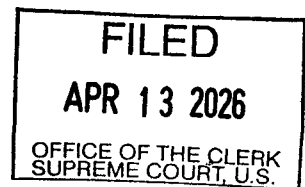


NO. 26-5685



IN THE
SUPREME COURT OF THE UNITED STATES

UNITED STATES ex rel. RUTH TORRES,

Petitioner, Pro Se,

v.

GREGORY WAYNE ABBOTT, ET AL.,

Respondents.

On Petition for a Writ of Certiorari
to the United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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i
QUESTIONS PRESENTED

This case asks whether state officials may violate federal law, defraud the United States, engage in RICO, potentially enable national security risks at the world's sixth busiest international port then use lawfare retaliation against a whistleblower with impunity.

In this case, government officials acted under the color of law using the state judiciary as a shield to avoid accountability, which the federal courts upheld and furthered and the Department of Justice refused to perform their statutorily required duty under 31 U.S.C. §3730(a) to investigate. Whistleblower Torres's complaint includes False Claim and §1983 claims and seeks injunctive relief against state and judicial officers for which immunity has been waived and exceptions apply—lack of jurisdiction and disqualification due to ultra vires acts and / or crime-fraud exception.

The questions presented are:

1. Whether Constitutional violations occur when federal judiciary fails to recuse as statutorily required, fails to provide de novo review of magistrates *sua sponte* dismissal of §1983 claims on the basis of judicial immunity denying a suspect class whistleblower relief from constitutional violations confirmed by sanction from the state judicial commission?
2. Circuit split warrants review re:
 - i. use of *sua sponte* dismissal exclusively against pro se *in forma pauperis* litigants via U.S.C. §1915(e)(2) screening consistently benefitting government defendants undermines separation of powers;
 - ii. magistrate preemptive prohibition to amend or file motion for appointment of counsel and subsequent adjudication absent de novo review conflicts with U.S. Const. art. III; and
 - iii. rigid application of *Iqbal* / *Twombly* nullifies *Haines*.
3. Circuit split on False Claims Act structural and procedural process, whether:
 - i. *sua sponte* dismissal during the seal period—prior to notice or intervention from the United States ripens jurisdiction—violates separation-of-powers and denies litigants' due process and equal protection;
 - ii. FCA imposes a duty on the government to investigate prior to issuing notice; and
 - iii. FCA claims may be advanced by pro se litigants or should be dismissed to benefit a hypothetical "better" litigant that can afford an attorney.

ii
PARTIES

Petitioner:	Ruth Torres, Pro Se
Respondents:	

- | | | |
|-------------------------------|----------------------------------|---|
| 1. Gregory Wayne Abbott | 34. Leslie Osborne | 69. Roy T. Atwood |
| 2. Warren Kenneth Paxton, Jr. | 35. Elizabeth Lang-Miers | 70. Shannon Cox |
| 3. Bonnie Lee Goldstein | 36. David Evans | 71. Thomas M. Misteli |
| 4. Nathan L. Hecht | 37. Catherine N. Wylie | 72. William R. Deloney |
| 5. Jimmy Blacklock | 38. David C. Hall | 73. Deborah K. Hartley |
| 6. Debra Lehrmann | 39. Ruben G. Reyes | 74. Chris Lowman |
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| 11. Brett Busby | 44. Ronald E. Bunch | 79. James N. Rader |
| 12. Eva Guzman | 45. Valerie Ertz | 80. Ann Hennis |
| 13. Kristina Marie Williams | 46. Frederick Tate | 81. Walter L. Jones |
| 14. Staci Jan Williams | 47. M. Patrick Maguire | 82. Janet Diaz |
| 15. Dale B. Tillery | 48. David Schenck | 83. Andres Alcantar |
| 16. Raymond G. Wheless | 49. Clifton Roberson | 84. Ruth R. Hughes |
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| 19. Mary K.M. "Missy" Medary | 52. Christopher M. Boeck | 87. Felicia Pitre |
| 20. Stephen B. Ables | 53. Daniella Heringer | 88. Jonathan Mckinnon |
| 21. Morton V. "Dean" Rucker | 54. Dawn Fowler | 89. David Langford |
| 22. David Slayton | 55. Donald Miller | 90. Terri Etekochay |
| 23. Robert D. Burns | 56. Eric Friedman | 91. Todd Keith Sellars |
| 24. Carolyn Fiske Wright | 57. Eugene Alcala | 92. Sean Donohue |
| 25. Amanda L Reichek | 58. George Solares | 93. Linda Valdez Thompson |
| 26. Ken Molberg | 59. Hyattye O. Simmons | 94. Gregory Spoon |
| 27. Dennise Garcia | 60. James Robertson | 95. Elaine Flud Rodriguez |
| 28. Robbie Partida-Kipness | 61. Jay M. Williams | 96. Henry S. Wehrmann |
| 29. Ada Elene Brown | 62. Jeffrey Hellberg | 97. Michael Scott Rawlings |
| 30. Lana Rolf Myers | 63. Jonathan Pace | 98. Barbara Elizabeth Cornelius "Betsy" Price |
| 31. Craig Stoddart | 64. Kevin R. Davidson | 99. Lillie Biggins |
| 32. Erin A. Nowell | 65. Kristen James | 100. Sam Coats |
| 33. Robert M. Fillmore | 66. Lucretia Milam | |
| | 67. Martha Lawless | |
| | 68. Michael Cohen | |

101. Francisco Hernandez
102. William Meadows
103. Regina Montoya
104. Curtis E. Ransom
105. Forrest Smith
106. William Tsao
107. Henry Borbolla
108. Eddie Reeves
109. Amir Rupani
110. Matrice Ellis-Kirk
111. Eric Johnson
112. Adam Bazaldua
113. Adam McGough
114. Adam Medrano
115. Cara Mendelsohn
116. Carolyn King Arnold
117. Casey Thomas
118. Chad West
119. David Blewitt
120. Jaime Resendez
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122. Lee Kleinman
123. Omar Narvaez
124. Paula Blackmon
125. Tennell Atkins
126. Mattie Parker
127. Ann Zadeh
128. Carlos Flores
129. Cary Moon
130. Dennis Shingleton
131. Gyna Bivens
132. Jungus Jordan
133. Kelly Allen Gray
134. William Brian Byrd
135. Heather Lavinia Howell
136. David Matalon
137. Kyle Achee Ferachi
138. Samuel G. Davison
139. Michael Chiusano
140. Chad Berry
141. Steven Don Goodspeed
142. Dustin Gaines
143. Harold "Harry" Dean Jones
144. Cathryn Copeland "Cc" Wood
145. C. John Scheef
146. Anna Solveig Brooks
147. Brandy Kearn Chambers
148. Heaven Marie Tull Diaz
149. Mark Galvan
150. Pursuit of Excellence, Inc.
151. Pursuit of Excellence Hr, Inc.,
152. Pursuit of Excellence - Northeast, Inc.
153. Pursuit of Excellence Holdings, LLC
154. Pursuit of Excellence - Texas, LLC
155. Pursuit of Excellence - Texas 2, LLC
156. Pursuit of Excellence - Texas 3, LLC
157. P4s Consulting, LLC
158. Cielo Creations, LLC
159. Cielo Preston Forest, LLC
160. The State of Texas
161. Texas Workforce Commission
162. Dallas Fort Worth International Airport Board
163. City Of Dallas, Texas
164. City Of Fort Worth, Texas
165. Texas Rangers
166. Dallas County District Attorney
167. Tarrant County District Attorney
168. Littler Mendelson P.C.
169. Scheef & Stone LLP
170. Chambers Legal, PLL
171. Farrow-Gillespie Heath Witter LLP
172. Middlebrook Group, PLLC
173. Cigna Healthcare of Texas, Inc.
174. JP Morgan Chase Bank
175. The CFO Suite, LLC
176. Frost Bank
177. Os33 Service Corp
178. Sara Martinez
179. Nicole Taylor
180. Oak Cliff Bible Fellowship
181. Dr. Anthony Evans

RELATED PROCEEDINGS

This case arises from and is related to the following proceedings in the United States District Court for the Northern District of Texas and the United States Court of Appeals for the Fifth Circuit:

- *United States ex rel. Torres v. Abbott*, No. 3:24-cv-01842 (N.D. Tex., 2024).
- *United States ex rel. Texas v. Abbott*, No. 25-10671, 2026 WL 93133 (5th Cir. Jan. 13, 2026).

The following are related cases:

- *California v. Texas*, 593 U.S. 659 (2021) and *Texas v. United States*, 340 F.Supp. 3d 579 (N.D. Tex. 2018).
- *United States v. Diaz*, 3:23-CR-00144-N (N.D. Tex. 2025).
- *Torres v. Goldstein*, No. 24-11021 (5th Cir. 2025). (cert denied) (U.S. 2026).
- *Torres v. Diaz*, 141 S. Ct. 909 (2020) (cert. denied).
- *Torres v. Dallas Fort Worth Int'l Airport Bd.*, No. 19-0940 (Tex. 2020), cert. denied, No. 20-5811 (U.S. 2020).
- *Torres v. Court of Appeals of Tex., Fifth Dist.*, No. 19-0130 (Tex. 2019), cert. denied. No. 20-5808 (U.S. 2020).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Ruth Torres respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The Fifth Circuit's opinion is unpublished, it is reported at 2026 WL 93133 (5th Cir. 2026) affirming and denying motions for en banc reconsideration, recusal, change of venue and appointment of counsel. Pet. App. A. The district court's opinion adopting magistrates Findings, Conclusions and Recommendations ("F,C&R") dismissing with prejudice is unpublished. *United States ex rel. Torres v. Abbott*, 3:24-cv-01842-X-BK (N.D. Tex. 2025). Pet. App. B and C, respectively.

JURISDICTION

The Fifth Circuit issued its decision on January 13, 2026. Petition for Writ of Certiorari was hand-delivered April 13, 2026. Notice of petition correction requirement was issued April 21, 2026. Constructive notice was received July 23, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- U.S. Const. amends. I, IV, V, XIV, § I
- 28 U.S.C. §144, (Judicial Disqualification)
- 28 U.S.C. §455 (a), (b)(1) and (3), (Judicial Disqualification)
- 28 U.S.C. §1915(e) (in forma pauperis dismissal)
- 31 U.S.C. §3729 et seq. (False Claims Act)
- 42 U.S.C. §1983 (Constitutional violations "under color of law")

INTRODUCTION

Can state government officials violate federal law, defraud the United States, engage in RICO, potentially enable national security risks at the world's sixth busiest international port then use the judicial system to retaliate against a whistleblower with impunity?

The underlying issue is law fare retaliation against suspect class litigant, Whistleblower Torres, by Texas government officials acting under color of law and using the judiciary to shield them from accountability. Whistleblower Torres's complaint includes False Claim Act and §1983 claims seeking injunctive relief against state officials and judicial officers for which immunity has been waived and exceptions apply—lack of jurisdiction and disqualification due to ultra vires acts and / or crime-fraud exception.

Whistleblower Torres alleges ongoing unconstitutional harm by state officials supported by the state judiciary committee finding the state trial court denied Whistleblower Torres due process. Allowing orders issued by disqualified judge to stand expands judicial immunity to unconstitutional and ultra-vires acts. Torres sought relief in the federal court, but claims were *sua sponte* dismissed via 28 U.S.C. §1915(e)(2) asserting judicial immunity and pleading deficiency absent specifics.

STATEMENT OF THE CASE

Background

Whistleblower Torres asserts suspect classification as a pro se, *in forma pauperis* whistleblower relator with constitutional and reverse qui tam claims under 31 U.S.C. §3729 seq. et., the False Claims Act ("FCA"). Torres's complaint alleges a coordinated scheme among state government officials and private actors, initiated by executives at Dallas-Fort Worth International Airport ("DFW"), who evaded Affordable Care Act ("ACA") requirements and defrauded the United States. This was accomplished by awarding contracts to staffing vendors—absent compliance with state statutorily required bidding process, issuing illegal contracts for an illegal purpose. The co-conspirators engaged in a worker shell game repeatedly firing and hiring workers under different entities to allege lower-wage employees were temporary and deny ACA benefits to hundreds of eligible workers. This scheme avoided ACA tax penalties increasing DFW profits and executive bonuses.

Heaven Marie Diaz was one of DFW's staffing contractors and sole manager of multiple entities including Pursuit of Excellence, Inc. Whistleblower Torres, a 25-year veteran Human Resources Executive, holding a master's degree in international management of human resources, specializing in policy, strategy and legal compliance was employed with this contractor. Torres warned her employer and DFW of their many co-employer federal and state violations incurred because of

their goal, and recommendations to cure. Instead, retaliatory suit was brought against Torres in state court.

Diaz was eventually convicted of multiple-felony tax fraud offenses stemming from these same DFW contracts for deducting but not forwarding over \$3 million in payroll taxes from DFW employees. Diaz was sentenced to 97 months' imprisonment and ordered to pay restitution. *United States v. Diaz*, No. 3:23-CR-00144 (N.D. Tex. 2025).

Whistleblower Torres alleges that DFW via their contractor, retaliated by initiating state court proceedings in 2016 to chill Torres's whistleblowing. The judicial system and state resources have been used since then significantly harming Torres repeatedly trampling constitutional rights. Below are just the highlights.

- 1) The 2016 case initiated by Pursuit of Excellence in Dallas, Texas state court against Torres alleged theft of trade secrets and other claims based on Torres forwarding work emails to her private email as evidence of Torres's whistleblower claims. Torres counter-claimed and cross-claimed adding DFW Airport, whose plea to jurisdiction was granted. Torres filed interlocutory appeal, which was denied. This case was assigned to Judge Bonnie Lee Goldstein.

Absent statutorily required bond, Judge Goldstein orally ordered Torres to agree to a Temporary Injunction (still in place 10 years later). Torres repeatedly objected but complied. The court appointed an "IT

Expert” who retained Torres’s laptop and iPhone for seven weeks, mirrored the contents, erased all programs and files, and returned the property unusable. However, the IT Expert did not delete emails containing the evidence Judge Goldstein sought to deprive Torres of. Therefore, Torres retained possession of some evidence despite fully complying with Judge Goldstein’s order and used it in the related Payday case before Judge Williams where the same party was found in contempt for withholding ordered discovery. Opposing counsel informed Judge Goldstein of the use of this evidence in the related case via *ex-parte* email and urged Torres be held in contempt. Within an hour, Torres’s claims were dismissed with prejudice, absent motion, notice or show cause hearing.

Torres attached some evidence of the illegal acts with several pleadings. Judge Goldstein ordered the pleadings removed from public view. Then Judge Goldstein ordered Torres to destroy all evidence and submit affidavit attesting to destruction or be incarcerated for up to six months until compliance. Torres filed two interlocutory appeals challenging injunction and denial of dismissal under Texas Citizens Participation Act, both were denied.

Plaintiff, Pursuit of Excellence amended adding claims against Torres’s single-member entities. Torres answered on behalf of entities

noticing lack of jurisdiction and standing, general denial and affirmative defenses to prevent default judgment which would be enforced personally against Torres. Texas' Unauthorized Practice of Law Committee ("UPLC") filed suit alleging Torres was practicing law without a license.

Torres was denied discovery, multiple motions for hearings and orders were ignored. Torres's motion for recusal was denied by Judge Goldstein and affirmed by Administrative Regional Judge Raymond Wheless.

Torres filed complaint with the Texas State Judicial Commission who issued private sanction on Judge Bonnie Goldstein for denying Torres due process and ordered retraining as a district court judge. Appendix F. During the 18-month judicial committee investigation, which customarily takes a maximum of six months, Judge Goldstein was elected to the Fifth Court of Appeals- Texas. Further, because the sanction was private, Torres was denied the investigation records.

Judge Goldstein's orders remain in effect to date harming Torres as the new state trial court refused to issue final order. The district clerk denied Torres records in support of mandamus. Torres moved the state appellant court for records order to support the mandamus, which was denied, as were multiple writs of mandamus and interlocutory appeals.

The federal court denied merit review asserting judicial immunity. *Torres v. Goldstein*, No. 24-11021 (5th Cir. 2025). (cert denied) (U.S. 2026).

2) The 2017 case initiated by Torres against The Texas Workforce

Commission, Marie Diaz and Pursuit of Excellence sought unpaid wages under Texas PayDay Act and was assigned to Judge Staci Williams.

At a Show Cause hearing on Torres's Motion for Contempt re defendants failing to comply with discovery order, Torres submitted some of the proof defendants thought destroyed via Judge Goldstein's order in the related case, this usage revealed Torres was still in possession. Judge Williams found opposing counsel in contempt. Opposing counsel sent an *ex-parte* email to Judge Goldstein requesting Torres be held in contempt for using the evidence before Judge Williams. Judge Goldstein issued order holding Torres in contempt, striking Torres's counterclaims with prejudice absent motion, notice or hearing.

Defendants appealed Judge Williams' contempt order, which was overturned by the Fifth Court of Appeals- Texas. Subsequently, Torres's further requests for enforcement of discovery were ignored, multiple motions for hearings and orders were ignored and no final order issued preventing appellate review.

3) Texas' Unauthorized Practice of Law Committee ("UPLC") filed suit, which failed to adhere to state statutes in pleading sufficiency and deadlines, against Torres for filing answer against her single-member entities in the case before Judge Bonnie Goldstein. UPLC refused Torres's demands to

produce committee records establishing authority to bring suit per statute. Torres sought the records via a Rule 12 "Special Panel" proceeding where Administrative Regional Judge Ray Wheless was recused by the presiding state officer. UPLC was not required to produce all the requested records because UPLC alleged the investigation was ongoing although they had already filed suit in state court. UPLC did not fully comply with order to release records however, the Special Panel asserted lack of authority to enforce their order.

The UPLC case was assigned to Judge Kristina Williams. After recusal in the related Rule 12 proceeding, Administrative Regional Judge Raymond G. Wheless—without case reassignment order or notice of Judge Williams unavailability—appeared to preside over UPLC's motion for summary judgment on seven-days' notice of hearing (Tex. R. Civ. P. 166a requires 21 days). Judge Wheless orally ordered the clerk to reject Torres's answer, granted summary judgment issuing a broadly worded permanent state-wide injunction which bars Torres from her human-resources occupation absent a law license causing Torres economic loss of \$200,000 annually.

Torres applied to North Texas law schools however; none would admit her. Therefore, Torres is completing law school in Washington, D.C.

District-Court Proceedings

Torres filed suit July 19, 2024 under Federal Claim Act's ("FCA") required 60-day seal (seal deadline was September 17, 2024).

On July 31, 2024, Magistrate Toliver issued order prohibiting process of service, filing of amendment or motion for appointment of counsel during 28 U.S.C. §1915(e)(2)(B) screening. Appendix D & E.

On Aug. 30, 2024, Magistrate Toliver issued Findings, Conclusions and Recommendation ("F,C&R") *sua sponte* dismissing with prejudice—during the FCA seal period and prior to the government's notice or intervention—finding Torres's complaint failed to satisfy Fed. R. Civ. P. 8 and *Iqbal/Twombly* requirements. Appendix C.

Torres filed timely objections, motion for appointment of counsel, motion for recusal and change of venue between Sept. 6, 2024, and Sept. 9, 2024.

On September 27, 2024, absent investigation, the government issued untimely notice and declined intervention yet requested dismissal, which the court granted. The government also asserted Torres could not proceed pro se on FCA claim. Torres objected on October 7, 2024.

On April 28, 2025, Judge Starr adopted Magistrate Renne Toliver's recommendation for dismissal with prejudice asserting *de novo* review absent

analysis. Judge Starr denied recusal, asserting prior association inadequate grounds.

Torres's objection to Government's motion to dismiss without intervening contrary to *Polansky*, was ignored. Motion for appointment of counsel was determined moot and change of venue declined.

Fifth Circuit

January 13, 2026, the Fifth Circuit affirmed and denied en banc review holding Petitioner failed to "present a non-frivolous appellate issue", had opportunity to amend but failed to do so and therefore abandoned claims.

REASONS FOR GRANTING THE WRIT

- A. To protect the integrity of the judiciary by enforcing statutory required recusal and clarify disqualification and judicial immunity limits, not just in theory but application, ensuring litigants' rights to unbiased, meaningful adjudication and de novo appellate review, especially for suspect class whistleblower which requires strict scrutiny.

Chief Justice John Marshall stated that it is the duty of the judicial department to say what the law is, reinforcing the idea that everyone is equally subject and accountable to the law. *Marbury v. Madison*, 5 U.S. 137 (1803). Yet, the Fifth Circuit ruling effectively immunizes judicial officers for unconstitutional acts even where (1) they have been formally sanctioned, and (2) they acted without jurisdiction. This result erodes our democracy's cornerstone principle:

"No man in this country is so high that he is above the law. . . . All officers of the government, from the highest to the lowest, are creatures of the law, and are bound to obey it. . . . [And the] Courts of justice are established, not only to decide upon the controverted rights of the citizens as against each other, but also upon rights in controversy between them and the government." *United States v. Lee*, 106 U.S. 196 (1882).

Chief Justice Roberts has explained, "we are a Government of laws and not of men. It is that rule of law that protects the rights and liberties of all Americans. It is the envy of the world, because without the rule of law, any rights are meaningless."¹ Judicial action is government action where "equal protection of the

¹ Chief Justice John G. Roberts, Confirmation Hearing before the Committee on the Judiciary, United States Senate, 109th Congress, U.S. Government Printing Office, 2005, pp. 55-6,

laws is not achieved through indiscriminate imposition of inequalities.” *Shelley v Kraemer*, 334 U.S. 1, 22 (1948).

That legitimacy cannot be maintained where litigants are denied a “fundamentally fair process” when a judge fails to recuse as statutorily required. *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 889 (2009). Further, 42 U.S.C. §1983 removes doubt as to basis for disqualification. Any clarity needed on recusal does not justify denial of justice, but resolution in the Judicial Code of Conduct parallel with statute. Nor can access to courts and justice be reduced to theories lacking practical application leaving litigants crawling to court. See *Tennessee v. Lane*, 541 U.S. 509, 533–34 (2004).

The level of declining trust in our government is evident by the legal profession’s urgent alarms and public opinion. A 2023 Harvard Review Note extensively discusses judicial abuses with exceedingly rare to nonexistent consequences as well as historical analysis of 42 U.S.C. § 1983². Additionally, the Federal Judicial Center provides the framework of judicial disqualification, which is applicable here to state and federal judges involved³.

<https://www.uscourts.gov/about-federal-courts/educational-resources/supreme-court-landmarks/nomination-process/chief-justice-roberts-statement-nomination-process>.

² Note, 42 USC §1983, *Judicial Immunity at the (Second) Founding: A New Perspective on §1983*, 136 Harv. L. Rev. 1456 (2023), <https://harvardlawreview.org/print/vol-136/judicial-immunity-at-the-second-founding-a-new-perspective-on-%C2%A7-1983/>.

³ See also Charles G. Geyh, *Judicial Disqualification: An Analysis of Federal Law*, Third Edition, Federal Justice Center (2020), <https://www.fjc.gov/content/348974/judicial-disqualification-analysis-federal-law-third-edition>

A 2024 Gallup survey found that only **35 % of Americans express confidence in our judicial system**, a 24-point drop since 2020 and the largest gap compared with other wealthy, developed nations with confidence below 50% regardless of U.S. leadership⁴. This decline demonstrates the real-world consequences of failing to safeguard fair adjudication: the public perceives courts as biased towards wealthy and powerful individuals and businesses and procedurally unfair, eroding the legitimacy of the judiciary itself.

The purpose of sovereign and judicial immunity rightfully protects officials acting in good faith or even negligence from litigation. Extending protection to intentional, illegal acts blatantly disrespects the source of government authority—the People—trampling justice.⁵ Under *Ex parte Young*, sovereign immunity does not bar suits against government officials in their individual capacity for injunctive relief because unconstitutional conduct is not actions on behalf of the government. 209 U.S. 123 (1908); 42 U.S.C. §1983. Immunity yields when actions occur in complete absence of jurisdiction and when due to crime/fraud exception. *Eastman v. Thompson*, 2022 WL

⁴ Benedict Vigers & Lydia Saad, Americans Pass Judgment on Their Courts, Gallup (Dec. 17, 2024), <https://news.gallup.com/poll/653897/americans-pass-judgment-courts.aspx>.

⁵ “The multitude of your sacrifices—what are they to me?” says the Lord . . . I have no pleasure [in your sacrifices] . . . When you come to appear before me, who has asked this of you? Trample my no more! Stop bringing meaningless offerings! Your [praise] is detestable to me. . . [When you gather]—I cannot bear your worthless assemblies. . . your [celebrations] I hate with all my being. They have become a burden to me; . . . When you spread out your hands in prayer, I will hide my eyes from you; even when you offer many prayers, I am not listening. Your hands are full of blood! Wash and make yourselves clean. Take your evil deeds out of my sight; stop doing wrong. Learn to do right; seek justice, rescue the oppressed, defend the [hurting and vulnerable].”

Holy Bible, Isaiah 1:11-17 (NIV).

11030550 (C.D. Cal. Oct. 19, 2022). We should not transform doctrines of immunity into devices enabling constitutional violations with impunity, especially since immunity is not mentioned in our Constitution which reasonably supports that Framers thought obsolete immunity inapplicable in a republic and defeasible by statute. *Alden v. Maine*, 527 U.S. 706, 762-4 (1999). "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection." *Marbury*, 5 U.S. 137. Although a king arguably enjoys absolute sovereignty, America has no king but three branches of government to maintain checks and balances against abuse of power.

The judiciary is the intellect and spine of our democratic body. Only the judiciary is fully populated with professional licensure and lifetime appointments for undistracted allegiance to the Constitution; not to any man, political party or popularity. Our Constitution does not presume honesty and integrity from government or judicial officers but was created to protect us from the very abuses now being blatantly experienced. This Court can no longer deny evidence in plain sight or allow privilege or preference to justify abdication of duty.

The defendant in this case is the governor of Texas and former state supreme court judge who has been entrenched at the highest levels of state power for decades. It is NOT reasonable to conclude that the people are truly empowered to remove an elected official by their vote given the totality of the circumstances where government abuse proliferates daily. Such displaces judiciary duty to blame and

burden the People while enabling unrestricted purchase of government, dilution of voting power, law enforcement and military use beyond constitutional limits; undue influence over the political process, media and history with impunity. *Citizens United v. FEC*, 558 U.S. 310 (2010); *Abbott v. LULAC*, 607 U.S. ____ (2025); *Mendoza v. Noem*, No. 26-1105 (8th Cir.); *Chicago Headline Club v. Noem*, 1:25-cv-12173, (N.D. Ill. Oct 06, 2025); *Watson v. Republican Nat'l Comm.*, 609 U.S. ____ (2026); *United States Postal Serv. v. California*, 609 U.S. ____ (2026); *Walt Disney Company v. FCC*, No. 1:26-cv-02902 (D.D.C. Aug. 18, 2026); *Nat'l Park Serv. V. Nat'l Trust for Hist. Pres. in the U.S.*, 609 U.S. ____ (2026).

The people voluntarily subject to the sovereign for sustenance of justice, not consumption by injustice at the hands of the sovereign. It is the ultimate betrayal for the Judiciary to hold others accountable while shielding their own illegal acts under a transparent but impenetrable blanket of immunity⁶. Such abrogates the judiciary's purpose and duty to provide unbiased justice⁷ to preserve democracy. As a few bad apples

⁶ "For the judgment you give will be the judgment you get, and the measure you give will be the measure you get." Holy Bible, Matthew 7:2 (NRSVUE).

"I tell you, on the day of judgment you will have to give an account for every careless word you utter, for by your words you will be justified, and by your words you will be condemned." Holy Bible, Matthew 12:36-37(NRSVU).

⁷ "I charged your judges at that time: 'Give the members of your community a fair hearing and judge rightly between one person and another, whether kin or resident alien. You must not be partial in judging: hear out the small and the great alike; you shall not be intimidated by anyone, for the judgment is God's.'" Holy Bible, Deut.1:16-7 (NRSVUE).

"You shall appoint judges and officials throughout . . . and they shall render just decisions for the people. You must not distort justice; you must not show partiality; and you must not accept a bribe, for a bribe blinds the eyes of the wise and subverts the cause of those who are in the right. Justice,

make the whole bunch rotten, the judiciary should attend to their own garden to preserve the harvest of justice.

The Judiciary has the power of life and death of a nation in a pen stroke, far deadlier than armed law enforcement whose potential to protect or harm is limited to physical presence. Extending doctrines of immunity to shield unconstitutional conduct threatens our grand 250-year experiment, strenuously to too many still waiting for full performance of our Constitution's contractual obligations. If our experiment fails, blame and regret shall be traditionally and functionally useless.

Whistleblower Torres's complaint alleges ongoing unconstitutional and ultra vires acts in three separate Texas cases. The federal district court *sua sponte* dismissed Torres's §1983 complaint under 28 U.S.C. § 1915(e) as "frivolous" solely by reciting cases and tests without application and conclusory assertions of deficiency absent specifics.

Torres's complaint details the issuance of orders absent jurisdiction. Unlawful orders by Texas state Judge Goldstein and Judge Wheless continue to stand harming Torres because state nor federal courts have provided Torres with opportunity for meaningful review before a neutral decision-maker. Torres reasonably concludes this is due to the controversial subject, the Affordable Care

and only justice, you shall pursue, so that you may live and occupy the land that the Lord your God is giving you". Holy Bible, Deut. 16:18-20 (NRSVUE).

"You shall not render an unjust judgment; you shall not be partial to the poor or defer to the great: with justice you shall judge your neighbor." Holy Bible, Levi. 19:15 (NRSVUE).

Act, for which Texas brought suit seeking invalidation. The defendants are the highest-ranking Texas state officials and the district judge that refused to recuse was the lead prosecutor that brought that very case!

In this case, the judiciary is not preserving a balance of powers but rather operating as an arm of the state defendants, effectively insulating constitutional violations from review, furthering and perpetuating damages by denying Torres relief or recourse.

Failure To Recuse in the Face of Structural Bias Violates Due Process.

Recusal is mandatory “when the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable.”

Williams v. Pennsylvania, 579 U.S. 1, 21(2016) (quoting *Caperton*, 556 U.S. 868, 872 (2009)). Due process requires more than formal procedure; it guarantees a “fair trial in a fair tribunal.” *In re Murchison*, 349 U.S. 133, 136 (1955). Courts must address bias and impartiality directly. *Liteky v. United States*, 510 U.S. 540 (1994). 28 U.S.C. § 636(b) requires meaningful de novo review; cursory adoption denies due process. *Gomez v. United States*, 490 U.S. 858 (1989); *United States v. Raddatz*, 447 U.S. 667 (1980); *Mathews v. Eldridge*, 424 U.S. 319 (1976).

DFW airport violating the Affordable Care Act is the basis of Torres’ suit and all the retaliation is responsive to that allegation. Judge Starr served as

Deputy First Assistant Attorney General under Defendants Governor Abbott and Attorney General Paxton and was lead counsel in Texas's constitutional challenge to the ACA, which was eventually overturned.

Texas v. United States, 340 F. Supp. 3d 579 (N.D. Tex. 2018); *California v. Texas*, 593 U.S. 659 (2021). Texas initiated that case after Torres started blowing the whistle and cross-claimed adding DFW to the underlying case before Judge Goldstein. Had this Court affirmed, Torres' claims would have been moot. Judge Starr was appointed to the federal bench in 2019.

Magistrate Toliver's F,C&R failed to detail any specific deficiency merely asserting the case is "frivolous and fails to state a claim" dismissing with prejudice. The magistrate asserted the lengthy complaint was "rambling and largely difficult to decipher . . . without much substantive elaboration . . . runs headlong into judicial immunity . . . generally lacks lucidity . . . Torres's claims against the judges—whether for injunctive, declaratory, or monetary relief—are barred by judicial immunity." Appendix C. However, Torres is confident an objective review would find the petition at least minimally sufficient. Besides, the cases cited do not hold what the magistrate asserts; judicial immunity does not bar injunctive or declaratory relief. More importantly, Torres's claims are for non-judicial, ultra-vires actions lacking all jurisdiction.

In *Mireles v. Waco*, 502 U.S. 9, 12 (1991), this Court held that immunity is lost when a judge acts "in the absence of all jurisdiction." "Relevant inquiry in

determining whether judge's actions were taken in 'judicial capacity,' . . . is nature and function of act, . . . normally performed by judge." *Id.* When adjudication occurs by a biased or disqualified judge; orders issued by such a judge are void.

Tumey v. Ohio, 273 U.S. 510 (1927); *Ward v. Village of Monroeville*, 409 U.S. 57 (1972); *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009).

Here, Judge Bonnie Goldstein appointed an "IT Expert" in a civil case on unsubstantiated allegations to search and seize Torres's private property then ordered Torres to destroy her evidence or be jailed for contempt. This was not judicial adjudication or a function normally performed by judicial function and therefore not shielded. *Forrester v. White*, 484 U.S. 219, 227 (1988). The fact that the state judicial commission determined Judge Goldstein denied Torres due process rights, is sufficient basis to determine Judge Goldstein was disqualified and all orders issued void.

Administrative Regional Judge Raymond Wheless suddenly appeared to preside in a case to which he was not assigned, after prior involuntary recusal in the related UPLC Rule 12 "Special Panel" matter. Judge Wheless issued a permanent state-wide injunction which prohibits Torres from working in her field. Judge's Goldstein and Wheless actions are in furtherance of DFW's conspiracy.

Additionally, Torres has been denied access to discovery and records from the state court proceedings, denied Mandamus and access to appellate review.

- State judges directed clerks to reject Petitioner's pleadings and prohibit hearing scheduling absent judicial approval in advance.
- The state courts refused to schedule hearings to enforce Torr  s's discovery requests.
 - State government entities selectively responded to Public Information Requests and State Attorney' General's office refused to require production per statute.
 - Parties and 3rd parties ignored discovery requests and properly served subpoenas.
- Torres was denied ability to prepare Mandamus.
 - State trial court reporters—whom were in attendance and transcribed during hearings—asserted no record existed or ignored production requests.
 - Judge Goldstein ordered the district clerk to seal court records and remove them from public view (still removed to date).
 - The state district clerk refused to produce records for Mandamus process at the direction of the state appellant clerk, which was confirmed by the county attorney general's office.
- State judges refused to issue final orders in two cases thereby denying Torres access to appellate review and writs for mandamus were denied.
- State Commission on Judicial Conduct issued private admonition validating Judge Goldstein's denial of due process but barred Torres from investigatory records because the admonition was private.

Judge Starr adopted F,C&R absent *de novo* analysis and failed to respond to F,C&R objections and the government's motion to dismiss without first intervening contrary to *Polansky*, 599 U.S. 419 (2023). Judge Starr denied recusal asserting rulings and prior association as inadequate grounds. Motion for change of venue was denied and motion for appointment of counsel was determined to be moot. The Fifth Circuit affirmed failing to provide *de novo* review, denied en banc review, denied motions for appointment of counsel and change of venue.

Suspect Classification

A suspect class is one saddled with such disabilities, or subjected to a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process. *Sonnier v. Quarterman*, 476 F.3d 349, 368 (5th Cir. 2007) (quoting *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, (1976)).

When suspect classifications or fundamental rights are at stake, such as access to courts, Equal Protection analysis requires the use of the **strict scrutiny standard**, requiring compelling state interest narrowly tailored and necessary in order to achieve the objective. If there is any less discriminatory means of achieving the goal, the law will be struck down. U.S. Const. Amend. V and XIV; e.g., *Loving v. Virginia*, 388 U.S. 1, 11 (1967).

The class-of-one theory forbids government actions that were arbitrary, irrational, or malicious. *Village of Willowbrook v. Olech*, 528 US 562 (2000). The Equal Protection Clause gives rise to a cause of action on behalf of a "class of one" where the litigant does not allege membership in a class or group but alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for such treatment. *Id.* The Clause secures every person within a jurisdiction against intentional and arbitrary discrimination, whether occasioned by a statute's express terms or by its improper execution. *Id.* To prove a

class-of-one claim, a litigant must establish that: (1) the government treated him or her differently from other similarly situated persons; (2) the difference in treatment was intentional; and (3) the difference in treatment was not rationally related to any legitimate government purpose. *Engquist v. Oregon Dept. of Agriculture*, 553 U.S.591 (2008).

Torres asserts equal protections strict scrutiny applies here demonstrated by how the state and federal courts have treated Whistleblower Torres differently from similarly situated persons, the difference was intentional and not related to any legitimate government purpose. Additionally, Torres unsuccessfully ability to obtain any relief or justice in multiple cases in Texas state and federal court over a 10-year period demonstrate a history of purposeful unequal treatment relegating Torres to a position of powerlessness as to command extraordinary protection from government and judicial officials abusing their offices and failing to perform duty to uphold the law.

Additionally, suspect class should be considered based on *pro se* and whistleblower status. *Pro se* plaintiffs have a three percent success rate compared to fifty-one percent if both parties are represented⁸. The National Center for State Courts has long recognized the disparity *pro se* litigants experience in the courts⁹. Those statistics are even worse for whistleblowers. When defendants are government officials with unlimited access to

⁸ Mitchell Levy, Comment, *Empirical Patterns of pro Se Litigation in Federal District Courts*, U. Chi. L. Rev. 2018, <https://lawreview.uchicago.edu/print-archive/empirical-patterns-pro-se-litigation-federal-district-courts#heading-7>.

⁹ Nat'l Ctr. for State Cts., A National Conference on Pro Se Litigation: A Report and Update, 2001, <https://ncsc.contentdm.oclc.org/digital/collection/ctadmin/id/2015/rec/10>.

taxpayer funded resources to retaliate against a whistleblower, small firms lack the resources and large firms, reliant on government contracts, were unwilling to risk guaranteed revenue streams to represent a whistleblower. This is especially true given the political winds of statutory enforcement of the Affordable Care Act and False Claims Act and limited ability to recover attorney fees against government litigants. Therefore, pro se representation is not a whistleblowers preference but a vulnerable position which enables abuses and should receive suspect classification.

This Court's intervention is warranted to clarify requirements of judicial recusal, disqualification and judicial immunity limits; litigants' rights to unbiased, meaningful adjudication and de novo appellate review, especially for suspect class whistleblower which requires strict scrutiny.

B. Lower courts are divided on use of magistrates *sua sponte* dismissal under U.S.C. §1915(e)(2) screening consistently benefitting government defendants, exclusively used against pro se *in forma pauperis* litigants, undermines separation of powers, and U.S. Const. art. III.

***Sua sponte* dismissal under §1915(e)(2) undermines separation of powers and continues to be conflated with Rule 12 (b)(6).**

Due process requires meaningful review before deprivation of any significant property interest absent extraordinary situations. *Boddie v. Connecticut*, 401 U.S. 371, 378-9 (1971). Procedural rules cannot be used to deprive a litigant of meaningful access to courts or the ability to vindicate substantive rights. *Id.* It is an

unjustifiable denial of a hearing, and therefore a denial of due process, to close the courts to an indigent on the ground of nonpayment of a fee. *Id.* at 386–87.

Procedural barriers cannot be allowed to shield substantive injustice. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982); *Padilla v. Kentucky*, 559 U.S. 356, 380 (2010). “[O]rdinary considerations of cost and convenience alone cannot justify [the judiciary’s] failure to provide individuals with a meaningful right of access to the courts. *Tennessee v. Lane*, 541 U.S. 509 (2004). Pro se pleadings must be liberally construed and leave to amend should be freely given. *Foman v. Davis*, 371 U.S. 178 (1962); *Haines v. Kerner*, 404 U.S. 519 (1972); *Erickson v. Pardus*, 551 U.S. 89 (2007).

Without meaningful access to courts and the records necessary to vindicate claims, constitutional guarantees are rendered hollow. Judge Friendly cautioned that extreme rigidity in procedural rules produces the same arbitrary, unjust results the law is designed to prevent. He emphasized the need for balance between strict rules and necessary judicial discretion to attain consistent, fair treatment. H. Friendly, *Indiscretion About Discretion*, 31 Emory L.J. 747 (1982).

Pro se *in forma pauperis* status is increasing due to cost of litigation and ever-expanding wealth gap between the haves and the have-nots. *Sua sponte* dismissal based on pro se *in forma pauperis* classification results in a two-edged sword of injustice perpetually worsening the standing of the have-nots to the profit of the wealthy and powerful abusing their power. Pro se indigent litigants lack representation usually

because of the damage caused by the parties they seek remedy from the court for.

Being denied representation and then denied access because one lacks representation is systemic inequity. If the judiciary is ever to live up to its constitutionally designed intent and duty—unbiased provider of equitable justice—then courts need funding to appoint representation for those unable to afford it against their powerful abuser because the government **always** secures money for what it cares about, including elaborate décor at the expense of Americans who can't even afford to buy real meat.

In forma pauperis is often the exclusive access for indigent litigants. Pro se *in forma pauperis* cases are consistently and almost exclusively subject to 28 U.S.C. §1915(e)(2) screening with **preemptive orders** barring service of process, amendment and motion for appointment of counsel resulting in over 98% sua sponte dismissals against government defendants with a lack of publicly accessible statistical reporting¹⁰.

A metastasizing practice converts 28 U.S.C. § 1915(e)(2) screening into docket sweeping dismissals exclusively benefitting the government, effectively making the judiciary default counsel for the government undermining separation-of-powers.

Courts continue to conflate §1915(e) and Rule 12 (b)(6) resolved in *Neitzke v. Williams*, 490 U.S. 319 (1989). In *Neitzke*, the court differentiated between § 1915(e)

¹⁰ U.S. Dist. Ct. N.D. Texas, Statistics, U.S. Courts (2026), <https://www.txnd.uscourts.gov/statistics>.

and Rule 12 (b)(6) and prohibits the court from conflating them “consonant with Congress' goal in enacting the *in forma pauperis* statute of assuring equality of consideration for all litigants.” *Id.* To conflate these standards deny indigent plaintiffs the practical protections of Rule 12(b)(6), notice of a pending motion to dismiss and an opportunity to amend the complaint before the motion is ruled on, which are not provided when complaints are dismissed *sua sponte*. *Id.*

The Fifth, Sixth, Seventh and Eighth Circuits permit *sua sponte* dismissal with prejudice under §1915(e)(2) screening preventing service of process and amendment, thereby acting as counsel and especially benefitting government defendants on wholesale basis. Here, as in most pro se *in forma pauperis* complaints found filed in Northern District of Texas, the magistrate preemptively issued order immediately upon case filing—prohibiting service of process, amendment or filing for appointment of counsel until the magistrate’s F,C&R dismissed with prejudice, without hearing, specific pleading deficiencies, or chance to amend—terminating constitutional claims absent opportunity to be meaningfully heard.

Constitutionally Protective Approach

Second, Third, Ninth and Tenth circuits have more explicitly emphasized that §1915(e)(2) does not abrogate Rule 15 protections in light of *Iqbal / Twombly* by raising sufficient factual allegations above the speculative level of sheer possibility but rather plausible inference which can be drawn that the action was not reasonably related to a legitimate government interest. *Ashcroft v. Iqbal*, 556 U.S. 662 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007). These circuits

typically require pro se litigants be afforded notice with specific pleading deficiencies to enable sufficient submission for a meritorious claim and at least one opportunity to amend, especially for constitutional claims, unless no cure is possible or its obvious plaintiff cannot prevail and amendment would be futile. See, e.g., *Gomez v. USAA Fed. Sav. Bank*, 171 F.3d 794, 795–96 (2d Cir. 1999). [O]utright refusal to grant the leave without any justifying reason . . . is not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the Federal Rules.” *Grayson v. Mayview State Hosp.*, 293 F.3d 103, 108 (3d Cir. 2002); *Lopez v. Smith*, 203 F.3d 1122 (9th Cir. 2000). “[A] careful judge will explain the pleading’s deficiencies so that a [litigant] with a meritorious claim can then submit an adequate complaint, cf. *Nasious v. Two Unknown B.I.C.E. Agents*, 492 F.3d 1158, 1163 (10th Cir.2007) (reversing dismissal with prejudice, in part because of district court’s failure to explain to pro se plaintiff what is required by Fed. R. Civ. P. 8).” *Gee v. Pacheco*, 627 F.3d 1178, 1186 (10th Cir. 2010). Retaliation allegations state claims for relief and should be allowed to proceed when allegations (1) identify constitutionally protected activity; (2) describe a responsive action that would “chill a person of ordinary firmness from continuing to engage in that activity” and (3) recite facts indicating that the action “was substantially motivated as a response to [his] exercise of constitutionally protected conduct.” *Id.* at 1189.

This divergence produces materially different outcomes for similarly situated litigants based solely on geography. In some circuits, a pro se litigant receives an opportunity to cure defects; in others, constitutional claims are terminated at the

outset. The question is exceptionally important because it governs the gateway to courts nationwide. The desire for efficient courts nor commonality of error should sway this court to trample due process rights of pro se *in forma pauperis* litigants.

Magistrate *sua sponte* dismissal and lack of *de novo* review are U.S. Const. art. III violations.

The Federal Magistrates Act carefully defines grant of authority to magistrates. 28 U.S.C. § 636(b)(1) allows delegation of pretrial motions “except a motion for injunctive relief, . . . to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action.” The authority to make final decisions remains with an Article III judge to satisfy constitutional requirements. The district judge must determine *de novo* any part of the magistrate judge's disposition that has been properly objected to. Fed. R. Civ. Proc. §72(b)(3).

U.S. Const. art. III violation occurs when a district court judge adopts a magistrate's dispositive recommendation without conducting *de novo* review and fails to respond to timely objections. A resulting order cannot stand if a magistrate exceeds their jurisdiction and if there is no meaningful review by a district judge. *Gomez v. U.S.*, 490 U.S. 858 (1989). This Court has emphasized that a district judge must engage in independent assessment of a magistrate's recommendation. *De novo* determination must be substantive independent determination of the issues without giving any special weight to the [prior] determination. *United States v. Raddatz*, 447 U.S. 667, 676 (1980). A rubber-stamp affirmance without independent findings

offends *Mathews v. Eldridge*, 424 U.S. 319 (1976). Moreover, this Court holds that due process requires “an opportunity to be heard at a meaningful time and in a meaningful manner, . . . requir[ing] consideration of three distinct factors: private interest that will be affected by official action; risk of erroneous deprivation of such interest through procedures used; . . . and government’s interest.” *Mathews v. Eldridge*; 424 U.S. 319 (1976). Reciting a test nor conclusory assertion a test was performed, absent support of independent determination of issues, does not satisfy the court’s obligation. *Id.*

If a magistrate doesn’t have authority to rule on a defendant’s motion to dismiss, how can they have *sua sponte* authority to dismiss? Diligent research found no rule or order delegating *sua sponte* dismissal authority, except under consent of parties per 28 U.S.C. §636(c). The F,C&R references delegated authority under “Special Order 3”. Appendix C. Torres found 38 separate orders under heading Special Order 3.¹¹ It is unclear what specific order was intended with no specificity as to delegated authority and duties found.

Regardless, Magistrate Toliver’s orders far exceeded statutory authority. Torres sought injunctive relief for constitutional violations. Magistrate Toliver *sua sponte* **preemptively prohibited** service of process, filing of amended complaint and motion for appointment of counsel during §1915(e)(2) *in forma pauperis* “judicial screening”. Appendix C, D & E. Here, Magistrate Toliver made *sua sponte*

¹¹ U.S. Dist. Ct. N.D. Texas, Special Orders, U.S. Courts, (2026), <https://www.txnd.uscourts.gov/special-order-3>.

dispositive decisions plus intentionally publicly disclosed the FCA sealed *Abbott* case multiple times.

Here, the Fifth Circuit concluded that “the record reflects ... the district court conducted the requisite *de novo* review.” Appendix A. However, Magistrate Toliver’s recommendations were adopted with a singular conclusory assertion that *de novo* review occurred—without findings, discussion or addressing any of Torres’s objections. Appendix B. Nor did the appellant court provide the requisite *de novo* review, again denying Torres due process and equal protection. The court can’t abrogate its duty with deficient conclusory findings to adopt dispositive recommendations.

Torres’s private interest is affected by this government action with erroneous deprivation of constitutional rights to work in her profession in the state of Texas; no recourse to recover from damages and violations of constitutional rights, nor stop ongoing economic damages due to standing illegal state orders. The interest should be in upholding our Constitution and protect the integrity of the judiciary.

i. Rigid Application of *Iqbal/ Twombly* nullifies *Haines* violating Due Process and Equal Protection Rights; a nationwide issue warranting Court’s intervention.

This case presents a recurring and outcome-determinative question at the gateway to federal courts: the sufficiency pleading level for pro se litigants. Rigid application converts *Iqbal/ Twombly* into a barrier to court access nullifying *Haines*. *Iqbal*, 556 U.S. 662 (2009); *Twombly*, 550 U.S. 544 (2007); *Haines*, 404 U.S. 519

(1972). Further, leave to amend must be freely granted when defects may be cured.

Foman v. Davis, 371 U.S. 178 (1962).

Here, the court rigidly applied *Twombly* under FRCP 8 denying opportunity to amend and ignored that fraud claims require adherence to FRCP 9, which Whistleblower Torres asserts compliance with and ability to amend if provided specific pleading deficiency. *Twombly*, 550 U.S. 544.

Torres's petition, consistent with other complex, extensive FCA petitions¹², is lengthy containing 158 claims and 181 defendants. The petition complies with FRCP Rule 9 and includes elements of all claims and violations incurred in three separate state cases ongoing since 2016. Petition length does not justify dismissal with prejudice and amendment can improve clarity. However, detailed specifics of any claim deficiency are required to enable amendment. The F,C&R cites to *Twombly*, absent specific pleading deficiency to support assertion of lack of plausibility or other pleading defect. *Id.* Appendix C. Nor does Judge Starr or the Fifth Circuit contribute a scintilla in support of assertion that review occurred or specificity to pleading deficiency. Appendix B and A.

C. Lower courts are divided on False Claims Act structural and procedural process, whether *sua sponte* dismissal during seal period—prior to notice or intervention from the United States ripening jurisdiction—violates separation-of-powers and denies litigants' due process and equal protection.

¹² U.S. Dep't of Justice, Fact Sheet: False Claims Act Settlements and Judgment, (Jan. 16, 2025), <https://www.justice.gov/opa/media/1424126/dl>.

This case presents an additional and independently certworthy question to resolve important circuit split questions concerning the structure and enforcement process of the False Claims Act ("FCA"). *Sua sponte* dismissal during the 31 U.S.C. §3730(b) seal period—prior to jurisdiction ripening upon government notice or 60 days—contradicts with FCA's plain language and congressional intent. Judicial interference violates separation of powers and due process rights with divergent results based on geography.

FCA whistleblower claims are enforcement actions brought on behalf of the United States, in which the relator functions as a partial assignee of the Government's claim. FCA requires:

- Pleading of facts subject to the heightened pleading standard of Fed. R. Civ. P. 9(b);
- filing under seal;
- notice to the United States;
- government investigation, "The Attorney General **diligently shall investigate** a violation under 31 U.S.C. § 3729." 31 U.S.C. § 3730(a); and provide **timely** notice whether they will intervene or not; (emphasis added)
- allowing the private citizen to advance the claim if the government declines to intervene. 31 U.S.C. § 3730(b).

Courts may not preempt the FCA process. *Polansky*, 599 U.S. 419. The Government's authority to dismiss ripens after it intervenes during the seal period. *Id.* The court's jurisdiction does not ripen until the expiration of the seal period, or the government's notice, whichever occurs first. 31 U.S. §3730 (b)(5); See *Am. C.L. Union v. Holder*, 673 F.3d 245, 256 (4th Cir. 2011). "When a person brings an action under this subsection, no person other than the Government may intervene". *Id.* It is

undeniable that the court *sue sponte* dismissing is intervening. Had Congress intended for the Court to have authority to *sue sponte* dismiss during the seal period, it would have specified it or never required a seal period at all.

By dismissing during the seal period, the courts are violating the separation of powers as their jurisdiction has not ripened. Thus, putting the proverbial cart before the horse nullifying FCA's structure and encroaching upon the authority and independence of another branch contrary to *Mistretta v. United States*, 488 U.S. 361, 382 (1989).

The D.C. and Ninth Circuit prohibit *sua sponte* dismissal during the seal period absent government notice. *United States ex rel. Vt. Nat'l Tel. Co. v. Northstar Wireless LLC*, 68 F.4th 1 (D.C. Cir. 2022); *Swift v. United States*, 318 F.3d 250 (D.C. Cir. 2003); *United States ex rel. Lujan v. Hughes Aircraft Co.*, 67 F.3d 242 (9th Cir. 1995). *United States ex rel. Sequoia Orange Co. v. Baird-Neece Packing Corp.*, 151 F.3d 1139 (9th Cir. 1998) established "rational relation" test for government dismissal of FCA claims if it demonstrates a valid government purpose and a rational relationship between the dismissal and that purpose.

Torres found it difficult to determine the breadth of FCA dismissals during the seal period due to limited publicly available statistical data but did find the Fifth Circuit consistently dismisses FCA claims with prejudice:

- during the statutory required seal period;
- prior to government investigation or notice;

- without appointment of counsel despite the complexity and public interest nature of the claims;
- consistently and exclusively benefits large business defendants;
- despite no harm to the judiciary or defendants if the judiciary complied with the plain language of FCA.

This practice conflicts with the Executive's duty and central role in FCA enforcement combating fraud against the United States. **The issue is not merely procedural, but structural eliminating the Government's investigation and enforcement authority—violating separation-of-powers.** The courts suffer no injury to wait until the statutorily defined seal period ripens prior to making adjudication decisions as no service on defendants or discovery is occurring.

Even if the government doesn't complain about it or subsequently declines to intervene, it doesn't moot the court's interference. In fact, the government's notice is moot because the court already dismissed with prejudice. Nor does Judge Starr's delay in adopting Magistrate's F,C&R in this case negate that interference or the Fifth Circuit's ongoing practice to dismiss FCA claims during the seal period.

i. Lower courts are divided on FCA pleading sufficiency.

FCA whistleblowers claims have enabled the United States to recover billions of dollars due to fraud. FY2022 resulted in \$2 billion in recovery from 351 settlements

and judgments, the highest since 1986¹³. In FY 2025, \$6.8 billion was recovered, \$5.7 billion in healthcare alone¹⁴. However, circuits split on pleading sufficiency under Rule 9(b) to survive a Fed. R. Civ. P. 12(b)(6) motion requiring actual false claims versus well-pled fraud schemes with inferential support. It is widely recognized that FCA whistleblowers rarely have access to both sides of a fraud scheme as employee roles often provide a narrow view of misconduct. Some courts, recognizing this limitation, allow "strong insider detail" of the fraudulent scheme to create a reasonable inference that violations occurred with the direct and independent knowledge that makes FCA a successful tool to combat fraud.

Third Circuit courts often emphasize substance over rigid formality to look for whether the complaint supplies a factual basis for a reasonable inference of falsity and claim submission. *United States ex rel. Foglia v. Renal Ventures Mgmt., LLC*, 2014 WL 2535339 (3d Cir. June 6, 2014).

In contrast, the Fourth, Sixth, Eighth, Eleventh, and many districts within the Second Circuit apply a strict approach requiring claim-specific factual detail in FCA pleadings. *United States ex rel. Wilson v. Kellogg Brown & Root, Inc.*, 525 F.3d 370

¹³ Tycko & Zavareei LLP, Whistleblowers' Dogged Pursuit of Qui Tam Cases Gets Results and Rewards FY 2022 False Claims Act Settlements & Judgments (Feb. 14, 2023), <https://www.fraudfighters.net/news/fy-2022-false-claims-act-settlements-judgments/>.

¹⁴ U.S. Dept. of Justice, False Claims Act Settlements and Judgments Exceed \$6.8B in Fiscal Year 2025 (Jan. 16, 2026), <https://www.justice.gov/opa/pr/false-claims-act-settlements-and-judgments-exceed-68b-fiscal-year-2025>.

(4th Cir. 2008); *United States ex rel. Bledsoe v. Community Health Systems, Inc.*, 501 F.3d 493 (6th Cir. 2007).

The First, Seventh, Ninth and Fifth Circuit decisions apply a more flexible Rule 9(b) standard emphasizing the pleading must give defendants fair notice and provide reasonable inference of falsity. *United States ex rel. Duxbury v. Ortho Biotech Prods., LP*, No. 12-2141 (1st Cir. 2013). However, *Torres* is a clear exception being treated differently by the Fifth Circuit compared to similarly situated litigant even after *Twombly*, 550 U.S. 544. See *United States ex rel. Grubbs v. Kanneganti*, 565 F.3d 180 (5th Cir. 2009).

This Court should intervene to resolve the circuit split and clarify the appropriate pleading deficiency, including considering *Iqbal/Twombly*.

ii. Whether FCA imposes a duty to investigate prior to notice, despite political winds.

False Claims Act enforcement is experiencing political whiplash leaving litigants with sore necks, while fraudsters have far greater ability to purchase government representative neck support. Sessions, Granston¹⁵ and Brand's 2018 memos limited FCA investigations and enforcement. Merrick Garland's Memo

¹⁵ U.S. A.G., Dir. Comm. Lit. Fraud, Michael D. Granston, Factors for Evaluating Dismissal Pursuant to 31 U.S.C. 3730(c)(2)(A), (Jan. 10, 2018), <https://s3.documentcloud.org/documents/4358602/Memo-for-Evaluating-Dismissal-Pursuant-to-31-U-S.pdf>.

reversed and supported enforcement¹⁶. Pam Bondi's 2025 Memo¹⁷ reversed again reinstating the Brand directions. Spinal stability in enforcement of statute, absent political influence, is the duty of the lifelong appointed judiciary.

Legislative design compels the government first to "diligently investigate". *Kisor v. Wilkie*, confirming agency guidance "never forms the basis for an enforcement action." 588 U.S. 558, 584 (2019) (internal citations omitted). *Loper Bright Enter.'s v. Raimondo*, made clear that agencies are not entitled to deference unless expressly provided for by statute, which is not provided here. 603 U.S. 369 (2024). Therefore, the government internal policies cannot overrule statutory obligations regardless of political winds. However, here the government failed to comply even with their own internal policies. The Department of Justice ("DOJ") Manual^{18,19} as well as AG Garland's 2021 memo were in effect at the time Torres's FCA claim was filed. Appendix G.

¹⁶ U.S. A.G. Merrick Garland, Issuance and Use of Guidance Documents by The Department of Justice, Dept. of Justice (July 1, 2021), <https://www.justice.gov/archives/opa/media/1149371/dl?inline=>.

¹⁷ U.S. A.G. Pam Bondi, Reinstating the Prohibition on Improper Guidance Document (Feb. 5, 2025), <https://www.justice.gov/ag/media/1388511/dl?inline>.

¹⁸ U.S. Dept. of Justice, "Justice Manual", July 30, 2025, <https://www.Justice.gov/JM/JusticeManual>

¹⁹ "Regardless of the standard of review that applies in each case, attorneys should identify in any motion that is filed reasons supporting dismissal of the action...If Department attorneys believe that dismissal may be warranted, they should consult closely with the affected agency. The agency's recommendation should be obtained in advance of the filing of any request to dismiss. Prior to seeking dismissal, Department attorneys should consider advising Relator of perceived deficiencies in their case so that Relator may consider dismissing the action, thus alleviating the need for a Department filing."

Here, the Government failed to comply with: 31 U.S.C. §3730 (a) and (b)(2) as well as every relevant section of their Justice Manual and the Attorney General directive in effect at the time of Torres's filing. Appendix G. The Government failed to conduct any investigation, did not contact or respond to Torres about the case at all, despite Torres directly sending multiple communications to multiple DOJ officials nor does the notice declining to intervene reveal the policy required coordination with any agency. Additionally, the notice requests dismissal without intervening contrary to *Polansky*, decided the year prior to Torres's filing. 599 U.S. 419 (2023).

The court failed to comply with (1) §3730 (b)(2); (2) §3730 (b)(4); (3) §3730 (c)(2)(A); and (4) §3730 (c)(3). Appendix G.

Therefore, the Government and court treat Torres differently than similarly situated litigants, *Polansky*, and *Kiser* absent legitimate government purpose, further supporting Torres's assertion of suspect classification. *Polansky*, 599 US 419; *Kiser*, 588 U.S. 558.

- iv. Lower courts are divided as to pro se litigants' ability to advance FCA claim dismissing to benefit a hypothetical "better" litigant that can afford an attorney.**

A private individual has standing to bring suit in federal court on behalf of the United States under the FCA, as "the United States' injury in fact suffices to

confer standing.” *Vermont Agency of Nat. Res. v. United States ex rel. Stevens*, 529 U.S. 765,766 (2000).

The *Trice* court further found pro se litigants right to advance FCA claim. *United States ex rel. Trice v. Westinghouse Elec. Corp.* 2000 WL 34024248, at *11, Case No. 96-CS-171-WFN (E.D. Wash. March 1, 2000) (referencing *Kelly*, 9 F.3d 743).

The court found the opposite in *Feliciano* reasoning the Government wants adequate representation on claim that affects the Government and allowing a pro se litigant to proceed bars “**a better equipped litigant**” [who can afford an attorney] to proceed (emphasis added). *United States ex rel Feliciano v. Ardon*, No. 24-7134 (D.C. Cir. 2025). The court denied the litigant in front of them due process ignoring the government denied itself the opportunity for adequate representation by refusing to advance the claim themselves, an issue congress contemplated and specifically protected relators right to proceed. 31 U.S.C. §3730 (c)(3). The *Feliciano* court withheld its duty to deliver refreshing water of justice for a hypothetical, more qualified and eligible litigant based on ability to employ an attorney within the statute of limitations leaving the litigant before them thirsty. *Id.* Those who can’t afford an attorney are still owed justice.

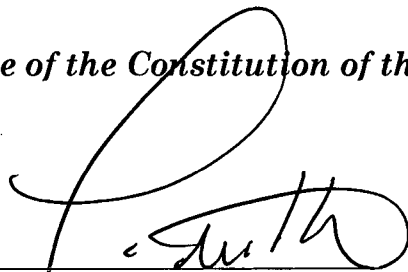
“Governments are instituted among Men, deriving their just powers from the consent of the governed,” The Declaration of Independence (U.S. 1776). We

the People deserve all branches of government, which we empower, to reliably fulfill their respective duty to “pursue a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity.” U.S. Const. pmb1.

CONCLUSION AND PRAYER

Torres asks this Court to restore and reform the foundational cornerstone so “*Equal Justice Under Law*” is not relegated to wall décor but demonstrably etched in the heart of every judicial officer evidenced by their judgments or recusal. Accordingly, Ruth “Truth” Torres respectfully prays this Honorable Court **Grant** this Petition for Writ of Certiorari, **Reverse, Remand** and **GRANT** appointment of counsel and **GRANT** Change of Venue for access to impartial tribunal for proceedings consistent with this Court’s precedent and constitutional requirements.

In Service of the Constitution of the United States of America,

A handwritten signature in black ink, appearing to read 'Ruth', with a large, stylized loop at the end.

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