolex Watch and the Federal Prosecution**

On September 8, 2022, CHP officers obtained and executed a state search warrant at petitioner's residence at 17843 Rinaldi Street in Granada Hills, California. Among the items seized was petitioner's Rolex watch. A CHP property receipt was issued to petitioner listing the watch and other seized items. State charges were never filed against petitioner. ER-57, ER-63.

Federal agents had separately arrested petitioner on August 30, 2022, for identity theft and conspiracy to commit bank fraud. The state vehicle theft charges were later consolidated into the federal case at petitioner's request. Petitioner ultimately pleaded guilty to conspiracy to commit wire fraud in violation of 18 U.S.C. § 1349 and was sentenced to 210 months' imprisonment. ER-54, 59–60.

### **C. The Federal Government's Post-Conviction Assertion of Control Over the Watch**

Following his conviction, petitioner made multiple efforts to secure the return of his Rolex watch. On August 14, 2024, defense counsel submitted a formal request to the government seeking its return. Over the following months, counsel and the

government exchanged multiple communications regarding the property. ER-74–88. The government did not contest that petitioner owned the watch and confirmed that it remained in CHP custody. ER-75.

However, the federal prosecutor declined to return the watch, stating that he was “suspicious of the claim that the Rolex was a gift from [petitioner’s] father” and that “[i]t appears to have been purchased during the time [petitioner] was generating huge cash profits from his scheme.” ER-79. In a subsequent phone call, the prosecutor stated that he did not want to return the watch because “your client is a fraudster and a liar and he’s lying to you about where he got the watch.” ER-68. The government presented no documentation or evidence to support these suspicions and did not assert that the watch was subject to forfeiture or otherwise unlawfully obtained.

On December 12, 2024, the government dispatched federal agents to interrogate petitioner’s mother and sister at their residence concerning the origin of the watch. ER-68.

In April 2025, after petitioner had filed this appeal, defense counsel spoke with CHP Investigator Emmanuel Dasilva regarding the watch. Dasilva told counsel that the issue of the watch “is being dealt with by the AUSA” and “I don’t want to get in the middle of this mess.” ER-16. In a follow-up email on April 14, 2025, Dasilva wrote: “I communicated with Assistant US Attorney Andrew Brown, and he confirmed they were working on an order to sell the watch to apply its value to the court’s earlier

order that defendant pay \$2+ million in restitution. Therefore, the watch will remain in evidence pending the order being completed.” ER-20.

The federal government did not initiate forfeiture proceedings, did not claim the watch was contraband, and did not obtain any judicial order authorizing its retention or sale.

#### **D. The District Court Proceedings**

On January 23, 2025, petitioner moved for the return of his Rolex watch under Federal Rule of Criminal Procedure 41(g). On March 13, 2025, the district court denied the motion, concluding that it lacked jurisdiction because the watch was “in the possession of state, not federal, authorities” and citing *United States v. Huffhines*, 986 F.2d 306 (9th Cir. 1993). The court further stated that petitioner had “an adequate remedy through state proceedings.” Appendix B.

On May 1, 2025, petitioner filed a motion for an indicative ruling, presenting the newly obtained evidence of CHP Investigator Dasilva’s statements confirming that the state agency had ceded control of the watch to the federal prosecutor. On May 23, 2025, the district court denied the motion, finding that petitioner’s constructive-possession argument was “not a new argument” and reaffirming its jurisdictional conclusion. Appendix C. The government did not file an opposition to the indicative ruling motion.

#### **E. The Ninth Circuit’s Decision**

On December 30, 2025, a three-judge panel (M. Smith, Christen, and Forrest, Circuit Judges) affirmed in an unpublished memorandum. The panel began by

observing that “Rule 41 applies only when a search is ‘federal in character,’” citing *United States v. Artis*, 919 F.3d 1123, 1130 (9th Cir. 2019). The panel acknowledged that the *Huffhines* “direct federal authorization” test, construed literally, would also bar relief even where state officials seized property without federal authorization and then “immediately and irretrievably transferred the property to federal officers”—a result “not even the government defends.” App. A at 3.

The panel further recognized that petitioner had produced evidence that “the state agency possessing the Rolex vowed to retain it while federal prosecutors sought to liquidate it” and that the state agency wished not “to get in the middle of this mess” while federal prosecutors “deal[] with” it. App. A at 4. Nevertheless, the court declined to adopt constructive possession as a basis for Rule 41(g) jurisdiction.

In doing so, the panel surveyed the approaches of its sister circuits. It noted that the Seventh and Tenth Circuits have applied constructive possession where property was “considered evidence in the federal prosecution,” citing *Solis*, 108 F.3d at 723, and *Bacon*, 900 F.3d at 1237. It observed that the Eighth Circuit recognizes constructive possession where the federal government either considered the property as evidence or directed state officials to seize it as federal agents. *Howard*, 973 F.3d at 894–95. And it acknowledged the Third Circuit’s citation to *Solis* for the proposition that Rule 41(g)’s predecessor “might apply based on ‘actual or constructive possession.’” *Chambers*, 192 F.3d at 376. App. A at 5. The panel minimized *Chambers* as merely having “cit[ed] *Solis*,” but as discussed in Section I.A below, *Chambers* did more than that—it stated the governing standard in terms that

expressly include constructive possession as a sufficient jurisdictional basis. The panel concluded that petitioner would not qualify for relief even under these circuits' tests, reasoning that there was "no evidence that federal prosecutors considered the Rolex as 'evidence in the federal prosecution'" and that state authorities did not seize the watch "as agents of federal authorities." App. A at 5–6.

The panel characterized petitioner's theory as one that would produce "toothless return orders that federal officials are incapable of executing and that state officials are at liberty to ignore," and concluded that the district court was "under no obligation to invoke Rule 41(g) on such flimsy grounds." App. A at 6.

## REASONS FOR GRANTING THE PETITION

### **I. The Courts of Appeals Are Divided on Whether and When Constructive Possession Confers Jurisdiction Under Rule 41(g), and This Case Exposes a Gap in the Existing Frameworks.**

The federal courts of appeals have taken divergent approaches to the role of constructive possession under Rule 41(g). At least four circuits recognize the concept; the Ninth Circuit has now declined to do so. And among the circuits that recognize constructive possession, the tests they have adopted are too narrow to reach the federal government’s conduct in this case—revealing an unaddressed gap in the law.

#### **A. The existing circuit approaches.**

The circuits have addressed constructive possession under Rule 41(g) with varying degrees of commitment to the doctrine, but the trend is toward recognition.

The Eighth Circuit has articulated the most detailed framework. In *United States v. Howard*, 973 F.3d 892, 894–95 (8th Cir. 2020), it held that a federal court has jurisdiction under Rule 41(g) over property in state custody where the federal government either “(1) consider[ed] the property as evidence in a federal prosecution or (2) direct[ed] state officials to seize the property as agents of federal authorities.”

The Tenth Circuit adopted a similar standard in *United States v. Bacon*, 900 F.3d 1234, 1237 (10th Cir. 2018), holding that Rule 41(g) jurisdiction attaches where state-held property was “considered evidence in the federal prosecution.”

The Third Circuit incorporated constructive possession into its governing legal framework in *United States v. Chambers*, 192 F.3d 374, 376 (3d Cir. 1999). There, the

court held that the government’s contention that it could not return property because it no longer retained it “might succeed if the government had never had actual or constructive possession of the property at issue.” *Id.* The court treated actual and constructive possession as alternative bases for jurisdiction, not as a hypothetical it was merely entertaining. Although the property in *Chambers* had been seized by the federal government (making actual possession the operative ground), the court’s statement of the rule is unqualified: constructive possession suffices.

The Seventh Circuit, in *United States v. Solis*, 108 F.3d 722 (7th Cir. 1997), engaged with the concept but stopped short of adopting it. The court noted that the record did not “affirmatively establish that the vehicle was ever considered evidence in the federal prosecution” and stated that “even if we were to accept the concept of constructive possession ... there would be no basis for relief.” *Id.* at 723. The court thus assumed the doctrine *arguendo* without deciding whether to adopt it—though *Chambers* cited *Solis* approvingly as support for the constructive-possession standard. *Chambers*, 192 F.3d at 376.

The Ninth Circuit, in the decision below, went further than any circuit in the opposite direction. The panel stated that it had “never endorsed constructive possession as a basis for Rule 41(g) relief” and “decline[d]” petitioner’s “invitation to adopt that theory here.” App. A at 2. The panel then surveyed the other circuits’ approaches and held, in the alternative, that petitioner would not qualify for relief under any of them. App. A at 5–6.

**B. The division is real and consequential, even though the panel offered an alternative holding.**

The government will likely argue that the division among the circuits is too uncertain to warrant certiorari. That argument understates the significance of the conflict in three respects.

First, the Ninth Circuit’s refusal to adopt constructive possession here puts it in direct conflict with the Third, Eighth, and Tenth Circuits. In the Third Circuit, the governing rule is that a return-of-property motion survives unless the government “had never had actual or constructive possession of the property at issue.” *Chambers*, 192 F.3d at 376. In the Eighth and Tenth Circuits, detailed tests define when constructive possession exists. In the Ninth Circuit, by contrast, constructive possession is not recognized at all. That is a square conflict on a question of law, and it will produce different outcomes in future cases—including cases with facts that satisfy the other circuits’ tests.

Second, the unsettled posture in the Seventh Circuit is itself a reason for this Court’s review. *Solis* left the question open nearly three decades ago. The Ninth Circuit has now resolved it in the negative. Without this Court’s guidance, the law will continue to develop unevenly.

Third, and most importantly, the alternative holding—that petitioner loses even under the existing tests—should not foreclose review because those tests are themselves part of the question presented. As explained below, the existing constructive-possession frameworks, even in the circuits that have adopted them, do

not reach the federal government's conduct in this case. That is the central problem this petition asks the Court to address.

**C. The existing tests do not account for post-conviction federal control exercised through cooperative state agents.**

The constructive-possession tests recognized in *Bacon* and *Howard* share a common orientation: they focus on the property's connection to a federal prosecution (was it considered evidence?) or on the federal government's role in the seizure itself (did state officers act as federal agents?). Both inquiries look backward—to the seizure or to the trial. Neither captures the situation presented here, in which the federal government asserts de facto control over property after the prosecution has concluded, not to advance any evidentiary purpose, but to enforce a federal monetary judgment.

The Ninth Circuit's alternative holding illustrates the problem. The panel found that the Rolex was not "evidence in the federal prosecution" and that state officers did not seize it "as agents of federal authorities." App. A at 5–6. Both findings are accurate in a narrow, formal sense. The watch was never introduced at trial, never listed on an exhibit list, and never referenced in any plea proceeding. The CHP officers who executed the state search warrant were investigating a state crime and did not act under federal direction.

But these formal findings obscure what actually happened. After the prosecution concluded, the federal government treated the watch as if it were the government's own asset. The AUSA refused to return it. He sent federal agents to

investigate its provenance. He told defense counsel he was “working on an order to sell the watch to apply its value to the court’s earlier order that defendant pay \$2+ million in restitution.” ER-20. And when defense counsel contacted the CHP, the state investigator disclaimed any independent authority over the watch, stating that the matter was “being dealt with by the AUSA” and deferring to the federal prosecutor’s instructions. ER-15–16.

This is not a case in which the federal government had a passing interest in state-held property. This is a case in which the federal government assumed operational control over the property’s disposition—not as a matter of evidentiary need, but as a mechanism for satisfying a federal restitution obligation, without initiating forfeiture proceedings or obtaining any judicial authorization. The state agency holding the watch had, in practical terms, become a bailee for the federal government.

The existing tests do not reach this conduct. Under *Solis* and *Bacon*, the watch was not “evidence.” Under *Howard*, the state officers did not act as federal agents at the time of the seizure, and the watch was not evidence. Petitioner’s situation thus falls into a gap: the federal government exercises every attribute of ownership and control, but because that control arose after the prosecution and is not connected to any evidentiary use, no existing framework provides a remedy.

This gap is not a feature of Rule 41(g); it is a deficiency in the tests the lower courts have devised. Rule 41(g) is an equitable remedy available to any “person aggrieved . . . by the deprivation of property.” It is not, by its terms, limited to property

that was used as evidence or seized under federal authority. The lower courts' narrow tests were crafted for the typical case and have not been adjusted to address the scenario presented here. This Court should grant certiorari to determine the proper scope of constructive possession under Rule 41(g) and to ensure that the doctrine is not defined so narrowly as to create a gap in judicial oversight.

## **II. The Ninth Circuit's Decision Permits the Federal Government to Exercise Unreviewed Dominion Over Property While Evading the Procedural Protections That Congress Has Provided.**

The practical consequence of the decision below is that the federal government may control the disposition of a citizen's property—including its liquidation to satisfy a federal judgment—without any judicial review of its authority to do so.

The government has not initiated forfeiture proceedings against petitioner's watch, which would trigger the procedural protections Congress has enacted to safeguard property rights—including notice, a right to be heard, and the government's burden to establish a connection between the property and criminal activity. Nor has the government obtained a judicial order authorizing the watch's sale. Instead, it has sought to accomplish extrajudicially what the law requires it to accomplish through formal legal channels.

Under the Ninth Circuit's rule, the federal government can do this with impunity so long as it arranges for a cooperative state agency to retain physical custody of the property. The government need never take the watch into its own evidence room. It need never designate it as evidence in the federal case. It need only

tell the state agency to hold the watch, tell the state to refuse to authorize its return, and tell the state to pursue its own plan to sell it—all while maintaining that no federal court has jurisdiction because the watch is technically in state hands.

This is not a hypothetical concern. It is exactly what happened here. And the Ninth Circuit’s only response to this problem was that any return order would be “toothless” because state officials might not comply. App. A at 6. But this reasoning is circular. The court refused jurisdiction because the state holds the property; but the state holds the property only because the federal government told it to. And the record demonstrates that the state agency would defer to whatever the federal government decided—CHP’s own investigator said as much in unequivocal terms.

The constitutional interest at stake is significant. The Fourth Amendment protects against unreasonable seizures, and the Fifth Amendment prohibits the deprivation of property without due process of law. Rule 41(g) is the primary procedural mechanism by which a federal defendant can vindicate these rights with respect to property seized in connection with a federal criminal case. If the rule does not reach property that the federal government controls but does not physically hold, then the constitutional protections it implements are incomplete.

### **III. This Case Is an Appropriate Vehicle Despite the Ninth Circuit's Alternative Holding.**

Even the appellate court's alternative holding is part of the question presented—it reflects a contested legal determination about the proper scope of constructive possession, not an uncontested factual finding that would persist regardless of the legal standard.

If this Court were to hold that constructive possession is cognizable under Rule 41(g) and that the doctrine encompasses post-conviction federal control over state-held property—not merely evidentiary use or pre-seizure authorization—then the Ninth Circuit's alternative holding would be overturned along with its primary one. The facts necessary to apply such a rule are undisputed: the federal government refused to return the watch, investigated its provenance, initiated steps to liquidate it, and the state agency expressly deferred to the federal prosecutor on the watch's disposition. Whether these facts satisfy a properly formulated constructive-possession test is a question of law, not a question of fact that would need to be resolved on remand.

Moreover, this case presents the question in a clean posture. There is no dispute about ownership—the government did not contest on appeal that petitioner owns the watch. There is no pending forfeiture action. There is no claim that the watch is contraband. The property has no evidentiary significance. The only question is whether the federal government's post-conviction conduct is sufficient to bring the

watch within the district court's Rule 41(g) jurisdiction. That is a pure question of law on a fully developed record.

Finally, the question is recurring and of practical significance. Joint state-federal investigations are a staple of modern law enforcement. As the Ninth Circuit itself recognized, its decision is at odds with the approach of multiple sister circuits. Without this Court's guidance, the circuits will continue to apply different standards, producing different outcomes for similarly situated defendants depending on geography. And the gap exposed by this case—federal control exercised through post-conviction conduct rather than pre-seizure authorization or evidentiary use—will remain unaddressed in every circuit.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: February 18, 2026

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