

No. _____

In the Supreme Court of the United States

VENISHA ARNOLD,
Petitioner,

v.

1600 WEST LOOP SOUTH, L.L.C., DOING BUSINESS
AS THE POST OAK AT UPTOWN HOUSTON;
JOSHUA BARRY; KEVIN MALONSON; CHRIS
HORAN; ROBERT MALONSON,
Respondents.

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

APPENDIX

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Appendix A

[Filed: Oct. 29, 2025]

**United States Court of Appeals
For the Fifth Circuit**

No. 25-20261
Summary Calendar

Venisha Arnold,

Plaintiff—Appellee,

versus

1600 West Loop South, L.L.C. , doing business as
The Post Oak at Uptown Houston; Joshua Barry;
Kevin Malonson;
Chris Horan; Robert Malonson,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:25-CV-1337

Before DAVIS, JONES, and HO, *Circuit Judges.*

PER CURIAM:*

Plaintiff-Appellant Venisha Arnold, a lawyer appearing pro se, sued multiple corporate entities and individuals under 42 U.S.C. §§ 1981, 1983 and state law after her arrest for allegedly impersonating a district attorney. The district court entered a final judgment after dismissing some of Arnold's claims with prejudice under federal Rule 12(b)(6) and others without prejudice under federal Rule 4(m).¹ We AFFIRM.

Arnold's operative complaint is largely indecipherable and, even after several readings, the core facts underlying her claims and each Defendant's alleged role in the case remain murky. From what we can discern, Arnold alleges a conspiracy among Joshua Barry, Kevin and Robert Malonson, Chris Horan, 1600 West Loop South LLC, Landry's LLC, and Hospitality Headquarters, Inc. to wrongfully arrest Arnold at the behest of a non-party billionaire after an unidentified person harassed the billionaire's mistress. Arnold brings state-law claims of defamation and malicious prosecution, a claim under 42 U.S.C. § 1981, and a claim under 42 U.S.C. § 1983 for malicious prosecution and false arrest.

Arnold originally filed suit in state court. Defendants Joshua Barry, 1600 West Loop South, LLC, Landry's LLC, and Hospitality Headquarters, Inc. removed the case to federal court. These de-

* This opinion is not designated for publication. See 5TH CIR. R. 47.5.

¹ See Fed. R. Civ. P. 4(m); Fed. R. Civ. P. 12(b)(6).

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defendants then moved to dismiss under Rule 12(b)(6), arguing none of them is a state actor, the complaint does not plausibly plead a § 1981 contract or the elements of a malicious-prosecution claim under state law, and the governing statute of limitations bars Arnold's defamation claim. The district court held a telephonic hearing where it asked Arnold specific questions about her allegations and allowed her to attempt to explain them at length. But Arnold was unable to provide clarity, leading the district court to express its confusion more than once. At the hearing's conclusion, the court granted the Rule 12(b)(6) motion and gave Arnold ten days to replead "against the main defendants." Arnold did not replead. Once that deadline passed, the court invoked Rule 4(m) to dismiss without prejudice the claims against Defendants Kevin Malonson, Chris Horan, and Robert Malonson because Arnold had never served them with process. The court entered its Final Judgment on June 25, 2025, and Arnold appealed. Our review of the Rule 12(b)(6) dismissal is de no-

vo.² Our review of the Rule 4(m) dismissal is for abuse of discretion.³

We first address the district court's Rule 12(b)(6) dismissal. The removing defendants argued Arnold's defamation claim was time-barred and that the complaint otherwise lacked plausible allegations requisite to state a viable claim. Arnold does not seriously engage any of these arguments on appeal, and her briefs, much like her pleadings in the district court, are rambling and inscrutable. For example, her opening brief's 26-page argument about the claims dismissed under Rule 12 includes just four superficial citations to caselaw untethered to any argument the removing defendants advanced. Neither the opening nor reply brief coherently explains how the removing defendants—three non-public entities and an employee of one of them—qualify as state actors for purposes of § 1983.⁴ Neither identifies the “loss of an actual,

² See *Blackburn v. City of Marshall*, 42 F.3d 925, 931 (5th Cir. 1995) (stating standard of review for dismissal under Rule 12(b)(6)). Arnold does not assign error to the district court's Rule 12(b)(6) dismissal of Landry's LLC or Hospitality Headquarters, Inc., which constitutes waiver of the claims against those defendants. See *Brinkmann v. Dall. Cnty. Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987) (holding that appellant's failure to identify any error in the basis for the district court's judgment “is the same as if he had not appealed that judgment”).

³ See *Lindsey v. U.S. R.R. Ret. Bd.*, 101 F.3d 444, 445 (5th Cir. 1996) (stating standard of review for “dismissal for failure to effect timely service of process”).

⁴ See *Cinelv. Connick*, 15 F.3d 1338, 1342 (5th Cir. 1994) (“To state a cause of action under § 1983, Appellant must allege that some person, acting under state or territorial law, has deprived him of a federal right.”).

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not speculative or prospective, contract interest” on account of Arnold’s race, as required to state a § 1981 claim.⁵ And neither disputes that the defamation claim is time-barred, except to say the statute of limitations “is irrelevant.” Taken as a whole, the briefs do not “provide meaningful analyses for each issue” and do not “present more than conclusory allusions as to [Arnold’s] arguments.”⁶ We thus AFFIRM the district court’s Rule 12(b)(6) dismissal of Arnold’s claims against the removing defendants.

We further find the district court properly exercised its discretion when it dismissed without prejudice Arnold’s claims against Defendants Kevin Malonson, Chris Horan, and Robert Malonson. On appeal, Arnold contends she served these individuals in accordance with federal Rule 5 before removal, while suit was pending in state court. But Rule 5 speaks to service of papers *after* service of a complaint and summons. It is Rule 4 that governs initial service of process, and that rule imposes a 90-day period within which such service must occur. When the 90-day deadline expires without service being effected, a court has two options: it must either “dismiss the action without prejudice . . . or order that service be made within a specified time.”⁷ That the district court chose the former in this case was not an

⁵ See *Morris v. Dillard Dep’t Stores, Inc.*, 277 F.3d 743, 751 (5th Cir. 2001).

⁶ See *Morris v. Dillard Dep’t Stores, Inc.*, 277 F.3d 743, 751 (5th Cir. 2001).

⁷ Fed. R. Civ. P. 4(m).

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abuse of discretion, especially since Arnold—herself an attorney—knows or should know how to properly serve a defendant under the federal rules and when it's necessary to seek additional time from the court to do so.⁸

Finally, Arnold has twice moved this court to judicially notice that she successfully served Defendants Kevin Malonson, Chris Horan, and Robert Malonson after her case was dismissed. But post-dismissal service is the same as no service at all. Her motions for judicial notice (R. Doc. 8, 22) are thus DENIED and the district court's Final Judgment dated June 25, 2025 is AFFIRMED.

⁸ See *Olivares v. Martin*, 555 F.2d 1192, 1194 n.1 (5th Cir. 1977) (declining to give a prose litigant the “liberal construction of his complaint normally given [to] prose litigants” because he was a licensed attorney).

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Appendix B

[Filed: Nov. 18, 2025]

**United States Court of Appeals
For the Fifth Circuit**

No. 25-20261

Summary Calendar

Venisha Arnold,

Plaintiff—Appellee,

versus

1600 West Loop South, L.L.C. , doing business as
The Post Oak at Uptown Houston; Joshua Barry;
Kevin Malonson;
Chris Horan; Robert Malonson,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:25-CV-1337

ON PETITION FOR REHEARING

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Before DAVIS, JONES, and HO, *Circuit Judges*.

PER CURIAM:

Treating the petition for rehearing en banc as a petition for panel rehearing (5TH CIR. R. 40 I.O.P.), the petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R. APP. P. 40 and 5TH CIR. R. 40), the petition for rehearing en banc is DENIED.

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Appendix C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

VENISHA ARNOLD, §
Plaintiff, §
§
VS. § CIVIL ACTION NO.
§4:25-CV-01337
1600 West Loop South, §
LLC, *et al.*, §
Defendants. §

ORDER

Plaintiff has filed a Motion for Reconsideration. ECF No.36. Plaintiff has not advanced any arguments in her Motion that has persuaded the Court that it should reconsider its ruling on Defendants' Motion to Dismiss. ECF No.16. Claims against Defendants 1600 West Loop South, LLC; Joshua Barry; Landry's LLC; Hospitality Headquarters, Inc; and Post Oak Hotel remain dismissed with prejudice.

Accordingly, Plaintiffs' Motion, ECF No.36, is **DE-NIED.**

IT IS SO ORDERED.

SIGNED at Houston, Texas, on this the 12th day of June, 2025.

/s/ Keith P. Ellison
KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE

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Appendix D

[Filed: June 25, 2025]

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

VENISHA ARNOLD,	§
Plaintiff,	§
	§
VS.	§CIVIL ACTION NO.
	§4:25-CV-01337
1600 West Loop South,	§
LLC, <i>et al.</i> ,	§
Defendants.	§

FINAL JUDGMENT

Pro se Plaintiff Venisha Arnold originally brought this suit against Defendants in state court, and Defendants subsequently removed the suit to this Court on March 21, 2025. ECF No.1. The Court granted some of Defendants' Motion to Dismiss, ECF No.16, in a hearing held on June 11, 2025. The Court dismissed the remaining Defendants in an Order signed on June 23, 2025.

Pursuant to Federal Rule of Civil Procedure 58(a), and for the reasons set forth in the June 23, 2025 Order and the hearing held on June 11, 2025, final judgment is hereby **ENTERED** for Defendants.

IT IS SO ORDERED.

SIGNED at Houston, Texas on this the 25th day of June, 2025.

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/s/ Keith P. Ellison

KEITH P. ELLISON

UNITED STATES DISTRICT JUDGE

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Appendix E

[Filed: Nov. 2, 2025]

CASE NO. 25-20261

UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT

VENISA ARNOLD, Plaintiff-Appellant
VERSUS
1600 WEST LOOP SOUTH LLC, et al Defendant-
Appellees

ON APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
NO. 4:25-CV-01337

**PETITION FOR REHEARING *EN BANC* FOR
PLAINTIFF-APPELLANT VENISHA ARNOLD**

Respectfully submitted:
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Houston, Texas 77056
Telephone: (713) 836-8200
APPEAL COUNSEL FOR PLAINTIFF/APPELLANT

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CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel certifies that the persons having an interest in the outcome of this case are:

1. Venisha Arnold, Plaintiff-Appellant
2. 1600 West Loop South LLC, Defendant-Appellee
3. Joshua Barry, Defendant-Appellee

This certificate is made so that the judges of this Court may evaluate possible disqualification or recusal.

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RULE 35(b)(1) STATEMENT

In my professional judgment, the questions presented by this petition satisfy the criteria of Federal Rule of Appellate Procedure 35(b)(1). The panel decision conflicts with Supreme Court precedent, *Terry v. Ohio*, 392 U.S. 1 (1968), reinterprets *Illinois v. Wardlow*, 528 U.S. 119 (2000), and creates a new standard for Fourth Amendment Terry seizures. While this is a path seldom traveled by the undersigned, the defense believes that the issues presented require the full Circuit's attention. Consideration by the full Court is therefore necessary to secure and maintain uniformity of the Court's decisions. T

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**ISSUES MERITING EN BANC
CONSIDERATION**

1. This court should grant the petition for rehearing *en banc* because the panel erred by not remanding a portion of the petitioner's claim to state court if the panel deems defendant 1600 W Loop South LLC and defendant Joshua Barry are not state actors under USC 42 1983 there is no federal claim, lack of subject matter jurisdiction and the panel erred by not remanding this portion of the plaintiff's claim to state court.
2. Whether defendant-appellee Joshua Barry is a state actor and conducted himself as a state actor under 42 USC 1983?

**COURSE OF PROCEEDINGS AND
DISPOSITION**

I. District Court Ruling

The trial court dismissed defendants Kevin Malonson, Chris Horan and Robert Malonson without prejudice for insufficient service. In a prior ruling defendants 1600 West Loop South LLC and Joshua Barry were dismissed for unknown reasons.

II. Panel decision

The panel's opinion affirmed the district court's ruling. The panel's decision was largely indecipherable so the plaintiff is not sure why the panel decided the way they did.

STATEMENT OF FACTS

This case is about a young attorney Venisha Arnold who has no criminal record and was falsely accused of impersonating a prosecutor, falsely arrested,

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maliciously prosecuted and defamed by her character and career being attacked on television for millions to see because the security director at the Post Oak Hotel thought she was "harassing" the mistress/relative of the hotel owner. The petitioner does not know the hotel owner or his relative/mistress. The influence of the hotel owner Tilman Fertitta and the now fired Harris County District Attorney Kim Ogg who was known for her corruption led to the petitioner being falsely arrested, maliciously prosecuted and defamed. There were material warrant omissions and other police misconduct that led to the petitioner's false accusation. If this case is ultimately remanded the petitioner will submit her grand jury packet and evidence of the warrant omissions to the trial court. As a pro se litigant/formerly accused the plaintiff has had issues with getting this evidence.

On March 30, 2023, the plaintiff, Attorney Venisha Arnold who has no criminal record, was falsely arrested and falsely accused of impersonating a prosecutor by the Public Corruption Division in Harris County by Former Corrupt District Attorney Kim Ogg's office and the out-of-jurisdiction Harris County Precinct One Constables Office in conjunction with the Post Oak Hotel, when she went to the hotel seeking clarification with management regarding "harassment" of individuals she does not know that are affiliated with the hotel after she was contacted by defendant Kevin Malonson at Harris County Precinct One Constables Office. On April 3, 2023, KPRC-TV in Houston, Texas ran a defamatory news story about the plaintiff's dismissed false accusation. The Plaintiff, a private individual with no criminal record

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was defamed on KPRC which reaches 5+ million viewers in Houston, (the plaintiff is from Houston) the plaintiff released a statement via social media regarding her false accusation. See Document 36-3 in the trial record. The plaintiff, a Houston native is a Washington DC Attorney who was in the middle of her application for admission to the Texas Bar when her false accusation began.

The Plaintiff has no criminal record, the plaintiff is Black which means the plaintiff has:

- No Racist Privilege in society
- No Racist Protection in society

The plaintiff has vehemently contended on social media that her false accusation of impersonation was regarding, a false accusation of "harassment" disguised as the false accusation of felony impersonation. Someone was allegedly "harassing" the hotel owner's mistress/relative with text messages. See Document 36-3 in the trial record. The petitioner's false accusation was a misdemeanor disguised as a felony by malicious individuals intending to cause the plaintiff career and reputational harm by falsely accusing the plaintiff, a Black woman attorney and defaming her on television. The "harassment" charge revolved around white people the plaintiff does not know and white people the plaintiff has never met and these are people the plaintiff has never contacted. The "harassment" was based on unreliable "evidence" from a non-human third party. The plaintiff's false accusation was dismissed due to insufficient evidence of her guilt almost two years later in January 2025. It should be noted all "witnesses" used in the petitioner's false accusation were employees of the hotel owner thus no real probable cause. Also the ho-

tel never produced a video of the alleged offense and the hotel security director defendant Joshua Barry who initiated the petitioner's false accusation was never orally dismissed from the litigation. See the Transcript for the hearing on June 11, 2025 Page 50 Line 5-Line 10 in the trial court record. Also the panel lied regarding the petitioner's timely filing of her amended pleading after the June 2025 hearing. The hearing was on June 11, 2025, the court requested an amended complaint with a deadline of ten days, the plaintiff filed her timely amended complaint on June 12, 2025. See Document 38 in the trial record filed June 12, 2025.

ARGUMENT AND AUTHORITIES

This Court should grant this petition and rehear the case en banc. The petitioner motions the United States Court of Appeals for the Fifth Circuit for a rehearing en banc. The plaintiff is asking for a rehearing en banc because there are significant errors in the panel's decision. In short, the panel's opinion is flawed. The panel appeared to not understand what the petitioner's case is about based on their opinion. The issues requiring the full Court's resolution concern U.S.C. 42 1983, Federal Rules of Civil Procedure 12 and the Texas malicious prosecution statute. Review by the full Court is "necessary to secure or maintain uniformity of the Court's decisions." Fed. R. App. P. 35(a)(1). The question is also one of "exceptional importance." Fed. R. App. P. 35(a)(2).

- I. **This court should grant the petition for rehearing en banc because the panel erred by not remanding the petitioner's claim for lack of subject matter jurisdiction regarding the petitioner's Malicious Prosecution State Claim.**

As the panel and defendants Joshua Barry and defendant 1600 West Loop South LLC all agreed, the petitioner's case began in state court. The petitioner's claim includes state and federal claims. The defendants Joshua Barry and 1600 West Loop South LLC keep trying to make the claim that they are private actors. The panel deemed defendants are private actors thus there is no federal claim and this portion of the plaintiff's complaint should be remanded to state court. The court must review this en banc because this matter is of exceptional importance. Fed. R. App. P. 35(a)(2).

The petitioner asserted claims for malicious prosecution and defamation under Texas law. The panel agreed with defendants that they are not state actors under USC 42 1983 thus when the panel affirmed the district's courts ruling the panel erred by not remanding this portion of the case back to state court because there is no subject matter jurisdiction also the case was originally filed in state court.

As the Fifth Circuit ruled in *Mesquite Asset Recovery Group, L.L.C. v. City of Mesquite*, the district court dismissed the takings claim and **remanded the plaintiffs' state-law claims to state court, reasoning that the plaintiffs had not "sufficiently alleged that the City acted in its sovereign, rather than its commercial, capacity."**

As the Fifth Circuit also ruled in *Stogner v Festeriga* "We have jurisdiction to review remand orders grounded in (1) a lack of subject matter jurisdiction or (2) a defect in the removal procedure ..."

The Federal Rules of Civil Procedure 12(b)(1) allows a party to challenge the subject matter jurisdiction of the district court to hear a case.

Here, the plaintiff's claims against defendants for malicious prosecution under Texas law is a state law claim and since the panel deemed defendants Joshua Barry and 1600 West Loop South LLC are not state actors under USC 42 1983 the only claims left are state law claims and there is a lack of subject matter jurisdiction, therefore the panel erred by not remanding the plaintiff's claim back to state court where the case began. The court must review this issue en banc.

II. This court should grant the petition for rehearing *en banc* due to the fact based on USC 42 1983 the panel's opinion and decision regarding defendant Joshua Barry is flawed and wrong.

The panel gave a short brief flawed statement regarding the liability of defendant Joshua Barry. Per the evidence under the Harris County District Attorney's Office under fired DA Kim Ogg defendant Joshua Barry is and was the security director of the Post Oak Hotel at the time the petitioner's false accusation began. Joshua Barry is also a reserve constable for Harris County Precinct One Constables Office. Per the evidence from the District Attorney the petitioner's false accusation started with defendant Joshua Barry.

The bulk of the cases defendants rely on in their appellate brief regarding the plaintiff's 1983 claims involve private individuals. Joshua Barry is not a private individual he is a state actor, he is a reserve constable for Harris County Precinct One who was acting under the color of law and the Security Director of the Post Oak Hotel he played a main role in the plaintiff's false accusation. This is factual evidence on file at Harris County District Attorney's Office. Joshua Barry's misconduct can be deemed as acting under the color of law in a 1983 claim because why did Tilman Fertitta's relative Laren Ware go to Joshua Barry instead of calling the police? The answer is because Joshua Barry is a cop, he is a reserve constable.

For example the defendants-appellees cite to *Morris v Dillard Department Stores* the *Morris* case fails because Joshua Barry is **not** a private security guard, Joshua Barry is **not** a part-time worker, Joshua Barry is the security director for the Post Oak Hotel **the evidence from Harris County District Attorney's Office proves this.** Therefore defendants Joshua Barry and his employer 1600 West Loop South LLC are liable to the plaintiff.

The court must review this issue en banc.

CONCLUSION

Based on the foregoing reasons, the plaintiff-appellant respectfully requests that this Court grant rehearing en banc and settle these important questions of federal law.

Respectfully submitted
Venisha Arnold

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/s/ Venisha Arnold
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CERTIFICATE OF SERVICE

I, Venisha Arnold, certify that today, October 31, 2025 I electronically filed the Petition for Rehearing En Banc for Appellant with the United States Court of Appeals for the Fifth Circuit by using the pro se email. I further certify that a copy of the Petition for Rehearing En Banc for Appellant was delivered via email to:

Pro se@ca5.uscourts.gov

amilton@azalaw.com

hgreene@azalaw.com

I further certify that a copy of the Petition for Rehearing En Banc for Appellant was delivered via United States Mail to:

/s/Venisha Arnold
Pro Se Plaintiff-Appellantc