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**In the Supreme Court
of the United States**

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SUPREME COURT, U.S.

JENNIFER L. DEES
ETHAN D. SMITH

Petitioners,

v.

ZURLO et al.,

Respondents.

**ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

PETITION FOR WRIT OF CERTIORARI

Dated: June 20, 2025

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QUESTIONS PRESENTED

1. Whether the Fifth Amendment's due process guarantee and congressional intent behind 28 U.S.C. § 1915 prohibit federal courts from dismissing pro se, IFP civil rights and RICO complaints with prejudice at the pre-service stage under § 1915(e)(2)(B)—without notice, opportunity to amend, or adversarial process—when the complaint alleges ongoing constitutional violations, judicial retaliation, and fraud on federal programs; and whether such dismissals, which disproportionately harm indigent litigants, violate equal protection, undermine Congress's authority to ensure court access, and deepen a circuit split with the Ninth, Third, Fifth, Sixth, and Seventh Circuits, which require opportunity to amend absent clear futility.
2. Whether a federal judge with undisclosed academic, professional, and familial ties to named state defendants may sua sponte invoke judicial, quasi-judicial, sovereign, and prosecutorial immunity—before service, without jurisdictional findings, and without recusal—to dismiss a pro se civil rights and RICO action alleging conduct outside lawful authority, thereby violating due process, congressional intent behind 42 U.S.C. §§ 1983, 1985, and the separation of powers by preempting Congress's authority to provide federal remedies for state misconduct; and whether such actions contravene this Court's precedents in *Caperton v. A.T. Massey Coal Co.*, *Liljeberg v. Health Services Acquisition Corp.*, and *Rippo v. Baker*, which mandate recusal for bias and prohibit judicial preemption of individualized defenses.
3. Whether state judges and court-appointed attorneys, acting under color of law but without jurisdiction for over five years, may be held liable under 42 U.S.C. §§ 1983, 1985(3), and 18 U.S.C. § 1962 for operating a racketeering enterprise that defrauds Title IV-D and IV-E programs, retaliates against whistleblowers, and exploits private matrimonial disputes for financial gain, in violation of congressional intent and the separation of powers; and whether lower courts may foreclose such claims based on intra-circuit precedent like *Kim v. Kim*, 884 F.3d 98 (2d Cir. 2018), despite conflicting rulings from the Third, Fifth, Sixth, Seventh, and Ninth Circuits, which permit liability for extrajudicial and racketeering conduct, thus undermining uniform enforcement of federal civil rights and anti-racketeering laws.

JURISDICTION

Petitioners invoke the jurisdiction of this Court under 28 U.S.C. § 1254(1). The final judgment of the U.S. Court of Appeals for the Second Circuit was entered on February 13, 2025, and a timely petition for rehearing and rehearing en banc was denied on March 28, 2025. This petition is filed within 90 days of the denial of rehearing, in accordance with Rule 13.1 of the Rules of this Court. This case arises under the Constitution and laws of the United States, including the First, Fifth, and Fourteenth Amendments; 42 U.S.C. §§ 1983 and 1985(3); and 18 U.S.C. § 1962.

LIST OF PARTIES

Petitioners are Jennifer L. Dees and Ethan D. Smith. Respondents are the 53 individuals and entities listed in the caption, comprising 17 defendant-appellees and 36 additional defendants, as designated by the Second Circuit. None of the respondents were served with process in the U.S. District Court for the Northern District of New York prior to the sua sponte dismissal of the complaint. A complete list of respondents is provided in Appendix A.

RELATED PROCEEDINGS

The following proceedings are directly related to this petition:

- **Dees & Smith v. Zurlo et al., No. 1:24-cv-00001 (N.D.N.Y.)** A subsequent appeal is now pending (2nd Cir. 25-1270) following further retaliation and a new final judgment entered by Judge D'Agostino in the same district court docket, reflecting continued misconduct while this petition was pending.
- **Smith & Dees v. Fisher et al., No. 1:25-cv-00199 (N.D.N.Y.)** Filed February 11, 2025. This is a related civil rights and RICO action naming state judicial officers, arising from the same retaliatory enterprise detailed in this petition. On February 13, 2025, the case was formally designated as related to Dees v. Zurlo by Judge D'Agostino after she assumed control.
- **Smith & Dees v. Fisher, No. 25-692 (2d Cir.)** Filed February 11, 2025. This appeal challenges District Judge D'Agostino's refusal to recuse from related proceedings in Fisher, despite demonstrated conflicts of interest, professional entanglements with defendants, and participation in events alongside parties and counsel during active litigation. The appeal remains pending.

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Petitioners Jennifer L. Dees and Ethan D. Smith respectfully ask this Honorable Court to issue a written opinion granting the writ of certiorari to review the decision of the United States Court of Appeals for the Second Circuit. This case presents urgent and unsettled questions of constitutional law, judicial accountability, and procedural due process that warrant this Court's intervention.

OPINIONS BELOW

1. The opinion of the U.S. Court of Appeals for the Second Circuit, issued on February 13, 2025, is unreported but available at Docket No. 24-1574 (ECF No. 59) and is reproduced in Appendix I, at App. 389–394.
2. The decision of the U.S. District Court for the Northern District of New York, entered by Judge Mae A. D'Agostino on May 21, 2024, is reported at 2024 WL 2291701 and is reproduced in Appendix E, at App. 263–300.
3. The Report and Recommendation of NDNY Magistrate Judge Stewart, dated March 11, 2024, is reported at 2024 WL 1053237 and is reproduced in Appendix D, at App. 226–262.
4. The Second Circuit's Order denying the Petition for Rehearing and Rehearing En Banc, dated March 28, 2025, is reproduced in Appendix L, at App. 422–424.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- U.S. Const. amend. I: "Congress shall make no law ... abridging the freedom of speech ... or the right of the people ... to petition the Government for a redress of grievances."
- U.S. Const. amend. V: "No person shall ... be deprived of life, liberty, or property, without due process of law..."

- U.S. Const. amend. XIV, § 1: “No State shall ... deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”
- 28 U.S.C. § 144: “Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein...”
- 28 U.S.C. § 455(a): “Any ... judge ... shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.”
- 28 U.S.C. § 455(b): “A judge shall also disqualify himself ... [where] he ... has a personal bias or prejudice concerning a party ... or has served as lawyer in the matter in controversy”
- 28 U.S.C. § 1651(a): “The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.”
- 28 U.S.C. § 1915(e)(2)(B): “The court shall dismiss the case at any time if the court determines that ... the action or appeal—(i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted...”
- 28 U.S.C. § 2201: “In a case of actual controversy within its jurisdiction ... any court of the United States ... may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.”
- 42 U.S.C. § 1983: “Every person who, under color of any statute ... subjects ... any citizen of the United States ... to the deprivation of any rights ... shall be liable to the party injured ...”
- 42 U.S.C. § 1985(3): “If two or more persons ... conspire ... for the purpose of depriving ... any person or class of persons of the equal protection of the laws ... they shall be liable ...”
- 18 U.S.C. § 1962(c), (d): “It shall be unlawful for any person employed by or associated with any enterprise ... to conduct or participate ... through a pattern of racketeering activity ...” and “It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.”

- 18 U.S.C. § 1513(e): “Whoever knowingly, with the intent to retaliate, takes any action harmful to any person ... for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offense, shall be fined ... or imprisoned ... or both.”
- 1341 (Mail Fraud): “Whoever, having devised ... any scheme or artifice to defraud ... places in any post office ... any matter or thing to be sent or delivered by the Postal Service ... for the purpose of executing such scheme ... shall be fined or imprisoned ... or both.”
- 1343 (Wire Fraud): “Whoever, having devised ... any scheme or artifice to defraud ... transmits or causes to be transmitted by means of wire, radio, or television communication ... shall be fined or imprisoned ... or both.”
- 18 U.S.C. § 1503: “Whoever corruptly ... influences, obstructs, or impedes ... the due administration of justice, shall be punished ...”
- 18 U.S.C. § 1951: “Whoever ... affects commerce ... by robbery or extortion ... commits an offense ... if such conduct includes extortion under color of official right ...”
- Fed. R. Civ. P. 15(a): “A party may amend its pleading once as a matter of course ... and in all other cases, a party may amend its pleading only with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.”
- Fed. R. Civ. P. 65(d)(1): “Every order granting an injunction and every restraining order must: (A) state the reasons why it issued; (B) state its terms specifically; and (C) describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required.”

STATEMENT OF THE CASE

This case presents an active constitutional emergency: a verified civil rights and RICO complaint—filed in forma pauperis and substantiated by hundreds of pages of judicial records, affidavits, transcripts, and statutory evidence—was sua sponte dismissed with prejudice, before service, by a federal judge with undisclosed ties to the named defendants, without jurisdictional findings, recusal, notice, or opportunity to amend. The Second Circuit affirmed in a two-page summary order,

entrenching a pattern of structural bias, retaliatory obstruction, and judicial self-protection that now demands this Court's intervention.

On January 2, 2024, Petitioners Dees and Smith, residents of Clifton Park, New York, filed a 170-page verified complaint in the U.S. District Court for the Northern District of New York (Case No. 1:24-cv-00001), under 42 U.S.C. §§ 1983, 1985(3), and 18 U.S.C. § 1962. The complaint named 53 defendants, including judges, prosecutors, law enforcement, and publicly funded attorneys (App. A–C), and alleged an ongoing racketeering enterprise operating under color of law to deprive Petitioners of constitutional rights, retaliate for protected activity, and fraudulently exploit federal Title IV funds through void judicial orders.

The proceeding styled Smith v. Smith, Saratoga County Supreme Court Index No. 2020-1227, remains ongoing as of June 2025. Contrary to the mischaracterizations adopted by the federal courts, Petitioners did not bring their federal complaint to relitigate domestic issues; they brought it to challenge a multi-year pattern of constitutional violations, federal fraud, and retaliatory misconduct rooted in a state proceeding that was void from inception.

Beginning August 3, 2020, sealed custody and support orders were entered without jurisdiction, based on the fraudulent assignment of indigent counsel—without any motion, court order, or determination of indigency—in direct violation of New York Judiciary Law § 35, Family Court Act §§ 249 and 262, 22 NYCRR § 7.2, and County Law § 722. Petitioners alleged that these void acts formed part of a coordinated RICO enterprise designed to suppress dissent, obstruct federal

inquiries, and divert millions in federal matching funds through unauthorized “representation” schemes and falsified financial filings (App. C).

Petitioner Dees was never a party to *Smith v. Smith*, the complaint alleges that she became a primary target of retaliation for her role as a witness and whistleblower. She endured multiple acts of violence, stalking, and uninvited intrusions at her home by individuals known to pose a threat—each time met with deliberate indifference by law enforcement and state courts. This was not mere negligence; it was retaliatory inaction, rooted in institutional hostility toward Dees for speaking out against judicial misconduct and exposing systemic fraud.

State actors did not merely ignore repeated pleas for protection by petitioners—they actively obstructed criminal accountability in order to preserve the unlawful judicial orders at the heart of this case. Despite an active court-issued order of protection, authorities failed to intervene when Dees suffered the miscarriage of her child on June 19, 2022, following a confrontation that was both foreseeable and preventable. That loss was compounded by a physical assault at Petitioners’ residence on November 8, 2023, which again went unprosecuted.

Law enforcement officials and prosecutors deliberately impeded the filing and advancement of criminal charges against Defendant Veronica Smith and blocked presentation of the matter to a grand jury—actions taken to shield state judges and preserve the illusion of legitimacy surrounding void custody and support orders entered without jurisdiction.

These acts of obstruction were not isolated, but part of the coordinated enterprise detailed in the federal complaint. Although Veronica Smith was initially arrested following a documented assault while under an active order of protection, the Saratoga Sheriff's Office and DA Heggen intervened to ensure the charges were dismissed. They refused to place or extend a protection order for the child, despite overwhelming evidence of risk and statutory mandates requiring such safeguards.

Notably, Rensselaer CPS conducted a full investigation, reviewed three videos confirming the assault, and issued a formal founded report for child endangerment. That finding—barring Smith from employment with children, the elderly, or disabled individuals—has withstood every level of appeal. Yet state actors, acting in concert, shielded her from all consequences, refused to protect the child, and enabled ongoing violations. As of June 19, 2025, these constitutional injuries remain unremedied—solidifying a pattern of state-sponsored retaliation, obstruction of justice, and deprivation of federal rights that compels this Court's intervention.

Despite the plainly federal character of these claims, the district court and Second Circuit erroneously invoked the existence of the ongoing Smith v. Smith action—along with sweeping judicial immunity—to dismiss the federal case at the threshold, without addressing jurisdiction, service, or the nature of the constitutional violations pled.

On March 11, 2024, Magistrate Judge Stewart granted Petitioners' IFP applications (App. M), but simultaneously issued a sua sponte Report and Recommendation (App. D) under 28 U.S.C. § 1915(e)(2)(B), recommending that the

complaint be dismissed with prejudice for most defendants based on presumed immunity and “failure to state a claim”—despite the absence of any responsive pleading, jurisdictional ruling, or motion to dismiss.

Notably, this ruling was issued 69 days after the initial complaint and 40 days after Petitioners filed a 48-page RICO Statement (App. C), identifying enterprise participants, predicate acts, statutory violations, and ongoing harm, in accordance with *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479 (1985), and *H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229 (1989).

On May 21, 2024, District Judge D’Agostino adopted the Report in full (App. E), dismissing the action with prejudice as to most defendants—again before service, without leave to amend, without jurisdictional analysis, and without addressing the numerous allegations of extrajudicial conduct, sealed fraud, or judicial conflicts. D’Agostino did so despite her documented history of public professional associations with several state defendants, including former clerks now employed by opposing parties, public mentorships of defendants and NDNY colleagues related to named state actors.

Petitioners appealed to the Second Circuit (Case No. 24-1574) on June 20, 2024. Their opening brief and appendix (App. F–G) detailed an ongoing campaign of retaliation and raised structural challenges to the use of § 1915 as a pretext for dismissing verified civil rights claims brought by indigent whistleblowers. They argued that the district court had acted *ultra vires* by invoking immunity sua

sponte, without permitting adversarial process or establishing jurisdiction—
foreclosing claims that no defendant had even attempted to defend.

Oral argument was held February 7, 2025, before Judges Parker, Nardini, and Bianco. Petitioners emphasized that the state orders at issue were void ab initio and that the enterprise targeted them for exposing fraud. “We’re not trying to relitigate family court,” they stated. “We’re alleging criminal acts carried out under the guise of court authority, where no such authority existed.” (App. H at 381–386.)

“We are not seeking to relitigate domestic issues; we are alleging that the state court acted wholly outside its jurisdiction, including issuing custody orders without any legal authority or evidentiary basis.” (App. H at 381)

“We are not asking this Court to review a state decision; we are asking it to recognize that no valid state decision exists in the first place because the orders were issued under color of law but without jurisdiction.” (App. H at 384)

“This has not stopped. We are still being retaliated against. We are still being forced into jurisdictionless proceedings, deprived of due process, and denied access to any impartial forum—state or federal.” (App. H at 386)

Six days later, on February 13, 2025, the panel issued a two-page summary affirmance (App. I), without analysis, citation, or acknowledgment of the jurisdictional and constitutional defects raised on appeal. That same day, Judge D’Agostino unilaterally assumed control over Petitioners’ newly filed action, *Smith v. Fisher*, No. 1:25-cv-199 (filed Feb. 12.), which sought injunctive relief against ongoing retaliation by state actors, including defendant Judge Versaci. Despite clear conflicts and new factual allegations of continuing harm, D’Agostino declined to recuse and began issuing text-only denials of motions for injunctive relief, stays, and hearings—without briefing, notice, or written rationale—contravening FRCP 7(b), 65(d), and basic due process protections.

On February 27, 2025, Petitioners filed a petition for panel rehearing and rehearing en banc (App. K), urging reconsideration of the structural due process violations, conflicts of interest, and the widening circuit split over the interpretation of § 1915(e)(2)(B). The Second Circuit summarily denied rehearing on March 28, 2025 (App. L). The constitutional crisis persists. As of June 19, 2025, Judge D'Agostino continues to preside over *Smith v. Fisher*, having issued multiple text-only denials of Petitioners' TRO and discovery motions while the Second Circuit adjudicates their appeal over an injunction she denied and her recusal (No. 25-692).

Meanwhile, in the underlying state proceeding, Versaci has unlawfully resumed authority over a matter in which he is both a material fact witness and an active defendant in parallel federal litigation. Despite holding no lawful jurisdiction—having never entered a valid order of appointment, indigency determination, or jurisdictional finding—Versaci continues to assert authority over the case, escalating his retaliatory conduct.

He has actively aided and abetted ongoing misconduct by blocking all attempts to subpoena material witnesses, facilitating backdoor filings to retroactively legitimize void custody and support orders, and willfully enabling fraudulent IRS tax submissions. On the record, he falsely claimed that “no fraud is going on,” despite possessing firsthand knowledge of the fabricated legal and financial instruments underpinning the orders in question.

After being personally served with the federal lawsuit naming him as a defendant, Versaci refused to conduct any jurisdictional inquiry, declined to stay the

proceedings, and has continued to suppress Petitioner Smith's filings—denying all meaningful access to the state court. His unlawful conduct directly emboldened state actors to take further retaliatory steps: within days, the opposing party used his void orders to submit another set of fraudulent IRS filings for the 2024 tax year. Versaci's role is not passive; it is that of an active co-conspirator cloaked in judicial robes, using the authority of the bench to obstruct justice, facilitate fraud, and retaliate against whistleblowers.

In *Smith v. Fisher*, Defendants' motions to dismiss confirm that no lawful jurisdiction ever existed in the underlying state proceedings. Not one defendant cited a single statute or case law demonstrating lawful jurisdiction, a valid indigency determination, or proper appointment of counsel under Judiciary Law § 35 or Family Court Act §§ 249 and 262. Instead, each defendant merely asserted blanket immunity—despite being sued in their professional capacities solely for prospective injunctive and declaratory relief.

The filings laid bare the absence of jurisdictional authority and the unconstitutional reliance on sealed dockets, ghost appointments, and fabricated indigency findings to launder federal funds. Versaci's continued interference, despite active federal oversight and a conflict of interest that cuts to the heart of the litigation, exemplifies the systemic impunity this Petition seeks to confront. This is not conjecture—it is an ongoing constitutional injury, enabled by collusive coordination between state and federal actors, in direct defiance of Congress's intent and this Court's precedents.

What began as a civil rights complaint has become a referendum on whether indigent pro se litigants may ever sue public officials engaged in enterprise-level misconduct. Petitioners do not merely ask this Court to review a flawed order—they ask this Court to restore the rule of law, affirm Congress’s authority under Article I, and uphold the structural protections of the Fifth and Fourteenth Amendments, now at risk of permanent erosion in the Second Circuit.

REASONS FOR GRANTING CERTIFICATION

This case presents three urgent constitutional questions that strike at the core of judicial accountability, access to justice, and structural due process. First, the sua sponte, pre-service dismissal of Petitioners verified civil rights and RICO complaint under 28 U.S.C. § 1915(e)(2)(B)—without notice, hearing, opportunity to amend, or jurisdictional findings—violated the Fifth Amendment and entrenched a deepening circuit split over procedural protections for indigent litigants.

Second, the district judge’s refusal to recuse, despite undisclosed personal and institutional ties to named defendants, and her unilateral invocation of immunity doctrines on their behalf, contravenes this Court’s precedents in *Caperton*, *Liljeberg*, and *Rippo*, and amounts to a structural due process failure that demands correction.

Third, Petitioners plausibly alleged that state officials—acting entirely outside jurisdiction—conspired to defraud federal programs, retaliate against whistleblowers, falsify court records, and obstruct federal oversight, yet their claims under §§ 1983, 1985(3), and 1962 were dismissed solely because the perpetrators

were state actors. That ruling conflicts with decisions from the Third, Fifth, Sixth, Seventh, Eighth, Ninth, and Eleventh Circuits, which permit civil RICO and civil rights liability for public-sector racketeering and conspiracies to violate constitutional rights.

Only this Court can resolve these doctrinal conflicts, restore uniformity, and confirm that due process, judicial disqualification, and federal civil rights remedies apply with equal force to state-sponsored corruption.

I. The Constitution and § 1915 Forbid Pre-Service Dismissals with Prejudice in IFP Civil Rights and RICO Cases Alleging Ongoing Retaliation and Federal Program Fraud

The first question presented asks whether the Fifth Amendment's Due Process Clause and congressional intent behind 28 U.S.C. § 1915 prohibit federal courts from dismissing pro se, IFP civil rights and RICO complaints with prejudice at the pre-service stage—without notice, opportunity to amend, or adversarial process—under § 1915(e)(2)(B), where the complaint alleges ongoing constitutional violations, judicial retaliation, and fraud on federal programs. It further asks whether such dismissals violate equal protection, undermine Congress's authority to ensure access to court, and deepen a growing circuit split. The answer is yes.

This case exemplifies the very abuse that § 1915 was never intended to permit: Petitioners, both indigent federal whistleblowers, filed a verified civil rights and RICO complaint on January 2, 2024, alleging ongoing violations of their constitutional rights. The complaint included documentary evidence of jurisdictional fraud, falsified indigency findings, fraudulent court appointments, retaliatory

prosecutions, obstruction of justice, and a scheme to misappropriate federal Title IV-D and IV-E funds under color of law.

Sixty-nine days after the complaint was filed, the assigned magistrate judge issued a sua sponte R & R (App. D) advising dismissal with prejudice under 28 U.S.C. § 1915(e)(2)(B)—before any defendant had been served, before any motion to dismiss had been filed, and before any jurisdictional analysis or Rule 12 review had occurred. On May 21, 2024, the district court adopted the recommendation in full (App. E), dismissing nearly all claims with prejudice and foreclosing any opportunity to amend.

If Petitioners' claims had truly been "frivolous" or facially deficient, such a finding would not have taken ten weeks to develop—especially not after Petitioners filed a detailed and compliant RICO statement. The delayed nature of the court's Report reflects the opposite: that the claims were serious, credible, and time-consuming to review. Yet no opportunity was granted to cure, clarify, or amend. By preemptively extinguishing congressionally authorized claims without service, jurisdictional findings, or procedural fairness, the courts below usurped Congress's exclusive Article I authority to create federal remedies and conditions of access."

The constitutional harm here is acute. Petitioners' claims were foreclosed without service, without briefing, and without a hearing—based solely on their economic status and the unilateral authority of a district judge with undisclosed conflicts. These rulings reflect not neutral adjudication, but a structural breakdown of judicial accountability. They are precisely what the Due Process Clause forbids,

and Congress sought to prevent by enacting § 1915: the exclusion of the poor from federal court based on poverty, political inconvenience, or judicial predisposition.

A. Pre-Service Dismissals with Prejudice Violate the Fifth Amendment, Equal Protection, and Congress’s Authority Under § 1915

The Due Process Clause prohibits the deprivation of protected legal interests without notice and an opportunity to be heard. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 168 (1951). The Equal Protection component of the Fifth Amendment forbids discriminatory treatment based on economic status in access-to-court cases. See *M.L.B. v. S.L.J.*, 519 U.S. 102, 124 (1996); *Boddie v. Connecticut*, 401 U.S. 371, 374 (1971). The district court’s sua sponte dismissal order violated both.

It extinguished a verified, plausible, and constitutionally grounded complaint without offering any opportunity for amendment or adversarial testing. Congress enacted § 1915 not to facilitate judicial gatekeeping, but to ensure that indigent litigants—especially those raising constitutional claims—could access the courts without financial barriers. *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 342 (1948); H.R. Rep. No. 104-107 (1995). Yet the courts below converted § 1915 into an exclusionary device, shielding state officials from scrutiny and extinguishing federal claims in direct contradiction of this Court’s precedents in *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Denton v. Hernandez*, 504 U.S. 25, 33 (1992).

No such findings were made here. The complaint was not dismissed for frivolity under *Neitzke* or for facial insufficiency under *Iqbal* or *Twombly*. It was dismissed preemptively, without any discussion of curability or procedural fairness.

This violates *Foman v. Davis*, 371 U.S. 178, 182 (1962), and *Haines v. Kerner*, 404 U.S. 519, 520 (1972), both of which require opportunity to amend and liberal construction for pro se litigants. And as *Felder v. Casey*, 487 U.S. 131, 138 (1988), confirmed, state procedural barriers cannot override the substantive protections guaranteed by § 1983. The same principle applies with greater force to federal barriers imposed under § 1915.

B. The Second Circuit's Rule Deepens a Circuit Split and Creates Outcome-Determinative Inequality Based on Geography

Multiple circuits have rejected the approach taken below and require that indigent, pro se litigants be granted an opportunity to amend unless it is absolutely clear that amendment would be futile:

- Ninth Circuit: *Lopez v. Smith*, 203 F.3d 1122, 1130–31 (9th Cir. 2000) (en banc); *McGuckin v. Smith*, 974 F.2d 1050, 1055 (9th Cir. 1992).
- Third Circuit: *Grayson v. Mayview State Hosp.*, 293 F.3d 103, 114 (3d Cir. 2002); *Allah v. Seiverling*, 229 F.3d 220, 223 (3d Cir. 2000).
- Fifth Circuit: *Bazrowx v. Scott*, 136 F.3d 1053, 1054 (5th Cir. 1998).
- Sixth Circuit: *Brown v. Matauszak*, 415 F. App'x 608, 615 (6th Cir. 2011).
- Seventh Circuit: *Luevano v. Wal-Mart Stores, Inc.*, 722 F.3d 1014, 1023–24 (7th Cir. 2013).

These circuits recognize that the consequences of dismissal with prejudice—especially before service—are severe, and that basic fairness requires a chance to cure alleged deficiencies. By contrast, the Second Circuit permits pre-service dismissal with prejudice in civil rights and RICO cases alleging ongoing constitutional injury, program fraud, and judicial misconduct. That divergence is not merely doctrinal—it is decisive.

Had Petitioners filed the exact same complaint in San Francisco, Chicago, Philadelphia, or Los Angeles, they would have been entitled to amend, proceed to service, and conduct discovery. In Albany, they were dismissed in secret, without process, and without a single defendant being notified. That disparity is outcome-determinative and constitutionally intolerable. The Constitution guarantees that access to justice should not turn on zip code or judicial discretion.

Congress enacted § 1915 to ensure equal access to court—not to empower judges to shield state misconduct from review. When federal courts use § 1915 to insulate themselves and their state counterparts from accountability, they invert the statute’s purpose and violate the structural separation of powers that protects against precisely this type of institutional overreach.

II. A Federal Judge with Undisclosed Conflicts May Not Sua Sponte Confer Immunity to State Actors Before Service.

The second question presented reaches the heart of constitutional adjudication: whether a federal judge who maintains undisclosed academic, professional, and personal affiliations with multiple named state defendants may, without service, without jurisdictional analysis, and without recusal, invoke doctrines of judicial, quasi-judicial, sovereign, and prosecutorial immunity sua sponte to extinguish a verified civil rights and RICO complaint that alleges those same defendants acted entirely outside the bounds of lawful authority. The answer, consistent with binding precedent and the Fifth Amendment, must be no.

Petitioners filed a 170-page, verified complaint alleging in exacting detail a coordinated, ongoing scheme by state judges, court-appointed attorneys, and

administrative officials to retaliate against constitutionally protected speech and whistleblowing, obstruct federal proceedings, falsify judicial records, and misuse federal funds. The complaint alleged conduct constituting a racketeering enterprise under 18 U.S.C. § 1961(4), in which state officials operated under color of law to enforce void judgments, extract federal reimbursements through fraud, and suppress litigation that threatened to expose their misconduct.

Instead of remaining neutral, the district court became a direct participant in this constitutional breakdown. District Judge D'Agostino, without any motion by the defendants (who had never been served), sua sponte dismissed the complaint with prejudice, citing doctrines of judicial and sovereign immunity and Rooker-Feldman abstention. These doctrines were not raised by any party and were applied in a preemptive manner, before service, without jurisdictional findings or the opportunity to amend, and in complete disregard of the procedural and ethical constraints that govern federal adjudication.

Judge D'Agostino's intervention is rendered constitutionally intolerable by her numerous undisclosed and ongoing connections to the very individuals and institutions named in the complaint. These connections were not incidental or historic. They were active, multidimensional, and created a clear appearance—and overwhelming probability—of institutional bias:

- **Academic and Institutional Ties:** Judge D'Agostino has long-standing affiliations with Albany Law School, where she has served as a featured speaker, mentor, and faculty affiliate. Many of the named defendants—including state judges, administrative officials, and 18-B counsel—are also affiliated with Albany Law School as alumni, adjuncts, mentors, or honorees. She has publicly celebrated these individuals through professional events and bar association

- functions. The shared academic nexus is not peripheral; it is central to the professional reputations and institutional identities of those involved.
- **Teaching and Mentorship of Named Defendants:** Judge D'Agostino has directly taught, mentored, and endorsed several named defendants and opposing counsel through law school programs and judicial mentorship initiatives. These are not abstract associations—they involve career-long relationships, endorsements, and reciprocal professional advancement, creating clear conflicts where she was asked to rule on their misconduct.
- **Public Honors and Co-Appearances:** On April 10, 2025—while both lawsuits are active—Judge D'Agostino was honored at a high-profile gala co-sponsored by firms and officials named in the complaint. Multiple defendants and their counsel were in attendance. Such appearances cement her as a publicly celebrated peer of the accused, not a neutral adjudicator of their violations.
- **Clerkship and Staffing Conflicts:** A former law clerk to Judge D'Agostino was employed at the time by a named defendant's office, suggesting continued personal and professional influence over litigation matters and creating the risk of inside access to judicial decision-making.
- **Spousal Proximity and Judicial Coordination:** Most significantly, Judge D'Agostino has a sustained institutional affiliation with Tina Versaci, Executive Director of the Northern District's Federal Bar Association. Tina Versaci is married to Defendant Judge Vincent Versaci—who is at the center of the underlying state proceedings and whose misconduct is also the subject of a related federal action, *Smith v. Fisher*, No. 1:25-cv-199 (N.D.N.Y.). The Versacis are known to be politically and professionally enmeshed in the local judicial community, with overlapping appearances, appointments, and courthouse influence. These connections underscore a pattern of coordinated protection among judiciary insiders, extending into the federal court itself.

These entanglements are not speculative. They were contemporaneous with the ruling, were never disclosed on the record, and implicated core constitutional guarantees of due process and judicial impartiality. Under *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009); *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847 (1988); *Rippo v. Baker*, 580 U.S. 285 (2017), recusal is not optional where personal or institutional ties create a serious risk of actual bias or its appearance.

Here, that risk was realized. Judge D'Agostino did not merely overlook a potential conflict—she extinguished a complex civil rights and RICO action in favor of her own colleagues, mentors, and former students.

Worse, she did so without adversarial process. The invocation of judicial and sovereign immunity *sua sponte*—before any defendant appeared—was not only procedurally improper but constitutionally impermissible. As this Court held in *Dennis v. Sparks*, 449 U.S. 24, 28–29 (1980), judicial immunity does not apply to acts undertaken in conspiracy or outside the scope of judicial function. *Cleavinger v. Saxner*, 474 U.S. 193, 201–02 (1985), further holds that quasi-judicial immunity is limited to formal adjudicative acts carried out under proper authority.

Immunity is an affirmative defense—not a license for judicial partisanship. In *Gomez v. Toledo*, 446 U.S. 635, 640 (1980), and *Wyatt v. Cole*, 504 U.S. 158, 165 (1992), it is the defendant's burden to assert and establish immunity, not the court's prerogative to preemptively impose it. Here, no defendant was served, no defense was raised, and no record was developed. Yet the district judge unilaterally invoked immunity doctrines on behalf of her professional peers and institutional affiliates—functioning not as a neutral adjudicator, but as an advocate for the accused.

That conduct was unauthorized, constitutionally impermissible, and structurally corrupt. The judge had no right—legally or ethically—to act as defense counsel for state officials implicated in extrajudicial misconduct. Her decision to do so usurped the adversarial process, violated due process, and contravened the separation of powers enshrined in Article III.

As the Fourth Circuit emphasized in *Gibson v. Goldston*, 73 F.4th 186 (4th Cir. 2023), judges who conduct warrantless home searches are not entitled to immunity because such conduct is executive, not judicial. Likewise, in *Spadafore v. Gardner*, 330 F.3d 849 (6th Cir. 2003), the Sixth Circuit held that immunity does not apply to retaliatory or administrative acts outside jurisdiction. The Ninth Circuit has reinforced this principle in *Starr v. Baca*, 652 F.3d 1202 (9th Cir. 2011), and *Keates v. Koile*, 883 F.3d 1228 (9th Cir. 2018), emphasizing that no immunity attaches to extrajudicial violations of constitutional rights, especially where officials conspire to retaliate or falsify records.

The decision below entrenches a dangerous circuit split. Unlike the Third, Fourth, Fifth, Sixth, Seventh, and Ninth Circuits—each of which limits immunity to adjudicative acts and disallows sua sponte invocation—the Second Circuit, through *Kim v. Kimm*, 884 F.3d 98 (2d Cir. 2018), allows judges to act as de facto defense counsel, extinguishing claims before service and without challenge.

This creates geographic injustice. Had Petitioners filed in San Francisco, Chicago, or Atlanta, they would have proceeded to discovery. In Albany, they were terminated by a conflicted judge without even the pretense of impartiality. The Due Process Clause forbids such a regime. It mandates disclosure of conflicts, disqualification where impartiality is reasonably questioned, and adversarial process before stripping litigants of their rights. The district court honored none of these duties.

This Court must intervene. The Constitution prohibits judges from becoming advocates for the accused or gatekeepers for judicial impunity. Caperton, Liljeberg, and Rippo compel recusal, not discretion, where systemic bias threatens the legitimacy of federal adjudication. Certiorari is essential to reaffirm that due process, structural accountability, and judicial disqualification are not optional safeguards—but binding obligations under Article III and the Fifth Amendment.

III. State Judges, Attorneys, and Officials Who Act Outside Jurisdiction to Operate a Retaliatory Racketeering Enterprise Are Not Immune Under §§ 1983, 1985(3), or RICO.

The third question presented implicates an urgent constitutional and doctrinal conflict: whether state actors—cloaked in judicial or prosecutorial titles—may evade accountability under 42 U.S.C. §§ 1983, 1985(3), and 18 U.S.C. § 1962 when they knowingly act in the absence of jurisdiction to fabricate authority, forge orders, falsify indigency determinations, retaliate against whistleblowers, and obstruct federal litigation. Under binding precedent and the Constitution’s structural safeguards, the answer must be no.

Petitioners verified complaint alleged an entrenched racketeering enterprise composed of state judges, publicly funded attorneys, prosecutors, and administrative officials who conspired to defraud federally funded child support and indigency programs (Title IV), falsify judicial records, forge custody and financial determinations, and suppress protected federal claims. These actions were not judicial or prosecutorial in nature. They were criminal, administrative, and retaliatory—executed outside lawful authority and in direct conflict with federal constitutional guarantees.

A. Judicial and Quasi-Judicial Immunity Do Not Shield Acts Taken in the Clear Absence of Jurisdiction, Nor Do They Bar Claims for Conspiracy, Retaliation, or Fraud

This Court has long made clear that judicial immunity is not absolute and does not extend to actions taken in the “clear absence of all jurisdictions.” *Stump v. Sparkman*, 435 U.S. 349, 356–57 (1978); *Bradley v. Fisher*, 80 U.S. (13 Wall.) 335, 351–52 (1872). Nor may immunity attach where the act is “nonjudicial in nature,” or where the judge acts not as a neutral arbiter but as a co-conspirator or retaliator. *Forrester v. White*, 484 U.S. 219, 227 (1988); *Dennis v. Sparks*, 449 U.S. 24, 28–29 (1980). In *Hafer v. Melo*, 502 U.S. 21, 30 (1991), this Court reaffirmed that state officials sued in their personal capacity for actions taken under color of law are not entitled to immunity when violating clearly established federal rights.

Petitioners alleged that state judges issued support and custody orders with no subject-matter jurisdiction, no personal jurisdiction over the parties or children, and no statutory basis under New York Domestic Relations Law or the Family Court Act. These same judges directed the fabrication of indigency certifications, appointed counsel without lawful process, and sealed fraudulent financial determinations based on forged records—acts wholly outside any adjudicative capacity. These were not judicial mistakes; they were extrajudicial abuses executed under color of office and in service of a coordinated retaliatory scheme.

Quasi-judicial immunity fares no better. In *Cleavinger v. Saxner*, 474 U.S. 193, 201–02 (1985), the Court held that such immunity applies only to those performing adjudicative functions under lawful delegation and with sufficient procedural safeguards. State-paid attorneys who forge financial affidavits, submit

false certifications of representation, and act as enforcement agents of the state are not shielded. They act under color of law for § 1983 purposes (*Tower v. Glover*, 467 U.S. 914, 920 (1984); *Briscoe v. LaHue*, 460 U.S. 325, 329 n.6 (1983)) and cannot cloak criminal fraud in the mantle of state authority.

Yet the Second Circuit ignored these controlling precedents. It affirmed dismissal without factual development, jurisdictional analysis, or application of this Court's rulings—treating immunity as an impenetrable shield even where the alleged conduct involved fraud, forgery, retaliation, and the systemic subversion of federal rights.

B. There Is a Deep and Worsening Circuit Split Over the Applicability of RICO and § 1985(3) to State Actors Engaged in Racketeering, Retaliation, and Civil Rights Conspiracy

There is no consensus among the circuits regarding the application of civil RICO and § 1985(3) to public-sector racketeering and conspiracies to violate constitutional rights. Some circuits have recognized the availability of these remedies against government officials acting outside the scope of their duties:

- Third Circuit: RICO claims may proceed against public officials who conspire to retaliate or obstruct constitutional rights. *Rose v. Bartle*, 871 F.2d 331, 366–67 (3d Cir. 1989).
- Fifth Circuit: § 1985(3) liability extends to malicious prosecution and retaliatory state enforcement. *Johnson v. Kegans*, 870 F.2d 992, 998 (5th Cir. 1989).
- Eighth Circuit: RICO applies where state actors engage in schemes to defraud the government. *Humes v. Clinton*, 792 F.2d 1237, 1241 (8th Cir. 1986).
- Eleventh Circuit: RICO remedies are available where public officials operate enterprises to suppress whistleblowers. *Alvarez v. United States*, 862 F.3d 1297, 1306 (11th Cir. 2017).

- Ninth Circuit: § 1985(3) applies to state-private conspiracies with class-based animus or retaliation. *Sever v. Alaska Pulp Corp.*, 978 F.2d 1529, 1537 (9th Cir. 1992).

The Second Circuit, by contrast, has repeatedly foreclosed these claims where the defendants include judges, prosecutors, or attorneys—regardless of whether the acts alleged fall within any judicial function. In *Kim v. Kimm*, 884 F.3d 98 (2d Cir. 2018), the court held that civil RICO claims may be dismissed solely due to the defendants’ status as judicial actors, without assessing the predicate acts, enterprise structure, or factual allegations as required by *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496 (1985), and *H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 240 (1989).

That precedent was summarily applied here—pre-service, with no adversarial process—to extinguish detailed RICO allegations involving mail fraud, wire fraud, obstruction of justice, witness retaliation under 18 U.S.C. § 1513(e), and laundering of federal program funds through fabricated state proceedings. These allegations met every RICO element: enterprise, pattern, predicate acts, and injury. That they were dismissed solely because the participants held judicial titles offends the rule of law and contradicts decisions from at least five other circuits.

This Court must resolve the split and clarify that public-sector racketeering enterprises are not exempt from federal scrutiny simply because the perpetrators wear robes or collect government paychecks.

C. Petitioners Seek Damages for Ongoing and Retrospective Constitutional Violations Arising from Acts Taken Entirely Outside State Jurisdiction

This case does not seek appellate review of final state judgments. Petitioners do not request injunctive relief or modification of custody or support orders in this action. Rather, they seek retrospective monetary damages for ongoing and completed violations of clearly established constitutional and statutory rights—violations that were committed under color of law but entirely outside any lawful jurisdiction. These claims fall squarely within the remedial scope of 42 U.S.C. §§ 1983, 1985(3), and 18 U.S.C. § 1964(c), and are not barred by doctrines of sovereign immunity, *Rooker-Feldman*, or abstention.

Petitioners have alleged a continuous course of extrajudicial and ultra vires conduct by state judges, attorneys, and officials. These actions are not judicial, quasi-judicial, or prosecutorial in nature. They are retaliatory and administrative abuses committed under color of law, but in the absence of any lawful authority, and thus fall outside the bounds of any immunity doctrine. See *Hafer v. Melo*, 502 U.S. 21, 28–30 (1991); *Dennis v. Sparks*, 449 U.S. 24, 28–29 (1980); *Forrester v. White*, 484 U.S. 219, 227 (1988).

Contrary to the Second Circuit’s approach, *Rooker-Feldman* is inapplicable here. Petitioners are not “state court losers” seeking review of adverse decisions, but federal civil rights plaintiffs alleging that state actors acted without jurisdiction, without due process, and outside any adjudicative framework. As this Court has made clear, *Rooker-Feldman* does not bar federal claims that are independent of and collateral to state judgments, even if those state actions formed part of the factual predicate. *Skinner v. Switzer*, 562 U.S. 521, 532–33 (2011); *Exxon Mobil*

Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 292 (2005). The complaint asserts independent federal claims.

Nor does Younger abstention apply. This case seeks retrospective damages for completed constitutional torts, not intervention in pending state proceedings. As reaffirmed in *Kugler v. Helfant*, 421 U.S. 117, 124–25 (1975), and *Gerstein v. Pugh*, 420 U.S. 103, 108 n.9 (1975), abstention is inappropriate where the plaintiff seeks redress for past and completed violations of federal law. This Court has repeatedly emphasized that federal courts are not passive observers of state misconduct, but the designated forum for enforcing federal rights. *Monroe v. Pape*, 365 U.S. 167, 180–81 (1961); *Ziglar v. Abbasi*, 582 U.S. 120, 131 (2017); *Ex parte Young*, 209 U.S. 123, 155–56 (1908).

As this Court held in *Sprint Communications, Inc. v. Jacobs*, 571 U.S. 69 (2013), abstention is “the exception, not the rule.” Petitioners’ claims do not implicate the three narrow categories warranting Younger abstention—nor did the district court conduct such analysis before invoking jurisdictional bars sua sponte.

Where, as here, state officials fabricate judicial authority to conceal ongoing fraud, retaliate against protected conduct, and obstruct access to court, they are not immune—they are liable. The Constitution demands more than a forum. It demands redress. Petitioners are entitled to seek damages for the harms inflicted by officials who used their positions not to adjudicate, but to persecute.

IV. Ongoing Retaliation and Institutional Complicity Demand This Court’s Intervention to Vindicate Structural Due Process and Prevent Irreparable Harm to the Federal Judiciary

This case presents not a theoretical dispute over jurisdiction or immunity, but a live constitutional emergency: a pattern of coordinated retaliation, procedural sabotage, and judicial complicity so entrenched that the judiciary itself is now an instrument of the constitutional violations it is duty-bound to remedy. What began as a denial of access to court has metastasized into a sustained campaign of retaliation and obstruction—executed by state actors and shielded by a conflicted federal judge. The actors involved have operated ultra vires, falsifying legal authority, forging public records, suppressing filings, and retaliating against whistleblowers under color of law, all while cloaked in immunity conferred not by statute, but by judicial indulgence.

On June 5, 2025, Petitioner Smith filed a formal motion in New York Supreme Court to vacate *Smith v. Smith*, Index No. 2020-1227, ab initio, based on five years of jurisdictional fraud. The motion set forth incontestable procedural and constitutional defects: orders entered in the absence of subject-matter jurisdiction, fabricated findings of indigency, forged financial filings, and the illegal diversion of Title IV-D and IV-E federal funds.

Within days—in direct retaliation—the NY Unified Court System reassigned Smith’s new matrimonial proceeding to Defendant Judge Versaci, a central figure in the federal civil rights case *Smith & Dees v. Fisher*, No. 1:25-cv-199 (N.D.N.Y.). This was no coincidence. It was a calculated move to reinsert a known retaliator into control of a proceeding that threatened to expose institutional fraud.

Simultaneously, on May 28, 2025, AD3 Clerk Mayberger—a named defendant in *Smith v. Fisher* and the spouse of Defendant Justice Christine Clark—acted ex parte and under seal to issue orders appointing counsel to Defendant Veronica Smith, without notice, without a hearing, and without any lawful judicial finding of indigency. The appointment was based solely on a perjured affirmation submitted by Defendant Resta-Tobin, a state-paid attorney and central figure in the ongoing federal investigation.

This retaliatory act occurred shortly after Clerk Mayberger was named as a defendant in *Smith v. Fisher* for unlawfully removing Petitioners' Article 78 petition and emergency motion for a stay and injunction from the NYSCEF system—a petition that directly challenged the jurisdiction and conduct of Defendant Justices, including his own wife, Justice Clark. The removal of those filings and the sealing of the May 28 appointment order constitute overt acts of obstruction—executed under color of law to shield fellow defendants, suppress constitutional claims, and conceal the continuing diversion of federal Title IV funds through falsified indigency certifications and unauthorized legal appointments.

Each effort by Petitioners to seek redress—whether to vacate void orders, assert federal rights, or prevent further injury—has been met with coordinated obstruction. Named defendants in *Dees v. Hood* and *Smith v. Fisher* have acted in concert with the New York Attorney General's Office to suppress filings, manipulate dockets, and extinguish proceedings before judicial review is possible.

This retaliatory scheme has been emboldened by District Judge D'Agostino, who has entrenched herself as both protector and participant in the very misconduct she was asked to adjudicate. After sua sponte dismissing *Dees v. Zurlo*, No. 1:24-cv-348 (N.D.N.Y.), on May 21, 2024, without notice, jurisdictional findings, or opportunity to amend, she seized control of the subsequent federal complaint—*Smith & Dees v. Fisher*, filed on February 13, 2025—which named many of the same state actors and detailed ongoing violations.

Thereafter, Judge D'Agostino's actions revealed a pattern of deliberate obstruction and strategic suppression in violation of structural due process and the Federal Rules:

- On February 19, just six days after filing, she denied Petitioners' TRO by text-only order, without findings of fact or conclusions of law—in direct violation of Rule 65(d)(1);
- On March 6, she permitted the retaliatory enforcement of void orders by Defendant Versaci to proceed unchecked, further undermining the very claims before her;
- On March 7 and March 18, she issued sua sponte orders staying discovery and granting informal dismissal motions—without adversarial process, briefing under Rule 7(b)(1), or compliance with Local Rule 7.1(b)(1);
- On March 24, she denied motions for reconsideration, injunctive relief, and recusal with no explanation, ignoring the record of conflicts and bias.

These rulings were not mere legal errors. They were procedural weapons wielded to insulate state misconduct from federal review—in direct defiance of this Court's precedents and the judicial obligation “to say what the law is.” *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803).

In response to this pattern, Petitioners filed an interlocutory appeal now pending before the Second Circuit in *Smith v Fisher*, No. 25-692, seeking both a preliminary injunction and Judge D'Agostino's mandatory disqualification. Yet even that proceeding has been obstructed. On June 16, 2025, the NY Attorney General's Office—representing multiple defendants—attempted to stall the appeal by seeking additional time, three days before due, even as state actors escalated their retaliatory conduct. That same day, the Unified Court System reassigned Petitioner Smith's newly filed matrimonial action back to Defendant Versaci.

These acts are not accidental—they reflect a deliberate and entrenched belief that the state and its judicial actors are above the law, protected by federal inaction and political insulation. Every procedural maneuver—from the suppression of filings and sealing of records to sua sponte dismissals and retaliatory reassignments—serves a singular purpose: to shield a network of state officials engaged in ongoing constitutional violations and fraudulent misuse of federal funds.

Petitioners do not confront isolated acts of judicial error; they face a coordinated system of institutional protectionism that must be dismantled by this Court if the rule of law is to be preserved. Here, that probability is beyond tolerable.

These irregularities extend beyond the district court. In *Dees v. Knox*, the Second Circuit elevated unserved defendants to appellee status—granting them procedural benefits despite their failure to appear, respond, or assert defenses, contrary to Rule 4 of the FRAP. That same manipulation is underway in *Dees v. Zurlo*, No. 25-1270, where no defendant has answered or been properly served, yet

the Second Circuit is again treating them as full parties and implicitly validating Judge D'Agostino's conflicts. These actions undermine the adversarial process and entrench judicial bias across circuits.

Meanwhile, Petitioners' injuries continue to mount: Unlawful loss of parental rights; Involuntary servitude under Title IV-D enforcement mechanisms; Revocation of driving privileges, fabricated tax filings, and motion suppression; Emotional trauma, physical assault, and miscarriage, all traceable to stress and retaliation inflicted by state actors under judicial protection. These are not abstract harms. They are deliberately inflicted injuries—the foreseeable result of weaponized procedure and retaliatory jurisdiction, inflicted with federal complicity.

This petition does not merely seek error correction. It demands structural accountability. When judges dismiss civil rights complaints before service, invoke immunity *sua sponte*, and refuse recusal despite flagrant conflicts, the Constitution is not enforced—it is evaded. When circuits treat unserved defendants as parties and judges as untouchable, the separation of powers collapses.

Only this Court can restore balance. Only this Court can reaffirm that federal judges are not gatekeepers for state misconduct, but guardians of the Constitution. The federal judiciary must not function as an enforcement wing for retaliatory state actors. Certiorari must be granted—not merely to protect Petitioners, but to preserve the institutional legitimacy of the courts themselves.

REQUEST FOR INVITATION TO THE SOLICITOR GENERAL AND INTERESTED AMICI CURIAE

In light of the exceptional constitutional, institutional, and statutory questions presented, Petitioners respectfully request that this Court invite the views of the Solicitor General of the United States pursuant to Rule 37.4. This case implicates urgent federal interests, including the systemic misuse of 28 U.S.C. § 1915 to preclude access to justice for indigent litigants, the retaliatory targeting of federal whistleblowers in violation of 31 U.S.C. § 3730(h), and a pattern of fraud upon federally funded child support and welfare programs under Title IV-D and Title IV-E of the Social Security Act.

The United States has a direct and compelling interest in safeguarding the integrity of federal whistleblower protections, preventing the abuse of federal funding streams by state actors, and ensuring that judicial immunity and abstention doctrines are not weaponized to shield fraud, extortion, or civil rights violations from accountability. Petitioners allege that these abuses are ongoing and systematized, affecting not only their rights but the lawful administration of federal programs and the constitutional structure of intergovernmental oversight.

Petitioners further respectfully request that this Court grant leave, pursuant to Rule 37.2 and 37.3, for any amici curiae—including public interest organizations, legal ethics associations, civil rights advocacy groups, and scholars concerned with due process and judicial impartiality—to submit briefs in support of the petition, including out of time or without the consent of the parties.

This petition raises far more than private grievances—it presents a structural threat to the rule of law when courts preempt litigation against their own institutional affiliates without process, service, or jurisdiction. Petitioners therefore respectfully urge this Court to solicit the input of the Solicitor General and all interested amici to ensure full and fair consideration of the constitutional harms and systemic irregularities at issue.

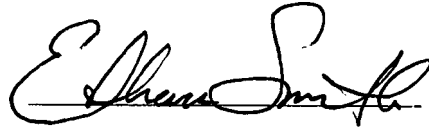
PRAYER FOR RELIEF

Petitioners respectfully request that this Court grant the petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.

Respectfully submitted this 20th day of June 2025



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CERTIFICATE OF COMPLIANCE

Pursuant to Supreme Court Rule 33.1(h), I hereby certify that this petition for a writ of certiorari contains 8,478 words, excluding the parts of the document that are exempted by Rule 33.1(d).

The petition has been prepared in a proportionally spaced typeface using Century Schoolbook 12-point font and complies with all formatting and length requirements set forth in Rule 33.1.

Respectfully submitted this 20th day of June 2025



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