

26 - 59 14 ORIGINAL

No.

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

SEP 10 2026

OFFICE OF THE CLERK

BOBACK SABEERIN,
Petitioner,
v.

CITY OF ALBUQUERQUE, ALBUQUERQUE POLICE DEPARTMENT;
APD DETECTIVE TIM FASSLER, IN HIS INDIVIDUAL CAPACITY;
APD DETECTIVE JOHN DEAR, IN HIS INDIVIDUAL CAPACITY,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF NEW MEXICO
S-1-SC-41354

PETITION FOR A WRIT OF CERTIORARI

Boback Sabeerin
Petitioner Pro Se
21 Blue Bonnet dr
Los Lunas, NM 87031
(407)785-8870
bobacksabeerin@yahoo.com

QUESTIONS PRESENTED

1. Whether a federal district court, exercising federal-question jurisdiction over claims under 42 U.S.C. § 1983, may enter summary judgment dismissing those claims with prejudice on qualified-immunity grounds where the plaintiff alleges and supports with record evidence that officers entered and searched before issuance of a warrant, that the warrant affidavit contained materially false or misleading facts, and that the affiant later made statements arguably undermining the asserted factual nexus to the place searched.
2. Whether the Tenth Circuit's application of 'arguable probable cause' conflicts with *Franks v. Delaware*, 438 U.S. 154 (1978), *Malley v. Briggs*, 475 U.S. 335 (1986), and *Groh v. Ramirez*, 540 U.S. 551 (2004), when it treated issuance of a warrant and judicial disagreement as supporting immunity without resolving evidence of a pre-warrant search or alleged knowing or reckless material falsehoods.
3. Whether the Fourteenth Amendment permits a state court to extinguish with prejudice claims arising from an asserted unconstitutional search and seizure without meaningful consideration of the litigant's continuation, tolling, and due-process contentions, where the procedural history was shaped by removal and remand and where the underlying claims had repeatedly been pursued rather than abandoned.

4. Whether, after defendants remove an action and the federal court remands the remaining state-law claims to the state court from which the action was removed, 28 U.S.C. § 1447(c) permits that state court to resume jurisdiction and decide a state-law venue objection; and, if so, whether removal alone waives that objection.
5. Whether a state procedural preservation rule constitutes an adequate and independent state ground barring review of a federal claim when, in the exceptional procedural circumstances of this case, the litigant continuously pursued the same controversy through federal dismissal of state claims without prejudice, removal, remand, a venue dismissal without prejudice, refile in the venue identified as proper, and a later dismissal with prejudice, yet the state appellate court refused to consider the statutory continuation theory because the precise savings-statute argument was not presented below.
6. Whether Petitioner's due process rights were preserved when no oral or evidentiary hearing before a state court was not made available to decide a venue motion after the state causes of action had been remanded to the court in Valancia County where the complaint had originally been filed .
7. Whether a state appellate court may treat a generally applicable preservation rule as an adequate state ground barring consideration of a federal tolling claim when the opposing parties placed the governing tolling issue before the trial court, the case's undisputed procedural history supplied the facts needed to

decide it, and rigid application of the rule defeats the federal protection Congress enacted in 28 U.S.C. § 1367(d).

8. Whether 28 U.S.C. § 1367(d), as construed in *Artis v. District of Columbia*, 583 U.S. 71 (2018), and *Jinks v. Richland County*, 538 U.S. 456 (2003), requires a state court deciding timeliness to account for the period during which supplemental state-law claims were pending in federal court before dismissing a refiled action with prejudice as time-barred.

PARTIES TO THE PROCEEDING

Petitioner Boback Sabeerin was plaintiff-appellant below.pro se

Respondents City Of Albuquerque, Albuquerque Police Department, APD Detective Tim Fassler, in his individual capacity; Are represented by Council of record Kristen J. Dalton P. O. Box 2248 Albuquerque-N.M 87031.

APD Detective John Dear, in his individual capacity; represented by Council on record, Sean E.Garrett. YLAW.P.C 4908 Alameda Blvd N.E Albuquerque -N.M 87113,

CORPORATE DISCLOSURE STATEMENT

Petitioner is an individual. No corporate disclosure statement is required.

STATEMENT OF RELATED PROCEEDINGS

9. Sabeerin v. Albuquerque Police Department, No. A-1-CA-41777, New Mexico Court of Appeals, judgment entered February 23, 2026.

10. Sabeerin v. Albuquerque Police Department, No. S-1-SC-41354, Supreme Court of New Mexico, certiorari denied May 5, 2026; rehearing denied June 15, 2026.

11. Sabeerin v. Albuquerque Police Department, No. D-202-CV-2023-06588, Second Judicial District Court, Bernalillo County, New Mexico, dismissal with prejudice entered January 16, 2024.

12. Sabeerin v. Albuquerque Police Department, No. A-1-CA-40338, New Mexico Court of Appeals, venue dismissal affirmed July 24, 2023.
13. Sabeerin v. Albuquerque Police Department, No. D-1314-CV-2021-00374, Thirteenth Judicial District Court, Valencia County, New Mexico.
14. Sabeerin v. Albuquerque Police Department, No. 1:21-cv-00512-MV-JFR, United States District Court for the District of New Mexico.
15. Sabeerin v. Albuquerque Police Department, No. 21-2046, United States Court of Appeals for the Tenth Circuit, judgment entered April 5, 2022.
16. Sabeerin v. Fassler, No. 1:16-cv-00497-JCH-LF, United States District Court for the District of New Mexico, final judgment entered April 1, 2021.
17. State v. Sabeerin, Nos. 31,412 and 31,895, 2014-NMCA-110, 336 P.3d 990.

TABLE OF CONTENTS

QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDING	iv
CORPORATE DISCLOSURE STATEMENT.....	iv
STATEMENT OF RELATED PROCEEDINGS.....	iv
TABLE OF AUTHORITIES.....	vii
PETITION FOR A WRIT OF CERTIORARI.....	1
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS	2
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE PETITION.....	9
CONCLUSION	21
CERTIFICATE OF COMPLIANCE.....	23
APPENDIX	24

TABLE OF AUTHORITIES

AMICA Mutual Insurance Co. v. McRostie, 2006-NMCA-046, 139 N.M. 486, 134 P.3d 734	13
Anderson v. Creighton, 483 U.S. 635 (1987)	12
Artis v. District of Columbia, 583 U.S. 71 (2018).....	iii, 9, 12-14
Cruz v. Arizona, 598 U.S. 17 (2023)	10, 16, 20
Danziger & De Llano, LLP v. Morgan Verkamp LLC, 948 F.3d 124 (3d Cir. 2020) .	16
Ford v. Georgia, 498 U.S. 411 (1991).....	11, 16
Franks v. Delaware, 438 U.S. 154 (1978).....	i, 14-15
Gathman-Matotan Architects & Planners, Inc. v. State Department of Finance & Administration, 1990-NMSC-013, 109 N.M. 492, 787 P.2d 411.....	13
Groh v. Ramirez, 540 U.S. 551 (2004)	i, 14
James v. Kentucky, 466 U.S. 341 (1984)	10, 16
Jinks v. Richland County, 538 U.S. 456 (2003).....	iii, 9, 12
Lee v. Kemna, 534 U.S. 362 (2002).....	10-11, 16, 20
Malley v. Briggs, 475 U.S. 335 (1986)	i, 12, 14
Messerschmidt v. Millender, 565 U.S. 535 (2012)	15
Michigan v. Long, 463 U.S. 1032 (1983).....	10
Murray v. United States, 487 U.S. 533 (1988).....	15
NAACP v. Alabama ex rel. Patterson, 357 U.S. 449 (1958)	11, 16

Sabeerin v. Albuquerque Police Department, No. 21-2046, 2022 WL 1013809 (10th Cir. Apr. 5, 2022)	v, 1, 8
Sabeerin v. Albuquerque Police Department, No. A-1-CA-41777 (N.M. Ct. App. Feb. 23, 2026) (nonprecedential).....	iv, 1
Segura v. United States, 468 U.S. 796 (1984)	15
Staub v. City of Baxley, 355 U.S. 313 (1958)	16
State v. Sabeerin, 2014-NMCA-110, 336 P.3d 990	v, 7
United States v. Leon, 468 U.S. 897 (1984)	14
Zangara v. LSF9 Master Participation Trust, 2024-NMSC-021, 557 P.3d 111.....	13

Constitutional Provisions and Statutes

U.S. Const. amend. IV	2, 4
U.S. Const. amend. XIV	i, 2
U.S. Const. art. VI, cl. 2	2
28 U.S.C. § 1257(a)	1
28 U.S.C. §§ 1331, 1343(a)(3)	11
28 U.S.C. § 1367(c)-(d)	iii, 2-3, 8-9, 12, 14, 19
28 U.S.C. § 1447(c)	ii, 15, 19
42 U.S.C. § 1983	i, 2, 4, 8, 10-11
NMSA 1978, § 37-1-14.....	3, 5, 13

Rules

Sup. Ct. R. 10.....	16-17, 19
---------------------	-----------

Sup. Ct. R. 13, 30.....	1
Sup. Ct. R. 14.....	19
Sup. Ct. R. 33.2.....	23
Sup. Ct. R. 39.....	23
Rule 12-321 NMRA.....	3

PETITION FOR A WRIT OF CERTIORARI

Petitioner Boback Sabeerin respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of New Mexico. NO.S-1-SC-41354

OPINIONS BELOW

The New Mexico Court of Appeals' memorandum opinion affirming dismissal is unpublished and available at No. A-1-CA-41777 (Feb. 23, 2026). It is reproduced at Pet. App 1a-8a. The Supreme Court of New Mexico's order denying discretionary review, No. S-1-SC-41354 (May 5, 2026), is reproduced at Pet. App. 9a-10a. Its order denying rehearing on June 15, 2026 is reproduced at Pet. App. 11a-12a. The state district court's judgment dismissing the action with prejudice The 10 th Circuit order and judgment No.21-2046 and all relevant authorities are reproduced in the supplemental Appendix materials.

JURISDICTION

The New Mexico Court of Appeals entered judgment on February 23, 2026. The Supreme Court of New Mexico denied discretionary review on May 5, 2026, and denied Petitioner's timely motion for rehearing on June 15, 2026. Under Rules 13.1, 13.3, and 30.1, the petition is due September 14, 2026 because the ninetieth day falls on Sunday, September 13, 2026. This Court has jurisdiction under 28 U.S.C. § 1257(a).

The federal question concerns the adequacy of the state preservation ground used to foreclose consideration of federal statutory tolling and the obligation of state courts to apply 28 U.S.C. § 1367(d). The judgment is final: the intermediate appellate court affirmed dismissal with prejudice, the State's highest court denied review and rehearing, and the mandate issued July 8, 2026.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment provides, in relevant part: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.”

The Fourteenth Amendment provides, in relevant part: “No State shall ... deprive any person of life, liberty, or property, without due process of law.”

42 U.S.C. § 1983 provides a civil remedy against a person who, under color of state law, subjects another to the deprivation of rights secured by the Constitution and laws of the United States.

The Supremacy Clause, U.S. Const. art. VI, cl. 2, provides in relevant part: 'This Constitution, and the Laws of the United States which shall be made in Pursuance thereof ... shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby.'

Title 28 U.S.C. § 1367(d) provides: 'The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.'

NMSA 1978, § 37-1-14 is New Mexico's savings statute. Petitioner relies on it as a continuation provision for an action timely commenced that fails for a cause other than negligence in prosecution and is recommenced within the statutory period.

Rule 12-321 NMRA governs preservation of issues for New Mexico appellate review. The Court of Appeals relied on that rule in refusing to reach the savings-statute contention.

STATEMENT OF THE CASE

1. This controversy arises from an August 19, 2009 search of Petitioner's business and his ensuing arrest and criminal prosecution. Petitioner has consistently maintained that the search warrant for Sabeerin's property at 112 General Arnold relied on information associated with a different property 112 Rhode Island and lacked constitutionally sufficient probable cause.

2. Petitioner was convicted in state court. In 2014, the New Mexico Court of Appeals reversed his convictions after concluding that the motions to suppress should have been granted because the General Arnold property warrant was invalid for lack of

probable cause. The New Mexico Supreme Court declined review, and the criminal charges were dismissed on November 17, 2015 after Petitioner had served seven years of imprisonment.

3. On May 27, 2016, Petitioner filed a federal civil action asserting claims under 42 U.S.C. § 1983 and state law. The federal district court ultimately granted summary judgment on the federal claims, including on qualified-immunity grounds, and declined supplemental jurisdiction over the state-law claims, dismissing those state claims without prejudice.

4. The Tenth Circuit affirmed the federal judgment in 2022. Nine years after the Court of Appeals decision on the suppression issue, The Tenth Circuit Courts decision explained that the earlier criminal suppression ruling concerned actual probable cause, while the qualified-immunity inquiry asked whether the officers had arguable probable cause and whether clearly established law was violated. The court concluded that Detectives Fassler and Dear had arguable probable cause and affirmed summary judgment on the federal Fourth Amendment claim. It also held that Petitioner had waived appellate review of the municipal-liability ruling.

5. Meanwhile, after the federal court declined to adjudicate the state claims, Petitioner filed a complaint on May 5, 2021 in the Thirteenth Judicial District Court in Valencia County. Respondents removed that action to federal court. In the removed case, the federal magistrate judge recommended dismissal of federal claims based on res judicata but recommended that the state claims be remanded valancia court,

because the earlier federal judgment had dismissed those state claims without prejudice and had not adjudicated their merits.

6. The federal court remanded the remaining state claims to Valencia County. After remand, Respondents moved to dismiss for improper venue. The Valencia County court dismissed without prejudice. The New Mexico Court of Appeals affirmed on July 24, 2023 in No. A-1-CA-40338, explaining that remand returned the case to the state court from which it had been removed .

7. On August 18, 2023, Petitioner refiled in the Second Judicial District Court in Bernalillo County. The complaint again alleged constitutional and tort claims arising from the 2009 search and its consequences. Respondents moved to dismiss on limitations grounds. Petitioner opposed dismissal by arguing, among other things, that the long procedural delay had been caused by the prior litigation path and Respondents' removal and venue positions. The Bernalillo County district court dismissed the action with prejudice.

8. On appeal, Petitioner argued that the first federal filing was timely and that New Mexico's savings statute, NMSA 1978, § 37-1-14, required the Bernalillo County action to be treated as a continuation of the earlier timely action. Respondents answered that the savings-statute issue had not been preserved in the district court.

9. On February 23, 2026, the New Mexico Court of Appeals affirmed. It held that the district court had not been alerted to the savings statute in Petitioner's written response or at the dismissal hearing. The court emphasized the purposes of preservation: allowing the district court to correct error, allowing the opposing party

to respond, and creating a sufficient record. It therefore declined to review the savings-statute argument and affirmed the limitations dismissal with prejudice.

10. Petitioner then sought discretionary review in the Supreme Court of New Mexico. That court denied certiorari on May 5, 2026. Petitioner sought rehearing, continuing to invoke due process, preservation, tolling/continuation principles, and the underlying constitutional injuries. Rehearing was denied on June 15, 2026. The Court of Appeals issued its final mandate on July 8, 2026.

11. The practical result is that Petitioner's federal claims were resolved in federal court on qualified-immunity and related grounds, while his state claims were repeatedly dismissed without prejudice until the final Bernalillo County limitations ruling dismissed them with prejudice. Petitioner contends that he did not abandon the controversy; rather, he continuously attempted to place the claims before a court with authority to adjudicate them.

12. This petition does not ask the Court to reweigh evidence or to function as a general court of error on New Mexico limitations law. The federal issue is whether the state preservation ruling, as applied in this unusual sequence, is an adequate state ground when its operation prevented consideration of the continuation theory that Petitioner says was inherent in the procedural history and necessary to avoid extinguishing claims he had repeatedly pursued.

A. Search of 112 General Arnold and criminal proceedings

Petitioner operated an automobile body shop at 112 General Arnold NE in Albuquerque. On August 19, 2009, officers were investigating Anjum Tahir at a separate Rhode Island property. The record contains Petitioner's sworn account that he arrived at 112 General Arnold at approximately 1:30 p.m., saw officers surrounding the property, and observed an officer emerging from inside the shop. Petitioner stated that officers detained him and others, took his telephone, entered the shop, and searched through his toolbox and office before a warrant issued at 4:40 p.m. The federal decisions recognized the 4:40 p.m. issuance time but did not accept that a pre-warrant evidentiary search had been established.

Detective Fassler's affidavit for 112 General Arnold largely repeated information from the 112 Rhode Island investigation. The New Mexico Court of Appeals found that the General Arnold affidavit had been copied directly from the Rhode Island affidavit except for a few additions. It held that the affidavit failed to identify a reliable source for the statement that Tahir did business at General Arnold, failed to explain why vehicles there were suspicious, failed to establish a nexus between Tahir's 112 Rhode Island activity and 112 General Arnold, and authorized an impermissible general search. *State v. Sabeerin*, 2014-NMCA-110, ¶¶ 16-29, 336 P.3d 990.

Petitioner alleged that, upon entering, Fassler said: 'The two officers that worked on your case 20 years ago ... work for me now [and] we are going to make sure you don't get out this time.' Petitioner further alleged that Fassler said, 'Foreigners like you

don't belong in this country,' and that he would do everything in his power to have Petitioner deported. The federal district court and Tenth Circuit recited these allegations. Petitioner also alleged that Detective Dear told Michelle Roybal that officers had been looking for Petitioner for twenty years and had come out of retirement to ensure that he did not 'get out this time.'

Petitioner's affidavit and complaint disputed Fassler's account of incriminating statements and claimed that records showed Tahir was arrested at Rhode Island, not General Arnold. Petitioner cited Exhibit L, at 31:13-20, for Fassler's statement: 'I cannot link Mr. Sabeerin to any of the five vehicles taken' and 'nor can I show Mr. Sabeerin's direct involvement.'

B. The federal action and dismissal of supplemental state claims

On May 27, 2016, Petitioner and other plaintiffs filed a federal civil-rights action arising from the search, arrest, prosecution, and imprisonment. The operative complaint asserted claims under 42 U.S.C. § 1983 and state constitutional and tort claims. On April 1, 2021, the federal district court entered judgment for the defendants on the federal claims, declined supplemental jurisdiction over the remaining state claims under 28 U.S.C. § 1367(c), and dismissed those claims without prejudice.

The Tenth Circuit later affirmed the federal judgment. *Sabeerin v. Albuquerque Police Department*, No. 21-2046, 2022 WL 1013809 (10th Cir. Apr. 5, 2022). That

ruling distinguished the probable-cause determination in the criminal case from the 'arguable probable cause' inquiry governing qualified immunity.

C. The New Mexico Court of Appeals affirmed. It accepted November 17, 2015 as the latest accrual date and acknowledged Petitioner's argument that the present action should be treated as a continuation of his timely 2016 federal action under the savings statute. Pet. App. 3a-5a. But the court refused to decide that issue because Petitioner had not expressly cited the savings statute in his written response or at the hearing. Id. at 6a-8a. The court recognized that Respondents had mentioned the statute in their motion, but held that an appellant could not rely on the opposing party's argument to establish preservation. Id. at 7a.

The court further stated that the record did not include documents needed to evaluate the 'complex procedural history of the three complaints.' Id. at 8a. It did not analyze the mandatory federal tolling rule in § 1367(d), Artis, or Jinks. The Supreme Court of New Mexico denied review and rehearing.

REASONS FOR GRANTING THE PETITION

This case warrants review because the judgment below foreclosed a congressionally protected tolling claim through a rigid preservation ruling without considering whether that state ground was adequate under this Court's precedents. It also left unaddressed § 1367(d), which this Court has held stops the state limitations clock and must be applied by state courts.

I. The adequacy of the state procedural ground presents a federal question under this Court's settled precedents.

This Court ordinarily does not review a federal question when the judgment rests on an independent and adequate state-law ground. *Michigan v. Long*, 463 U.S. 1032, 1041 (1983). Adequacy, however, is itself a federal question. A procedural rule generally must be firmly established and regularly followed, and even a sound rule may be inadequate when its application in the particular case is exorbitant. *Lee v. Kemna*, 534 U.S. 362, 375-376 (2002); *James v. Kentucky*, 466 U.S. 341, 348-351 (1984).

The Court recently reaffirmed in *Cruz v. Arizona*, 598 U.S. 17 (2023), that a state procedural ruling cannot bar federal review merely because the state labels it procedural. The Court examines whether the asserted ground is adequate to support the judgment in the circumstances presented.

The application here is exceptional. First, limitations and statutory tolling were inherent in Respondents' dismissal motion. Respondents themselves mentioned the savings statute. Second, Petitioner argued the facts and equitable premise of tolling: he timely commenced the federal action, refiled promptly after federal dismissal, litigated removal and remand, and filed in the proper county promptly after the venue appeal ended. Third, those undisputed dates appear in judicial records and in the opinion below. Fourth, the intermediate court's refusal to consider tolling transformed a dismissal without prejudice for venue into a permanent merits-ending bar.

Those circumstances substantially served the purposes that the court below identified for preservation: alerting the trial court, allowing a response, and developing a record. Respondents were alerted because they addressed the statute in their own motion. They could respond and did so. The relevant chronology came from the courts' own cases. Under *Lee*, an objection that timely brings the issue to the court and permits corrective action satisfies the legitimate state interest; technical noncompliance does not invariably create an adequate bar. 534 U.S. at 378-385.

The state court nevertheless demanded that this pro se litigant repeat the statutory label already placed before the court by Respondents, while declining to address the federal tolling rule that governs state courts. That is the kind of 'pointless severity' and case-specific exorbitance this Court has held inadequate. See *Ford v. Georgia*, 498 U.S. 411, 423-425 (1991); *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 454-458 (1958).

II. Federal district courts have authority over § 1983 claims, but qualified immunity does not authorize judgment without resolving genuinely disputed material facts.

The first Question Presented requires an important clarification. A United States district court plainly has original jurisdiction over claims arising under 42 U.S.C. § 1983. 28 U.S.C. §§ 1331, 1343(a)(3). It may enter final judgment, including summary judgment, and may dismiss claims with prejudice when the governing merits or

preclusion rules permit. The jurisdictional proposition alone therefore does not support certiorari.

The substantial federal issue is narrower: whether summary judgment was proper when the record, viewed favorably to Petitioner, allegedly showed a pre-warrant entry and search and knowing or reckless material falsehoods. Qualified immunity protects reasonable mistakes, but it does not protect officers who knowingly violate the law. *Anderson v. Creighton*, 483 U.S. 635, 638-641 (1987); *Malley v. Briggs*, 475 U.S. 335, 341, 344-345 (1986).

III. The judgment cannot be reconciled with the mandatory operation of § 1367(d).

Congress enacted § 1367(d) to prevent supplemental state claims from expiring while a plaintiff pursues them in federal court. *Jinks* held that the provision supplies 'a tolling rule that must be applied by state courts.' 538 U.S. at 459. *Artis* then held that 'toll' means to hold the state limitations period in abeyance - to stop the clock - while the claim is pending in federal court and for thirty days after dismissal. 583 U.S. at 75, 92.

The state courts measured elapsed calendar time from Petitioner's release in November 2015 to his Bernalillo County filing in August 2023. But that calculation omitted the years during which his state claims were pending as supplemental claims in federal court. The omission is material. Petitioner filed the federal action on May

27, 2016, roughly six months after release. Under Artis, the limitations clock did not continue running during the federal action. When the district court dismissed the state claims on April 1, 2021, the unexpired portion of the applicable state period remained, followed by the statutory thirty-day protection.

Petitioner filed in state court on May 5, 2021. Whether that filing was four days outside the federal thirty-day floor is not the end of the calculation because Artis preserves the unexpired balance of the original state limitation period in addition to thirty days. 583 U.S. at 75-76. On the chronology accepted below, substantial time remained under a two- or three-year limitations period when the federal action commenced. The court below did not perform that calculation.

The first state refiling was later dismissed without prejudice for improper venue. New Mexico law states that § 37-1-14 applies to a venue dismissal. *AMICA Mutual Insurance Co. v. McRostie*, 2006-NMCA-046, ¶¶ 7-12, 139 N.M. 486, 134 P.3d 734. The present complaint was filed within weeks after the appellate decision affirming that dismissal. New Mexico also recognizes statutory and equitable protections for timely claims that fail for nonmerits reasons. See *Gathman-Matotan Architects & Planners, Inc. v. State Department of Finance & Administration*, 1990-NMSC-013, 109 N.M. 492, 787 P.2d 411; *Zangara v. LSF9 Master Participation Trust*, 2024-NMSC-021.

The Court need not decide every state-law consequence of the venue dismissal. It should grant review to decide whether the state court could refuse to undertake the antecedent federal calculation by imposing the preservation bar in these

circumstances. At minimum, the judgment should be vacated and remanded for consideration of § 1367(d), the remaining limitations period under Artis, and any additional protection afforded by state law.

IV. The treatment of the warrant evidence warrants review under Franks, Malley, Groh, and Leon.

Franks holds that a warrant cannot rest on a knowingly or recklessly false material statement. 438 U.S. at 155-156, 171-172. Malley holds that obtaining a warrant from a magistrate does not make an officer's conduct per se reasonable; an officer may be liable where no reasonably competent officer would have concluded the warrant should issue. 475 U.S. at 345-346. Leon likewise withholds good-faith protection where the magistrate was misled by information the affiant knew was false or would have known was false but for reckless disregard. 468 U.S. at 923. Groh denied qualified immunity for an obviously deficient warrant. 540 U.S. at 564-565.

Petitioner's evidence, if credited, was not merely that the affidavit lacked actual probable cause. He alleged that officers entered and searched hours before issuance; that Fassler's affidavit transplanted facts from Rhode Island; that the affidavit inaccurately placed Tahir at General Arnold; and that later testimony and interview statements showed no evidentiary link between Petitioner and specified vehicles. The New Mexico Court of Appeals had already held that the affidavit lacked a reliable source, a nexus, and particularity. Those allegations required a focused materiality

and state-of-mind analysis rather than reliance on the number of judges who had disagreed about actual probable cause.

The courts below reasoned that the dissent in the criminal appeal supported objective reasonableness. Judicial disagreement may be relevant under *Messerschmidt*, 565 U.S. at 553-554, but it does not resolve a *Franks* claim based on facts allegedly withheld from or misstated to the issuing judge. Nor does it answer whether an evidentiary search occurred before issuance. A pre-warrant search cannot be justified retroactively by evidence later obtained or a warrant later issued. See *Murray v. United States*, 487 U.S. 533, 540-542 (1988); *Segura v. United States*, 468 U.S. 796, 813-816 (1984).

This case also raises a vehicle problem the Court should note: the Tenth Circuit judgment became final in 2022 and is not itself timely for direct review now. Review is available only to the extent the 2026 state judgment independently presents and decided these federal questions. The Court may therefore conclude that the qualified-immunity question is not properly presented by this state-court petition.

V. Section 1447(c) allowed the Valencia County court to proceed after remand, and removal alone ordinarily did not waive venue.

Section 1447(c) expressly provides that after the federal clerk mails a certified remand order, '[t]he State court may thereupon proceed with such case.' Remand

returns the case to the state court from which it was removed. Thus, the Valencia County court regained authority to address state-law matters, including venue.

Removal also does not ordinarily waive Rule 12 defenses. See *Danziger & De Llano, LLP v. Morgan Verkamp LLC*, 948 F.3d 124, 132-133 (3d Cir. 2020). The question whether Respondents waived a New Mexico venue objection by litigation conduct is primarily a state-law question. The supplied record does not establish a square conflict among federal courts or state courts of last resort on that issue. These features make the venue issue a weak basis for certiorari even though it forms part of the procedural history.

VI. THE STATE PRESERVATION RULING PRESENTS A FEDERAL ADEQUACY QUESTION.

Supreme Court Rule 10(c) recognizes that review may be warranted when a state court decides an important federal question in a way that conflicts with relevant decisions of this Court. Although a state procedural rule ordinarily may constitute an adequate and independent ground, the adequacy of that ground is itself a question of federal law when the state rule prevents adjudication of a federal claim.

Lee v. Kemna, 534 U.S. 362 (2002), recognizes that even a generally valid procedural rule may be inadequate when applied in an exceptional or exorbitant manner. *Cruz v. Arizona*, 598 U.S. 17 (2023), likewise confirms that an unforeseeable or unsupported application of state procedure cannot automatically insulate a federal question from review. *James v. Kentucky*, 466 U.S. 341 (1984), *Ford v. Georgia*, 498 U.S. 411 (1991), *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958), and *Staub*

v. City of Baxley, 355 U.S. 313 (1958), reflect the same core principle: a state procedural ground must be sufficiently established, regular, and fairly applied before it can foreclose federal review.

Petitioner's argument is narrow. He does not ask this Court to excuse every preservation defect by a self-represented litigant. He contends that the purposes of preservation should be evaluated against the actual procedural history. The parties and courts had repeatedly addressed timeliness, venue, removal, remand, dismissal without prejudice, and refile. Petitioner's position is that strict insistence on a particular statutory citation, after years of litigation over the same claims and procedural sequence, operated as a trap that converted prior non-merits dismissals into a final merits-preclusive limitations judgment.

Due process requires notice and a meaningful opportunity to be heard, but a hearing may often be provided through written submissions when the dispute concerns legal questions and no material evidentiary facts require resolution. The record states that the Valencia court decided on the briefs; it does not show that Petitioner lacked notice or an opportunity to submit argument. Accordingly, the no-oral-hearing issue is unlikely to satisfy Rule 10 absent a state rule requiring a hearing or a specific factual dispute that could not fairly be decided on the papers.

VII. THE REMOVAL-REMAND-VENUE-REFILING SEQUENCE MAKES THIS CASE EXCEPTIONAL.

The record does not present a simple late-filed complaint. Petitioner first filed in federal court after the criminal case ended. The federal court adjudicated the federal

claims but expressly declined supplemental jurisdiction over the state claims and dismissed those claims without prejudice. Petitioner promptly pursued the state claims. Respondents removed that action to federal court. The federal court then remanded the state claims. After remand, Respondents obtained dismissal for improper venue, again without prejudice. Petitioner then refiled in Bernalillo County, the venue Respondents maintained was proper, only to face a statute-of-limitations dismissal with prejudice.

The August 17, 2021 federal recommended disposition is significant to this sequence because it distinguished the preclusive effect of the federal judgment on federal claims from the absence of a merits adjudication of the state claims. It recommended remand of the state claims so that a state court could address them. The later state venue dismissal likewise was without prejudice. Petitioner therefore contends that the eventual with-prejudice limitations dismissal should not have been insulated from review by a preservation ruling applied without accounting for the litigation path that preceded it.

The February 23, 2026 Court of Appeals opinion stated that the district court was not plainly alerted to the savings-statute issue and that the appellate record concerning the three complaints was underdeveloped. That reasoning identifies the precise federal adequacy issue Petitioner asks this Court to review: whether, in these exceptional circumstances, the preservation rule served its legitimate function or instead became an excessive formal barrier to consideration of the continuation and timeliness issue.

VIII. The petition presents serious vehicle and finality obstacles.

Certiorari is not a mechanism for correcting every alleged error. The Court ordinarily grants review to resolve conflicts among courts of last resort or important unsettled federal questions. The federal qualified-immunity judgment became final in 2022. The 2026 state judgment focused on limitations and preservation. The venue ruling rests on state procedure and § 1447(c)'s straightforward text. These obstacles should be addressed candidly because Rule 14 requires a direct and concise argument and Rule 10 disfavors fact-bound error correction.

IX. The issue is important and this case is an appropriate vehicle.

Supplemental jurisdiction routinely places state claims in federal court. Section 1367(d) protects litigants and state courts by allowing related federal and state claims to be litigated together without forfeiting state claims if federal jurisdiction later ends. A state court's ability to avoid the federal rule through an unusually rigid preservation ruling would undermine the uniform protection Congress created.

This case squarely presents the interaction between the adequacy doctrine and mandatory federal tolling. The opinion expressly rests on nonpreservation. The material dates are identified. The action was dismissed with prejudice, so the question is outcome-determinative. And the State's highest court denied review and rehearing, leaving no further state remedy.

The record also identifies a potential obstacle: the opinion says some relevant documents from the prior proceedings were absent. That concern supports a remand rather than denial of review. The courts can take notice of their own judgments and determine the federal tolling period from verified filing and dismissal dates. The absence of a developed merits ruling is a consequence of the procedural bar challenged here, not a reason to insulate it.

**X. THE CASE PRESENTS AN IMPORTANT FEDERAL QUESTION
CONCERNING ACCESS TO ADJUDICATION OF CONSTITUTIONAL
CLAIMS.**

The interaction between ordinary preservation rules and federal constitutional rights matters beyond the particular facts of this case. State courts have legitimate interests in requiring parties to alert trial judges to alleged error. At the same time, this Court's adequacy precedents protect federal rights from being defeated by state procedural applications that are unforeseeable, inconsistently applied, or disproportionate to the purpose of the rule.

Here, the consequences were dispositive. The Court of Appeals did not reject the savings-statute theory on its merits; it refused to consider it. The resulting judgment left the Bernalillo County dismissal with prejudice in place. Review would allow this Court to clarify how Lee and Cruz apply when a litigant's claims move between federal and state court through removal, remand, non-merits dismissal, and refiling before a state preservation rule is used to bar the principal response to a limitations defense.

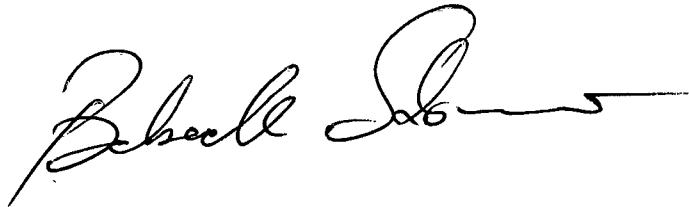
The petition also presents a due-process concern. Petitioner alleges that the original search violated the Fourth Amendment and that the ensuing litigation never produced a merits adjudication of the state claims before they were extinguished by limitations. The federal courts' qualified-immunity analysis does not itself resolve the separate state-law claims, and the 2021 federal disposition expressly recognized that the state claims had been dismissed without prejudice. Petitioner asks for review of the procedural mechanism that ultimately prevented consideration of whether those claims remained timely as a continuation of the earlier action.

CONCLUSION

The petition for a writ of certiorari should be granted. Alternatively, if the Court concludes that the federal warrant questions are not properly presented through the 2026 state judgment, it should grant, vacate, and remand only if an intervening federal authority bears directly on the state judgment's treatment of Petitioner's federal rights.

Respectfully submitted,

Boback Sabeerin

A handwritten signature in black ink, appearing to read 'Boback Sabeerin', with a long horizontal flourish extending to the right.

Petitioner Pro Se

21 Blue Bonnet Road

Los Lunas, NM 87031

(407)7858870

bobacksabeerin@yahoo.com

CERTIFICATE OF COMPLIANCE

Pursuant to Supreme Court Rule 33.2(b), I certify that the Petition for a Writ of Certiorari is prepared on 8 1/2-by-11-inch paper and contains no more than 24 pages, excluding the portions that precede page 1 of the petition and the appendix. This filing is prepared for submission with a motion for leave to proceed in forma pauperis under Supreme Court Rule 39.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 14, 2026.

A handwritten signature in black ink, appearing to read "Boback Sabeerin", written over a horizontal line.

Boback Sabeerin