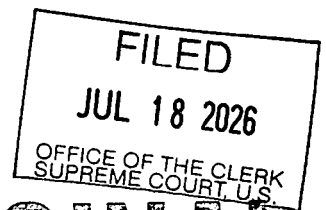


No. **26-5705**

IN THE SUPREME COURT OF THE UNITED STATES



ORIGINAL

KEVIN LEE BIGLOW,

Petitioner,

v.

DELL TECHNOLOGIES INC.,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

Kevin Lee Biglow

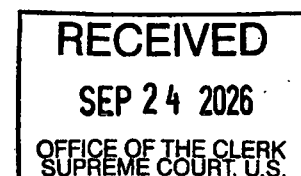
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QUESTIONS PRESENTED

1. Whether an arbitral tribunal exceeds its powers under 9 U.S.C. § 10(a)(4) by dismissing Title VII civil rights claims on limitations grounds where the parties' contract and federal law expressly carve out such claims from mandatory arbitration.
2. Whether a court of appeals violates its duty of meaningful judicial review under the Federal Arbitration Act by affirming an arbitration award where the tribunal declined to rule on the petitioner's threshold jurisdictional submissions during a fifty-four-day period preceding the award.
3. Whether an arbitration award must be vacated under 9 U.S.C. § 10(a)(2) where the arbitral forum appointed an arbitrator whom the petitioner had contractually struck from the panel, and the successor arbitrator adopted the disqualified arbitrator's procedural rulings without an independent hearing.
4. Whether an arbitration award must be vacated under 9 U.S.C. §§ 10(a)(1) and 10(a)(3) where the award rests on factual findings that are demonstrably refuted by the certified administrative record and the petitioner was denied a meaningful opportunity to present evidence.

PARTIES AND DIRECTLY RELATED CASES

Pursuant to Supreme Court Rule 14.1(b), the parties to the proceeding in the United States Court of Appeals for the Tenth Circuit whose judgment is sought to be reviewed are Petitioner Kevin Lee Biglow and Respondent Dell Technologies Inc.

The corporate disclosure statement required by Rule 29.6 is inapplicable because Petitioner is an individual, non-corporate entity. Pursuant to Supreme Court Rule 33.2, this petition is prepared in the standard 8.5 x 11-inch format required for litigants proceeding in forma pauperis.

The directly related cases in state or federal courts or in this Court are:

1. *Kevin Lee Biglow v. Dell Technologies Inc.*, United States Court of Appeals for the Tenth Circuit, Case No. 25-3007 (judgment entered March 24, 2026; rehearing en banc denied April 20, 2026).

2. *Kevin Lee Biglow v. Dell Technologies Inc.*, United States District Court for the District of Kansas, Case 2:20-cv-02563-KHV-BGS (order denying motion to vacate and confirming arbitration award entered December 19, 2024).

3. *Biglow v. Wilkerson et al.*, United States District Court for the District of Kansas, Case 6:25-cv-01276-EFM-BGS (active, unresolved legal malpractice action targeting Petitioner's former arbitration counsel).

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OPINIONS AND JUDGMENTS BELOW

The unpublished Order and Judgment of the United States Court of Appeals for the Tenth Circuit, filed March 24, 2026, affirming the district court's judgment, appears as **Appendix A** to this petition at page App. 1 (Biglow v. Dell Technologies Inc., No. 25-3007).

The order denying Petitioner's timely Petition for Panel Rehearing and Rehearing En Banc, filed April 20, 2026, appears as **Appendix B** at page App. 23.

The memorandum and order of the United States District Court for the District of Kansas denying Petitioner's Motion to Vacate the Arbitration Award and Motion to Reopen, filed December 19, 2024, appears as **Appendix C** at page App. 24.

JURISDICTION

The judgment of the United States Court of Appeals for the Tenth Circuit was entered on March 24, 2026 (App. 1). A timely Petition for Rehearing En Banc was denied by the Tenth Circuit on April 20, 2026 (App. 23).

Pursuant to Supreme Court Rule 13.3, the 90-day period for filing a petition for a writ of certiorari runs from the date of the denial of rehearing. This Petition for a Writ of Certiorari complies with the timing metrics of Supreme Court Rule 13.3 and the explicit content requirements of Supreme Court Rule 14.1, and is filed within 90 days of the Tenth Circuit's final order. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Seventh Amendment to the United States Constitution provides:

"In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

The Fifth Amendment to the United States Constitution provides in relevant part:

"No person shall... be deprived of life, liberty, or property, without due process of law..."

Section 10(a) of the Federal Arbitration Act (FAA), 9 U.S.C. § 10(a), provides: (a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration—**(1)** where the award was procured by corruption, fraud, or undue means; **(2)** where there was evident partiality or corruption in the arbitrators, or either of them; **(3)** where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or **(4)** where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

This case also involves the Fourteenth Amendment; 9 U.S.C. §§ 1, 2; 18 U.S.C. § 1516; 42 U.S.C. § 2000e-5(f)(1); Pub. L. No. 111-118, § 8116; and 48 C.F.R. § 252.222-7006. The complete, verbatim text of all applicable constitutional, statutory, and regulatory provisions is set forth in full in Appendix D to this petition starting at page App. 37.

STATEMENT OF THE CASE

This petition seeks review of a United States Court of Appeals for the Tenth Circuit decision affirming an arbitration award issued against Petitioner Kevin Lee Biglow and Respondent Dell Technologies Inc. ("Respondent" or "Dell"). The final award dismissed Petitioner's Title VII claims on timeliness grounds, applying a limitations period to an arbitration demand under Section 7 of the parties' Mutual Agreement to Arbitrate, which provides that claims are subject to the "same statutes of limitation that would apply in court."

The arbitrator did not rule upon Petitioner's threshold position that Section 3(c) of the Agreement excludes claims that federal law prohibits from mandatory arbitration, including Title VII civil rights claims covered by the Franken Amendment, Pub. L. No. 111-118, § 8116. The underlying arbitration proceedings involved the initial appointment of an arbitrator who had been subject to a contractual strike list, whose procedural framework was subsequently adopted by the successor arbitrator who issued the final award.

Citations to the core Record on Appeal are designated hereinafter as "ROA," and citations to the Supplemental Record on Appeal are designated as "SROA." Additionally, Petitioner's itemized, 63-page JAMS Arbitration Comprehensive Timeline of Events, which details the multi-year history of this dispute and is embedded within the record below, is designated hereinafter as the "Comprehensive Timeline" (ROA Vol. 2 at 357-418).

A. Contractual Framework and JAMS Initiation

1. Factual Background and OFCCP Audit Timeline

The underlying dispute arises from Respondent Dell Technologies, Inc.'s employment practices and its subsequent termination of Petitioner on August 16, 2019, which Petitioner alleges violated Title VII of the Civil Rights Act of 1964. Prior to his termination, Petitioner operated as an employee within Respondent's corporate structures, documenting internal compensation disparities and race-based promotion blocks. Concurrently, Respondent was undergoing an active compliance audit conducted by the United States Department of Labor's Office of Federal Contract Compliance Programs ("OFCCP"). This federal compliance review investigated systemic pay disparities and compliance issues regarding Executive Order 11246 and Title VII across Respondent's facilities.

Petitioner's internal requests to correct his compensation and job grade level occurred during this federal review period. On May 16, 2019, while OFCCP negotiations were underway, Petitioner's manager initiated an internal ethics complaint alleging that Petitioner had raised claims of pay discrimination. Petitioner maintains that the factual allegations within this internal complaint were disputed by the underlying evidence. Respondent's investigators, Kris Salt (Dell Ethics) and Maurice Tyler (Dell Human Resources), utilized this report to launch an internal review. This internal review focused on whether Petitioner possessed evidence regarding the ongoing OFCCP federal audit or was communicating directly with federal officials. After requesting Petitioner to turn

over his internal documentation, Respondent terminated Petitioner's employment on August 16, 2019.

On September 27, 2019, forty-two days later, Respondent and the OFCCP formally ratified an Early Resolution Conciliation Agreement ("ERCA") (ROA Vol. 2 at 441 Line 31; ROA Vol. 2 at 213, 220–221; ROA Vol. 3 at 708). Under the explicit terms of this ERCA, the OFCCP noted that Respondent's "Southborough establishment was not in compliance with Executive Order 11246" and had "found other possible compliance issues at other establishments under review." To resolve these violations without engaging in enforcement proceedings, Respondent entered into the ERCA to secure a five-year scheduling exemption from federal compliance reviews. This chronological timeline, along with Petitioner's 16 recorded audio conversations, forms part of the evidentiary record underlying his claims

2. The MAA and the Federal Statutory Framework

Prior to his termination, on November 29, 2018, Petitioner executed a Mutual Agreement to Arbitrate ("MAA") governed by the Federal Arbitration Act (ROA Vol. 1 at 166–170). Section 9 of the MAA provided that the arbitrator apply the same substantive law that would apply had the proceeding been filed in court (ROA Vol. 1 at 169). Similarly, Section 7 of the MAA provided that all claims are subject to the same statutes of limitation that would apply in court.

As a prime federal defense contractor with contracts exceeding the \$1 million statutory threshold, Respondent was bound by the Department of Defense Appropriations Act, 2010 (Franken Amendment), Pub. L. No. 111-118, § 8116, 123

Stat. 3409, and its implementing regulation, 48 C.F.R. § 252.222-7006 (ROA Vol. 3 at 772). This federal regulatory framework prohibits defense contractors from enforcing pre-dispute mandatory arbitration agreements for civil rights claims arising under Title VII of the Civil Rights Act of 1964. Throughout the proceedings below, Petitioner maintained that this statutory prohibition excluded his Title VII civil rights claims from mandatory arbitration under the explicit carve-out provision found in Section 3(c) of the MAA (ROA Vol. 2 at 106–107).

3. Arbitration Initiation and Court Stay

Following the District Court's May 5, 2021, order compelling arbitration (ROA Vol. 1 at 306), the private tribunal proceedings did not immediately commence. Petitioner, proceeding *pro se*, subsequently took unilateral action to initiate the process. On July 27, 2021, Petitioner contacted JAMS Denver to request instructions on initiating the JAMS arbitration process pursuant to the court's stay order (ROA Vol. 1 at 333). On August 6, 2021, Petitioner submitted his case files to JAMS Denver and served copies on Respondent's outside counsel (ROA Vol. 1 at 337). JAMS officially opened the arbitration under Case ID 29278 on August 11, 2021 (ROA Vol. 1 at 339). Following the August 2021 opening, the case management fee remained unpaid and the JAMS Service Agreement was unexecuted by Respondent.

On November 24, 2021, the District Court issued an Order to Show Cause directed at Respondent, (ROA Vol. 1 at 317). The order noted that as of November 16, 2021, JAMS had not received administrative fees or a signed Service Agreement

from either party, and it directed Respondent to explain why it had not forfeited its right to arbitration. Despite experiencing severe documented financial hardship, Petitioner immediately moved to comply with the forum's rules, executing the agreement and paying the non-refundable \$400 JAMS case management filing fee on November 29, 2021 (ROA Vol. 1 at 358-359 Lines 13-14). Respondent subsequently complied with JAMS's administrative requirements only after the issuance of the court's order.

4. Procedural Communications and Notices

On March 4, 2022, during settlement discussions, Respondent's in-house counsel, Christopher Hahn, communicated with Petitioner, who was proceeding *pro se*, regarding the administrative requirements of the arbitration practice. Mr. Hahn stated that Petitioner must enumerate his claims and provide Respondent and JAMS with a document entitled "Demand for Arbitration." Mr. Hahn further discussed settlement options and suggested the possibility of moving the case to mediation rather than JAMS arbitration. During these communications, Respondent did not state or provide notice to Petitioner that a 90-day limitation period applied to the filing or serving of the Demand for Arbitration (Memorandum of Law in Support of Motion to Vacate; ROA Vol. 2 at 360 Line 30). Respondent's communications at that time focused entirely on the procedural formatting of the demand and the potential exploration of alternative dispute resolution frameworks.

On April 1, 2022, the parties executed and submitted a Joint Report on the Status of Arbitration directly to the District Court. In that joint report, signed by

both Respondent's corporate counsel and Petitioner, the filing of Petitioner's formal demand for arbitration was described as "timely submitted" under the Scheduling Order (SROA 19-3). Respondent did not raise a statute-of-limitations objection in that joint report, nor did it assert a limitations objection during the subsequent nineteen months of the arbitration proceedings.

Respondent asserted a limitations defense for the first time on October 8, 2023, within its Motion for Summary Disposition (ROA Vol. 2 at 568, 571-575). This motion was filed more than two years after JAMS officially opened the arbitration case file and after the initial arbitrator had been replaced by a successor arbitrator.

In its Motion for Summary Disposition, Respondent stated that the parties "engaged in extensive discovery" from March through December 2022 (ROA Vol. 2 at 570). The July 28, 2022 Joint Status Report, however, stated that discovery was at an "absolute impasse" (SROA 19-5).

B. The Fourteen-Month Arbitral Vacancy and the Discovery Stay

Following the District Court's May 5, 2021, order compelling arbitration (ROA Vol. 1 at 306), the mutual arbitrator selection process under Section 8 of the MAA did not occur within thirty days of Petitioner's August 6, 2021, written demand for arbitration. The District Court subsequently issued an Order to Show Cause on November 24, 2021, directing Respondent to justify the delay in commencing the administrative proceedings. Following the issuance of that order, JAMS commenced the arbitration under Reference No. 1100117427 on December

15, 2021, and appointed Arbitrator Florine L. Clark ("Arbitrator Clark" or "Clark") as the presiding arbitrator on December 28, 2021.

Following a preliminary conference on March 1, 2022, the parties entered a limited discovery window. During this window, Petitioner notified the forum and corporate counsel that Respondent's discovery responses were deficient. On June 29, 2022, the parties agreed to a ninety-day administrative stay to provide Petitioner an opportunity to retain discovery counsel. Arbitrator Clark executed the administrative stay on July 5, 2022, and withdrew from the proceeding on July 6, 2022.

On July 28, 2022, the parties executed a Joint Status Report, stating to the District Court that discovery remained stayed (SROA 19-5). Following Arbitrator Clark's withdrawal, the arbitral seat remained vacant for fourteen consecutive months, from July 6, 2022, through September 13, 2023. During this fourteen-month period, no active rulings were issued on pending items or discovery matters.

C. Arbitral Forum Proceedings and Stay

1. Motion to Extend Stay and JAMS Email Communications

Following Arbitrator Clark's withdrawal on July 6, 2022, Petitioner proceeded *pro se*. On October 10, 2022, while discovery was stayed, Petitioner filed a formal Motion to Extend Stay for Sixty Days to provide an opportunity to secure counsel (ROA Vol. 2 at 564). Respondent did not file a docketed response to the motion. Instead, corporate in-house counsel, Christopher Hahn, sent an email to JAMS Case Manager Charmaine Ogren at 11:23 AM on October 10, 2022 (ROA Vol.

2 at 366, Line 64).

In that email, Mr. Hahn stated that while Respondent disagreed with the factual allegations within the motion, corporate counsel proposed modifying the requested timeline. Mr. Hahn stated that a 60-day stay would expire during the winter holidays and that a 90-day stay expiring in early January would be preferable, concluding that Respondent would not oppose a request for a 90-day stay (ROA Vol. 2 at 366, Line 64). Petitioner accepted the 90-day extension via email at 12:34 PM that same day.

2. Representation and Appointment of Arbitrator McGahey

Prior to retaining counsel, Petitioner communicated with multiple law firms, including California attorney Arkady Itkin (ROA Vol. 1 at 787-790). On September 27, 2022, Respondent's outside counsel, Mr. Welch, transmitted an email to Petitioner and carbon-copied Mr. Itkin on the correspondence (ROA Vol. 1 at 790). At the time of this transmission, Mr. Itkin had not signed a service agreement with Petitioner or entered a formal appearance on the arbitration record. In the email, Mr. Welch wrote: "I have attached a draft of the joint status report due to the Court on Friday. Arkady has reviewed and is fine with it, but we wanted to make sure you were as well. Please advise." (ROA Vol. 1 at 790). Following these communications, Mr. Itkin recommended a mediation framework to Petitioner (ROA Vol. 1 at 788). Petitioner declined, and Mr. Itkin subsequently ceased communications regarding the matter (ROA Vol. 1 at 790).

On February 7, 2023, Petitioner retained Leon Emery Wilkerson and Emery

Wilkerson, PC ("Wilkerson") (ROA Vol. 2 at 368 Line 78). These representation events are the subject of an active legal malpractice action filed by Petitioner in the United States District Court for the District of Kansas, titled Kevin Lee Biglow v. Leon Emery Wilkerson, et al., Case No. 6:25-cv-01276-EFM-BGS (D. Kan. ECF No. 24).

On March 24, 2023, JAMS transmitted an arbitrator strike list to the parties (ROA Vol. 2 at 45 Line 89). On March 29, 2023, Petitioner's counsel, Wilkerson, executed the mandatory JAMS strike list and explicitly placed a contractual strike on Robert L. McGahey, Jr., removing him from consideration (ROA Vol. 2 at 46 Line 91). On September 13, 2023, JAMS issued a Notice of Appointment designating Robert L. McGahey, Jr ("Arbitrator McGahey" or "McGahey") as the sole presiding arbitrator (ROA Vol. 2 at 52 Line 119). No objection to the appointment was filed by Mr. Wilkerson at that time (ROA Vol. 2 at 66–73, 119–121).

At the initial October 4, 2023, Preliminary Conference, Arbitrator McGahey stated on the record: "Well, I already know what the parties want here" (ROA Vol. 2 at 52, 121, 373). Arbitrator McGahey then granted Respondent's request to file dispositive motions for summary disposition, vacating the existing 14-month discovery stay and proceeding without scheduling an evidentiary hearing (ROA Vol. 2 at 53–54). Mr. Wilkerson did not enter an objection or inquiry on the record regarding the arbitrator's statement or the scheduling of dispositive motions (ROA Vol. 2 at 121–122).

In Respondent's subsequently filed Motion for Summary Disposition, in-

house counsel Christopher Hahn wrote: "During the scheduling conference for this arbitration, Claimant's counsel described this case as a discriminatory pay case" (ROA Vol. 2 at 90–92 Lines 204–209, 576). The central JAMS administrative log contains no record of a scheduling conference being scheduled or docketed prior to that date. Petitioner's operative Demand for Arbitration asserted Title VII claims, whistleblower retaliation, and disclosures related to the underlying OFCCP audit (ROA Vol. 2 at 425).

3. Dispositive Pleadings and Termination of Counsel

At the October 4, 2023, Preliminary Conference, Arbitrator McGahey verbally directed Respondent to file dispositive motions within 30 days and afforded Petitioner 60 days to respond (ROA Vol. 2 at 53). Respondent served its Motion for Summary Disposition on Petitioner's counsel, Mr. Wilkerson, on October 23, 2023; Boeing served its motion on November 1, 2023 (ROA Vol. 2 at 58).

On November 20, 2023, Petitioner communicated with Mr. Wilkerson via text message to confirm whether dispositive motions had been filed (ROA Vol. 2 at 54). Mr. Wilkerson replied at 8:00 PM: "I will send their motions to you" (ROA Vol. 2 at 56). Mr. Wilkerson transmitted Boeing's motion to Petitioner on November 22, 2023, and Respondent's motion on November 24, 2023 (ROA Vol. 2 at 55). This transmission occurred thirty-two days after Respondent's motion was served and twenty-one days after Boeing's motion was served, leaving nine days remaining before the response deadline.

Petitioner terminated his contract with Mr. Wilkerson on November 29, 2023

(ROA Vol. 2 at 58), and proceeded *pro se*. Petitioner immediately filed a request for an emergency extension of time with JAMS. That same day, JAMS Case Manager Charmaine Ogren emailed the parties at Arbitrator McGahey's direction, scheduling a status conference for December 8, 2023, to address the request. Due to a conflict with Petitioner's jury duty obligation, the conference was rescheduled and held on December 13, 2023 (ROA Vol. 2 at 62 Line 143). At the conference, Arbitrator McGahey granted Petitioner an extension until January 6, 2024, to file his responses. Petitioner subsequently released Boeing from the arbitration framework, narrowing the active dispute to Respondent alone (ROA Vol. 2 at 87 Line 195).

4. Arbitrator Disqualification and Appointment and Award

Proceeding *pro se*, Petitioner located the March 29, 2023 strike list in his files on January 24, 2024, demonstrating that Arbitrator McGahey had been placed on a contractual strike list (ROA Vol. 2 at 46). On January 26, 2024, JAMS Case Manager Charmaine Ogren emailed the parties, stating: "It appears that there was an error in appointing him (McGahey)" (ROA Vol. 2 at 68 Line 156). On January 31, 2024, JAMS Case Manager Brianne Strickland emailed the parties, confirming that JAMS was disqualifying Arbitrator McGahey, closing the existing file, and transferring the proceeding to JAMS Case ID Number 34922 (ROA Vol. 2 at 72–73 Line 160). JAMS transferred the existing records compiled under Arbitrator McGahey into the new case file.

On March 1, 2024, JAMS appointed James Ware ("Arbitrator Ware" or

"Ware") as the third arbitrator (ROA Vol. 2 at 83–84). On April 4, 2024, Petitioner filed a Motion to Compel Production of Documents and Things (ROA Vol. 2 at 85 Line 186). Arbitrator Ware subsequently issued Order No. 1, establishing internal procedures and setting a fact discovery completion date for August 23, 2024 (ROA Vol. 2 at 86 Line 191; ROA Vol. 1 at 1037), and Order No. 2, addressing the District Court's May 25, 2024 dismissal deadline (ROA Vol. 2 at 1025–26).

On April 23, 2024, during a conference, Respondent's corporate counsel, Christopher Hahn, discussed the status of the federal case closure. Arbitrator Ware stated on the record, "You know I can't do that, Mr. Hahn," to which Mr. Hahn responded, "Well, Judge, I'm in a box" (ROA Vol. 2 at 90 Line 202).

Between May 15, 2024, and July 8, 2024, the tribunal did not issue rulings or docketing entries regarding seven submissions transmitted by Petitioner via the JAMS Access Portal and email, including motions to compel production, supplemental briefs, an emergency brief invoking the Section 3(c) carve-out and the Franken Amendment, and requests for a hearing (ROA Vol. 2 at 93; ROA Vol. 3 at 147, 529, 642, 671–673, 675, 732).

On July 8, 2024, the tribunal issued Order No. 3 (ROA Vol. 3 at 734), followed by a Final Award on July 11, 2024 (ROA Vol. 3 at 764). The award dismissed all of Petitioner's claims based upon a 90-day limitations period, without conducting an oral argument or an evidentiary hearing on the merits.

D. Proceedings in the District Court and Court of Appeals

On October 8, 2024, Petitioner filed a Motion and Supporting Memorandum to Vacate the Arbitration Award in the United States District Court for the District of Kansas, asserting that the arbitrators exceeded their authority, refused to hear material evidence, and that the award was procured through undue means and conflicted with equitable tolling principles (ROA Vol. 2 at 17–134). This followed the District Court's prior handling of Petitioner's May 15, 2024, Motion Requesting an Emergency Hearing and Motion to Reopen the Proceedings for Good Cause Shown (ROA Vol. 1 at 992). On November 19, 2024, Petitioner filed a separate *Pro Se* Motion to Inform the Court of What Appears to Be an Appearance of Fraud regarding a voluntary dismissal notation on the case summary (ROA Vol. 3 at 1061). Magistrate Judge Brooks G. Severson denied that specific motion minutes later via a text-only entry that same day, noting that the case had been administratively closed on June 19, 2023, and that no formal stipulation of dismissal had been executed or filed (ROA Vol. 3 at 1069).

On December 19, 2024, the District Court issued its final memorandum and order denying Petitioner's Motion to Vacate and confirming the arbitration award (District Court Docket; ROA Vol. 3 at 1071).

Petitioner filed a timely Notice of Appeal on January 16, 2025. During the appellate proceedings, Petitioner filed a Motion for Investigation of Systematic Record Exclusion Pattern and for Appropriate Relief in the Court of Appeals on August 5, 2025, after discovering that the initial record transmitted to the appellate

tribunal omitted seven of nine Joint Status Reports filed below (10th Cir. Case No. 25-3007, Doc. 42). The Tenth Circuit denied the motion without prejudice.

Petitioner subsequently filed a motion to supplement the record, which the Tenth Circuit granted, and two omitted Joint Status Reports—the April 1, 2022 report (SROA 19-3) and the July 28, 2022 report (SROA 19-5)—were added to the appellate record.

On March 24, 2026, the United States Court of Appeals for the Tenth Circuit issued its Order and Judgment affirming the District Court's confirmation of the award (App. 1; Kevin Lee Biglow v. Dell Technologies Inc., No. 25-3007). In reviewing the procedural history, the panel found as a matter of fact that Petitioner retained legal counsel "after Arbitrator McGahey's appointment" (App. 3). The panel further determined that Respondent was not required to plead appellate waiver or affirmative defenses in its initial lower-court motions because motions do not constitute responsive pleadings under the Federal Rules of Civil Procedure (App. 7). Finally, the panel noted what appeared to be an unverified reliance on generative artificial intelligence software within Petitioner's appellate submissions, cautioning *pro se* litigants against the inclusion of hallucinated legal authorities while declining to impose formal monetary or dismissal sanctions under Appellate Rule 38 (App. 1, 16–19). Petitioner filed a timely Petition for Rehearing En Banc, which the Tenth Circuit denied on April 20, 2026 (App. 24).

REASONS FOR GRANTING THE WRIT

The Tenth Circuit affirmed an arbitration award that was structurally compromised by the appointment of a contractually disqualified arbitrator, a dispositive motion built on record-refuted fabrications, the systematic suppression of a *pro se* litigant's material submissions, and the deliberate preservation of a tainted record. Review is necessary to resolve direct conflicts with this Court's decisions and to clarify the non-discretionary duty of federal courts to police fraud, structural defect, and procedural collusion under the Federal Arbitration Act.

I. APPOINTING A CONTRACTUALLY DISQUALIFIED ARBITRATOR AND PRESERVING HIS TAINTED RECORD CONSTITUTES EVIDENT PARTIALITY PER SE UNDER 9 U.S.C. § 10(a)(2)

Arbitration is strictly a creature of contract, and a tribunal possesses no authority outside the boundaries defined by the parties' agreement (*Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 472 (1989)). The MAA Clause 8 incorporated JAMS Rule 15, granting each party an absolute right to strike names from the arbitrator roster (ROA Vol. 2 at 231). On March 29, 2023, Petitioner's counsel executed the mandatory JAMS strike list, explicitly striking Arbitrator McGahey (ROA Vol. 2 at 46 Line 91, 369 Lines 87–88). Under the MAA's terms, this was a binding, permanent contractual disqualification. In *Commonwealth Coatings Corp. v. Continental Casualty Co.*, 393 U.S. 145, 149–50 (1968), this Court held that arbitrators must "not only be unbiased

but also avoid even the appearance of bias." A party's contractual right to strike is the primary mechanism for preventing bias before proceedings begin. For an administrative forum to ignore an executed strike list eliminates that safeguard and breaks the consensual foundation of the contract.

Nearly six months after his permanent exclusion, JAMS appointed the disqualified Arbitrator McGahey (ROA Vol. 2 at 52 Line 119). This was a material breach of the MAA's core selection provisions. The Eighth Circuit has held that an arbitrator appointed through a method not contemplated by the parties' agreement lacks legitimate authority, rendering subsequent determinations voidable under § 10(a)(4) (*Hugs & Kisses, Inc. v. Aguirre*, 220 F.3d 890, 893 (8th Cir. 2000)). The Eleventh Circuit has likewise held that an arbitral body exceeds its statutory bounds when it fails to comply with explicit selection metrics (*Cat Charter, LLC v. Schurtenberger*, 646 F.3d 836, 844 (11th Cir. 2011)).

The structural defect was confirmed by Arbitrator McGahey's own statements at the October 4, 2023 Preliminary Conference. Before receiving any substantive briefs, he declared: "Well, I already know what the parties want here" (ROA Vol. 2 at 52, 121, 373). A neutral arbiter who possesses final knowledge of the parties' objectives before receiving any submissions creates an unavoidable appearance of pre-judgment. Under the *Morelite* standard, evident partiality exists where "a reasonable person would have to conclude that an arbitrator was partial" (*Morelite Constr. Corp. v. N.Y.C. Dist. Council Carpenters Ben. Funds*, 748 F.2d 79, 84 (2d Cir. 1984)). A contractually disqualified arbitrator who admits pre-knowledge

of the parties' positions satisfies that standard.

The Tenth Circuit never applied § 10(a)(2). Instead, it analyzed McGahey's appointment only under § 10(a)(1) and imposed a "nexus" test requiring Petitioner to prove a causal link between McGahey's appointment and Ware's final award (App. 14–15). That was legal error. Evident partiality under § 10(a)(2) does not require a nexus to the award; it requires only that a reasonable person would conclude the arbitrator was partial. See *Morelite*, 748 F.2d at 84. By applying a § 10(a)(1) nexus test to a § 10(a)(2) claim, the Tenth Circuit substituted a standard this Court has never adopted and one that effectively nullifies the statutory protection against biased arbitrators.

Moreover, the Tenth Circuit's application of its invented nexus test rested on two clearly erroneous factual premises.

First, the panel concluded that Arbitrator Ware's subsequent written scheduling order cured any defect from McGahey's appointment, finding that "the only order Arbitrator McGahey issued was a scheduling order, and Arbitrator Ware's scheduling order superseded it" (App. 15). That conclusion is directly refuted by the certified administrative record: Arbitrator McGahey never issued a written scheduling order, and Arbitrator Ware ultimately abandoned his own independent procedural framework to enforce McGahey's unauthorized track. At the October 4, 2023 Preliminary Conference, Arbitrator McGahey issued only an undocketed, verbal directive granting Respondent permission to file a motion for summary disposition within 30 days while completely freezing active discovery (ROA Vol. 2 at

53–54). Respondent acted immediately upon this unauthorized verbal track, serving its Motion for Summary Disposition on October 23, 2023 (ROA Vol. 2 at 58).

The Tenth Circuit's finding of a "curing, superseding order" is exposed as a fiction by the subsequent timeline of the tribunal. When Arbitrator Ware assumed control of the newly transferred case file on March 1, 2024, he initially issued Order No. 1 and Order No. 2, establishing independent procedures, setting a fact discovery completion date for August 23, 2024, and scheduling a full five-day merits hearing for September 23–27, 2024 (ROA Vol. 2 at 86 Line 191; ROA Vol. 1 at 1037). JAMS Case Manager Brian Palencia formalistically codified this schedule in a May 2, 2024 Notice of Hearing. However, rather than allowing this independent track to proceed, the tribunal abandoned its own case management orders. The certified record establishes that discovery was never underway or conducted under the successor arbitrator; the parties had explicitly executed a permanent stay of all discovery on July 1, 2022, due to disagreements over the scope of discovery requests, and the initial arbitrator simultaneously withdrew (July 28, 2022 Joint Report on Status of Arbitration; (SROA 19-5). Proceedings remained completely arrested during the subsequent 14-month arbitral vacancy, and discovery was never resumed. Between May 15 and July 8, 2024, Arbitrator Ware completely halted the dead discovery tracks referenced in Order No. 1, refused to host the scheduled Zoom merits hearings, and left Petitioner's motions to compel production entirely unaddressed (ROA Vol. 2 at 85 Line 186, 93). Instead, in Order No. 3 and the subsequent Final Award, Ware revived, adopted, and relied exclusively upon the out-of-district

summary disposition papers that Respondent had filed months prior under McGahey's unauthorized verbal directive (ROA Vol. 3 at 734, 764). The Tenth Circuit's finding of a "superseding cure" rests on a premise flatly contradicted by the record, masking the reality that Ware actively abandoned his own independent procedural orders to enforce a summary dismissal track engineered by an excluded predecessor.

Second, the panel reversed the case chronology to insulate its reasoning, stating: "Meanwhile, after Arbitrator McGahey's appointment, Biglow retained counsel, who filed an amended arbitration demand asserting sixteen claims" (App. 3). This is factually incorrect. The record establishes that counsel was retained on February 7, 2023 (ROA Vol. 2 at 368 Line 78), and executed the strike list on March 29, 2023 (ROA Vol. 2 at 46 Line 91)—both months before McGahey's appointment on September 13, 2023 (ROA Vol. 2 at 52 Line 119). By reversing this timeline, the panel avoided confronting why counsel who had contractually excluded McGahey would remain silent during his placement (ROA Vol. 2 at 64–68 Lines 150–157).

Based on these legal and factual errors, the Tenth Circuit dismissed Petitioner's structural defect argument as "facially absurd" (App. 15). That characterization was only possible because the panel reviewed a § 10(a)(2) claim under the wrong statutory provision, relied on a record chronology refuted by the docket, and ignored evidence that the successor arbitrator merely ratified his disqualified predecessor's void procedural orders. This Court should grant review to correct these fundamental errors and clarify the standard for vacatur when an

arbitration proceeds before a contractually disqualified arbitrator.

II. THE ARBITRATOR EXCEEDED HIS POWERS UNDER 9 U.S.C. § 10(a)(4) BY INVENTING A LIMITATIONS PERIOD THAT DOES NOT EXIST IN THE PARTIES' CONTRACT

Section 10(a)(4) mandates vacatur where arbitrators exceed their powers by imposing rules that flatly contradict the express terms of the parties' agreement. *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 668-69 (2010). Arbitrators are not free to create contractual obligations from whole cloth; their authority is strictly limited to interpreting and applying the agreement as written.

Section 7 of the Mutual Agreement to Arbitrate (MAA) explicitly provides that claims in arbitration are subject to the "same statutes of limitation that would apply in court" (ROA Vol. 1 at 168). At the time Respondent filed its Motion for Summary Disposition, the federal district court had entered a stay of this action—not a dismissal—confirming that the claims remained procedurally viable and timely in the federal system (ROA Vol. 1 at 306). Because a stay preserves the action, Petitioner's claims remained procedurally viable when the court referred them to the arbitral seat.

Despite this, Arbitrator Ware dismissed all claims with prejudice (ROA Vol. 3 at 764). The dismissal was not based on any court-equivalent statute of limitations, but on a manufactured 90-day deadline that Respondent claimed was required by JAMS rules. No such 90-day period appears anywhere within the four corners of the

MAA (ROA Vol. 1 at 166-170). By creating and enforcing a limitations rule that the parties never agreed to—and that directly contradicts the MAA's express directive to apply court-equivalent statutes—Ware rewrote the contract rather than interpreting it. This is the archetypal "excess of powers" that § 10(a)(4) was designed to remedy.

The manufactured nature of this timeline is exposed by Respondent's own affirmative record admissions. On March 4, 2022, corporate counsel Christopher Hahn communicated extensively with Petitioner regarding the precise mechanics of drafting and serving the Demand for Arbitration (ROA Vol. 2 at 360 Line 30). At no point during those detailed instructions did Respondent mention or warn the pro se litigant that any 90-day limitation applied. Respondent's silence on this purported deadline, while simultaneously directing Petitioner on how to execute the demand, established that no such limitation was believed to exist at that time.

Furthermore, on April 1, 2022, Respondent explicitly executed and submitted a Joint Report on the Status of Arbitration directly to the District Court, confirming in writing that Petitioner's demand was "timely submitted" under the Scheduling Order (SROA 19-3). Allowing a represented corporate entity to confirm timeliness on the judicial docket, remain silent on the defense for nineteen months, and then invoke a manufactured, extra-contractual deadline via summary disposition is an enforcement of powers that undermines the consensual foundation of arbitration.

The Tenth Circuit defended its affirmance by holding that federal courts cannot second-guess an arbitrator's procedural or contractual interpretations, even

if they are flawed. But that reasoning conflates interpretive error with contractual invention. Judicial deference under § 10(a)(4) extends to an arbitrator's *interpretation* of the parties' agreement; it does not extend to an arbitrator's *replacement* of the agreement with terms the parties never adopted. Where the MAA's plain text requires court-equivalent statutes of limitation and the arbitrator instead imposes a 90-day rule found nowhere in the contract, the arbitrator has not interpreted the contract—he has rewritten it. *Stolt-Nielsen*, 559 U.S. at 668-69. The question whether an arbitrator may create a limitations period that contradicts both the plain text of the parties' agreement and the procedural status of a stayed federal action warrants this Court's review.

III. THE AWARD WAS PROCURED BY FRAUD, UNDUE MEANS, AND FORUM MANIPULATION IN VIOLATION OF 9 U.S.C. § 10(a)(1)

Section 10(a)(1) mandates vacatur of any award “procured by corruption, fraud, or undue means.” While Section 2 of the Federal Arbitration Act (9 U.S.C. § 2) establishes a general federal policy favoring the validity and enforceability of written arbitration agreements, such agreements remain subject to revocation upon “such grounds as exist at law or in equity for the revocation of any contract.” Parties may validly contract to arbitrate “gateway” questions of arbitrability (*Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63 (2019); *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938 (1995)). However, this framework cannot bypass contract boundaries or permit corporate entities to procure arbitral awards through procedural deception. The statutory grounds for vacatur under § 10(a)(1) are

exclusive, mandatory, and serve as an essential guardrail to police the integrity of the private forum (*Hall Street Associates, L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 578 (2008)), and arbitrators flatly exceed their powers when enforcing procedures completely unsupported by the consensual parameters of the parties' agreement (*Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 668–69 (2010)).

A. The Structural Defects of the Arbitral Forum and Counsel

Communications

The arbitration was structurally affected by circumstances surrounding Petitioner's legal representation and the preservation of a procedural record generated by an excluded arbitrator. Dell faced a significant risk: Petitioner's claims, backed by 16 recorded audio conversations and internal data, threatened to expose ongoing systemic pay and promotion disparities found by the OFCCP and addressed under the September 27, 2019 Early Resolution Conciliation Agreement ("ERCA"). Under the ERCA, if Dell violated the agreement, its five-year scheduling exemption would be void, exposing the company to immediate administrative reopening and impacting federal contract eligibility.

The procedural issues began before the tribunal was fully constituted. Respondent's counsel engaged in a pattern of interfering with Petitioner's search for representation. Prospective attorney Arkady Itkin ceased communications with Petitioner after unauthorized communications with Respondent's outside counsel, Sara E. Welch, who added him to private case correspondence without Petitioner's knowledge (ROA Vol. 1 at 790). When Petitioner subsequently retained Leon

Wilkerson, that attorney did not transmit Respondent's Motion for Summary Disposition to Petitioner until November 24, 2023, thirty-two days after it was served on October 23, 2023, and did not transmit Boeing's motion until November 22, 2023, twenty-one days after it was served on November 1, 2023 (ROA Vol. 2 at 58–59 Lines 132).

By withholding these filings, Wilkerson reduced Petitioner's preparation period to nine days before his termination and Petitioner's return to *pro se* status. An award obtained after a party's own counsel fails to timely transmit case-dispositive filings raises severe questions of procedural fairness under 9 U.S.C. § 10(a)(1). This concealment isolated the arbitral record from Petitioner's preserved claims, operating to shield Respondent from public exposure of federal audit non-compliance and potential liability under 18 U.S.C. § 1516 for obstruction of a federal audit. Respondent's campaign to direct this dispute into a truncated, private administrative framework was designed to ensure that Petitioner's recorded audio conversations—documenting discrepancies related to the ongoing OFCCP compliance audit—would never enter a public judicial record.

B. The Record Contradictions in Respondent's Dispositive Motion

Respondent's dispositive motion, which Arbitrator Ware adopted, relied on three material factual assertions directly contradicted by the certified record. Relying on the isolation of the forum, Respondent's counsel presented factual assertions regarding the internal ethics investigation—handled by Kris Salt (Dell Ethics) and Maurice Tyler (Dell Human Resources)—that were contradicted by

Petitioner's 16 recorded audio conversations and internal data metrics.

First, Respondent asserted that a “scheduling conference” occurred in which Petitioner's counsel described the case as a “discriminatory pay case” (ROA Vol. 1 at 576). Because the official JAMS administrative log contains no record of any such scheduling conference ever being authorized (ROA Vol. 2 at 90–92 Lines 204–209), this corporate admission indicates that an undocumented session was executed to characterize and undermine Petitioner’s active civil rights claims outside the formal record. This characterization directly contradicted Petitioner’s actual operative pleadings, which explicitly encompassed Title VII whistleblower retaliation and the underlying OFCCP audit disclosures—factual allegations that Respondent sought to suppress because they implicated potential liability for obstructing a federal audit under 18 U.S.C. § 1516 (ROA Vol. 2 at 145, 152, 220–221).

Second, Respondent asserted that the parties “engaged in extensive discovery” from March through December 2022 (ROA Vol. 2 at 570). This claim is flatly refuted by the July 28, 2022, Joint Status Report, which confirmed discovery was at an “absolute impasse” (SROA 19-5). Respondent further mischaracterized the cause of Arbitrator Clark’s withdrawal by implying it resulted from Petitioner’s continuances, when the record establishes that Clark’s withdrawal followed the expiration of a mutual 90-day stay (SROA 19-5).

Third, Respondent asserted a 90-day limitations defense (ROA Vol. 2 at 571–575), directly contradicted by its own signed stipulation in the April 1, 2022, Joint Status Report that Petitioner’s demand was “timely submitted” (SROA 19-3). On

April 23, 2024, corporate counsel Christopher Hahn further characterized the status of the federal stay to Arbitrator Ware, selectively quoting the June 7, 2023, administrative closure order while omitting the provision allowing either party to move to reopen (ROA Vol. 2 at 90 Line 202). This characterization led the tribunal to truncate the proceeding. Procuring a summary dismissal based on factual assertions that the moving party knows are directly contradicted by existing administrative records constitutes undue means under § 10(a)(1).

C. Respondent's Admissions and Evident Default Below

When Petitioner challenged this procurement in the District Court, Respondent failed to offer any substantive, record-based rebuttal to the evidence of record contradictions. Instead, Respondent relied on the highly deferential standard of the Federal Arbitration Act ("FAA"), effectively treating arbitral finality as an absolute shield against judicial scrutiny of record manipulation and document suppression. By declining to provide an innocent explanation for the severe discrepancies between their motion text and the underlying record, Respondent left the court with unrebutted evidence of procedural irregularity. A party cannot secure the benefits of a highly deferential standard of review by remaining silent when confronted with *prima facie* evidence of undue means.

D. Respondent's Post-Record Statements

The issue was compounded by Respondent's statement during appellate briefing. On July 2, 2025, Ms. Welch emailed Petitioner: "Dell did not assert any defenses in its motion to compel arbitration, or in its opposition to your motion to

vacate, because Dell was not required to assert any ‘defenses’ in those papers.” Respondent thus confirmed that it had deliberately declined to assert its legal theories below, only to raise them for the first time on appeal. This Court has held that a fraud perpetrated to secure a judgment is a “wrong against the institutions set up to protect and safeguard the public,” and the judicial duty to investigate and rectify it is “paramount and unyielding.” *Field v. Mans*, 516 U.S. 59, 66 (1995); see also *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246 (1944). The Tenth Circuit brushed aside these uncontradicted allegations in a footnote, declaring them unsupported by the record, and applied the deferential standard without addressing the specific record contradictions.

IV. THE ARBITRATOR’S NON-CONSIDERATION OF MATERIAL SUBMISSIONS CONSTITUTES PREJUDICIAL MISCONDUCT UNDER 9 U.S.C. § 10(a)(3)

From May 15 to July 8, 2024, Arbitrator Ware and JAMS did not respond to portal entries, emails, or telephonic inquiries from Petitioner while drafting a case-dispositive award (ROA Vol. 2 at 93). During this 54-day period, the tribunal did not docket or rule upon seven material submissions timely filed by Petitioner:

1. Claimant’s Reply to Respondent Dell’s Response to Claimant’s Supplemental Brief to Respondent’s Motion for Summary Disposition (ROA Vol. 3 at 642), submitted May 31, 2024;
2. Claimant’s Motion to Compel Production of Documents and Things, Litigation Files and Attorney–Client Communications Are Waived (ROA Vol.

- 3 at 147), submitted April 4, 2024;
3. Memorandum of Points and Authorities in Support of Claimant's Motion to Compel Production of Respondent Dell Technologies, Inc.'s Document and Things, Privilege Files and Attorney-Client Communications (ROA Vol. 3 at 529), submitted April 4, 2024;
 4. Claimant's Second Supplemental Brief to Respondent's Motion for Summary Disposition (ROA Vol. 3 at 601), submitted April 15, 2024;
 5. Claimant's Inquiry Letter to Arbitrator Ware (ROA Vol. 3 at 671–673), submitted June 7, 2024;
 6. Claimant's Emergency Brief in Opposition to Mandatory Arbitration invoking the Section 3(c) carve-out and the Franken Amendment (ROA Vol. 3 at 675), submitted June 25, 2024; and
 7. Claimant's Messages Via the JAMS Portal Requesting a Hearing to Discuss Discovery and Other Pressing Issues (ROA Vol. 3 at 732), submitted July 1, 2024.

The most critical filing among these seven submissions was the June 25, 2024 Emergency Brief, which presented Petitioner's threshold jurisdictional defense: that his active Title VII claims were completely exempted from mandatory arbitration under the Department of Defense Appropriations Act, 2010 (Franken Amendment), Pub. L. No. 111-118, § 8116, 123 Stat. 3409, because Respondent was a prime federal defense contractor holding military service contracts exceeding the \$1 million statutory threshold (ROA Vol. 3 at 675). The arbitrator did not evaluate

and reject this filing on the merits; he did not docket it. By declining to docket, hear, or rule upon these submissions before issuing the award, the tribunal denied Petitioner a meaningful hearing.

The Tenth Circuit insulated this misconduct by holding that **“because the arbitrator disposed of the case on threshold timeliness grounds, the claimant cannot demonstrate that the unaddressed discovery motions or supplemental briefs were material to the final outcome”** (App. 16). This reasoning is doctrinally flawed. It conflates standard, interlocutory discovery motions with threshold challenges to the tribunal's very jurisdiction to preside. A federal contractor's compliance with statutory procurement limitations under the Franken Amendment is an issue of absolute forum capacity that a private tribunal cannot simply avoid by choosing not to docket the filing. By treating a jurisdictional immunity brief as an immaterial procedural motion, the court of appeals permitted an arbitrator to shield his own overreach by systematically ignoring the threshold objections meant to halt the unauthorized proceeding.

On July 11, 2024, Arbitrator Ware summarily dismissed all sixteen of Petitioner's claims with prejudice without live testimony, witness cross-examination, or oral argument (ROA Vol. 3 at 764). This was not a routine failure to address tangential arguments; it was a refusal to hear evidence pertinent and material to the controversy (ROA Vol. 3 at 734). Section 10(a)(3) of the FAA mandates the vacatur of an arbitral award where the arbitrators are guilty of misconduct “in refusing to hear evidence pertinent and material to the controversy;

or of any other misbehavior by which the rights of any party have been prejudiced.” The certified record establishes that the tribunal’s failure to consider Petitioner’s submissions satisfies that statutory standard.

By declining to hold an evidentiary hearing, the tribunal compromised the procedural due process protections applicable to federal arbitration under the Fifth Amendment (*U.S. Const. amend. V*) and the Fourteenth Amendment (*U.S. Const. amend. XIV*), which require a neutral tribunal to afford notice and a meaningful opportunity to present evidence before issuing a case-dispositive award. Furthermore, because this non-consideration of the record summarily extinguished Petitioner’s statutory Title VII civil rights claims without an adversarial framework, live testimony, or an objective fact-finding mechanism, the resulting award reflects severe prejudicial misconduct.

An agreement to arbitrate a statutory claim operates as a waiver of the Seventh Amendment right to a jury trial, see *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 28 (1991), but that waiver is consensual and exists only so long as the arbitral agreement itself remains valid. Where the award was obtained through systematic record manipulation in violation of § 10(a)(1) and the tribunal refused to hear material evidence in violation of § 10(a)(3), the underlying waiver is voidable with the contract, and the Seventh Amendment right to a jury trial (*U.S. Const. amend. VII*) revives upon vacatur and restoration to federal court. Permitting such an award to stand permanently deprives Petitioner of his statutory claims, operating as an unconstitutional bar to the restoration of his preserved right

to a jury trial guaranteed by the Seventh Amendment.

V. THE TENTH CIRCUIT APPLIED A DISPARATE DOUBLE STANDARD THAT PENALIZED THE PRO SE LITIGANT

The Tenth Circuit panel applied an asymmetrical standard of review that penalized a *pro se* litigant for technical briefing imperfections while immunizing a represented corporation from baseline waiver principles. The panel explicitly stated on page 3 of its opinion that Petitioner retained legal counsel “after Arbitrator McGahey’s appointment,” when the undisputed, certified record establishes that counsel was retained on February 7, 2023—seven months before McGahey’s contractually barred appointment on September 13, 2023 (ROA Vol. 2 at 367 Line 76-79). By relying on this inverted chronology, the court of appeals insulated the administrative forum’s appointment error from judicial scrutiny, avoiding any analysis of why a contractually struck arbitrator established the binding procedural parameters under which the successor arbitrator subsequently operated.

Furthermore, the court held Petitioner’s threshold jurisdictional defense under the Department of Defense Appropriations Act, 2010 (Franken Amendment), Pub. L. No. 111-118, § 8116, 123 Stat. 3409, to be “inadequately briefed” on appeal because his opening brief failed to articulate the precise mechanics of the statutory carve-out. While holding the *pro se* litigant to this hyper-technical standard, the panel simultaneously excused Respondent’s total silence throughout the lower court proceedings. On July 8, 2025, Petitioner filed a formal Motion to Strike Waived Defenses, demonstrating that Respondent had openly conceded its failure to raise timely defenses below. The Tenth Circuit rejected this motion on pages 6 and 7,

holding that because a motion to compel or a motion to vacate does not constitute a responsive "pleading" under the Federal Rules of Civil Procedure, Respondent was under no obligation to assert its defenses below.

This asymmetrical application of procedural rules extinguished a *pro se* litigant's core statutory protections for minor briefing omissions, while permitting a multinational defense contractor to remain silent for two years and then bypass standard waiver rules on appeal. The Supreme Court has established that a *pro se* litigant's filings, "however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (citing *Haines v. Kerner*, 404 U.S. 519, 520 (1972)). The Tenth Circuit's approach represents a severe departure from that standard.

The court of appeals also erred by deferring to an arbitral record that excluded material evidence. The lower court ruled that because Respondent's dispositive motions and the 16 recorded audio files were systematically struck or left unrecorded by the arbitrator, the judiciary was powerless to review evidence of procedural irregularities. By holding that federal courts must defer to an arbitral record that was engineered through document suppression, the Tenth Circuit stripped § 10(a)(1) and § 10(a)(3) of their statutory function. Deference is due to legitimate adjudicative outcomes; it is not due to procedural defaults that prevent a claimant from presenting evidence.

VI. THIS CASE IS AN EXCELLENT VEHICLE TO CLARIFY THE SCOPE OF JUDICIAL REVIEW OVER MANIPULATED ARBITRAL RECORDS

This case presents an important and unresolved question of federal law: whether a district court may rely exclusively on the face of a private arbitral record to deny a motion to vacate under 9 U.S.C. § 10(a)(1), where the claimant alleges the record was systematically manipulated, or whether the court must independently evaluate *prima facie* evidence of procedural misconduct before according the award preclusive effect.

The Tenth Circuit's approach effectively immunizes the arbitral process from meaningful judicial scrutiny whenever an opposing party suppresses dispositive evidence before it reaches the formal docket. If allowed to stand, this ruling would permit federal defense contractors to enforce arbitration awards notwithstanding a claimant's evidence that procedural misconduct suppressed material proof of Title VII violations—in potential tension with the anti-retaliation mandates of the Department of Defense Appropriations Act, 2010 (The Franken Amendment), Pub. L. No. 111-118, § 8116.

This question is especially acute for self-represented employees subject to mandatory arbitration, who lack the procedural tools to detect or prove that adverse evidence was suppressed before it could be docketed. Without a clear rule requiring federal courts to independently evaluate *prima facie* evidence of record manipulation under § 10(a)(1) and § 10(a)(3), litigants are left without a meaningful

remedy when a private forum refuses to docket threshold jurisdictional challenges.

This Court should grant certiorari to clarify that the FAA's deferential framework does not foreclose a district court's statutory authority under § 10(a) to evaluate whether an award was procured by undue means, including where the claimant has presented objective evidence that material submissions were suppressed before they could enter the arbitral record.

CONCLUSION

The decision below establishes a dangerous precedent allowing arbitral forums to bypass mandatory selection rules, enforce extra-contractual deadlines, and ignore threshold jurisdictional challenges while insulating their final awards from meaningful judicial review. The statutory safeguards of 9 U.S.C. § 10(a) cannot be rendered a dead letter. This case presents an issue of exceptional national importance, offering this Court an essential opportunity to reaffirm that the FAA requires an unyielding judicial duty to protect the statutory right to a fair hearing under § 10(a)(3) and to vacate awards compromised by evident partiality, undue means, or record manipulation.

For the foregoing reasons, Petitioner Kevin Lee Biglow respectfully prays that this Court grant this Petition for a Writ of Certiorari, vacate the judgment of the United States Court of Appeals for the Tenth Circuit, and remand this action with instructions to vacate the underlying arbitration award.

Respectfully submitted,



Dated: July 17, 2026

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