

Supreme Court, U.S.  
FILED  
**MAR - 2 2026**  
OFFICE OF THE CLERK

25A1004

**APPLICATION FOR A STAY OF PROCEEDINGS**

*(Supreme Court Rule 23)*

In the Supreme Court of the United States-----Marquise Miller  
Applicant,

v.

Timothy Degiusti

-----To the Honorable Neil M. Gorsuch,

Associate Justice of the United States Supreme Court  
and Circuit Justice for the Tenth Circuit

-----EMERGENCY APPLICATION FOR STAY

**PARTIES TO THE PROCEEDING**

The Applicant is Marquise Miller. The Respondent is Timothy Degiusti.

**LIST OF ALL PROCEEDINGS**

Marquise Miller v. Timothy DeGiusti,

No. 25-6120, United States Court of Appeals for the Tenth Circuit

*(Appeal pending)*

Marquise Miller v. Timothy DeGiusti,

No. 5:25-cv-00301-SWS, United States District Court for the Western District of  
Oklahoma *(Order entered June 13, 2025)*

**DECISIONS BELOW**

On October 23, 2025, the United States Court of Appeals for the Tenth Circuit  
ordered that Appellee’s response brief was due no later than **December 8, 2025.**

**RECEIVED**  
**MAR - 5 2026**  
OFFICE OF THE CLERK  
SUPREME COURT, U.S.

*See* Doc. 11. Notwithstanding that court-ordered deadline, on **December 9, 2025**, the Clerk of the Tenth Circuit **accepted Appellee’s brief for filing**, *see* Doc. 21—one day late—without any publicly issued extension, motion for leave, or judicial order authorizing untimely filing.

That same day, **December 9, 2025**, the Clerk also referred Appellant’s pending motion to disqualify the entire Tenth Circuit Court of Appeals to an unidentified merits panel, without disclosing the judges assigned, establishing a briefing schedule, or providing any indication as to when—if ever—the motion would be adjudicated. *See* Doc. 22.

On **December 18, 2025**, Appellant filed an Emergency Motion to Stay Proceedings Pending Resolution of Appellant’s Motions to Disqualify the Tenth Circuit and the Department of Justice; or, Alternatively, to Transfer the Appeal to a Neutral Circuit; and to Vacate the Clerk’s Unauthorized Sua Sponte Extension of Appellee’s Deadline. *See* Doc. 24. **This document is enclosed.**

This sequence of events reflects asymmetric procedural treatment: Appellee’s untimely brief was accepted for filing, while Appellant’s disqualification motion—implicating the neutrality and structural integrity of the appellate tribunal itself—was diverted to an anonymous panel with no ruling date in sight.

## **JURISDICTION**

This Court has jurisdiction to grant a stay of proceedings pursuant to 28 U.S.C. § 2101(f) and Supreme Court Rule 23. Under § 2101(f), a Justice of this Court may

stay proceedings in a case pending in a United States court of appeals where the case is subject to this Court's certiorari jurisdiction under 28 U.S.C. § 1254(1). This matter arises from an appeal currently pending in the United States Court of Appeals for the Tenth Circuit, Case No. 25-6120, and is therefore within this Court's potential appellate jurisdiction.

This application seeks a stay of ongoing appellate proceedings because threshold, non-waivable disqualification issues remain unresolved, including a pending motion to disqualify the entire Tenth Circuit Court of Appeals and a motion to disqualify the Department of Justice as counsel. As set forth in the record, those motions were not adjudicated but instead were deferred indefinitely to an unidentified future merits panel, while substantive appellate deadlines continue to run and an untimely appellee brief was accepted for filing by the Clerk without judicial authorization.

Jurisdiction is proper because the relief sought is not available from any other court or judge. The challenged conduct occurred within the court of appeals itself and implicates the institutional impartiality and lawful composition of that tribunal, including proceedings in which the appellee is a sitting federal judge with longstanding institutional ties to the Circuit, including prior service by designation and leadership of the Tenth Circuit's Judicial Health and Assistance Committee ("JHealth") No panel of the Tenth Circuit can meaningfully resolve a challenge to its own neutrality while the appeal proceeds.

This Court’s intervention is warranted because the injuries alleged are structural and constitutional in nature. Forcing a litigant to continue appellate proceedings before a tribunal whose impartiality is reasonably questioned constitutes irreparable harm, and such harm is effectively unreviewable after final judgment, as participation by a potentially disqualified decision-maker itself violates due process. See *In re Murchison*, 349 U.S. 133 (1955); *Williams v. Pennsylvania*, 579 U.S. 1 (2016). Accordingly, this Court has jurisdiction to grant a stay to preserve its prospective review, prevent irreparable constitutional injury, and ensure that the appellate proceedings do not continue in the absence of a lawfully constituted and impartial tribunal.

**Table of Contents**

**APPLICATION FOR A STAY OF PROCEEDINGS..... 1**

**DECISIONS BELOW ..... 1**

**STATEMENT OF THE CASE ..... 6**

**A. Failure to Adjudicate Appellant’s Emergency Motion ..... 6**

**B. Proceedings Below and District Court Recusals..... 7**

**C. Motions to Disqualify the Tribunal and the Department of Justice ..... 7**

**D. Clerk Actions and Acceptance of an Untimely Brief ..... 8**

**E. Deferral of Disqualification Motions to an Unidentified Merits Panel..... 8**

**F. Structural Concerns and the Role of JHealth ..... 9**

**G. Present Posture ..... 9**

**Necessity of Immediate Relief ..... 10**

**Summary of Specific Reasons a Stay Is Justified ..... 11**

**REASONS A STAY IS WARRANTED..... 11**

**I. The Tenth Circuit Clerk Granted a Sua Sponte Post-Deadline Extension—An Act Not Even an Article III Judge May Perform—Creating a Jurisdictional Defect That Continues to Affect the Appeal ..... 12**

**II. The District Court Granted Miller’s Motion to Correct the Record, Yet the Tenth Circuit Clerk Refused to Implement That Article III Order After Miller Invoked Rule 10(e) ..... 12**

|   |    |
|---|----|
| III. The Entire Western District of Oklahoma Recused Itself Due to Institutional Ties to Judge DeGiusti, Yet the Tenth Circuit Continues to Act While an Emergency Disqualification Motion Remains Pending, Even Though Judge DeGiusti Served and/or Authored Opinions on 10 <sup>th</sup> Circuit Court of Appeals by Designation on Numerous Occasions..... | 13 |
| IV. DOJ Attorney Emily Fagan’s Prior Employment with Cheek & Falcone Law Firm—Counsel for Legacy Bank—Creates an Unadjudicated Conflict, and DOJ’s Continued Participation Violates Local Rule 83.2(f).....   | 14 |
| V. WHY IMMEDIATE SUPREME COURT INTERVENTION IS NECESSARY AND APPELLANT COULD NOT AWAIT RULING BY THE TENTH CIRCUIT.....   | 16 |
| IRREPARABLE HARM AND NEED FOR IMMEDIATE RELIEF .....  | 20 |
| RELIEF REQUESTED .....  | 21 |

**TABLE OF AUTHORITIES**

**Cases**

|  |        |
|--|--------|
| <i>Cheney v. U.S. Dist. Court</i> , 542 U.S. 367, 380–81 (2004) .....        | 21     |
| <i>Lujan v. Nat’l Wildlife Fed’n</i> , 497 U.S. 871, 896–97 (1990) .....     | 12     |
| <b>Marquise Miller v. Timothy DeGiusti</b> .....                             | 1      |
| Miller v. Legacy Bank, Case No. 20-946-D (W.D. Okla. Doc. 13-2).....         | 20     |
| Miller v. Legacy Bank, <b>W.D. Okla. No. 20-946-D</b> .....                  | 15     |
| Miller v. Legacy Bank, <b>W.D. Okla. No. 5:25-cv-00301-SWS</b> .....         | 14     |
| <i>re Murchison</i> , 349 U.S. 133 (1955).....                               | 4      |
| <i>re Murchison</i> , 349 U.S. 133, 136 (1955).....                          | 14, 18 |
| <i>Stump v. Sparkman</i> , 435 U.S. 349, 356–57 (1978).....                  | 15, 20 |
| <i>United States v. Morris</i> , 562 F.3d 1131 (10th Cir. 2009).....         | 14     |
| <i>United States v. Pearson</i> , 203 F.3d 1243, 1277 (10th Cir. 2000) ..... | 16, 20 |
| <i>Williams v. Pennsylvania</i> , 579 U.S. 1 (2016).....                     | 4, 14  |
| <i>Williams v. Pennsylvania</i> , 579 U.S. 1, 8–9 (2016) .....               | 18     |

**Statutes**

|                           |   |
|---------------------------|---|
| 28 U.S.C. § 1254(1) ..... | 3 |
| 28 U.S.C. § 2101(f) ..... | 2 |

**Rules**

|   |    |
|---|----|
| Federal Rule of Appellate Procedure 10(e) ..... | 12 |
| Federal Rule of Appellate Procedure 26(b) ..... | 12 |

Rule 23 ..... 1, 2

APPENDIX .....1A-

**STATEMENT OF THE CASE**

This case arises from an appeal pending in the United States Court of Appeals for the Tenth Circuit, Case No. 25-6120, in which Appellant Marquise Miller seeks review of actions taken by a federal judge and the Department of Justice. The appeal presents threshold issues concerning judicial impartiality, the lawful authority of court officers, and the integrity of appellate proceedings when the neutrality of the tribunal itself is challenged.

**A. Failure to Adjudicate Appellant’s Emergency Motion**

On December 18, 2025, Appellant filed an Emergency Motion to Stay Proceedings Pending Resolution of Appellant’s Motions to Disqualify the Tenth Circuit and the Department of Justice; or, Alternatively, to Transfer This Appeal to a Neutral Circuit; and to Vacate the Court Clerk’s Unauthorized Sua Sponte Extension of Appellee’s Deadline. *See* Doc. 24 (entered Dec. 18, 2025, at 11:28 a.m.). The motion expressly requested immediate judicial adjudication of the Clerk’s post-deadline extension, the acceptance of Appellee’s untimely and deficient brief, and the unresolved motions challenging the identity, neutrality, and lawful authority of both the appellate tribunal and opposing counsel. To date, the Tenth Circuit **has not ruled on the Emergency Motion**. Nevertheless, the appeal has continued to

move forward: filing deadlines have been recalculated, Appellee's untimely brief has been treated as operative, and Appellant's disqualification motions have been deferred to an unidentified future merits panel. As a result, Appellant remains compelled to litigate before a tribunal whose impartiality and lawful authority are expressly contested, **without any presently constituted adjudicator to resolve those challenges**. This failure to adjudicate the Emergency Motion—while allowing the appeal to proceed under the effects of the Clerk's ultra vires actions—has left Appellant without meaningful relief below and forms a central part of the irreparable constitutional injury now before this Court.

#### **B. Proceedings Below and District Court Recusals**

The underlying action names a sitting federal judge as a respondent. At the outset of the case, **all judges of the United States District Court for the Western District of Oklahoma recused themselves**, and the matter was reassigned to an out-of-district judge. That mass recusal reflected an institutional determination that impartial adjudication could not occur within the district due to the respondent judge's role and relationships. The appeal now pending in the Tenth Circuit raises similar concerns at the appellate level, where the respondent judge has repeatedly sat by designation and has longstanding professional and institutional ties within the Circuit.

#### **C. Motions to Disqualify the Tribunal and the Department of Justice**

While the appeal was pending, Appellant filed a Motion to Disqualify the Entire Tenth Circuit Court of Appeals, asserting that structural conflicts and institutional relationships prevent the Circuit from adjudicating the case with the appearance of neutrality required by due process. Appellant also filed a Motion to Disqualify the Department of Justice as counsel, challenging DOJ's authority and ethical eligibility to participate given its dual and shifting representation roles in the case. These motions raise threshold issues concerning the identity and authority of the decision-maker and opposing counsel—issues that must be resolved before merits proceedings may lawfully continue.

#### **D. Clerk Actions and Acceptance of an Untimely Brief**

On October 23, 2025, the Tenth Circuit ordered that Appellee's response brief was due no later than **December 8, 2025**. Appellee did not file a timely brief by that deadline. On December 8, the brief was docketed as received but marked deficient. On **December 9, 2025**, without any motion for extension and without a judicial order, the **Clerk of the Tenth Circuit accepted Appellee's brief for filing**, effectively granting a post-deadline extension and recalculating Appellant's reply deadline. The Clerk's actions altered substantive deadlines and accepted an untimely filing—acts reserved to Article III judges under the Federal Rules of Appellate Procedure.

#### **E. Deferral of Disqualification Motions to an Unidentified Merits Panel**

That same day, the Clerk entered a docket notation stating that Appellant’s motion to disqualify the entire Tenth Circuit would be **referred to a merits panel to be assigned at a later time**, without identifying the judges, setting a schedule, or indicating when—if ever—the motion would be resolved. The motion to disqualify the Department of Justice was similarly transferred. As a result, the appeal continues to move forward on the merits **while unresolved motions challenge the neutrality and lawful composition of the tribunal itself**, creating the risk that judges whose impartiality is questioned will participate in selecting themselves to decide the case.

#### **F. Structural Concerns and the Role of JHealth**

The disqualification issues are heightened by the respondent judge’s prior service by designation on the Tenth Circuit and his leadership role as Chair of the Circuit’s **Judicial Health and Assistance Committee (“JHealth”)**, a confidential internal program providing support and assistance to judges and their families. That role necessarily involved trust-based, nonpublic relationships within the Circuit, raising serious and non-waivable concerns about institutional impartiality when a judge associated with the program is a party to the appeal.

#### **G. Present Posture**

Despite these unresolved threshold issues, appellate deadlines continue to run, and Appellant is being compelled to litigate before a tribunal whose neutrality is reasonably in question. Because participation by a potentially disqualified decision-

maker itself constitutes irreparable constitutional injury, Appellant now seeks a stay from this Court to preserve the status quo and prevent further proceedings until the disqualification motions are resolved by a lawfully constituted and impartial adjudicator.

## **PURPOSE OF THIS APPLICATION**

This application seeks a narrow stay of proceedings to preserve the status quo while the United States Court of Appeals for the Tenth Circuit considers—and resolves—pending emergency motions that go to the court’s authority to act at all. Those motions challenge (1) ultra vires acts by the Clerk that not even an Article III judge could perform; (2) the refusal to implement a district court order correcting the record; (3) circuit-wide disqualification following a unanimous district-court recusal; and (4) the Department of Justice’s conflicted participation, including unresolved disqualification based on prior employment and unlawful role-switching. Absent a stay, the Tenth Circuit continues to act while these threshold jurisdictional and due-process defects remain unresolved, creating irreparable constitutional injury that cannot be cured after the fact.

### **Necessity of Immediate Relief**

The relief sought is not available from any other court or judge because the threshold defects at issue—ultra vires acts by the Clerk affecting jurisdiction, refusal to implement a binding district-court order correcting the record under Rule 10(e), an unresolved emergency motion seeking circuit-wide disqualification, and

the Department of Justice's conflicted participation—are all presently pending before, and attributable to, the court whose authority to proceed is itself challenged. Continued action by that tribunal while these antecedent questions remain unresolved would compound the constitutional injury and render later review ineffective. Applicant has first sought relief below. Emergency motions addressing each of these defects were filed in the Tenth Circuit and remain unresolved. Despite those pending motions, proceedings continue. Because a tribunal whose authority is squarely in question may not proceed while a live disqualification and jurisdictional challenge is outstanding, no further relief can be meaningfully obtained below. Only a temporary stay from this Court can preserve the status quo and prevent irreparable harm while the lower court resolves the threshold issues it must decide before acting at all.

### **Summary of Specific Reasons a Stay Is Justified**

A stay is warranted to prevent proceedings conducted without jurisdiction, on an inaccurate record, before a potentially disqualified tribunal, and with conflicted government counsel. These are structural defects that cannot be cured after the fact. Proceeding now would irreversibly taint the appellate process and defeat effective review. A narrow stay pending resolution of the emergency motions below is therefore necessary to safeguard due process and the integrity of Article III adjudication.

### **REASONS A STAY IS WARRANTED**

## **I. The Tenth Circuit Clerk Granted a Sua Sponte Post-Deadline Extension—An Act Not Even an Article III Judge May Perform—Creating a Jurisdictional Defect That Continues to Affect the Appeal**

On December 8, 2025—the deadline set by Article III judges—the Clerk of the Tenth Circuit ruled that Judge Timothy DeGiusti’s brief, filed through the Department of Justice, was deficient. (Doc. 11; deficiency notice dated Dec. 8, 2025). Rather than require a timely motion or strike the filing, the Clerk later granted DOJ three additional days after the deadline had expired to submit a corrected brief. (Doc. 19).

That action was taken without a motion, without any showing of excusable neglect, and without judicial findings. Federal Rule of Appellate Procedure 26(b) permits post-deadline extensions only on motion and only by the court. This Court has made clear that even Article III judges lack authority to grant such relief sua sponte. *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 896–97 (1990). A clerk has none.

The Clerk’s order therefore was entered in the complete absence of jurisdiction. It reversed the legal effect of a deficiency ruling, altered the briefing schedule, and recalculated deadlines for the pro se litigant—all quintessential judicial acts performed without authority. That jurisdictional defect continues to taint the appeal and independently warrants a stay.

## **II. The District Court Granted Miller’s Motion to Correct the Record, Yet the Tenth Circuit Clerk Refused to Implement That Article III Order After Miller Invoked Rule 10(e)**

Before the appeal proceeded, the district court expressly granted Miller's motion to correct a mislabeled document, ordering that the record be amended to reflect what was actually filed and considered. (W.D. Okla. 5:25-cv-00301-SWS, Doc. 23 at 17). That ruling was a completed Article III determination. After the corrected record was transmitted inaccurately, Miller invoked Federal Rule of Appellate Procedure 10(e) to enforce the district court's order. Rather than adjudicate the motion, the **Tenth Circuit Clerk** "referred" the matter to an unidentified future merits panel and declared that "no ruling will issue at this time." (Doc. 12). By refusing to implement a binding district-court order and blocking judicial review, administrative personnel effectively nullified an Article III ruling and froze an inaccurate appellate record. That action exceeds clerical authority, violates Rule 10(e), and independently justifies a stay to prevent further proceedings on a distorted record.

### **III. The Entire Western District of Oklahoma Recused Itself Due to Institutional Ties to Judge DeGiusti, Yet the Tenth Circuit Continues to Act While an Emergency Disqualification Motion Remains Pending, Even Though Judge DeGiusti Served and/or Authored Opinions on 10<sup>th</sup> Circuit Court of Appeals by Designation on Numerous Occasions**

At the outset of this litigation, every active district judge in the Western District of Oklahoma recused themselves because of institutional relationships with Judge Timothy D. DeGiusti. The court stated:

"The District Judges of this Court recuse from participation in this case. Pursuant to direction from Chief Tenth Circuit Judge Jerome Holmes, the case is hereby assigned to United States District Judge Scott Skavdahl of the District of Wyoming." (Doc. 6). W.D. Okla., No. 5:25-cv-00301-SWS

That unanimous recusal is an objective judicial determination that impartial adjudication was not possible within the district. Judge DeGiusti's institutional integration is even deeper at the appellate level. **He has served numerous times on the 10<sup>th</sup> Circuit Court of Appeals and authored opinions as a member of the Tenth Circuit by designation**, including *United States v. Morris*, 562 F.3d 1131 (10th Cir. 2009), and has participated in confidential appellate deliberations with sitting circuit judges. **He also served in a leadership role (chairperson) over JHealth, a confidential internal program serving Tenth Circuit judges and their families.** Miller filed an emergency motion to disqualify the entire Tenth Circuit on this basis. (<https://judicature.duke.edu/articles/jhealth-how-the-tenth-circuit-is-improving-the-health-and-performance-of-federal-judges/>) That motion remains unresolved. Nevertheless, the court continues to issue orders and allow the appeal to advance. Proceeding while a live disqualification motion is pending violates due process. *In re Murchison*, 349 U.S. 133, 136 (1955); *Williams v. Pennsylvania*, 579 U.S. 1 (2016). A stay is required to halt further action by a tribunal whose authority to act is squarely in question.

#### **IV. DOJ Attorney Emily Fagan's Prior Employment with Cheek & Falcone Law Firm—Counsel for Legacy Bank—Creates an Unadjudicated Conflict, and DOJ's Continued Participation Violates Local Rule 83.2(f)**

The Department of Justice first appeared in this case as amicus curiae, filing a Motion for Leave to Appear as Amicus Curiae with Brief in Support on behalf of the United States, through DOJ attorney Emily Fagan. *See* Doc. 9 (Apr. 2, 2025), *Miller*

*v. Legacy Bank*, W.D. Okla. No. 5:25-cv-00301-SWS. **Emily Fagan did not represent Judge Timothy DeGiusti in that filing**; she appeared solely on behalf of the United States in an amicus capacity. After the district court denied the Department of Justice's initial motion to dismiss, *see* Doc. 10, the Department of Justice subsequently appeared as defense counsel for Judge Timothy DeGiusti, a named judicial defendant in the same matter, when DOJ attorney Cedric Bond filed a Motion to Dismiss with Brief in Support on Judge DeGiusti's behalf. *See* Doc. 12 (May 8, 2025) (Bond, Cedric).

This sequential role-switching by the Department of Justice—from amicus curiae for the United States to party counsel for a judicial defendant in the same case—created a non-waivable institutional conflict requiring immediate judicial adjudication. The conflict is compounded by undisputed facts bearing directly on the ethical eligibility of DOJ counsel. Before joining the Department of Justice, **Emily Fagan was employed by Cheek & Falcone**, the law firm that represented **Legacy Bank in *Miller v. Legacy Bank***, W.D. Okla. No. 20-946-D. *See* W.D. Okla. Doc. 13-2. Judge DeGiusti is sued in the present action for conduct taken while presiding over that very case in the complete absence of jurisdiction, conduct outside the scope of judicial immunity. *See Stump v. Sparkman*, 435 U.S. 349, 356–57 (1978).

DOJ's continued participation also violates Local Rule 83.2(f) of the Western District of Oklahoma, which permits DOJ to appear either on behalf of the United

States or a federal officer—but not to alternate roles within the same case. The Department of Justice is a single governmental entity; conflicts are imputed to the Department as a whole and cannot be cured by substituting counsel or invoking internal screening. Miller filed a motion to disqualify DOJ on these grounds. That motion remains unresolved. Nevertheless, DOJ continues to appear and benefit from procedural irregularities, including the Clerk’s unauthorized post-deadline extension. Proceeding while the authority and ethical eligibility of opposing counsel remain contested violates due process and independently supports a stay. *United States v. Pearson*, 203 F.3d 1243, 1277 (10th Cir. 2000).

## **V. WHY IMMEDIATE SUPREME COURT INTERVENTION IS NECESSARY AND APPELLANT COULD NOT AWAIT RULING BY THE TENTH CIRCUIT**

Immediate Supreme Court intervention is necessary because, while Appellant’s Emergency Motion and disqualification motions remained pending and unresolved in the United States Court of Appeals for the Tenth Circuit, the court—through its Clerk—continued to take operative actions that advanced the appeal, altered deadlines, and accepted an untimely filing, thereby inflicting ongoing and irreparable constitutional injury.

### **A. Failure to Grant a Stay Could Allow the Clerk’s Unauthorized Post-Deadline Extension to Control the Appeal**

On October 23, 2025, the Tenth Circuit ordered that Appellee’s response brief was due no later than **December 8, 2025**. See Doc. 11. Appellee did not file a compliant brief by that deadline. Instead, on **December 8, 2025**, the Clerk docketed a “*Notice of appellee’s deficient brief received from Timothy D. DeGiusti*,” expressly stating

that the brief was **deficient** and setting a new due date of **December 11, 2025** for correction. *See* Doc. 19. That notice—issued without any motion for extension or judicial order—unilaterally granted Appellee additional time beyond the court-ordered deadline.

The following day, on **December 9, 2025**, again without any motion for leave, finding of excusable neglect, or judicial order, the **Clerk accepted Appellee’s brief for filing**, thereby converting a concededly deficient, post-deadline submission into an operative merits filing and recalculating Appellant’s reply deadline. *See* Doc. 21.

That same day—**December 9, 2025**—the Clerk also **referred Appellant’s pending Motion to Disqualify the Entire Tenth Circuit Court of Appeals to an unidentified merits panel to be assigned at a later time**, without disclosing the judges, setting a briefing schedule, or providing any assurance that the motion would be resolved before further judicial participation occurred. *See* Doc. 22. The Court had earlier taken the same approach with Appellant’s Motion to Disqualify the Department of Justice as counsel. *See* Doc. 16. As a result, **all threshold disqualification issues were deferred indefinitely**, while the appeal continued to move forward on the merits under deadlines imposed by a Clerk acting without judicial authority.

#### **B. Denial of a Stay Would Complete the Constitutional Injury by Allowing Further Participation of a Potentially Disqualified Tribunal**

Appellant was left without a presently constituted adjudicator to resolve motions that directly challenge the identity, neutrality, and lawful authority of the decision-makers themselves, even as the court continued to issue rulings shaping the course of the appeal. Compounding the constitutional injury, Judge DeGiusti's untimely and procedurally unauthorized brief remains on the docket, notwithstanding that it was accepted only through ultra vires clerk action. Because the brief was filed after the court-ordered deadline and without any Rule-compliant extension, it must be stricken from the record, and none of its arguments may lawfully be considered. Allowing those arguments to influence further proceedings would perpetuate the due-process violation and compound the structural harm.

Appellant filed an Emergency Motion to Stay Proceedings on December 18, 2025. *See* Doc. 24. By that point, however, the constitutional injury was already ongoing: the tribunal whose impartiality was challenged continued to participate in the case; deadlines continued to run; and a deficient, untimely brief had been accepted and treated as operative.

The harm at issue is structural and constitutional, not merely procedural. Forcing a litigant to proceed before a tribunal whose impartiality is reasonably questioned constitutes irreparable injury at the moment of participation, regardless of the ultimate outcome. *In re Murchison*, 349 U.S. 133, 136 (1955). Once a potentially disqualified decision-maker participates—by extending deadlines, accepting filings,

or shaping the course of the case—the Due Process Clause is violated, and no later ruling can undo that harm. *Williams v. Pennsylvania*, 579 U.S. 1, 8–9 (2016).

Waiting for the Tenth Circuit to rule would not have avoided the injury; it would have completed it. Because the court continued to act while the emergency motion and disqualification motions remained unresolved, Appellant faced an immediate and non-waivable loss of his constitutional right to a neutral appellate tribunal. That loss is effectively unreviewable after final judgment and cannot be remedied through ordinary appellate processes.

Accordingly, immediate Supreme Court intervention is necessary to preserve the status quo, prevent further structural due-process violations, and ensure that the appeal does not proceed before a tribunal whose lawful composition and impartiality remain in dispute. A stay—and the striking of Judge DeGiusti’s untimely brief—is the only mechanism capable of preventing irreparable constitutional harm while this Court’s prospective review is preserved.

### **C. Delay in Resolving DOJ’s Conflicted Representation Inflicts Irreparable Harm**

Appellant could not await a ruling from the Tenth Circuit because the authority and ethical eligibility of opposing counsel remain unresolved, yet the Department of Justice continues to participate in the appeal and benefit from procedural rulings. The Department of Justice first appeared in this case as **amicus curiae**, filing a motion to dismiss advancing the interests of the United States. Only after dismissal of that motion did the DOJ appear as **defense counsel for Judge Timothy**

DeGiusti, a named judicial defendant. That role-switching—from amicus to party counsel in the same case—created a **non-waivable conflict requiring immediate judicial resolution**. The conflict is compounded by undisputed facts concerning DOJ counsel’s prior employment. DOJ attorney Emily Fagan was previously employed by Cheek & Falcone, the law firm that represented Legacy Bank—the defendant in *Miller v. Legacy Bank*, Case No. 20-946-D (W.D. Okla. Doc. 13-2). Judge DeGiusti is sued here for actions taken while presiding over that case in the **clear absence of jurisdiction**, conduct outside the scope of judicial immunity. *See Stump v. Sparkman*, 435 U.S. 349, 356–57 (1978).

DOJ’s continued participation also violates **Local Rule 83.2(f) of the Western District of Oklahoma**, which permits DOJ to appear **either** on behalf of the United States **or** a federal officer—but not to alternate roles within the same case. DOJ is a single governmental entity; conflicts are imputed to the Department as a whole and cannot be cured through substitution of counsel or internal screening. *See United States v. Pearson*, 203 F.3d 1243, 1277 (10th Cir. 2000).

Appellant filed a motion to disqualify DOJ on these grounds. That motion **remains unadjudicated**, yet DOJ continues to appear and to benefit from the Clerk’s unauthorized post-deadline extension. Proceeding while the identity and authority of opposing counsel remain legally contested violates due process and independently makes a stay necessary.

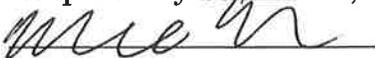
**IRREPARABLE HARM AND NEED FOR IMMEDIATE RELIEF**

The injury here is structural and ongoing. Once a court lacking authority continues to act, the constitutional harm cannot be undone. No later appeal can “un-ring the bell” of proceedings conducted without jurisdiction, before a potentially biased tribunal, or with conflicted government counsel. *Cheney v. U.S. Dist. Court*, 542 U.S. 367, 380–81 (2004).

### **RELIEF REQUESTED**

Applicant respectfully requests that this Court issue a stay of all proceedings in Tenth Circuit Case No. 25-6120 pending resolution of the emergency motions now before that court, including motions challenging the Clerk’s authority, enforcing Rule 10(e), disqualifying the tribunal, and disqualifying the Department of Justice.

Respectfully submitted,



Marquise M. Miller  
1505 N.W. 179th Terrace  
Edmond, Oklahoma 73012  
(405) 315-7825  
wonderfullymadefoundationmm@gmail.com  
Pro Se

**FILED**  
**United States Court of Appeals**  
**Tenth Circuit**

**UNITED STATES COURT OF APPEALS**  
**FOR THE TENTH CIRCUIT**

**February 9, 2026**

**Christopher M. Wolpert**  
**Clerk of Court**

MARQUISE MILLER,

Plaintiff - Appellant,

v.

TIMOTHY D. DEGIUSTI, District Judge,  
in his individual capacity,

Defendant - Appellee.

No. 25-6120  
(D.C. No. 5:25-CV-00301-SWS)  
(W.D. Okla.)

**ORDER**

Before **CARSON** and **FEDERICO**, Circuit Judges.

Before the court is Appellant’s “Emergency Motion to Stay Proceedings Pending Resolution of Appellant’s Motions to Disqualify the Tenth Circuit and the Department of Justice; or, Alternatively, to Transfer this Appeal to a Neutral Circuit; and to Vacate the Court Clerk’s Unauthorized Sua Sponte Extension of Appellee’s Deadline.”

(Dkt. No. 24).

“The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion.” *Nken v. Holder*, 556 U.S. 418, 433–34 (2009).

Under the traditional standard for a stay,

a court considers four factors: (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of

the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

*Id.* at 426 (internal quotation marks omitted). Appellant has not met his burden of establishing entitlement to relief based on any of the four factors, so we deny the motion for stay.

Entered for the Court

Per Curiam

No.

---

In the  
Supreme Court of the United States

---

**MARQUISE MILLER,**

*Petitioner*

v.

**Timothy Degiusti,**

*Respondent*

---

**CERTIFICATE OF SERVICE**

---

I hereby certify that this filing was sent by  
fed ex mail on ~~January 22, 2020~~ to Timothy  
Degiusti at: *March 2, 2026*

**Cedric Bond and Emily Fagan**  
DOJ-USAO  
210 Park Avenue  
Suite 400  
Oklahoma City, OK 73102



**MARQUISE M. MILLER**

1505 N.W. 179th Terrace  
Edmond, Oklahoma  
73012

(405) 315-7825

wonderfullymadefoundationmm@gmail.com

**RECEIVED**

**MAR - 5 2026**

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

**Additional material  
from this filing is  
available in the  
Clerk's Office.**