No. _____

In the Supreme Court of the United States

ROWLAND MARCUS ANDRADE, AND
ABTC CORPORATION,
Petitioners,

v.

INTERNAL REVENUE SERVICE,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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Fifteenth day of December, MMXXV

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QUESTIONS PRESENTED

1. Should the district court have held an evidentiary hearing to address Petitioners' allegations that pieces of paper purporting to be summonses lacked the essential attributes justifying characterization as summonses?

2. Did the Notice of Agreed Order filed in the district court on May 23, 2024, preserve the petitioners' right of appeal when it stated that the Movants agree to the order in form and reserve the right to ask the Court to reconsider its rulings and/or appeal the substance of the rulings?

3. Did the district court, the petitioners, and the respondent consider the Decision of the district court to be final within the meaning of 12 U.S.C. §3410(d) when that Court issued an unopposed stay to its ruling until the Fifth Circuit decides Petitioners' appeal of that ruling?

4. Are the forty-one (41) States' Constit-ution Open Court Provisions (App.22-36) "laws of the several states [that] shall be regarded as rules of decision" pursuant to 28 U.S.C. §1652 tantamount to an amendment of the United States Constitution, given that they typically provide, as is the case under Tex. Const. Art. I, § 13 (App.33-34), that "[a]ll courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law" and given further that it requires only 38 States to ratify an amendment to the Constitution, or if not tantamount to an amendment, laws that should be given considerable weight by this Court in this matter?

5. Are thirty-four (34) States' Constitution Inalienable Rights Provisions (App.37-47) that typically provide, as is the case under Texas Const. Art. I, § 19 (App.46), that [n]o citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land. (App.46) "laws of the several states [that] shall be regarded as rules of decision" pursuant to 28 U.S.C. §1652, and this Court should give that considerable weight in this matter?

6. Does 12 U.S.C. §3410(d) withdraw from judicial cognizance a right of appeal from a clearly erroneous ruling by a district court which, from its nature, is an inherent procedural element of a suit at the common law, and violate Article III of the United States Constitution that "[t]he judicial power shall extend to all Cases, in Law and Equity" when it states that "[a] court ruling denying a motion or application under this section shall not be deemed a final order and no interlocutory appeal may be taken therefrom by the customer" to a Federal appellate court?

7. Does 12 U.S.C. §3410(e) withdraw from judicial cognizance a matter which, from its nature, is the subject of a suit at the common law and violate Article III of the United States Constitution that "[t]he judicial power shall extend to all Cases, in Law and Equity" when it says "[t]he challenge procedures of this title constitute the sole judicial remedy available to a customer to oppose disclosure of financial records pursuant to this title"?

8. Are 12 U.S.C. §3410(d) and (e) plainly unconstitutional under Article III of the United States Constitution that "[t]he judicial power shall

extend to all Cases, in Law and Equity" by declaring the District Court ruling "not final" and denying the Fifth Circuit's jurisdiction to hear an appeal, given that Congress cannot override the inherent equitable power, indeed obligation, of the courts, to perform the functions inherent in the judicial institution?

9. Does 12 U.S.C. §3410(d) denying an appeal conflict with the mandate in 28 U.S.C. § 1652 that the "laws of the several states … shall be regarded as rules of decision" where most State Constitutional provisions provide that all courts shall be open, that every person shall have remedy by due course of law for an injury done him, in his lands, goods, person or reputation, and no citizen shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land?

RELATED PROCEEDINGS

United States District Court (S.D. Tex.):

Rowland Marcus Andrade and ABTC Corporation v. *United States Department of the Treasury, Internal Revenue Service*, No. 4:24-MC-000248 (Aug. 8, 2024) (all Petitioners' motions were denied but the Court ordered that the IRS sequester records until all appeals are completed)

United States Court of Appeals (CA5):

Rowland Marcus Andrade and ABTC Corporation v. *United States Department of the Treasury, Internal Revenue Service*, No. 4:24-MC-000248 (May 27, 2025) (appeal dismissed for want of jurisdiction)

Rowland Marcus Andrade and ABTC Corporation v. *United States Department of the Treasury, Internal Revenue Service*, No. 4:24-MC-000248 (Sep. 17, 2025) (rehearing denied)

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The Fifth Circuit's opinion is reproduced in the Appendix at App.3-4. The Southern District of Texas's order denying motion to quash is reproduced in the Appendix at App.7-21.

JURISDICTION

The Fifth Circuit's judgment was entered on May 27, 2025. Rehearing was denied on September 17, 2025. This Court has jurisdiction under 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

First, U.S.Const., pmbl.:

> We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Second, U.S.Const., Art. I, §§ 1 and 8, in relevant part:

> All legislative Powers herein granted shall be vested in a Congress of the

> United States, which shall consist of a Senate and House of Representatives.
>
> [. . .]
>
> To constitute Tribunals inferior to the supreme Court;

Third, 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. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

The Open Courts provisions from the State constitutions from forty-one states and the Inalienable Rights Provisions from thirty-four states appear in the Appendix D and E, respectively at App.22-36 and App.37-47.

Sixth, 12 U.S.C. §3405:

> A Government authority may obtain financial records under section 3402(2) of this title pursuant to an

administrative subpena or summons otherwise authorized by law only if—

(1) there is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry;

(2) a copy of the subpena or summons has been served upon the customer or mailed to his last known address on or before the date on which the subpena or summons was served on the financial institution together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry:

"Records or information concerning your transactions held by the financial institution named in the attached subpena or summons are being sought by this (agency or department) in accordance with the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.] for the following purpose: If you desire that such records or information not be made available, you must:

"1. Fill out the accompanying motion paper and sworn statement or write one of your own, stating that you are the customer whose

> records are being requested by the Government and either giving the reasons you believe that the records are not relevant to the legitimate law enforcement inquiry stated in this notice or any other legal basis for objecting to the release of the records.
>
> "2. File the motion and statement by mailing or delivering them to the clerk of any one of the following United States district courts: .
>
> "3. Serve the Government authority requesting the records by mailing or delivering a copy of your motion and statement to .
>
> "4. Be prepared to come to court and present your position in further detail.
>
> "5. You do not need to have a lawyer, although you may wish to employ one to represent you and protect your rights.

If you do not follow the above procedures, upon the expiration of ten days from the date of service or fourteen days from the date of mailing of this notice, the records or information requested therein will be made available. These records may be

> transferred to other Government authorities for legitimate law enforcement inquiries, in which event you will be notified after the transfer."; and
>
> (3) ten days have expired from the date of service of the notice or fourteen days have expired from the date of mailing the notice to the customer and within such time period the customer has not filed a sworn statement and motion to quash in an appropriate court, or the customer challenge provisions of section 3410 of this title have been complied with.

12 U.S.C. §3405.

Seventh, 12 U.S.C. §3410:

> **(a) Filing of motion to quash or application to enjoin; proper court; contents**
>
> Within ten days of service or within fourteen days of mailing of a subpena, summons, or formal written request, a customer may file a motion to quash an administrative summons or judicial subpena, or an application to enjoin a Government authority from obtaining financial records pursuant to a formal written request, with

copies served upon the Government authority. A motion to quash a judicial subpena shall be filed in the court which issued the subpena. A motion to quash an administrative summons or an application to enjoin a Government authority from obtaining records pursuant to a formal written request shall be filed in the appropriate United States district court. Such motion or application shall contain an affidavit or sworn statement—

(1) stating that the applicant is a customer of the financial institution from which financial records pertaining to him have been sought; and

(2) stating the applicant's reasons for believing that the financial records sought are not relevant to the legitimate law enforcement inquiry stated by the Government authority in its notice, or that there has not been substantial compliance with the provisions of this chapter.

Service shall be made under this section upon a Government authority by delivering or mailing by registered or certified mail a copy of the papers to the person, office, or department specified in the notice which the customer has received pursuant to this

chapter. For the purposes of this section, "delivery" has the meaning stated in rule 5(b) of the Federal Rules of Civil Procedure.

(b) Filing of response; additional proceedings

If the court finds that the customer has complied with subsection (a), it shall order the Government authority to file a sworn response, which may be filed in camera if the Government includes in its response the reasons which make in camera review appropriate. If the court is unable to determine the motion or application on the basis of the parties' initial allegations and response, the court may conduct such additional proceedings as it deems appropriate. All such proceedings shall be completed and the motion or application decided within seven calendar days of the filing of the Government's response.

(c) Decision of court

If the court finds that the applicant is not the customer to whom the financial records sought by the Government authority pertain, or that there is a demonstrable reason to believe that the law enforcement inquiry is legitimate and a reasonable belief that the records sought are relevant to that inquiry, it shall deny

the motion or application, and, in the case of an administrative summons or court order other than a search warrant, order such process enforced. If the court finds that the applicant is the customer to whom the records sought by the Government authority pertain, and that there is not a demonstrable reason to believe that the law enforcement inquiry is legitimate and a reasonable belief that the records sought are relevant to that inquiry, or that there has not been substantial compliance with the provisions of this chapter, it shall order the process quashed or shall enjoin the Government authority's formal written request.

(d) Appeals

A court ruling denying a motion or application under this section shall not be deemed a final order and no interlocutory appeal may be taken therefrom by the customer. An appeal of a ruling denying a motion or application under this section may be taken by the customer (1) within such period of time as provided by law as part of any appeal from a final order in any legal proceeding initiated against him arising out of or based upon the financial records, or (2) within thirty days after a notification that no legal proceeding is

contemplated against him. The Government authority obtaining the financial records shall promptly notify a customer when a determination has been made that no legal proceeding against him is contemplated. After one hundred and eighty days from the denial of the motion or application, if the Government authority obtaining the records has not initiated such a proceeding, a supervisory official of the Government authority shall certify to the appropriate court that no such determination has been made. The court may require that such certifications be made, at reasonable intervals thereafter, until either notification to the customer has occurred or a legal proceeding is initiated as described in clause (A). [1]

(e) Sole judicial remedy available to customer

The challenge procedures of this chapter constitute the sole judicial remedy available to a customer to oppose disclosure of financial records pursuant to this chapter.

(f) Affect on challenges by financial institutions

Nothing in this chapter shall enlarge or restrict any rights of a financial institution to challenge requests for records made by a Government authority under existing

> law. Nothing in this chapter shall entitle a customer to assert the rights of a financial institution.

Eighth, 28 U.S.C. §1652:

> The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply.

And finally, 31 U.S.C. §5318, in relevant parts:

> **(a) General Powers of Secretary.**—The Secretary of the Treasury may (except under section 5315 of this title and regulations prescribed under section 5315)—
>
> (4) summon a financial institution or nonfinancial trade or business, an officer or employee of a financial institution or nonfinancial trade or business (including a former officer or employee), or any person having possession, custody, or care of the reports and records required under this subchapter, to appear before the Secretary of the Treasury or his

delegate at a time and place named in the summons and to produce such books, papers, records, or other data, and to give testimony, under oath, as may be relevant or material to an investigation described in subsection (b);

(b) Limitations on Summons Power.—

(1) Scope of power.—

The Secretary of the Treasury may take any action described in paragraph (3) or (4) of subsection (a) only in connection with investigations for the purpose of civil enforcement of violations of this subchapter, section 21 of the Federal Deposit Insurance Act, section 411 [1] of the National Housing Act, or chapter 2 of Public Law 91–508 (12 U.S.C. 1951 et seq.) or any regulation under any such provision.

(d) Service of Summons.—

Service of a summons issued under this section may be by registered mail or in such other manner calculated to give actual notice as the Secretary may prescribe by regulation.

INTRODUCTION

The issues in this case pertain to Internal Revenue Service (IRS) administrative summonses issued by the Respondent IRS to third-party banks of Rowland Marcus Andrade (Andrade) seeking financial records pursuant to the Bank Secrecy Act of 1970, also known as the Currency and Foreign Transactions Reporting Act (the BSA, 31 U.S.C. §§ 5311–5336, *et seq*.), which was enacted to fight money laundering in the United States. Those summonses were served pursuant to 31 U.S.C. §5318(a)(4) and were subject to the limitation in 31 U.S.C. §5318(b)(1) that they could be used "only in connection with investigations for the purpose of *civil enforcement* of violations." (emphasis added)

The BSA generally requires that federal government agencies provide individuals with a notice and an opportunity to object, pursuant to the Right to Financial Privacy Act of 1978 (the RFPA, 12 U.S.C. §§ 3401–3423, *et seq*.), before a bank or other specified institution can disclose personal financial information to a federal government agency. The IRS mailed that notice in this case to an old company address even though the IRS had already been informed that the address was no longer valid. Consequently, there was no effective notice of the summonses to Andrade when they were mailed to that address in violation of the RFPA requirement of mailing to Andrade's last known address.

Andrade filed a motion on February 12, 2024 to quash two sets of summonses pursuant to the RFPA in the Southern District of Texas, pursuant to the

Customer Challenge provisions of 12 U.S.C. §3410(a) of the RFPA alleging that he never received copies of those two sets of summonses, the first set issued in May 2023 and the second set issued in September 2023, and alleging further that the documents purporting to be summonses failed to meet the standards comprising conditions precedent to being considered summonses.

After Andrade was made aware of the May 2023 summonses, counsel promptly contacted the IRS and explained that no notice had been received since they had been sent to an incorrect address. In response, the IRS issued new summonses in September 2023, using the same address, an address at which the IRS knew that Andrade had not received the May 2023 summons. Compounding those errors, the IRS failed to inform Andrade's counsel about the issuance of the September 2023 summonses until February 2, 2024. The IRS admitted that the May 2023 summonses were issued without proper notice after Andrade filed the motion to quash.

The district court, the petitioners, and the respondent considered the Decision of the district court to be final within the meaning of 12 U.S.C. §3410(d) when that Court issued its unopposed stay to its ruling until the Fifth Circuit decided the petitioners' appeal of that ruling.

The district court did not hold an evidentiary hearing that the summonses failed to meet the standards comprising conditions precedent to being considered summonses and denied the motion to quash the summonses.

The Court ultimately denied the motion to quash the summonses while stating that Petitioners

conceded the issues, but the Agreed Order on Motion to Quash filed May 23, 2024 (S.D. Tex. ECF No. 25) confirms that they did not concede the issues since the Order stated unambiguously that the "request that "[t]he IRS shall sequester all records received in response to any summons and such documents shall not be reviewed by anyone pending further order of this Court" is GRANTED." *Id.*

The Notice of that Agreed Order filed on May 23, 2024 stated that the "United States agrees to the order as to both form and substance. Movants agree to the order in form and reserve the right to ask the Court to reconsider its rulings and/or appeal the substance of the rulings." (S.D. Tex. ECF No. 24)

The Fifth Circuit dismissed the appeal for want of jurisdiction pursuant to 12 U.S.C. §3410(d), which provides that "[a] court ruling denying a motion or application under this section shall not be deemed a final order and no interlocutory appeal may be taken therefrom by the customer," *despite* its inherent powers as a court under the common law and this Court's precedents *and despite* being informed of the faulty nature of the summonses.

Consequently, this case presents the important questions whether 12 U.S.C. §3410(d) and (e) are plainly in conflict with forty-one State constitution Open Courts provisions (see App.22-36), and thirty-four State constitutions' inalienable Rights provisions (App.37-47), including those of Texas, in which jurisdiction these proceedings occurred.

This Court has said that "separation of powers, among other things, prevents Congress from exercising the judicial power." *Patchak* v. *Zinke*, 583 U.S. 244 (2018) (citing *Plaut* v. *Spendthrift Farm,*

Inc., 514 U.S. 211, 218 (1995)). This Court in *Patchak* also held that "The simplest example would be a statute that says, 'In *Smith* v. *Jones*, Smith wins.'" 12 U.S.C. §3410(d) and 12 U.S.C. §3410(e) clearly state that "in *Andrade* v. *I.R.S.*, I.R.S. wins."

Article III, Section 2 Clause 1 of the United States Constitution is unambiguous when it states that "[t]he judicial Power shall extend to all Cases, in Law and Equity … to Controversies to which the United States shall be a Party …." This case is one to which the United States is a Party. Moreover, the forty-one (41) State Constitution Open Courts Provisions (App.22-36) speak unambiguously to the role played by the judiciary in our Federal system of checks and balances.

Article I, Section 13 of the Texas Constitution (App.33-34) similarly is unambiguous when it states that "[a]ll courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law."

Article I, Section 19 of the Texas Constitution (App.34) likewise is unambiguous when it states that "[n]o citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land."

12 U.S.C. §3410(d) and (e) contradict the notion that "all courts shall be open," deny him a "remedy by due course of law," deprives him of "privileges or immunities" by disfranchising him and deprives him of "the due course of the land."

Only two cases have discussed 12 U.S.C. §3410, *Irani* v. *United* States, 448 F.3d 507 (CA2 2006) and *SEC* v. *Jerry T. O'Brien, Inc.*, 467 U.S. 735 (1984).

Neither court confronted either the Constitutional separation of powers issues or the "Open Court" provisions of 41 States.

This Court must address Andrade's equitable rights at common law and his Constitutional rights under the Texas Constitution to challenge the sufficiency of pieces of paper purporting to be summonses and must find a way of addressing the unusual, perhaps rare, circumstances where the district court ignored Andrade's allegations that those documents failed to comply with the essential requisites of summonses.

This Court must find a way of returning this matter to the district court for hearings on the legal sufficiency of those "summonses" by either invalidating or articulating exceptions to 12 U.S.C. §3410(d) and (e) consistent with separation of powers under the United States Constitution and the "Open Courts" provision of Article I of the Texas Constitution (App.33-34).

The Fifth Circuit's *per curiam* decision below gave short shrift to the significant Federal and State Constitutional issues bearing on this matter.

There is no way that denying Andrade access to the courts to contest a fundamental denial of due process by a federal district court could possibly be the law. Taken seriously, it would allow any judge to avoid being second-guessed when he or she renders a fatally flawed decision. Consider a judge who either has personal animus toward the litigant or was having "a bad day" and renders a decision that has no foundation in either the facts or the applicable law. Denying the litigant an appeal is contrary to fundamental notions of access to the courts and due process upon which this country was built.

To correct the consequential errors, resolve the multiple Constitutional law issues, and close the dangerous loopholes generated by the Fifth Circuit's decision below, this Court should grant review.

STATEMENT OF THE CASE

Andrade's motion to quash the administrative summonses alleged that the summonses failed to meet the notice requirements of 12 U.S.C. §3405(2) and, even if they met those requirements, the documents were not summonses within the meaning of the BSA and RFPA. The district court then denied the motion, but the Court, the petitioners, and the respondent considered the Decision of the district court to be final within the meaning of 12 U.S.C. §3410(d) when that Court issued an unopposed stay to its ruling until the Fifth Circuit decides the petitioners' appeal of that ruling.

The district court failed to make any findings of fact on whether those pieces of paper met the minimum requirements that are conditions precedent to being characterized as "summonses" within the meaning of the BSA and whether the IRS complied with the notice requirements of the RFPA.

Andrade appealed the district court's order denying Andrade's motion to quash those pieces of paper purporting to be summonses. The Fifth Circuit dismissed the appeal for want of jurisdiction in a per curiam order (App.3-4).

Andrade has been denied his Constitutional right of access to the Courts, a right that the legislature has no power to contravene (App.22-36).

In a concurrent case, Andrade was charged by the Government in June 2020 and was found guilty in March 2025 of wire fraud and money laundering in connection with the fraudulent marketing and sale of a cryptocurrency called AML Bitcoin in the Northern District of California, No. 20-CR-00249 RS-1.

The charges were brought by the IRS and prosecuted by the Department of Justice. Andrade appealed to the Ninth Circuit on October 15, 2025, in No. 25-5095. Notably, the motion to quash in this civil case was filed on February 12, 2024, after Andrade was charged in the criminal case and before he was found guilty.

In a case connected to that criminal matter, Jack Abramoff ("Abramoff") pled guilty to a criminal information for conspiracy to commit wire fraud and violating the Lobbying Disclosure Act in the Northern District of California, No. 20-CR-0260 RS.

The issues in that appeal are numerous, but address Andrade's concerns about the Government withholding exculpatory and impeachment evidence regarding their relationships with Abramoff and others that would establish Andrade's innocence. Andrade believes that classified evidence pursuant to the Classified Information Procedures Act of 1980 was improperly withheld by the Government, including details regarding Abramoff's government employment, his classified record, and withheld materials which may reveal critical information beneficial to himself.

Andrade suspects, but cannot yet prove, that the summonses in this Texas civil matter were intended to uncover information that the Government could use in the California criminal matter given evidence

that the summonses in question here were initiated by supervisors in California rather than Texas.

When congress enacted 12 U.S.C. §3410(d) and (e), they surely did not intend to shield the government from oversight by creating a way for the IRS to abuse the civil summonses process by intentionally or mistakenly violating a person's privacy rights by issuing faulty summonses, filing false affidavits of compliance (to which the government admitted) and by using civil summonses in order to circumvent the federal rules of criminal procedure.

I. The Purported Summonses

There is nothing in either 12 U.S.C. §3405(2) or its legislative history to indicate that service of incomplete copies of summonses satisfies the requirement that "a copy of the subpoena or summons" be served on Andrade. Andrade was entitled to a complete copy of the summonses.

> This construction is not only mandated by the words of the Act, but also accomplishes the salutory [*sic*] purpose of requiring government authorities to particularize, in independent subpoenas, the entities and accounts to which requests for financial information pertain. In sum, subpoenas should be drafted such that either an RFPA notice to a customer is necessary, or it is not.

Hunt v. *SEC*, 520 F. Supp. 580, 603 (N.D. Tex. 1981)

The IRS failed to provide a "true and correct copy" of any of the Summonses to Andrade. Four Summonses were issued, two in May 2023, and the other two in September 2024. Andrade's copies of the Summonses were missing pages 1 through 4 of Summonses. Moreover, there is no signature on the attestation in Andrade's copies of the Summonses that they are true and correct copies of the originals. That probably is because the IRS did not want to sign the attestation on Andrade's copies of the Summonses since they were not true and correct copies of the originals. Moreover, the "Notice of No Legal Proceedings" was signed but not dated. Petitioners were prejudiced because the lack of a date prevented Andrade from knowing whether he was within the required 30-day limit for filing an appeal pursuant to 12 U.S.C. §3410(d)(2).

The incomplete nature of the Summonses given to Andrade and the absence of that attestation means that the Summonses were fatally flawed, yet the District Court ignored those flaws, leaving Andrade without recourse if he cannot either appeal or challenge the Court's failure to address the flaws.

II. The Mandatory Notice to Andrade Failed to State the Nature of the Inquiry with "Reasonable Specificity"

12 U.S.C. §3405 mandates notice of the summonses with "reasonable specificity the nature of the law enforcement inquiry." "It is beyond question that a mere recitation of the government authority's statutory jurisdiction is inadequate to achieve compliance with the Act." *Hunt*, *supra*. Thus, the standard for 12 U.S.C §3405 compliance is that the investigation is to determine whether the persons being investingated have either violated or are about to violate any provision of a law that is identified with particularity.

The purported summonses provided this Customer Notice to Andrade:

> Records of information concerning your transactions held by the financial institution named in the attached subpoena, summons, or formal written request are being sought by the Internal Revenue Service in accordance with the Right to Financial Privacy Act of 1978, 12 U.S.C. §§ 3401-3422, *et seq*. for the purpose(s) of civil enforcement of violations of the Currency and Foreign Transactions Reporting Act as amended, (31 U.S.C. §§ 5311-5332, *et seq*.) or any regulation under such provision.

That Notice of the Summonses given to Andrade was not a notice providing the reasonable specificity regarding the nature of the examination conforming to the standard articulated in *Hunt*, *supra*. That ambiguity could not be cured after the fact at the hearing.

III. The Mandatory Notice to Andrade Was Mailed to an old Address and Never Reached Him

Even assuming that the RFPA standard for service using the last known address for Andrade was correct, which it is not, the IRS could (and should) have served notice of the September BSA Summonses through either Andrade's Registered Agent or the address listed for Andrade on the Texas Franchise Tax Public Information Report dated July 24, 2023, filed with the Texas Comptroller of Public Accounts. The IRS also could have served notice of the BSA Summonses through Andrade's attorney, with whom the IRS already had been communicating extensively from July 2023 through December 2023.

IRS failure to either inform Andrade's attorney or use an address on file with the State of Texas was either intentional or sheer negligence. When Congress enacted 12 U.S.C. §3410(d) and (e), they surely did not intend to shield the government from oversight by creating a way for the IRS to abuse the civil summonses process by intentionally or mistakenly using a bad mailing address for mailing the notice, an address known to be bad when the September summonses were mailed.

In summary, there was no reasonable notice of the nature of the inquiry. Yet, the district court ignored those flaws, leaving Andrade without recourse if he cannot either appeal or challenge the Court's failure to address the flaws.

REASONS FOR GRANTING THE PETITION

The district court, the petitioners, and the respondent considered the Decision of the district court to be final within the meaning of 12 U.S.C. §3410(d) when that Court issued an unopposed stay to its ruling until the Fifth Circuit decided the petitioners' appeal of that ruling. Otherwise, the petitioners' motion to stay the district court ruling until the Fifth Circuit ruled would have been opposed by the Government for lack of jurisdiction pursuant to that statutory provision. Consequently, the Fifth Circuit had jurisdiction to hear the respondent's appeal.

This Court's website informs the world of the grave responsibilities residing in its hands:

> "EQUAL JUSTICE UNDER LAW" - These words, written above the main entrance to the Supreme Court Building, express the ultimate responsibility of the Supreme Court of the United States. The Court is the highest tribunal in the Nation for all cases and controversies arising under the Constitution or the laws of the United States. As the final arbiter of the law, the Court is charged with ensuring the American people the

> promise of equal justice under law and, thereby, also functions as guardian and interpreter of the Constitution.[1]

The Supreme Court of the United States is the ultimate arbiter of the law in the United States since this Court is charged with ensuring the promise of equal justice under law and, thereby, also functions as the ultimate guardian and interpreter of the Constitution. This Court plays an essential role in analyzing critically the significant Constitutional issues posed by Andrade in this last opportunity to correct an appalling violation of judicial authority by Congress.

There must be some recourse to challenge the egregiously erroneous decision of the district court, given the absence of any findings of fact regarding the nature of the pieces of paper that purport to be summonses.

Granting the petition is needed since 12 U.S.C. §3410(d) conflicts with the mandate in 28 U.S.C. §1652 that the "laws of the several states … shall be regarded as rules of decision" and the rules of decision embedded in the open court provisions of forty-one State Constitutions.

Granting the petition is also needed because the 28 U.S.C. §1652 invocation of State Constitutional rights as rules of decision must trump the 12 U.S.C. §3410(d) denial of access to the courts of appeals.

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[1] https://www.supremecourt.gov/about/constitutional.aspx (last accessed November 30, 2025.)

I. The Fifth Circuit had Jurisdiction to Hear the Appeal Because the Ruling of the District Court was Final

The district court, the petitioners, and the respondent considered the Decision of the district court to be final within the meaning of 12 U.S.C. §3410(d) when that Court issued an unopposed stay to its ruling until the Fifth Circuit decides Petitioners' appeal of that ruling (S.D. Tex. ECF No. 60; S.D. Tex. ECF No. 20, 24-20376.7) Consequently, the Fifth Circuit had jurisdiction to hear Respondents' appeal.

The government frivolously raised a jurisdictional objection in its appellate opposition by relying on 12 U.S.C. §3410(d). This was improper and misleading, because the government had already agreed that the Fifth Circuit had jurisdiction when it did not oppose the district court expressly entering an order permitting the appeal. There was no "waiver" of §3410(d) or (e). Rather, the statutory requirements were satisfied when the government issued its standard "Notice that No Legal Proceedings Are Contemplated," which is the mechanism that triggers appealability under §3410(d)(2). That notice was already in the District Court record before the Court entered its order authorizing the appeal and was included in the district court civil docket filed with the Fifth Circuit (S.D. Tex. ECF No. 19-16, Ex. 16 Notice of no Legal Proceedings; S.D. Tex. ECF No. 20, 24-20379.4).

By first agreeing to the appeal and then reversing course in its opposition brief, the petitioners were prejudiced by the government's abrupt and inconsistent change of position.

II. Separation of Powers Between the Judicial and Legislative Branches

"It is emphatically the province and duty of the judicial department to say what the law is." *Marbury* v. *Madison*, 5 U.S. 137, 177 (1803). The Fifth Circuit ignored its own precedent where it had cited *Marbury* in 2024 to this effect: "Chief Justice Marshall famously said 'where there is a legal right, there is also a legal remedy by suit or action at law, wherever that right is invaded.' But *Marbury*'s 'legal right' was a statutory—not a constitutional—one." *Wilson* v. *Midland Cnty.*, 116 F.4th 384, 403 n.6 (CA5 2024). Andrade's right in 28 U.S.C. §1652 is a statutory one.

This Court said this in 2018:

> The separation of powers, among other things, prevents Congress from exercising the judicial power. See *Plaut* v. *Spendthrift Farm, Inc.*, 514 U. S. 211, 218 (1995). One way that Congress can cross the line from legislative power to judicial power is by "usurp[ing] a court's power to interpret and apply the law to the [circumstances] before it." *Bank Markazi* v. *Peterson*, 578 U. S. 212, 225 (2016). The simplest example would be a statute that says, "In *Smith* v. *Jones*, Smith wins." See *ibid.*, n. 17

Patchak v. *Zinke*, 583 U.S. 244, 250 (2018)

12 U.S.C. §3410(d) and (e) are statutes that say, "In *Andrade* v. *I.R.S.*, the I.R.S. wins." They deny findings or results under old law since the "old law" recognizes that where there is a legal right, there is also a legal remedy by suit or action at law, wherever that right is invaded. In this case, the legal right is one of the constitutional right of access to the courts under forty-one State Constitutions, including that of Texas (App.33-34).

The Fifth Circuit also ignored its precedent where it cited *Marbury* in 2023 stating that

> … [C]ourts are law-declaring institutions. "Rudimentary justi-ce requires that those subject to the law must have the means of knowing what it prescribes . . . . [O]ne of emperor Nero's nasty practices was to post his edicts high on the columns so that they would be harder to read and easier to transgress."[13] Jurisdictional obtuseness leads to despot-ism. And *ubi jus ibi remedium*.[14]

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[13] Antonin Scalia, *The Rule of Law as a Law of Rules*, 56 U. Chi. L. Rev. 1175, 1179 (1989).

[14] Where there is a right, there is a remedy. *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137, 163, 2 L. Ed. 60 (1803) (quoting 3 William Blackstone, Commentaries *23).

Braidwood Mgmt. v. *EEOC*, 70 F.4th 914, 924 (CA5 2023)

The Fifth Circuit also invoked *Marbury* in 2022 when it opined that "this is no moot-court competetion. The stakes here are very real. [. . .] Our diligent state-court colleagues "are partners in our shared duty 'to say what the law is'—equal partners, not junior partners." *Gabriel Inv. Grp., Inc.* v. *Tex. Alcoholic Bev. Comm'n (In re Gabriel Inv. Grp., Inc.)*, 24 F.4th 503, 506–507 (CA5 2022) (citations and footnotes omitted)

This case presents a most important question and that is whether 12 U.S.C. §3410(d) and (e) are plainly unconstitutional as a violation of the separation of powers under the Constitution since they purport to exercise the judicial power. This is no moot-court competition and the stakes here are very real.

Only two cases have addressed the 12 U.S.C. §3410(d) and (e) denial of a court of appeals jurisdiction to hear an appeal, one of which is the Second Circuit:

> We granted a temporary stay pending a hearing on the Movants' stay motion. The Government has moved to dismiss the appeal, contending that we lack jurisdiction. We agree.
>
> ***
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> The RFPA makes clear that the means of judicial review provided for in the statute are exclusive. *See id.* § 3410(e) ("The challenge procedures of this chapter constitute the sole judicial remedy available to a customer to oppose disclosure of financial records pursuant to this chapter.").

Irani v. *United States*, 448 F.3d 507, 509–510 (CA2 2006)

The Second Circuit did not address the constitutional separation of powers issues with respect to either provision.

This Court is the only other court to have addressed the 12 U.S.C. §3410(d) and (e) denial of a court of appeals jurisdiction to hear an appeal. It did so in this manner:

> ··· [T]he Right to Financial Privacy Act … accords customers of banks and similar financial institutions certain rights to be notified of and to challenge in court administrative subpoenas of financial records in the possession of the banks. The most salient feature of the Act is the narrow scope of the entitlements it creates. *** A customer's ability to challenge a subpoena is cabined by strict procedural requirements. For example, he … cannot appeal an adverse determination until the Government has completed its investigation, § 3410(d). Perhaps most importantly, the statute is drafted in a fashion that minimizes the risk that customers' objections to subpoenas will delay or frustrate agency investigations.

SEC v. *Jerry T. O'Brien, Inc.*, 467 U.S. 735, 745–746 (1984) This Court also did not address the separation of power issues.

While a "customer's ability to challenge a subpoena is cabined by strict procedural requirements" and the statute might be drafted to minimize "the risk that customers' objections to subpoenas will delay or frustrate agency investigations," this Court did not address circumstances where, as here, the governent acts unlawfully by serving papers that are not, in fact, summonses.

Granting the petition allows this Court to address Andrade's right to challenge the sufficiency of the papers purporting to be summonses and must find a way of addressing the unusual, perhaps rare, circumstances of illegal behavior by the government, as is the case here.

Paraphrasing the words first quoted *supra* that are written above the main entrance to the Supreme Court, as the final arbiter of the law, this Court is charged with ensuring Andrade, a member of the American people, the promise of equal justice under law." Only by granting this petition, this Court can serve the best interests of the People in assuring access to the courts in exercising their right to due process.

Granting the petition is necessitated by the magnitude of the issues before this Court and the unusual facts in this case.

III. Congress Cannot Deprive a Court of its Inherent Power to Hear Cases by Enacting 12 U.S.C. §3410(d) and (e)

12 U.S.C. §3410(d) and (e) are plainly unconstitutional since they purport to regulate the machinery of the courts by depriving the court of its inherent power to hear cases and depriving Andrade of his Texas Constitutional right of access to the courts.

U.S.Const., Art. III §2, cl. 1 extended the federal judicial power to "all Cases, in *Law* ***and*** *Equity*, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority." (emphasis added.)

U.S.Const., Art. III, §8, cl. 9 provides that Congress has the power "To constitute Tribunals inferior to the supreme Court."

The Preamble to the U.S. Constitution, sometimes referred to as the enacting clause, provides:

> We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America

U.S.Const., pmbl.

While the Preamble does not itself grant powers or confer rights, the words "establish Justice"

embody one of the aspirations that We the People have for our Constitution, and that were expected to flow from the substantive provisions that follow, the stated goal being to create a government that will meet the needs of the people. In effect, it frames the Article III, section 2, clause 1, extension of the federal judicial power to "all Cases, in Law and Equity" to "establish justice."

When Congress constitutes tribunals inferior to the supreme court, those tribunals inherit the federal judicial power to all cases in equity provided under Article III.

We know that was what the Founders intended since Alexander Hamilton explained in Federalist number 80 that

> ⋯ there is hardly a subject of litigation between individuals, which may not involve those ingredients of fraud, accident, trust, or hardship, which would render the matter an object of equitable rather than of legal jurisdiction.

Hamilton elaborated in Federalist number 83 that "the great and primary use of a court of equity is to give relief in extraordinary cases, which are exceptions to general rules." If this case is not an extraordinary case where the district court failed to address the nature of documents purporting to be summonses, it is hard to imagine what might be an extraordinary case within Hamilton's intendment.

Supreme Court Justice Joseph Story, (who authored *Commentaries on Equity Jurisprudence*) in 1836,

echoed Hamilton, writing that cases must occur to which the antecedent rules cannot be applied without injustice, or to which they cannot be applied at all. The "antecedent rules of 12 U.S.C. §3410(d) and (e) "cannot be applied without injustice."

In 1812, this Court addressed the conflict arising between (1) the Congressional power to limit the jurisdiction of the inferior courts and (2) the implied powers of those courts arising from the nature of their institution.

> [T]he power which congress possess to create Courts of inferior jurisdiction, necessarily implies the power to limit the jurisdiction of those Courts to particular objects; and when a Court is created, and its operations confined to certain specific objects, with what propriety can it assume to itself a jurisdiction – much more extended -- in its nature very indefinite – applicable to a great variety of subjects – varying in every state in the Union – and with regard to which there exists no definite criterion of distribution between the district and Circuit Courts of the same district?
>
> The only ground on which it has ever been contended that this jurisdiction could be maintained is, that, upon the formation of any political body, *an implied power to preserve its own existence and promote the end and object of its creation*, necessarily results to it.

> But, without examining how far this consideration is applicable to the peculiar character of our constitution, it may be remarked that it is a principle by no means peculiar to the common law. It is coeval, probably, with the first formation of a limited Government; belongs to a system of universal law, and may as well support the assumption of many other powers as those more peculiarly acknowledged by the common law of England.
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> ***
>
> *Certain implied powers must necessarily result to our Courts of justice from the nature of their institution.*

United States v. *Hudson and Goodwin*, 11 U.S. 32 (1812) (emphasis added)

The words in Article III that "[t]he judicial power shall extend to all Cases, in Law and Equity" are unambiguous. The words "all Cases" are unambiguous, the word "Law" is unambiguous, and the word "Equity" is unambiguous.

This Court spoke to Article III powers of the judiciary in this way:

> The Constitution prohibits Congress from "withdraw[ing] from judicial cognizance any matter which, from its nature, is the subject of a suit at the common law." *Murray's Lessee* v. *Hoboken Land & Improvement Co.*, 59

> U.S. 272 (1856). Once such a suit "is brought within the bounds of federal jurisdiction," an Article III court must decide it ….

SEC v. *Jarkesy*, 603 U.S. 109, 127 (2024)

The Constitution similarly prohibits Congress from withdrawing from judicial cognizance any matter where an Article III court must address the question of its jurisdiction, given its nature and the necessity of applying the equitable power given to it explicitly by Article III.

The mere fact that Congress has the power to establish the courts and define the limits of their jurisdiction cannot override the inherent power, indeed obligation, of the courts to perform the functions inherent in the judicial institution. "Clearly there are links between individual rights within the curial process and the scope of a court's inherent jurisdiction."[2]

Inherent powers of the courts that do not derive from a legislative grant or specific constitutional provision exist since the courts reside in a common law system in which the independent judiciary enforces legal constraints on government and the legal rights of people, the underlying principle being that the role of courts resolving legal issues is a

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[2] Wendy Lacy, *Inherent Jurisdiction, Judicial Power and Implied Guarantees under Chapter III of the Constitution*, 31 Fed. L. Rev. 57, 59 (2003).

fundamental characteristic of the common law tradition preexisting adoption of the Constitution.[3]

State court decisions are rules of decision in the federal courts.[4] In 1911, the Massachusetts Supreme Judicial Court emphasized the inherent power of the courts "to do whatever may be done under the general principles of jurisprudence to insure to the citizen a fair trial" and that "possession of such power involves its exercise as a duty."[5]

If Massachusetts courts have "inherent power … [that] involves its exercise as a duty," then the plaintiff has the threshold *right* to a careful judicial examination of the asserted grievance that might then establish the right to be heard by the court. That would include a right to appeal decisions where that judicial examination was careless.

In 1972, that Court said that "every judge *must* exercise his inherent powers as necessary to secure the full and effective administration of justice" given the fact that the inherent powers of the courts "have their basis in the Constitution, regardless of any statute." *O'Coin's, Inc.* v. *Treasurer of Worcester Cnty.,* 362 Mass. 507, 514 (1972) (emphasis added) That sentiment must extend to the courts of appeal.

> The test must be whether a rule really regulates procedure, – the judicial process for enforcing rights and duties recognized by substantive law and for justly

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[3] Jim R. Carrigan, *Inherent Powers of the Courts*, 24 Juv. Just. 38 (1973), 40. Edlin, *supra* citing Henry P. Monaghan, *Marbury and the Administrative State*, 83 Colum. L. Rev. 1, 14 (1983).

[4] 28 U.S.C. §1652.

[5] *Crocker* v. *Justs. of Superior Ct.*, 208 Mass. 162, 179 (1911)

> administering remedy and redress for disregard or infraction of them.

Sibbach v. *Wilson & Co.*, 312 U.S. 1 (1941)

By withholding jurisdiction from the Court of Appeals with respect to a particular class of controversies 12 U.S.C. §3410(d) and (e) "really regulate procedure." They undoubtedly are in their nature judicial since they can be interpreted as influencing the determination of controversies by impairing the inherent powers of the judiciary whether directly or indirectly. They preclude the courts of appeals from "justly administering remedy and redress for disregard or infraction of" the rules governing service of RFPA Notice of BSA summonses.

12 U.S.C. §3410(d) and (e) ignore Article III, section 2, clause 1, of the Constitution which extended the federal judicial power to "all Cases, in Law *and Equity* …." (emphasis added) The framers of the Constitution granted the federal courts jurisdiction over both common-law actions and suits in equity. A traditional limit on equity provided that federal courts would have equity jurisdiction only over cases in which no sufficient legal remedy existed.

> Through the development of equity's complementary function toward law, the scope of its jurisdiction became defined by a series of maxims well known to early American jurists—principally, (i) that equity acts *in personam,* see Joseph Story, *Commentaries on Equity Pleadings* § 72, at 74 (Boston, 2d ed.

> 1840)' (ii) that equity "follows the law," 1 Joseph Story, *Commentaries on Equity Jurisprudence* § 19, at 22 (Boston 1836); and (iii) that equity "suffers not a right to be without a remedy," Richard Francis, *Maxims of Equity*, no. 6, at 24 (London 1728). These primary maxims were crystalized in the rich tradition of injunctive relief practice in English Chancery and furthermore in the courts of equity of the Early Republic. The Court finds that the equitable maxims and their historic illustrations are in harmony with the injunctions presently sought by Intervenor-Plaintiffs in their motions before the Court.

Vanderstok v. *Blackhawk Mfg. Grp. Inc.*, 692 F. Supp. 3d 616, 629 (N.D. Tex. 2023).

Today it is generally accepted that "[e]quity has the power, where necessary, to pierce rigid statutory rules to prevent injustice." *Metro. Sch. Dist. of Sw. Parke* v. *Vaught*, 249 Ind. 412, 417 (1968) It also is generally accepted that courts of equity, being courts of conscience, "do not bind themselves by strict rules of law" but look "beneath the rigid rules to find substantial justice." *Wabash Valley Coach Co.* v. *Turner*, 221 Ind. 52, 65 (1943) "Equity will not suffer a wrong without a remedy."[6] See Burrill., A NEW LAW DICTIONARY AND GLOSSARY (New York: John S.

[6] *Kirtley* v. *McClelland*, 562 N.E.2d 27, 30 (Ind. Ct. App. 1990).

Voorhees, 1850) at Vol. II, 802's definition of equity[7] in A NEW LAW DICTIONARY AND GLOSSARY published in 1850.[8]

Moreover, the records surrounding ratification of the Constitution do not indicate that Congress can regulate the mode of proceeding in court, *i.e.*, adjective or remedial law. That silence leads us to conclude that federal courts were expected to act the way the courts in England had functioned traditionally.

The Massachusetts Supreme Court said in 1945 that "the exact line between judicial and executive or legislative powers has never been delineated with absolute precision." *Lachapelle* v. *United Shoe Mach. Corp.*, 318 Mass. 166, 170 (1945) citing *Denny* v. *Mattoon*, 2 Allen 361, 377 (Mass. 1861). That Court said in 1978 that the "critical inquiry" is determining whether the legislative act "would interfere with the functions of" the judicial department and, if so, the judicial rule prevails over the one enacted by the Legislature.

> Legislation … may be enacted in aid of the judicial department, and doubtless in appropriate instances standards of conduct may be set up by statutes. If the judicial department promulgates a rule imposing standards … in conflict with

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[7] Burrill, Alexander M., A NEW LAW DICTIONARY AND GLOSSARY (New York: John S. Voorhees, 1850) at Vol. II, 802.

[8] The definition appears in Charles C. Morgan, THE GUARANTEES IN THE MASSACHUSETTS CONSTITUTION IMPOSING A DUTY ON MASSACHUSETTS COURTS TO GRANT STANDING TO ALL PERSONS IN ALL ACTIONS (2023).

> those imposed by the legislation, the judicial rule would prevail.

Opinion of the Justs. to the Senate, 375 Mass. 795, 813–814 (1978) (internal quotations and citations omitted)

Building on that history, in 2012 that court articulated the boundary between the respective roles of the legislative and judicial branches of government resides between statutes that either set policy or assist the judiciary in its adjudicatory role and statutes that usurp the functions of the judiciary. The former is an appropriate exercise of legislative power since it either gives or defines substantive rights whereas the latter is an inappropriate exercise of legislative power because it regulates the machinery by which the Judiciary enforces those substantive rights.[9]

12 U.S.C. §3410(d) and (e) regulate the mode of proceeding in court, *i.e.*, they constitute adjective or remedial law. They are inappropriate exercises of legislative power because they regulate the machinery by which the court of appeals enforces Andrade's substantive rights in being free from unlawful summonses. They are in their nature judicial since they influence the determination of controversies by impairing the inherent powers of the courts and the courts of appeal.

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[9] See *Ellis* v. *Dep't of Indus. Accidents*, 463 Mass. 541, 549 (2012). A. Leo Levin and Anthony G. Amsterdam, *Legislative Control Over Judicial Rulemaking: A Problem in Constitutional Revision*, 107 U. Pa. L. Rev. 1 (1958) at 31-32.

From the nation's founding, the Supreme Court treated equity as a parallel body of general law to be applied in all cases that federal courts adjudicate.[10]

The concept of equity in the colonies at the time the Constitution was adopted was something more than equity as applied in England by Chancery in judicial proceedings. The principle of equity permeated everything that the colonists felt and said such that it was inherent in the way they applied themselves to basic notions of good government.[11]

The concept of equity in the colonies at the time the Constitution was adopted was something more than equity as applied in England by Chancery in judicial proceedings. The principle of equity permeated everything that the colonists felt and said such that it was inherent in the way they applied themselves to basic notions of good government.[12]

This Court may presume, in the absence of contrary evidence, that Congress implicitly incorporated into 12 U.S.C. §§ 3410, *et seq*. traditional equitable principles of the English Court of Chancery as construed by the Supreme Court.[13] A

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[10] Michael T. Morley, *The Federal Equity Power*, 59 B.C. L. Rev. 1, 219 at 279 (2018)

[11] For a detailed discussion of the judicial independence of the courts in the colonies beginning with the Mayflower Compact, the development of common law and equity courts in the colonies, equity relief in the colonies, procedural rights being the exclusive purview of the judiciary, and substantive rights the exclusive purview of the legislature, see Morgan, *supra* pp. 101-170.

[12] *Id.*

[13] *eBay Inc.* v. *MercExchange, L.L.C.,* 547 U.S. 388, 394 (2006); *Winter* v. *NRDC, Inc.,* 555 U.S. 7, 20 (2008); Morley *supra* at 224.

federal court may not ignore a state's remedial requirements and restrictions unless its text or legislative history expressly provides otherwise.

12 U.S.C. §3410(d) and (e) are plainly unconstitutional.

IV. State Laws Shall be Rules of Decision in the Federal Courts; the Decision Below Circumvents and Conflicts with this Court's Precedents

The practical implications of the decision below, on their own, more than warrant certiorari. The decision below also satisfies the more traditional criteria for review since it conflicts with this Court's precedents—their outcomes, their doctrine, and their methodology.

The *per curiam* opinion (1) ignores Andrade's legal rights, (2) ignores the Court's "province and duty" when it fails to address the mandate in 28 U.S.C. §1652 that the "laws of the several states … shall be regarded as rules of decision," (3) fails to apply the substantive law embedded in the open court provisions of forty-one State Constitutions, (4) fails to recognize that the Court is in the day-to-day business of resolving textual ambiguities, (5) fails to acknowledge that its "diligent state-court colleagues 'are partners in our shared duty' to say what the law is—equal partners, not junior partners'" with the States, and (6) fails to either give Andrade a remedy or explain why it cannot give Andrade a remedy.

This Court has articulated the following test for determining whether a federal court should apply a state rule when it is enforcing substantive rights

created by state law: "If the state provision is the substantive *right* or obligation being asserted, the federal court *must* apply it." *Miller* v. *Davis*, 507 F.2d 308, 314 (1974) (citing *Erie R.R.* v. *Tompkins*, 304 U.S. 64, 78 (1938) and *Hanna* v. *Plumer*, 380 U.S. 460 (Harlan, J., concurring) (1965)) (emphasis added)

This Court also said "[t]he test must be whether a rule really regulates procedure, – the judicial process for enforcing rights and duties recognized by substantive law and for justly administering remedy and redress for disregard or infraction of them." *Hanna*, 380 U.S. at 464, citing *Sibbach*, 312 U.S. at 14.

The State Constitutional provisions guaranteeing access to the courts reflect a fundamental notion of human rights held dear by the Patriots during the Revolution. For a detailed discussion of the judicial independence of the courts in the colonies beginning with the Mayflower Compact, the development of common law and equity courts in the colonies, equity relief in the colonies, procedural rights being the exclusive purview of the judiciary, and substantive rights the exclusive purview of the legislature, see Charles C. Morgan, THE GUARANTEES IN THE MASSACHUSETTS CONSTITUTION IMPOSING A DUTY ON MASSACHUSETTS COURTS TO GRANT STANDING TO ALL PERSONS IN ALL ACTIONS (2023), pp. 101-170.

The forty-one State Constitution open court provisions (App. 22-36) provide a substantive right of access to the courts which unquestionably regulates procedure. For example, the following language, found in the Texas Constitution, Article I, §§ 13 and 19. parallels the Open Court provisions in the Constitutions of the forty other states:

> All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law.

Tex. Const. Art. I, §13. (App.33-34).

> No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

Tex. Const. Art. I, §19. (App.34).

Those Constitutional provisions encompass both rules of decisions and substantive rights to have access to the courts and have due process of law, administering justice to obtain a remedy that cannot be curtailed by denying appeals to higher courts when a lower court works a manifest injustice.

The Texas Constitution, like the Massachusetts Constitution, guarantees the people free access to the courts because it "requires that all cases be decided by a judge, and that litigants need not 'purchase' access to justice." *Ventrice* v. *Ventrice*, 87 Mass. App. Ct. 190 (2015).

Stated another way, the provision guarantees that "every individual is entitled to his own day in court in which to assert his own rights or to defend against their infringement." *Pesce* v. *Brecher*, 302 Mass. 211, 212 (1939). "A court may appropriately urge settlement on the parties but may not refuse

them access to a judicial forum to resolve their justiciable disputes." *Graizzaro* v. *Graizzaro*, 36 Mass. App. Ct. 911 (1994).

The State Constitutions provide "a right to petition that includes the right to seek judicial resolution of disputes" and "and "the right to prompt and impartial administration of justice." *Gaetani* v. *Hadley*, No. CV 14-30057-MGM n.14 (D. Mass. Mar. 29, 2019) (quoting *Blanchard* v. *Steward Carney Hosp., Inc.*, 477 Mass. 141, 158 n.24 (2017), and citing *Campatelli* v. *Chief Justice of Trial Court*, 468 Mass. 455, 475 (2014)).

The *per curiam* opinion of the Court below inexplicably fails to rule on 28 U.S.C. §1652 that the "laws of the several states … shall be regarded as rules of decision."

V. Failure to Address Procedural Due Process and the Right to be Heard; the Decision Below Circumvents and Conflicts with this Court's Precedents

Again, the practical implications of the decision below, on their own, more than warrant certiorari. The decision below also satisfies the more traditional criteria for review since it conflicts with this Court's precedents—their outcomes, their doctrine, and their methodology.

In 1950, this Court said that "an elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is … to … afford them an opportunity to present their objections." *Mullane* v. *Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)

The Fifth Circuit even ignored its own precedents when it acknowledged the principle by citing *Funtes* v. *Shevin* to this effect. 407 U.S. 67, 80 (1972) "For more than a century the central meaning of procedural due process has been clear: 'Parties whose rights are to be affected are entitled to be heard ….'" *Qureshi* v. *United States*, 600 F.3d 523, 526 (CA5 2010) (quoting *Baldwin* v. *Hale*, 68 U.S. 223 (1864))

The Eighth Circuit tells us that "[t]o establish a procedural due process violation, a plaintiff must demonstrate that he has a protected property or liberty interest at stake and that he was deprived of that interest without due process of law." *Hopkins* v. *Saunders*, 199 F.3d 968, 975 (CA8 1999)

The Southern District of Iowa quoted the Eighth Circuit in *Hopkins* by saying that "[t]he mere fact that a hearing was held, however, does not mean that C. Line was provided with the opportunity to be heard 'at a meaningful time and in a meaningful manner' as required to satisfy due process." *C. Line, Inc.* v. *City of Davenport*, 957 F. Supp. 2d, 1012, 1040 (S.D. Iowa 2013), citing *Hopkins*, 199 F.3d at 975.

In this case, the Fifth Circuit panel did not hold oral argument, there was no "hearing," and Andrade was not provided with the opportunity to be heard at a meaningful time and in a meaningful manner. By doing so, the Fifth Circuit panel ignored fundamenttal notions of due process, not to mention the precepts in forty-one State Constitutional Open Courts Provisions (App.22-36) thirty-four State Constitutional Inalienable Rights Provisions (App 37-47).

The right to be "heard" includes the right to have the Court "hear" what is said and address what is

said. When a judge or a court of law hears a case, or evidence in a case, they listen to it officially to decide it. The silence in the *per curiam* opinion gives the impression that Andrade was not "heard" in a meaningful manner but was ignored.

CONCLUSION

More generally, but no less importantly, the opinion below thumbs its nose at the principles of interpretation that this Court has repeatedly used—and directed lower courts to use—when interpreting the separation of powers between the legislative and judicial branches of the government, when interpreting the inherent powers, indeed obligations of the courts to hear cases, as well as when interpreting procedural due process. This Court has granted certiorari to rule on overbroad Congressional enactments in a number of cases, even in the absence of a circuit split.

Given the failure to address the issues in the decision below, this Court should grant the petition.

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Dated: December 15, 2025 *Counsel for Petitioner*