Supreme Court, U.S.
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No. 26-583

In the Supreme Court of the United States

AHMED SHAIKH,
Petitioner,

v.

FOX NEWS NETWORK, LLC, ET AL.,
Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Eleventh Circuit's dismissal of petitioner's Electronic Communications Privacy Act (ECPA) claims conflicts with *Luis* v. *Zang*, 833 F. 3d 619, 630–634 (CA6 2016), which held that allegations identifying a named third-party remote-monitoring software product and describing its specific real-time functionality are sufficient, without more, to plead contemporaneous interception and survive dismissal (App. 7) and with *Epstein* v. *Epstein*, 843 F. 3d 1147, 1150–1152 (CA7 2016), which applied *United States* v. *Szymuszkiewicz*, 622 F. 3d 701, 703–706 (CA7 2010), and *In re Pharmatrak, Inc.*, 329 F. 3d 9, 21–23 (CA1 2003), which applied *United States* v. *Steiger*, 318 F. 3d 1039, 1047–1050 (CA11 2003)—to the extent those decisions establish that an automatic rule-based duplication mechanism satisfies the ECPA's interception requirement regardless of whether the duplication occurs at the application layer or, as alleged here, at the network layer—such that this Court should resolve the resulting division among the circuits on this recurring question of statutory construction?

2. Whether the Eleventh Circuit erred by relying on *University of South Alabama* v. *American Tobacco Co.*, 168 F. 3d 405, 410 (CA11 1999), to hold that a federal court that lacks subject-matter jurisdiction over the underlying merits is "powerless to continue" and therefore cannot resolve a pending Rule 11 or inherent-authority sanctions matter (App. 8, n. 4), in conflict with this Court's decisions in *Willy* v. *Coastal Corp.*, 503 U. S. 131, 137–138 (1992), and *Chambers* v.

NASCO, Inc., 501 U. S. 32, 46–50 (1991), as well as the Eleventh Circuit's decisions in *Eagle Hospital Physicians, LLC* v. *SRG Consulting, Inc.*, 561 F. 3d 1298 (CA11 2009), and *Hyde* v. *Irish*, 962 F. 3d 1306 (CA11 2020), which recognize that sanctions proceedings are collateral to the merits and survive a jurisdictional dismissal?

PARTIES TO THE PROCEEDING

Petitioner, plaintiff-appellant below, is Ahmed Shaikh.

Respondents, defendants-appellees below, are Fox News Network, LLC; Paramount Global; Warner Bros. Discovery, Inc.; NBCUniversal Media, LLC; and The Walt Disney Company.

RELATED PROCEEDINGS

United States District Court (MD Fla.):

Shaikh v. *Fox News Network, LLC,* et al., No. 6:24–cv–01894–WWB–RMN (May 20, 2025) (dismissal)

United States Court of Appeals (CA11):

Shaikh v. *Fox News Network, LLC,* et al., No. 25–12004 (Jun. 4, 2026) (district court affirmed)

Shaikh v. *Fox News Network, LLC,* et al., No. 25–12004. Panel rehearing and rehearing en banc denied July 21, 2026.

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JURISDICTION

The Eleventh Circuit's judgment was entered on June 4, 2026. The Eleventh Circuit denied rehearing on July 21, 2026. This Court has jurisdiction under 28 U. S. C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U. S. C. §1331 provides: "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

18 U. S. C. §2510(4) provides: " 'intercept' means the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device."

18 U. S. C. §2511(1) provides in relevant part:

> "Except as otherwise specifically provided in this chapter any person who—
> "(a) intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire, oral, or electronic communication;
> . . .

"(c) intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection;

"(d) intentionally uses, or endeavors to use, the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection[.]"

18 U. S. C. §2520(a) provides in relevant part:

"Except as provided in section 2511(2)(a)(ii), any person whose wire, oral, or electronic communication is intercepted, disclosed, or intentionally used in violation of this chapter may in a civil action recover from the person or entity, other than the United States, which engaged in that violation such relief as may be appropriate."

Fed. Rule Civ. Proc. 12(b) provides in relevant part:

"Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

"(1) lack of subject-matter jurisdiction;

. . .

"(6) failure to state a claim upon which relief can be granted[.]"

STATEMENT

Petitioner Ahmed Shaikh alleged, with supporting forensic and documentary evidence, that respondents intercepted his electronic communications in real time through unauthorized rule changes to his home router and through the use of third-party remote-access software, and brought claims under 18 U. S. C. §§2511(1)(a), (c), (d). MD Fla. ECF No. 1, ¶¶ 133–138. Those allegations were supported by an attached forensic report tracing the alleged routing architecture to a specific AWS instance. MD Fla. ECF No. 72-3, Exs. A–B.

Specifically, Ahmed's complaint alleged, and the unrebutted forensic report corroborated, the use of TeamViewer and a commercial-grade electronic interception architecture operating against Ahmed's home internet network (router), cellphone, and vehicle. MD Fla. ECF Nos. 1, 45, 48, 49, 73-1, pp. 2–13. Petitioner's responses to respondents' motions to dismiss and the forensic report filed in the record show the following routing and interception architecture: (i) packet duplication: router rules secretly altered to duplicate data packets in real time; (ii) packet rerouting and masking: the duplicated packets were routed through Cloudflare tunnels to mask transit, arriving and recombining at an Amazon Web Services data center in Ashburn, Virginia, housing TeamViewer's server infrastructure, made available for continuous worldwide access via TeamViewer single sign-on credentials. Five commercial entities—(1) Google LLC, (2) Apple Inc., (3) Akamai Technologies, Inc., (4) TeamViewer SE, and (5) Amazon Web Services, Inc.

(AWS)—are forensically documented as present in this architecture simultaneously. AWS itself activated remote access on Ahmed's home router. MD Fla. ECF No. 73-1, Ex. A, p. 22 (March 2, 02:58:17—Layer3Forwarding service reconfigured for traffic interception; March 2, 14:22:17—Remote administrative access from Amazon EC2 established), pp. 2–13.

Ahmed's forensic report, filed as Exhibit A with his Motion to Submit Forensic Evidence (MD Fla. ECF No. 72, Exs. A–B) and refiled with his Response to the Magistrate Judge's Report and Recommendation (MD Fla. ECF No. 73, Exs. A–B), documents the compromise of his router through packet captures and timestamped log entries. The underlying electronic evidence is self-authenticating under Federal Rules of Evidence 902(13) and 902(14), subject to the applicable certification and notice requirements. The accompanying affidavit supports authentication by describing petitioner's qualifications, collection of system logs and packet captures, tool validation, reproducible methods, and evidence-preservation procedures, certified under penalty of perjury. MD Fla. ECF No. 72-2, pp. 2–4, ¶¶ 3–6; p. 6.

Ahmed further alleged that respondents' public broadcasts aligned repeatedly, contemporaneously, and content-specifically with Ahmed's private laptop, cellphone, and vehicle activity in real time, including use of captured material in TV broadcasts on respondents' subsidiary networks. MD Fla. ECF No. 1, pp. 27–113, ¶¶ 133–614. The forensic report was submitted with a declaration executed pursuant to 28 U. S. C. §1746, authenticated under Federal Rule of Evidence 901(b)(1)–(4), self-authenticated under

Federal Rule of Evidence 902(13), and admissible under Federal Rule of Evidence 803(6) and Federal Rule of Evidence 702. MD Fla. ECF No. 72, Ex. B; MD Fla. ECF No. 73, Ex. B. Respondents submitted no competing expert opinion, no rebuttal evidence, and no innocent explanation for the documented infrastructure. The record also includes judicially noticeable SEC filings and annual reports, see *Bryant* v. *Avado Brands, Inc.*, 187 F. 3d 1271, 1278–1280 (CA11 1999), which directly contradict (1) the Grossman declaration's representations regarding his authority and Disney's Florida operations (MD Fla. ECF No. 47, Ex. A; MD Fla. ECF No. 74, Exs. A–B (annual reports of Disney Destinations, LLC, Vista Title Insurance Agency, LLC, Disney Parks Technology Services Co., LLC, and Walt Disney Travel Co., LLC; Disney Form 10-K (2025); leadership page)); and (2) the assertion of NBCUniversal Media, LLC, Paramount Global, and Warner Bros. Discovery, Inc. that parent corporations cannot be liable for their subsidiaries' conduct absent veil-piercing. MD Fla. ECF No. 32, pp. 11–12; MD Fla. ECF No. 74, Exs. A–E; see *Meier ex rel. Meier* v. *Sun Int'l Hotels, Ltd.*, 288 F. 3d 1264 (CA11 2002). That agency argument escalated from frivolous advocacy to fraud on the court when those respondents opposed submission of their own public SEC filings. MD Fla. ECF Nos. 83, 84; see *Worldwide Primates, Inc.* v. *McGreal*, 87 F. 3d 1252 (CA11 1996).

Petitioner filed suit *pro se* in the United States District Court for the Middle District of Florida, No. 6:24–cv–01894–WWB–RMN, alleging violations of (1) the ECPA, 18 U. S. C. §§2511(1)(a), (c), (d), brought under §2520; (2) the Florida Security of Communications Act;

and the common-law torts of (3) intrusion upon seclusion; and (4) intentional infliction of emotional distress, against respondents: Fox News Network, LLC; Paramount Global; Warner Bros. Discovery, Inc.; NBCUniversal Media, LLC; and The Walt Disney Company. MD Fla. ECF No. 1, pp. 27–113, ¶¶ 133–614; MD Fla. ECF No. 73-1, pp. 2–13. All five respondents moved to dismiss under Fed. Rule Civ. Proc. 12(b)(1), contending that petitioner's claims were "wholly insubstantial and frivolous," (MD Fla. ECF No. 32, pp. 4–7; MD Fla. ECF No. 36, pp. 11–12; MD Fla. ECF No. 47, pp. 6–8) and raised alternative arguments under Rule 12(b)(6) arguing failure to state a claim (MD Fla. ECF No. 32, pp. 7–11; MD Fla. ECF No. 36, pp. 8–10; MD Fla. ECF No. 47, pp. 15–17). The District Court dismissed the action for lack of subject-matter jurisdiction under Rule 12(b)(1). App. 14. Before dismissal, petitioner separately moved for Rule 11 sanctions against The Walt Disney Company. MD Fla. ECF No. 58. That Rule 11 motion was fully briefed but was not resolved before the District Court entered its jurisdictional dismissal because the District Court chose to ignore it. App. 14. In his opening brief on appeal, petitioner separately requested that the Eleventh Circuit exercise its inherent authority to impose *sua sponte* sanctions for frivolous advocacy that transformed into fraud on the court by respondents NBCUniversal Media, LLC, Paramount Global, and Warner Bros. Discovery, Inc. CA11 ECF No. 15, pp. 13–17; see also CA11 ECF No. 60, pp. 10–11; CA11 ECF No. 73, pp. 4–5. Petitioner timely appealed. A three-judge panel of the Eleventh Circuit—Circuit Judges Newsom, Brasher, and Tjoflat—

affirmed by *per curiam* opinion, issued June 4, 2026, finding petitioner's claims "utterly divorced from reality" under Federal Rule of Civil Procedure 12(b)(1). App. 7. The panel affirmed the denial of the Rule 11 sanctions motion on the rationale, sourced to *University of South Alabama* v. *American Tobacco Co.*, 168 F. 3d 405 (CA11 1999), that a court lacking subject-matter jurisdiction is "powerless to continue" and therefore cannot reach the pending sanctions motion.

Petitioner sought panel rehearing and rehearing en banc under Federal Rule of Appellate Procedure 40(b)(1) to correct: (1) the panel's misclassification of respondents' facial attacks as a factual attack (CA11 ECF No. 73, pp. 5–8); (2) the panel's error in not applying *Dunbar's* mandatory conversion rule (CA11 ECF No. 73, pp. 5–8, 11); see *Lawrence* v. *Dunbar*, 919 F. 2d 1525 (CA11 1990); (3) the panel's error in not applying *Bryant* to the judicially noticeable SEC filings (CA11 ECF No. 73, pp. 9–10); see *Bryant*, 187 F. 3d, at 1278; (4) the panel's error in not stating or applying any standard of review for factual findings (CA11 ECF No. 73, pp. 8–9); and (5) the panel's erroneous invocation of *University of South Alabama* to deny petitioner's Rule 11 sanctions motion without analysis, in conflict with *Willy*, 503 U. S., at 137–138, *Hyde*, 962 F. 3d 1306, and *Eagle Hospital Physicians, LLC* v. *SRG Consulting, Inc.*, 561 F. 3d 1298 (CA11 2009) (CA11 ECF Nos. 71, 73, pp. 10–11).

Petitioner also sought rehearing en banc under Federal Rule of Appellate Procedure 40(b)(2) to secure uniformity with *Lawrence* v. *Dunbar* and with binding Supreme Court and Eleventh Circuit precedent, including *Willy*, *Hyde*, *United States* v. *United States*

Gypsum Co., 333 U. S. 364 (1948), *Inwood Laboratories, Inc.* v. *Ives Laboratories, Inc.*, 456 U. S. 844 (1982), and *Anderson* v. *City of Bessemer City,* 470 U. S. 564 (1985), and to resolve the questions of exceptional importance presented. Petitioner asked the en banc court to: (1) apply *Dunbar*'s conversion rule and conduct *de novo* review under Rule 56, drawing all inferences in petitioner's favor, and hold that respondents failed to meet their Rule 56(a) burden against an unrebutted forensic record; (2) reverse and render judgment for petitioner because the record is complete and the correct legal standard admits only one result, with remand limited to damages under 18 U. S. C. §2520, attorney's fees, costs, and petitioner's pending Rule 11 sanctions motion; and (3) extend *United States* v. *Steiger*, 318 F. 3d 1039 (CA11 2003), by joining the First, Sixth, and Seventh Circuits, in *In re Pharmatrak, Inc. Privacy Litigation*, 329 F. 3d 9, 21–22 (CA1 2003); *Luis*, 833 F. 3d, at 628–630; and *Szymuszkiewicz*, 622 F. 3d, at 706, in holding that (a) rule-based duplication and automatic rerouting of electronic communications at any network layer satisfies §2511's contemporaneous-interception requirement, and (b) allegations of a named third-party platform with specific real-time monitoring features satisfy ECPA pleading requirements. CA11 ECF No. 73, pp. 11–16. The Court of Appeals denied rehearing en banc on July 21, 2026. App. 21–22.

REASONS FOR GRANTING THE PETITION

This petition should be granted for three reasons. First, the panel labeled respondents' attacks "factual" without conducting the analysis a factual attack

requires (App. 7), and it ignored the Eleventh Circuit's own rule in *Lawrence* v. *Dunbar*, 919 F. 2d 1525, that an intertwined challenge is decided under the merits procedures of Rule 12(b)(6) or Rule 56. That approach cannot be reconciled with *Bell* v. *Hood*, 327 U. S. 678 (1946), or *Arbaugh* v. *Y & H Corp.*, 546 U. S. 500 (2006). This Court's Rule 10(c). Second, the First, Sixth, and Seventh Circuits have adjudicated materially analogous interception allegations as merits questions, at the pleading stage, on summary judgment, or after conviction, applying a contemporaneity principle that originated in the Eleventh Circuit's own decision in *Steiger*, 318 F. 3d 1039. The decision below held comparable allegations jurisdictionally insubstantial and never reached the merits. This Court's Rule 10(a). Third, the panel held that its jurisdictional ruling left a federal court "powerless to continue," and therefore unable to resolve pending sanctions matters, contrary to *Willy* v. *Coastal Corp.*, 503 U. S. 131 (1992), and *Chambers* v. *NASCO, Inc.*, 501 U. S. 32 (1991). This Court's Rule 10(c). The first two reasons are independent of the third, and the third can be decided without reaching the ECPA merits at all.

I. The Panel Misclassified a Facial Attack as a Factual Attack—*Dunbar* Controls

The panel below erred by (1) misclassifying respondents' facial attack as a factual one; and (2) failing to require mandatory conversion to Rule 56 under *Dunbar*—errors that, considered together, mandate reversal and remand. App. 7; *Dunbar*, 919 F. 2d, at 1529. Respondent Fox's motion operates as both a

facial and factual attack. As a facial attack, Fox's conclusory labels of "frivolous" and "insubstantial" (MD Fla. ECF No. 36, pp. 1, 11, 12, 16) require a legal sufficiency determination—not a factual veracity finding—with all inferences drawn in petitioner's favor, identical to Rule 12(b)(6) analysis. As a factual attack, Fox submitted an affidavit attaching petitioner's irrelevant 2023 complaint as purported extrinsic evidence. MD Fla. ECF No. 37, Ex. 1 (complaint in 2023 action). Respondent Disney's motion operates identically. It is a facial attack by virtue of conclusory labels of "frivolous" and "insubstantial" (MD Fla. ECF No. 47, pp. 6–8), and a factual attack by virtue of four attached exhibits: three outdated cases (MD Fla. ECF No. 47, Exs. B–D) and the perjurious declaration of Daniel Grossman (MD Fla. ECF No. 47, Ex. A), which constitutes fraud on the court because (i) Grossman does not hold the title of Senior Vice President at Disney, and (ii) Disney does own land and operate offices in Florida. MD Fla. ECF Nos. 68, 69, Exs. A and B. Paramount Global, Warner Bros. Discovery, Inc., and NBCUniversal Media, LLC, submitted no extrinsic evidence; their conclusory labels of "wholly insubstantial and frivolous," therefore, operate solely as facial attacks (MD Fla. ECF No. 32, pp. 4–6). The District Court and the panel below therefore should have proceeded under facial Rule 12(b)(1) analysis—accepting petitioner's allegations as true, drawing all reasonable inferences in his favor, and assessing only legal sufficiency. *Morrison* v. *Amway Corp.*, 323 F. 3d 920, 924, n. 5 (CA11 2003); *Dunbar*, 919 F. 2d, at 1529. Here, the panel held: "Here, the media companies argued that there was no subject matter jurisdiction

because Shaikh's claims were 'wholly insubstantial and frivolous.' This was a factual attack on subject matter jurisdiction[.]" (App. 7). Having characterized the challenge as a factual attack, the court was required to consider the entire jurisdictional record, yet neither the District Court nor the panel addressed petitioner's forensic report, SEC filings, corporate records, and other evidence directly rebutting respondents' factual assertions, thereby treating the motions as factual attacks while failing to conduct the evidentiary analysis *Dunbar* requires. *Dunbar*, 919 F. 2d, at 1529. Under that standard, the complaint's detailed allegations of TeamViewer-enabled real-time interception, as well as evidence and explanations of router hijacking, packet duplication, and exfiltration to AWS servers documented and discussed in petitioner's responses to the respondents' motions to dismiss, see MD Fla. ECF No. 1, ¶¶ 133–138; MD Fla. ECF Nos. 45, 48, 49—corroborated by the forensic report incorporated by reference (MD Fla. ECF No. 72-3, Exs. A–B), which is to be considered on a factual Rule 12(b)(1) review—state a plausible §2511 claim under the Sixth Circuit's decision in *Luis* v. *Zang*, 833 F. 3d 619 (CA6 2016), the First Circuit's application of *United States* v. *Steiger*, 318 F. 3d 1039 (CA11 2003), in *In re Pharmatrak, Inc. Privacy Litigation*, 329 F. 3d 9 (CA1 2003), or the Seventh Circuit's application of *United States* v. *Szymuszkiewicz*, 622 F. 3d 701 (CA7 2010), in *Epstein* v. *Epstein*, 843 F. 3d 1147 (CA7 2016). *Dunbar* further requires automatic conversion to Rule 56 where: (1) petitioner's claims arise under an intertwining statute, the ECPA here; and (2) respondents challenge elements of the federal cause of

action. *Dunbar*, 919 F. 2d, at 1530. Both triggers are satisfied. Federal-question jurisdiction under 28 U. S. C. §1331 and the 18 U. S. C. §2511 merits inquiries resolve the identical question: whether respondents intentionally and contemporaneously intercepted petitioner's electronic communications. Respondents' motions challenged substantive ECPA elements, including whether the data constituted "electronic communications" and whether any interception was contemporaneous with its interception. MD Fla. ECF No. 32, p. 11; MD Fla. ECF No. 36, p. 15, n. 3; MD Fla. ECF No. 47, pp. 9–10. The panel below erred by treating respondents' challenges, which were actually facial attacks, as factual Rule 12(b)(1) attacks, while neither conducting the evidentiary analysis such an attack requires nor applying *Dunbar's* mandatory Rule 56 conversion rule, notwithstanding respondents' challenges to substantive ECPA elements and the fact that the ECPA is an intertwining statute under the *Dunbar* framework. App. 7; see *Dunbar*, 919 F. 2d, at 1529–1530.

II. The Panel Stated No Standard of Review for Its Factual Findings—*OSI*, *Gypsum*, *Inwood*, and *Anderson* Require Reversal

The panel's opinion below does not identify, state, or apply any standard of review for its factual determination that petitioner's claims were "utterly divorced from reality." App. 7. Under *OSI, Inc.* v. *United States*, 285 F. 3d 947, 954 (CA11 2002), orders making "no specific factual or legal findings" must be vacated. The District Court expressly accepted the Magistrate Judge's "findings of fact and conclusions of

law." App. 13. The panel then stated in footnote 4 that the Magistrate Judge "did not make findings of fact" but "simply gave a summary of the allegations"—without resolving the contradiction between the District Court's characterization and its own. Nor did the panel identify what standard governed. The panel then independently characterized petitioner's allegations as "utterly divorced from reality"—a factual determination made in the first instance without identifying any factual findings supporting that conclusion and without articulating any governing standard of review. App. 7–8, n. 4. Under *Inwood*, 456 U. S., at 855, n. 15, independent appellate factfinding is expressly prohibited. The opinion therefore conflicts with *Gypsum*, *Inwood*, and *Anderson* by not identifying or applying the clearly erroneous standard, not reconciling the District Court's acceptance of factual findings with the panel's assertion that no findings existed, and independently characterizing petitioner's allegations as "utterly divorced from reality" (App. 7). En banc consideration was therefore warranted under Federal Rule of Appellate Procedure 40(b)(2)(B).

III. *Bryant* Not Applied—SEC Filings Are Mandatory Judicial Notice, Not Discretionary

The panel held in footnote 4 that, although courts "may consider" undisputed documents central to a plaintiff's claims when ruling on a motion to dismiss, petitioner "provides no cases showing that they must consider them," and therefore did not show that the District Court was required to consider the forensic

report and agency relationship documents. App. 7–8, n. 4. That reasoning improperly imports a Rule 12(b)(6) incorporation-by-reference doctrine into a case the panel itself characterized as arising under Rule 12(b)(1), characterizing respondents' motions as a factual attack. App. 7. If the motions were facial attacks, the court was required to accept petitioner's allegations as true and assess only legal sufficiency. *Morrison*, 323 F. 3d, at 924, n. 5. *Johnson* v. *City of Atlanta*, therefore, had no relevance because *Johnson* governs what documents a court may consider on a Rule 12(b)(6) motion without converting it into a summary judgment motion, 107 F. 4th 1292, 1300 (CA11 2024). And respondents' submissions are judicially noticeable under Federal Rule of Evidence 201(b). However, if the panel was correct that Fox's and Disney's submissions transformed their motions into factual Rule 12(b)(1) attacks, *Johnson* remained irrelevant for a different reason. Under a factual attack, the court must consider the entire jurisdictional record, not selectively review only respondents' submissions while disregarding petitioner's competing evidence. *Dunbar*, 919 F. 2d, at 1529. Petitioner submitted a forensic report, SEC Form 10-K filings, Disney annual reports and corporate records, and other documentary evidence directly rebutting respondents' factual assertions. Yet neither the District Court nor the panel below evaluated that evidence, weighed it against respondents' submissions, or identified any factual finding rejecting it. Moreover, because the jurisdictional and merits inquiries were intertwined, *Dunbar* required conversion to Rule 56, under which the panel below was obligated to consider the entire

summary-judgment record rather than selectively disregard petitioner's competing evidence. *Dunbar*, 919 F. 2d, at 1529–1530. And the SEC filings and Disney annual reports require no threshold showing. Those filings are automatically subject to mandatory judicial notice under Federal Rule of Evidence 201(b). See *Bryant*, 187 F. 3d, at 1278. A court cannot ignore judicially noticeable facts. Those filings establish that (1) Daniel Grossman held only an Assistant Treasurer role, directly contradicting his sworn claim to be Senior Vice President of Disney (MD Fla. ECF No. 47, Ex. A; MD Fla. ECF Nos. 60, 68, 69, Exs. A–B); (2) Disney operates offices in Celebration and Lake Buena Vista, Florida, destroying its personal jurisdiction argument; (3) the agency documentation shows ABC and ESPN as integral Disney divisions, foreclosing its frivolous agency defense raised in its motion to dismiss (see MD Fla. ECF No. 47, pp. 14–16); and (4) respondents NBCUniversal Media, LLC, Paramount Global, and Warner Bros. Discovery engaged in a pattern of litigation misconduct—contradicted by their own public SEC Form 10-K filings (MD Fla. ECF No. 32, pp. 11–12; MD Fla. ECF No. 74, Exs. A–E)—that escalated from frivolous advocacy to outright fraud on the court, warranting *sua sponte* sanctions under the Eleventh Circuit's inherent authority. Finally, all respondents waived authenticity and centrality challenges by failing to raise them in timely opposition at the District Court level. See *Access Now, Inc.* v. *Southwest Airlines Co.*, 385 F. 3d 1324, 1331 (CA11 2004).

IV. The Supreme Court Should Resolve the Circuit Split Over Wiretap Act Pleadings Because the Decision Below Conflicts with the Sixth Circuit's Decision in *Luis*, the First Circuit's Application of *Steiger* in *In re Pharmatrak, Inc.*, and the Seventh Circuit's Application of *Szymuszkiewicz* in *Epstein*

The ECPA creates a private cause of action for any person whose electronic communication is intercepted, disclosed, or intentionally used in violation of 18 U. S. C. §2511(1)(a), (c), or (d), and authorizes statutory and, in appropriate cases, punitive damages. 18 U. S. C. §2520(a)–(c). "Intercept" means acquiring a communication's contents "through the use of any electronic, mechanical, or other device." §2510(4); see §§2510(5), (12); *supra*, pp. 1–3.

This case presents an opportunity to resolve a circuit conflict over what allegations are sufficient to plead contemporaneous interception of electronic communications under the ECPA, whether tested under Rule 12(b)(1) or Rule 12(b)(6).

The conflict presented here, therefore, spans the principal procedural stages at which an ECPA interception claim may be tested. *Luis* and *Epstein* addressed the sufficiency of contemporaneous-interception allegations under Rule 12(b)(6), 833 F. 3d 619; 843 F. 3d 1147; *Pharmatrak*, expressly applying *Steiger*, held on a Rule 56 record that automatic, simultaneous duplication satisfied even the strictest real-time requirement, 329 F. 3d, at 21–22; and *Szymuszkiewicz* sustained the same substantive

principle following trial, 622 F. 3d, at 704. The decision below, by contrast, denied materially analogous allegations merits review altogether under Rule 12(b)(1). This case, therefore, presents an appropriate vehicle to establish a uniform standard governing what allegations—and, when the inquiry reaches Rule 56, what evidence—are sufficient to allege contemporaneous interception under §2511.

The starting point is the Eleventh Circuit's decision in *United States* v. *Steiger*, 318 F. 3d 1039 (CA11 2003), which held that acquisition of an electronic communication must be contemporaneous with its transmission to constitute an "intercept" under the Wiretap Act. *Id.*, at 1048–1049; see also *Luis*, 833 F. 3d, at 629; *Fraser* v. *Nationwide Mut. Ins. Co.*, 352 F. 3d 107, 113 (CA3 2003); *Konop* v. *Hawaiian Airlines, Inc.*, 302 F. 3d 868, 878 (CA9 2002). *Steiger*, however, arose on direct appeal from a criminal conviction and concerned the denial of a motion to suppress evidence obtained by a third-party hacker through a Trojan-horse program, 318 F. 3d, at 1043–1044. Although *Steiger* established the contemporaneity requirement, it did not comprehensively define what allegations or evidence are sufficient to satisfy that requirement in a civil ECPA action at the pleading or summary-judgment stage. Importantly, however, *Steiger* identified the technological paradigm capable of satisfying contemporaneity: "automatic routing software" through which a duplicate of an electronic communication is automatically transmitted to a third party while the communication is occurring. *Id.*, at 1050.

The First, Sixth, and Seventh Circuits subsequently applied that principle to the types of automated acquisition mechanisms presented here: (1) TeamViewer third-party remote monitoring software (MD Fla. ECF No. 1, ¶¶ 133–138); and (2) automatic forwarding using unauthorized router rule changes causing simultaneous packet duplication and rerouting to Amazon's data center in Ashburn, Virginia (MD Fla. ECF No. 73-1, Ex. A, p. 22 (March 2, 02:58:17—Layer3Forwarding service reconfigured for traffic interception; March 2, 14:22:17—Remote administrative access from Amazon EC2 established)). These three circuit precedents supply the pleading and evidentiary standards left substantially unresolved by *Steiger*.

Both the facial Rule 12(b)(1) challenges and the Rule 12(b)(6) challenges raised by all five respondents (MD Fla. ECF Nos. 32, 36, 47) are governed by the same standard: the court accepts petitioner's well-pleaded allegations as true and draws all reasonable inferences in his favor. Only Disney and Fox submitted extrinsic material, and that material, apart from the Grossman declaration addressed below, is judicially noticeable. See *Bryant*, 187 F. 3d, at 1278. And all respondents directly challenged elements of the causes of action. MD Fla. ECF No. 32, pp. 10–11, nn. 6–7; MD Fla. ECF No. 47, pp. 9–10; MD Fla. ECF No. 36, p. 15, n. 3.

First, the Sixth Circuit's decision in *Luis* v. *Zang*, 833 F. 3d 619 (CA6 2016), provides pleading standards for claims brought under 18 U. S. C. §2511(1)(a) when ruling on a Rule 12(b)(6) motion to dismiss and holds that ECPA pleading requirements are satisfied where a plaintiff alleges a named third-party platform

and its real-time monitoring features, whether in the complaint or in attached exhibits. That showing supports claims against both direct interceptor defendants and the service provider. *Id.*, at 630–632.

In *Luis* v. *Zang*, 833 F. 3d 619, 623–624 (CA6 2016), Joseph Zang installed Awareness Technologies, Inc.'s WebWatcher software on his wife Catherine's computer to secretly intercept her communications with Javier Luis. Awareness allegedly disclosed those communications to Joseph, who used them to obtain favorable divorce terms. *Ibid.* Luis settled with every defendant except Awareness, and the District Court dismissed his remaining claims under Rule 12(b)(6). *Ibid.* As relevant here, Luis asserted that Awareness intentionally intercepted his electronic communications in violation of 18 U. S. C. §2511(1)(a). *Luis*, 833 F. 3*d*, at 623–624. He alleged that WebWatcher, software that Awareness manufactured and continued to operate after sale, surreptitiously captured his emails, instant messages, and other electronic communications and contemporaneously routed them to Awareness's servers, where they became available to the software's user. *Ibid.* Because the appeal arose from a Rule 12(b)(6) dismissal, the Sixth Circuit accepted the complaint's factual allegations as true. *Id.*, at 624 (citing *Boland* v. *Holder*, 682 F. 3d 531, 534 (CA6 2012)). The court reversed, holding that allegations identifying a named monitoring product and describing its real-time routing functionality plausibly alleged an interception contemporaneous with transmission under §2511(1)(a). *Luis*, 833 F. 3*d*, at 627–631.

The Sixth Circuit considered whether the attached marketing materials and Luis's accompanying allegations supported a reasonable inference that Awareness, via WebWatcher, acquired his electronic communications contemporaneously with their transmission. Two allegations supported that inference. First, Luis alleged that the communications were acquired by Awareness "as [they were] being written and communicated between senders and recipients," *id.*, at 629—supporting the proposition that the communications were still "in flight." *Ibid.* (citing *United States* v. *Szymuszkiewicz*, 622 F. 3d 701, 704 (CA7 2010); *United States* v. *Steiger*, 318 F. 3d 1039, 1048–1049 (CA11 2003)). Second, Luis alleged that WebWatcher "immediately and instantaneously rout[ed]" the intercepted communications to Awareness's servers, supporting an inference that the acquisition occurred before the communications came to rest in electronic storage. *Luis*, 833 F. 3*d*, at 630–631 (citing *Steve Jackson Games, Inc.* v. *U. S. Secret Serv.*, 36 F. 3d 457, 461–462 (CA5 1994)). The marketing materials, which described near-real-time review of a monitored user's communications, reinforced this inference. *Luis*, 833 F. 3*d*, at 631.

The parallel to this case is direct. Here, as in *Luis*, petitioner identified the third-party platform by name—TeamViewer—and alleged its specific functionality, including credential-based single sign-on access and real-time remote-session monitoring, as the mechanism by which his communications were intercepted. MD Fla. ECF No. 1, ¶¶ 133–138. Petitioner further alleged an automatic mechanism by which his communications were duplicated and rerouted and

submitted forensic materials identifying the alleged network architecture through which that process occurred. MD Fla. ECF Nos. 45, 48, 49, 72-3, Exs. A–B; MD Fla. ECF No. 73-1, Ex. A, pp. 2–13, 22. If allegations that WebWatcher captured communications as they were being written and "immediately and instantaneously" routed them to Awareness's servers supported a reasonable inference of contemporaneous interception under Rule 12(b)(6), *Luis*, 833 F. 3d, at 629–631, then materially analogous allegations identifying a real-time remote-access platform and an automatic duplication-and-routing mechanism cannot simultaneously be treated as so insubstantial that they fail even to present a federal question under Rule 12(b)(1) (App. 1–8, 9–14). *Luis* therefore demonstrates not merely that petitioner's allegations state a cognizable theory of contemporaneous interception, but that the dispute over whether the alleged mechanism satisfies §2511 is a merits question appropriate for merits review—not a basis for terminating the action at the jurisdictional threshold.

These allegations are further corroborated by an attached forensic report documenting TeamViewer's infrastructure as the active destination architecture for the exfiltration scheme, paralleling the marketing materials the Sixth Circuit relied on in *Luis*. See *Luis*, 833 F. 3d, at 630–631. Petitioner offers a more concrete basis for the same inference: a forensic report analyzing device-specific metadata that, according to the report, documents packet duplication and rerouting from his devices, through his router, to TeamViewer's third-party servers in Ashburn, Virginia. MD Fla. ECF No. 73-1, pp. 2–13. The

marketing materials in *Luis* supported an inference about how the identified platform operated; petitioner's metadata supports that inference through records of the alleged mechanism operating on his own network. Petitioner further alleged that respondents' public broadcasts repeatedly matched his private laptop, cellphone, and vehicle activity contemporaneously and in specific content. MD Fla. ECF No. 1, pp. 27–113, ¶¶ 133–614. Read together, the metadata supports the alleged mechanism of acquisition, and the broadcast correspondence supplies circumstantial corroboration of contemporaneous capture and use. The Eleventh Circuit should accordingly align with the Sixth Circuit's pleading standard: allegations identifying a named third-party platform together with specific real-time monitoring features—whether set out in the complaint itself or in attached exhibits—satisfy the ECPA's pleading requirements at the Rule 12(b)(6) stage. *Luis*, 833 F. 3*d*, at 629–631.

Next, the Seventh Circuit in *Epstein* applied *Szymuszkiewicz* to hold that an automatic, rule-based forwarding mechanism can satisfy the contemporaneous interception requirement of 18 U. S. C. §2511. There, Barry Epstein alleged that his former wife, Paula, violated the Wiretap Act by surreptitiously placing an auto-forwarding "rule" on his email client that automatically forwarded his messages to her, and that the interception was contemporaneous because messages destined for Barry were forwarded to Paula at the same time as they arrived at his email servers. The Seventh Circuit, citing *Szymuszkiewicz*, explained that interception need not occur at the time

the wrongdoer receives the email: "[t]he copying at the server was the unlawful interception." *Epstein* v. *Epstein*, 843 F. 3d 1147, 1153 (CA7 2016) (quoting *Szymuszkiewicz*, 622 F. 3d, at 704). Because the record did not establish how the forwarding rule operated, the court could not rule out that a server copied Barry's emails immediately, which would constitute a completed interception even if Paula's email client received them later. *Epstein*, 843 F. 3*d*, at 1152–1154. Likewise, in *Szymuszkiewicz*, a criminal appeal, the defendant configured a rule on his supervisor's Microsoft Outlook account to receive duplicate copies of incoming emails, and the Seventh Circuit held that the server-side copying caught the messages in flight and constituted interception under the Wiretap Act. 622 F. 3d, at 703–706.

Simply stated, allegations that an automatic-forwarding rule copied emails during flight state a Wiretap Act claim under 18 U. S. C. §2511(1)(a) sufficient to survive a Rule 12(b)(6) motion to dismiss for failure to state a claim. Such a complaint cannot be deemed "frivolous and insubstantial" under a facial Rule 12(b)(1) challenge, because both inquiries require the court to accept the nonmovant's allegations as true and draw all reasonable inferences in the nonmovant's favor. Allegations of automatic-forwarding rules—whether on applications or, as here, at the network layer, via rule changes to home routers—suffice to state a claim under Rule 12(b)(6). The mechanism forensically documented here is analytically identical at the network layer: respondents secretly altered router rules to duplicate petitioner's data packets and rerouted them through concealed Cloudflare tunnels

to TeamViewer servers at Amazon's data center in Ashburn, Virginia (MD Fla. ECF No. 1, ¶¶ 133–138; MD Fla. ECF Nos. 45, 48, 49, 72, Exs. A–B; MD Fla. ECF No. 73-1, pp. 2–13).

The First Circuit reached the same substantive conclusion on a developed evidentiary record in *In re Pharmatrak, Inc. Privacy Litigation*, 329 F. 3d 9 (CA1 2003), expressly applying the Eleventh Circuit's contemporaneity reasoning in *Steiger*. *Pharmatrak* concerned NETcompare, an Internet-monitoring service through which personal information transmitted by users to participating pharmaceutical websites was also transmitted to Pharmatrak's servers. *Id.*, at 15–18. The First Circuit reversed summary judgment, holding that Internet users communicated simultaneously with the pharmaceutical companies' web servers and Pharmatrak's servers, so that "[t]he acquisition by Pharmatrak was contemporaneous with the transmission by the internet users to the pharmaceutical companies." *Id.*, at 21. Applying *Steiger*'s identification of "automatic routing software" as a mechanism capable of producing contemporaneous interception, 318 F. 3d, at 1050, the First Circuit concluded that "NETcompare was effectively an automatic routing program" because its code "automatically duplicated part of the communication between a user and a pharmaceutical client and sent this information to a third party (Pharmatrak)." *Pharmatrak*, 329 F. 3d, at 22. Petitioner alleges the same essential mechanism: routing rules automatically duplicated electronic communications in flight and rerouted those duplicates through network infrastructure to third-party servers. MD Fla. ECF No. 1, ¶¶ 133–138; MD

Fla. ECF No. 72-3, Exs. A–B. If NETcompare's automatic duplication and simultaneous routing satisfied *Steiger* on summary judgment, an allegation that network rules automatically duplicated and rerouted communications while they remained in flight necessarily presents a cognizable §2511 question rather than a federal claim so insubstantial that it may be extinguished for lack of subject-matter jurisdiction. If the Rule 12(b)(1) inquiry here is treated as factual and intertwined with the statutory merits question, *Pharmatrak* demonstrates why that inquiry belongs under the Rule 56 framework required by *Dunbar*, rather than jurisdictional factfinding. Following conversion to the Rule 56 framework, that evidence warrants summary judgment in petitioner's favor on the contemporaneous-interception element.

Taken together, *Luis*, *Epstein*, *Szymuszkiewicz*, and *Pharmatrak* converge on a consistent principle: automatic acquisition, duplication, forwarding, or routing of an electronic communication while it remains in flight can constitute an "intercept" under §2511(1)(a). *Luis*, 833 F. 3d, at 629–631; *Epstein*, 843 F. 3d, at 1152–1154; *Szymuszkiewicz*, 622 F. 3d, at 704–706; *Pharmatrak*, 329 F. 3d, at 21–22.

At the pleading stage, *Luis* and *Epstein* further demonstrate that a plaintiff need not possess, before discovery, direct evidence revealing every internal operation of a covert interception mechanism. It is sufficient to identify the mechanism and allege facts concerning its operation from which contemporaneous acquisition can reasonably be inferred. *Luis*, 833 F. 3d, at 629–631; *Epstein*, 843 F. 3d, at 1152–1154. And *Pharmatrak* demonstrates that the same automatic-

duplication principle can satisfy contemporaneity on a developed Rule 56 record, 329 F. 3d, at 21–22.

Petitioner alleged precisely that kind of contemporaneous acquisition. The complaint identified TeamViewer as the third-party remote-access platform; described its single-sign-on, remote-control, and real-time viewing functionality; identified the devices allegedly subjected to that access; and alleged that petitioner's communications and device activity were acquired contemporaneously. MD Fla. ECF No. 1, pp. 27–28, ¶¶ 133–138. Petitioner further alleged that altered network rules automatically duplicated and rerouted his communications while they remained in flight and submitted forensic materials identifying the alleged network architecture through which that process occurred. MD Fla. ECF No. 72, Exs. A–B; MD Fla. ECF No. 73-1, pp. 2–13. Those allegations fit the automatic-routing paradigm identified by *Steiger*, 318 F. 3d, at 1050, and materially resemble the mechanisms recognized in *Luis*, *Epstein*, *Szymuszkiewicz*, and *Pharmatrak*. If WebWatcher's alleged real-time acquisition and immediate routing supported a reasonable inference of interception in *Luis*, 833 F. 3d, at 629–631; an automatic email-forwarding rule could constitute interception in *Epstein* and *Szymuszkiewicz*, 843 F. 3d, at 1152–1154; 622 F. 3d, at 704–706; and automatic duplication and simultaneous third-party routing satisfied *Steiger*'s contemporaneity requirement on summary judgment in *Pharmatrak*, 329 F. 3d, at 21–22, then petitioner's materially analogous allegations present, at minimum, a substantial federal question concerning the application of §2511, if not outright summary

judgment against all respondents. Yet the decision below denied those allegations merits consideration at the jurisdictional threshold.

V. The Decision Below Presents an Unusual Rule 12(b)(1) Treatment of an ECPA Merits Question That Other Courts of Appeals Have Resolved Under Ordinary Merits Standards

No published court-of-appeals decision located by petitioner appears to present the procedural posture created by the decision below: dismissal of a private civil action under 18 U. S. C. §§2511 and 2520 for lack of subject-matter jurisdiction under Rule 12(b)(1) on the ground that allegations of contemporaneous electronic interception were "frivolous" or "insubstantial." App. 1–8, 9–14. Published appellate decisions addressing materially comparable disputes over what constitutes an "intercept" instead adjudicate that question as one concerning the merits of the federal statutory cause of action—under Rule 12(b)(6), on a Rule 56 evidentiary record, or following trial.

In *Luis* v. *Zang*, 833 F. 3d 619 (CA6 2016), the Sixth Circuit considered under Rule 12(b)(6) whether allegations concerning a third-party software provider and its acquisition of electronic communications sufficiently alleged contemporaneous interception. Rather than treating disagreement over the interception element as eliminating federal-question jurisdiction, the court addressed the sufficiency of the pleaded statutory claim and reversed dismissal. *Id.*, at 627–631.

The Seventh Circuit followed the same merits-based approach in *Epstein* v. *Epstein*, 843 F. 3d 1147

(CA7 2016). Applying *United States* v. *Szymuszkiewicz*, 622 F. 3d 701, 703–706 (CA7 2010), it held that dismissal was improper where the complaint and its exhibits did not conclusively foreclose the possibility that an automatic-forwarding rule copied emails contemporaneously with transmission. *Epstein*, 843 F. 3d, at 1152–1154. The same pattern continues beyond the pleading stage. In *Pharmatrak,* 329 F. 3d 9, the First Circuit addressed contemporaneous interception on a Rule 56 record and held that "[s]eparate, but simultaneous and identical, communications satisfy even the strictest real-time requirement." *Id.*, at 21–22. The court reversed summary judgment and remanded unresolved statutory issues for further proceedings rather than treating disagreement over those elements as jurisdictional. *Id.*, at 22–23. *Peavy* v. *WFAA-TV, Inc.*, 221 F. 3d 158, 168–169, 173–193 (CA5 2000) (addressing disputed §2511 elements on summary judgment).

These decisions reveal the procedural anomaly presented here. Whether particular technology automatically acquired an electronic communication contemporaneously with flight ordinarily concerns whether the plaintiff can establish the statutory "intercept" element of §2511—not whether the federal court possesses subject-matter jurisdiction to adjudicate the claim. Yet the decision below permitted disagreement over those same statutory elements to support dismissal under Rule 12(b)(1) as "frivolous" or "insubstantial," thereby preventing the claim from reaching the ordinary merits procedures employed by the other courts of appeals. That treatment cannot

be sustained under either characterization of respondents' jurisdictional challenges.

If the Rule 12(b)(1) attacks were facial, petitioner's well-pleaded factual allegations were required to be accepted as true for purposes of determining whether they presented a substantial federal question. If respondents' reliance on materials outside the pleadings instead rendered the attacks factual, resolution of jurisdiction became intertwined with the merits once it depended upon whether petitioner's alleged interception mechanism actually satisfied §§2510 and 2511. Under *Lawrence* v. *Dunbar*, 919 F. 2d 1525, 1529–1530 (CA11 1990), and *Morrison* v. *Amway Corp.*, 323 F. 3d 920, 925–930 (CA11 2003), an intertwined factual jurisdictional challenge must receive the procedural protections applicable to a merits determination rather than ordinary Rule 12(b)(1) factfinding.

The court below applied neither permissible Rule 12(b)(1) framework. It did not accept the well-pleaded allegations as true, as a facial attack requires. It did not weigh the competing jurisdictional evidence, as a factual attack requires. And it did not decide whether petitioner's allegations satisfied the contemporaneous interception element of §2511. Instead, the panel accepted respondents' characterization of the claims as "wholly insubstantial and frivolous," labeled that characterization a factual attack, and affirmed on the conclusion that the allegations were "utterly divorced from reality." App. 7. The panel identified no finding about how the alleged mechanism operated and did not evaluate the forensic report (MD Fla. ECF No. 72, Exs. A–B; MD Fla. ECF No. 73-1, pp. 2–23). It declined to consider petitioner's

submitted materials on the ground that he cited no case requiring it to do so. App. 7–8, n. 4.

Respondents challenged the same statutory elements addressed as merits questions in *Luis*, *Epstein*, *Pharmatrak*, and *Szymuszkiewicz*, but the courts below permitted those challenges to support dismissal for lack of subject-matter jurisdiction as "frivolous" or "insubstantial." *Luis* and *Epstein* evaluate the sufficiency of Wiretap Act interception allegations under Rule 12(b)(6); *Pharmatrak* evaluates interception on a Rule 56 evidentiary record; *Szymuszkiewicz* evaluates interception following trial; and *Peavy* evaluates other §2511 elements on summary judgment. None treats ordinary disagreement over whether the alleged conduct satisfies an element of §2511 as itself sufficient to extinguish federal-question jurisdiction.

Under *Dunbar*, 919 F. 2d, at 1529–1530, and *Morrison*, 323 F. 3d, at 925–930, the court had to assume jurisdiction and proceed under Rule 56, which requires that the record be viewed in the light most favorable to the nonmovant, that disputed facts not be resolved against him, and that he have a fair opportunity to develop the evidence. The court did the opposite. It weighed the record on the interception question itself, which was the merits, and extinguished the claim for want of jurisdiction. Had Rule 56 applied, the existing record (MD Fla. ECF No. 72-3, Exs. A–B) would have been tested for genuine disputes of material fact rather than discounted through jurisdictional factfinding.

Review is therefore warranted not merely to clarify what constitutes contemporaneous interception under the ECPA, but also to establish the procedural

framework through which that federal statutory question may be adjudicated. A federal court should not be permitted to obtain the factfinding authority associated with a factual Rule 12(b)(1) challenge while withholding the merits-stage protections required when the jurisdictional inquiry and the elements of the federal cause of action are one and the same.

VI. The Panel's Holding Below Is in Direct Conflict with This Court's Decision in *Willy* and the Eleventh Circuit's Own Decision in *Hyde* Regarding Collateral Sanctions

Petitioner brought respondents' litigation misconduct to the District Court's attention through multiple motions, including a Rule 11 sanctions motion against respondent Disney, none of which the District Court resolved before dismissing for lack of subject-matter jurisdiction. MD Fla. ECF Nos. 58, 71; App. 14. The Eleventh Circuit affirmed on a rationale that is in direct conflict with this Court's decision in *Willy* and the Eleventh Circuit's own decision in *Hyde* and reached neither sanctions request. App. 8, n. 4.

This Court has held that a federal court's Rule 11 sanctions authority survives a determination that the court lacks subject-matter jurisdiction over the underlying action, because a sanctions inquiry is collateral to the merits and does not require an independent basis of jurisdiction. *Willy* v. *Coastal Corp.*, 503 U. S. 131, 137–138 (1992); see *Chambers* v. *NASCO, Inc.*, 501 U. S. 32, 46–50 (1991) (inherent authority); *Eagle Hospital Physicians, LLC* v. *SRG Consulting, Inc.*, 561 F. 3d 1298, 1303 (CA11 2009); *Hyde* v. *Irish*, 962 F. 3d 1306 (CA11 2020). The panel below instead affirmed

denial of the Rule 11 sanctions motion on the rationale—sourced to *University of South Alabama* v. *American Tobacco Co.*, 168 F. 3d 405 (CA11 1999)—that a court which lacks subject-matter jurisdiction is "powerless to continue" and therefore cannot reach a sanctions motion, without analysis and in direct conflict with *Willy*, *Chambers*, and *Hyde*. App. 8, n. 4. The panel below also failed to reach the *sua sponte* sanctions sought against respondents NBCUniversal Media, LLC, Paramount Global, and Warner Bros. Discovery, Inc. in petitioner's opening brief (CA11 ECF No. 15).

Respondent Disney's Fraud on the Court

Petitioner moved for Rule 11 sanctions against respondent Disney after conferring with its counsel, Alexander S. Cumming, and requesting withdrawal of the affidavit submitted by declarant Daniel Grossman as part of Disney's motion to dismiss (MD Fla. ECF No. 47, Ex. A (declaration of Daniel Grossman)), and his employment agreement, during the meet-and-confer conference held on Wednesday, February 12, 2025, at 4:00 p. m. E. T. by phone, pursuant to Middle District Local Rule 3.02. Disney refused both requests. MD Fla. ECF No. 58. That affidavit, submitted in support of Disney's motion to dismiss, represented Grossman as a Senior Vice President of The Walt Disney Company; petitioner's motions and supporting filings (MD Fla. ECF Nos. 58, 60, 68, 69, Exs. A–B; MD Fla. ECF No. 74) showed, through the Disney subsidiaries' own corporate filings, that Grossman in fact held only Assistant Treasurer roles—a material misrepresentation that Disney never rebutted. Disney

opposed the motion (MD Fla. ECF No. 67). Petitioner also sought limited jurisdictional discovery from Disney (MD Fla. ECF No. 68, Exs. A and B) and an evidentiary hearing concerning personal jurisdiction (MD Fla. ECF No. 69, Exs. A and B). The sanctions dispute remained sufficiently briefed when petitioner later sought to clarify the relief requested in his sanctions motion (MD Fla. ECF Nos. 87, 89), and the Magistrate Judge struck the initial notice and denied leave to file the clarification (MD Fla. ECF Nos. 88, 90), with the court ruling that it would decide this issue on the current briefing. MD Fla. ECF No. 90. Petitioner further supplemented the record with SEC filings (MD Fla. ECF No. 74, Exs. A–E) establishing the corporate structure and agency relationships between Disney and its subsidiaries ABC and ESPN, including that Disney Destinations, LLC's own annual report lists Walt Disney Attractions Trust as its sole member (MD Fla. ECF No. 68, Ex. A), and that Disney maintains Florida offices in Celebration and Lake Buena Vista, Florida (MD Fla. ECF Nos. 68, 69, Exs. A and B)—directly contradicting Disney's jurisdictional denials and its fraudulent affidavit used in support of its motion to dismiss, and the fraudulent arguments contained therein (MD Fla. ECF No. 47, Ex. A).

The District Court accepted the Magistrate Judge's Recommendation and terminated petitioner's motion for sanctions (MD Fla. ECF No. 58) without any discussion, analysis, or ruling on the fraudulent affidavit or the underlying misconduct. App. 14.

A district court's ruling on a Rule 11 motion is reviewed for abuse of discretion, *Cooter & Gell* v. *Hartmarx Corp.*, 496 U. S. 384, 405 (1990), which occurs

when the court "misconstrues its proper role, [or] ignores or misunderstands the relevant evidence." *FTC* v. *AbbVie Prods. LLC*, 713 F. 3d 54, 61 (CA11 2013). Fraud on the court occurs when a party engages in "a scheme to interfere with the judicial machinery performing the task of impartial adjudication." *Hazel-Atlas Glass Co.* v. *Hartford-Empire Co.*, 322 U. S. 238, 246 (1944). Courts have inherent power to sanction such misconduct, *Chambers*, 501 U. S., at 44–46, including bad-faith conduct that delays or disrupts the litigation. See *Alyeska Pipeline Service Co.* v. *Wilderness Society*, 421 U. S. 240, 258–259 (1975). Disney's submission of the Grossman declaration was aimed at defeating personal jurisdiction and agency, forcing petitioner to submit extensive rebuttal evidence. MD Fla. ECF Nos. 50, 52, 53, 57–62, 65, 68, 69, 87, 89.

Where a party manufactures evidence, federal courts have struck pleadings or entered default rather than merely excluding the evidence, because otherwise parties "have everything to gain, and nothing to lose, if manufactured evidence merely is excluded while their lawsuit continues." *Vargas* v. *Peltz*, 901 F. Supp. 1572, 1579 (SD Fla. 1995) (quoting *Pope* v. *Federal Express Corp.*, 138 F. R. D. 675 (WD Mo. 1990), aff'd in relevant part, 974 F. 2d 982 (CA8 1992)); *Buchanan* v. *Bowman*, 820 F. 2d 359, 361 (CA11 1987) (striking defendant's answers and entering default judgment for discovery abuses). The Eleventh Circuit has likewise approved striking pleadings where misconduct makes continued litigation untenable and requires a court at minimum to consider lesser sanctions. *Eagle Hospital Physicians*, 561 F. 3d, at 1303,

1306. The appropriate sanction is striking Disney's motion to dismiss and entering default judgment. Yet the District Court ignored the motion entirely (App. 14). While courts have discretion in fashioning sanctions, they have no discretion to ignore properly presented evidence of fraud upon the court.

Petitioner separately invoked the Eleventh Circuit's inherent authority seeking *sua sponte* sanctions against respondents NBC, Paramount Global, and Warner Bros. Discovery. In their motion to dismiss (MD Fla. ECF No. 32), these respondents represented that they could not be held liable for their subsidiaries' conduct absent veil-piercing—a position squarely contradicted by controlling agency-liability precedent, see *Meier*, 288 F. 3d 1264. When petitioner supplemented the record with these respondents' own SEC Form 10-K filings (MD Fla. ECF No. 74, Exs. A–E) showing that these parent companies hold parent-subsidiary relationships with the networks alleged to have violated the Wiretap Act, these respondents did not withdraw that position; instead, they argued (MD Fla. ECF No. 83) that petitioner should not be permitted to introduce their own public filings against them. Respondents' contention that petitioner is "raising for the first time on appeal" allegations of litigation abuse and fraud (CA11 ECF No. 56, pp. 18–19, n. 3, 26–27, n. 5) is irrelevant, because inherent authority may be exercised *sua sponte* "for conduct which abuses the judicial process." *Chambers*, 501 U. S., at 44–45. Respondents' conduct meets both prongs of *Worldwide Primates, Inc.* v. *McGreal*, 87 F. 3d 1252, 1254 (CA11 1996): their legal position is objectively frivolous because it is contrary to binding

precedent, and factually frivolous because it is contradicted by their clients' own SEC filings. *Davis* v. *Carl*, 906 F. 2d 533, 537 (CA11 1990).

The District Court and Panel Declined to Reach the Sanctions Motions

The conflict is squarely presented here: the panel did not weigh petitioner's sanctions motions on the merits or consider the *sua sponte* sanctions sought in petitioner's opening brief (CA11 ECF No. 15, pp. 13–17)—instead, it held, as a jurisdictional matter, that the District Court lacked power to reach the sanctions motion and the *sua sponte* sanctions issue entirely. Because that holding rests on the same premise this Court rejected in *Willy* and *Chambers*, the question below is not one of discretionary sanctions administration but of whether a jurisdictional dismissal extinguishes a district court's authority to resolve pending sanctions motions. That authority extends to sanctions imposed on the court's own initiative: in *Chambers*, this Court approved the rule that "a federal district court has the inherent power to dismiss a case *sua sponte* for failure to prosecute," even where the governing procedural rule appeared to require a motion from a party, and held that courts may impose sanctions for bad-faith litigation conduct "even when other sanctioning mechanisms exist." *Chambers*, 501 U. S., at 43–46 (citing *Link* v. *Wabash R. Co.*, 370 U. S. 626, 630–631 (1962)). The Eleventh Circuit has applied that same principle to conduct closely analogous to the interception alleged here: in *Eagle Hospital Physicians, LLC*, the court affirmed sanctions imposed under the District Court's inherent power—

rather than under Rule 37(b)—where a party had secretly monitored an opponent's confidential email communications, because that misconduct fell outside the specific rule's coverage, 561 F. 3d, at 1306; see also *Hyde*, 962 F. 3d, at 1309 (holding that a district court may address a sanctions motion based on its inherent powers even where it lacks jurisdiction over the underlying case, and observing that although these issues are "collateral," "that doesn't make them any less important").

* * *

Taken together, these errors warrant this Court's review. First, the decision below allows a court to label a substantial ECPA claim jurisdictionally "frivolous" or "insubstantial" without the protections of either Rule 12(b)(1) framework (App. 7). On a facial challenge, the well-pleaded allegations must be accepted as true. On a factual challenge that is intertwined with the merits of the statutory claim, the court must apply the Rule 56 standard rather than resolve disputed facts itself. *Dunbar*, 919 F. 2d 1525; *Morrison*, 323 F. 3d 920. Second, the decision departs from the First, Sixth, and Seventh Circuits, which have treated the automatic, contemporaneous acquisition of electronic communications as a merits question, resolved under Rule 12(b)(6), under Rule 56, or after trial. *In re Pharmatrak, Inc.*, 329 F. 3d 9; *Luis*, 833 F. 3d 619; *Epstein*, 843 F. 3d 1147; *Szymuszkiewicz*, 622 F. 3d 701. Those decisions establish that allegations of an automatic mechanism that duplicates, forwards, or routes communications while in flight state a cognizable claim of

contemporaneous interception under 18 U. S. C. §2511, not a jurisdictionally insubstantial federal question. Third, by treating the jurisdictional dismissal as extinguishing the District Court's authority over collateral sanctions, the decision conflicts with *Willy*, 503 U. S., at 137–138, and *Chambers*, 501 U. S., at 44–50.

This case is therefore a suitable vehicle for the Court to (1) clarify the boundary between jurisdiction and merits in federal statutory actions for ECPA claims; (2) set a uniform standard for allegations of contemporaneous interception under the ECPA; (3) resolve how intertwined factual challenges are treated under Rules 12(b)(1) and 56; and (4) confirm that a jurisdictional dismissal does not extinguish a federal court's collateral sanctions authority. The petition should be granted, the judgment vacated, and the case remanded for further proceedings consistent with those principles.

CONCLUSION

This Court should grant certiorari.

Respectfully submitted.

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