No. 21-30620

In the United States Court of Appeals for the Fifth Circuit

HAKEEM MEADE, on behalf of himself and all others similarly situated; MARSHALL SOOKRAM,

Plaintiffs-Appellants,

v.

ETOH MONITORING, L.L.C.,

Defendant-Appellee.

On appeal from the United States District Court
for the Eastern District of Louisiana,
No. 2:20-cv-1455, Hon. Carl Barbier, District Judge, presiding.

APPELLANTS' PETITION FOR REHEARING EN BANC

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Certificate of Interested Persons

Appellants certify that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case.

1. Plaintiffs-Appellants

   Hakeem Meade; Marshall Sookram

2. Defendants-Appellees

   ETOH Monitoring, L.L.C.; Paul A. Bonin

3. Counsel for Plaintiffs-Appellants

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Dated: June 20, 2025

s/ Jaba Tsitsuashvili
Counsel for Plaintiffs-Appellants

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Rule 40(b)(2) Statement

The panel opinion in this case departed significantly and in multiple ways from how this Circuit assesses claims of systemic due process violations in judicial administration. The full Court should rehear this case en banc and bring the decision into harmony with Circuit precedent on a vital constitutional issue. Fed. R. App. P. 40(b)(2)(A), (D).

This case asks: Did a judicial ankle-monitoring system that operated for the profit of a private company violate due process by using company-induced judicial coercion to prioritize that company's coffers? That system required pretrial defendants to contract with a private company for $300 a month. The ordering judge, however, did not disclose his professional and financial ties to the company (including an unpaid debt)—which he called his "special service." Nor did he disclose the availability of other providers. Then, the judge systematically received reports from the company pinpointing who was behind on fees. The judge used those targeted reports to coerce payment. He did so by threatening jailtime and by extending the duration (and therefore also the fees) of those individuals' ankle-monitoring. Those company-induced judicial deprivations of property and liberty were based expressly and solely on

the company's stated desire to get paid. Necessity, public safety, or ability to pay did not enter the equation. That all occurred while the judge's election campaign owed $1,000 to one of the company's owners, one of whom was also the judge's former law partner and regular campaign contributor.

Appellants claim that system amounted to actual bias or at least a possible temptation or appearance of bias in judicial administration, violating due process. The panel affirmed the pleading-stage dismissal of that claim. It reasoned only that the company's campaign contributions did not create a due process problem. But that fundamentally misunderstood the nature of Appellants' claim. And it failed to account for any of the other circumstances described above, including how the system actually operated. In the process, the panel opened conflicts with Circuit precedent concerning both the identification of actual-bias claims and the assessment of possible-temptation claims. *See Tesla, Inc. v. La. Auto. Dealers Ass'n*, 113 F.4th 511 (5th Cir. 2024); *Caliste v. Cantrell*, 937 F.3d 525 (5th Cir. 2019); *Cain v. White*, 937 F.3d 446 (5th Cir. 2019); *Ballard v. Wall*, 413 F.3d 510 (5th Cir. 2005); *Brown v. Vance*, 637 F.2d 272 (5th Cir. 1981).

Simply put: The panel erroneously assessed this as a "risk of bias" case, when it is really an "actual bias" case; worse yet, the panel misconstrued the legal analysis this Circuit's caselaw requires under either characterization. The "full court's consideration is therefore necessary to secure or maintain uniformity of the court's decisions." Fed. R. App. P. 40(b)(2)(A).

Moreover, the risks and realities of revenue-generating judicial capture exemplified by this case raise "questions of exceptional importance," given the rise and prevalence of for-profit companies in defendant-funded judicial systems. Fed. R. App. P. 40(b)(2)(D).

Statement of the Issues

1. Does the panel opinion conflict with this Circuit's assurances that *actual bias* in judicial administration violates due process? (Yes.)

2. Does the panel opinion conflict with this Circuit's distinction between one-off and systemic-incentive cases concerning the assessment of *possible temptation for bias* in judicial administration? (Yes.)

Statement of the Proceedings

Appellants brought this case under § 1983 and the Fourteenth Amendment's Due Process Clause. They seek to declare unconstitutional

the judicial ankle-monitoring system operated by the Orleans Parish Criminal District Court (Judge Bonin) and a private, for-profit company (ETOH). They also seek to disgorge, on a classwide basis, the fees ETOH collected via that unconstitutional system. ROA.83–84. Shortly after the case was filed, Judge Bonin left the bench; because he was sued only in his official capacity, Appellants dismissed him. ROA.220. But the case continued against ETOH. Appellants still seek to declare unconstitutional and enjoin from revival the type of ankle-monitoring system Judge Bonin and the company operated, and to disgorge the fees ETOH collected via that unconstitutional system.

ETOH moved to dismiss, arguing that as a private company it could not be liable under § 1983 or the Fourteenth Amendment. The district court denied that motion, holding that ETOH is a state actor for purposes of the claims at issue here because those claims concern ETOH's performance of a public function: court-ordered ankle-monitoring of criminal defendants. ROA.284–293. (ETOH did not challenge that state-actor holding on appeal.) ETOH later moved to dismiss on the pleadings for failure to state a claim. The district court granted that motion, holding that the complaint's allegations concerning the relationships between

Judge Bonin and ETOH did not state a due process claim. ROA.955–962. The panel affirmed (opinion attached). The panel assessed Appellants' due process claim through the lens of campaign contributions, rather than the suite of additional allegations detailed in Appellants' complaint and briefing. Appellants maintain that the panel fundamentally misunderstood the nature of their due process claim and departed significantly (and dispositively) from this Circuit's due process caselaw. Appellants now move for rehearing by the panel and rehearing en banc.

Statement of the Facts

This case asks: Did a judicial ankle-monitoring system that operated for the profit of a private company violate due process by using company-induced judicial coercion to prioritize that company's coffers?

That system required pretrial defendants to contract with a private company (which the judge called his "special service") for $300 a month, without disclosing the judge's professional and financial ties to the company (including an unpaid debt) or the availability of other providers. ROA.64, 68, 70, 71, 75. Then, the company systematically sent the judge targeted reports, which "highlighted" individuals for "attention" because they were behind on fees, and asked the judge to "remind[]" those

individuals of their "continuing obligation to make payments to our company." ROA.73.

The judge obliged, aggressively. He relied on those targeted company reports to coerce payment—by threating jailtime and by extending the duration (and therefore also the fees) of those individuals' ankle-monitoring. ROA.66–67, 69, 72, 73–77. Those company-induced judicial deprivations of property and liberty were based expressly and solely on the company's stated desire to get paid; necessity, public safety, or ability to pay did not enter the equation. ROA.66–67, 69, 71–77.

That all occurred while the judge's election campaign owed $1,000 to one of the company's owners, one of whom was also the judge's former law partner and regular campaign contributor. ROA.69–71.

All of these systemic practices were documented and summarized by a judicial watchdog group, which also noted how distinct these systemically coercive practices were from the practices of other judges. ROA.72. Specific instances quoting ETOH and the judge and demonstrating these practices are described in the complaint, including Appellants' experiences and the consistent experiences of others. ROA.64–69, 73–77. These facts are also elaborated on, with further

quotes from the complaint, in the Argument section below.

Appellants claim that the system operated by Judge Bonin and ETOH demonstrated actual bias or at least a possible temptation or appearance of bias in judicial administration, violating due process.

Argument

I. The panel opinion conflicts with this Circuit's assurances that actual bias in judicial administration violates due process.

The panel opinion rightly noted: "Actual bias 'no doubt' may constitute grounds for relief." Op. 5 (citation omitted). In conclusory fashion, it went on: "Here, Judge Bonin did not disclose any actual bias in favor of ETOH." *Id.* Notably, that standard conflicts with a previous explanation that allegations of "possible bias" are sufficient to make out an actual-bias claim at the pleading stage. *Tesla, Inc. v. La. Auto. Dealers Ass'n*, 113 F.4th 511, 524 (5th Cir. 2024), *rehearing denied*. Such confusion about the standard alone warrants the full Court's attention. Regardless, Appellants' allegations meet even the panel's new, unduly strict pleading-stage standard. Yet the panel disregarded those allegations.

Appellants' complaint contains detailed allegations of judicial decisionmaking for the express and sole purpose of profiting ETOH, including company-induced threats of jailing by the judge. Those extensive allegations are detailed below. If those debtor's-prison-like allegations do not meet the actual-bias standard (especially at the pleading stage), it is hard to imagine what private-profit-generating judicial system could. The full Court should make clear that the oft-repeated but rarely exercised actual-bias standard has teeth, and that it does not abide profit-driven capture of the bench. *See In re Murchison*, 349 U.S. 133, 136 (1955) (due process "of course requires an absence of actual bias"); *Cain v. White*, 937 F.3d 446, 454 n.7 (5th Cir. 2019) (suggesting the obvious proposition that it violates due process if a judge "actually succumbed to that 'temptation'"); *Brown v. Vance*, 637 F.2d 272, 286 (5th Cir. 1981) (recognizing the need for intervention when "[p]ossible temptation bloomed into questionable behavior"); *Tesla, Inc.*, 113 F.4th at 524 n.14 (recognizing "plausible actual bias based on well-pleaded facts").

The panel failed to address the complaint's detailed allegations of actual bias. As explained in Appellants' opening brief, the complaint

details how Judge Bonin and ETOH operated a property- and liberty-depriving ankle-monitoring system in which filling ETOH's private coffers was the priority, with no corresponding concern for necessity, public safety, or ability to pay:

- the judge "made it a regular practice of recommending defendants use ETOH," emailing defense attorneys sign-up information, and requiring his staff to provide "the contact information for ETOH"; he did that without ever disclosing his campaign's unpaid debt to ETOH's owner, his professional and personal relationships with ETOH's owners, or the availability of other ankle-monitoring providers (ROA.71–72);
- the judge required pretrial defendants to enter pricey contracts ($300 a month) with ETOH—which he called his "special service"—and steered them *away* from other ankle-monitoring providers (ROA.72–76);[1]

[1] *See also* ROA.65 ("From February 2017 to August 2017, Hakeem continued appearing for unmonitored pretrial proceedings before Judge Bonin. He appeared about once a month. Judge Bonin ordered him to take drug tests, which he always passed. By August 2017, Hakeem had been dutifully appearing for pretrial proceedings without ankle monitoring for over a year—including for about six months with Judge Bonin. In August 2017, Judge Bonin suddenly ordered Hakeem to ankle monitoring at Hakeem's expense. He told Hakeem to go to ETOH for these services. When Judge Bonin ordered Hakeem to ankle monitoring by ETOH, Hakeem does not

- the judge simultaneously "waive[d]" or "reduc[ed]" defendants' *non*-ETOH financial obligations, such as "fines and court costs" or "bond[s]," with no such considerations for ETOH; to the contrary, he made clear that those same individuals' liberty was contingent on paying ETOH (ROA.74–76);
- the judge "threatened to put defendants back in jail and set bond for their failure to pay their remaining debts" to ETOH (ROA.72);
- "Judge Bonin reminded Hakeem that he still owed money to ETOH and that Hakeem's failure to pay ETOH could violate his bond conditions. Hakeem understood this as Judge Bonin explicitly conditioning Hakeem's freedom from pretrial jailing on his ability to pay ETOH." (ROA.66–67);
- the judge made clear: "Mr. Sookram will be able to have the monitor removed once his balance is paid in full." (ROA.69);

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recall the judge stating that he was a flight risk or that he posed a threat to public safety. Hakeem did not understand why Judge Bonin was suddenly depriving him of his pretrial liberty and property, after more than a year of incident-free pretrial appearances and drug tests. At the August 2017 hearing at which Judge Bonin ordered Hakeem to ankle monitoring, Judge Bonin gave no explanation for his order.").

- the judge told defendants they could be released from ETOH's ankle-monitoring "when you get financially current" with ETOH—making explicit that individuals who posed no threat to public safety would remain deprived of their liberty (and keep accumulating fees) in service only of ETOH's profits (ROA.74);
- the judge's ETOH-profiting system was possible only because ETOH "highlighted" for him precisely who to target for such "attention"—i.e., who needed to be "reminded of [their] continuing obligation to make payments to our company"; in other words, the judge was acting on ETOH's inducements (ROA.73);[2]
- invariably, those reminders took the form of judicially-threatened jailing or extended ankle-monitoring; no other considerations, such as necessity, public safety, or ability to pay, entered the equation (ROA.66–67, 69, 71–77);

[2] *See also* ROA.66 ("When Hakeem submitted to ETOH's custody, an ETOH employee told Hakeem that the company would be sending detailed reports to Judge Bonin—not only regarding his compliance with the geographic and curfew restrictions, but also his payment (or nonpayment) of ETOH's daily fees.").

- the judge's express and repeated prioritization of ETOH's collections in lieu of all else occurred against the backdrop of the judge's election campaign owing $1,000 to ETOH's owner (ROA.70);
- the judge's express and repeated prioritization of ETOH's collections in lieu of all else inured to the financial benefit of the judge's former law partner and the judge's regular campaign contributors (ROA.69–71); and
- the judge's ankle-monitoring procedures—including the threats of jailing for inability to pay—were singularly unusual in his parish, according to a judicial watchdog who regularly observed the practices of Judge Bonin and the other judges of the Orleans Parish Criminal District Court (ROA.72).

In short, the bias here was in favor of ETOH's bank account, at the expense of unnecessary deprivations of property and liberty. Those allegations demonstrate actual bias (beyond even the possible temptation for it) because they require no theorizing: The judge ordered defendants to contract with a particular company; that company told the judge who needed "attention" and "reminders" about paying up; and the judge

proceeded to coerce those payments on pain of jailing. That systemic use of the judicial system as a profit-collections device presents an opportunity to make real this Circuit's assurances that actual bias from the bench violates due process. The full Court should hold that such targeted use of the judicial system for private profit "pushes beyond what due process allows" because it crosses the line from the "mere threat of []partiality" into its *actualization*. *Caliste v. Cantrell*, 937 F.3d 525, 530, 532 (5th Cir. 2019). In other words, this is an easy case because it is the rare situation where the judge "actually succumbed" to using his courthouse as ETOH's contract-feeder and on-demand debt-collector. *Cain*, 937 F.3d at 454 n.7. The panel opinion did not account for those demonstrations of actual bias.

It is hard to see how the conduct detailed above alleges anything "other than 'possible bias,'" which is what suffices to make out an actual-bias claim at the pleading stage. *Tesla, Inc.*, 113 F.4th at 524. Moreover, to treat Judge Bonin's systemic bias for ETOH's coffers as insufficient to state an actual-bias claim is to jettison this Court's longstanding admonition that "concerns of judicial administration" do not "require a high evidentiary barrier," especially in the face of highly "questionable

behavior." *Brown v. Vance*, 637 F.2d 272, 284, 286 (5th Cir. 1981) (Wisdom, J.). That is why this Circuit recently found "actual bias" sufficiently pleaded in similar circumstances: private parties reaching out to a regulator and achieving the state targeting of the plaintiff that they hoped for. *Tesla, Inc.*, 113 F.4th at 524 n.14. That sounds a lot like the systemic arrangement between ETOH and Judge Bonin (whose judicial role demanded an especially stringent maintenance of neutrality, and its appearance). *Accord Ballard v. Wall*, 413 F.3d 510 (5th Cir. 2005) (allowing a due process claim to proceed against private creditors who benefited from a judge's explicit conditioning of liberty on paying private debts to those private creditors).

In short, the need to treat like cases alike compels acknowledging the actual bias pleaded here, based on the systemic use of the judicial system to satisfy ETOH's desire to get paid upon judicial threat of jailing. Appellants are no less entitled to § 1983's promise of protection against governmental predation than the multibillion-dollar corporation whose rights were recently vindicated in *Tesla*. This is an opportunity to bring the Circuit's actual-bias caselaw into harmony.

II. The panel opinion conflicts with this Circuit's distinction between one-off and systemic-incentive cases concerning judicial administration.

This is also an opportunity to harmonize and elaborate on this Circuit's distinction between the two different lines of possible-temptation caselaw regarding judicial administration. Such claims either (1) "address one-off situations when the financial incentive is unique to the facts of the case" or (2) "address[] incentives that a court's structure creates in every case," based on the incentives of an omnipresent, nonparty arm of the court. *Caliste*, 937 F.3d at 530. That distinction matters because it dictates the evidentiary standard and what facts get prioritized in the analysis. Appellants argued at length before the panel that the more vigilant systemic-incentives standard governs this case (Opening Br. 21–41), but the opinion failed to address the issue. Instead, it incorrectly treated Appellants' claim as concerning campaign donations. *See* Op. 7–8. That was a fundamental misunderstanding of Appellants' claim and how it should be assessed. The full Court should take this opportunity to explain the proper, systemic, totality-of-circumstances analysis.

In one-off cases asking whether due process requires a particular judge to recuse in a particular case based on the identity of a particular party, an "extraordinary" confluence of circumstances must converge, as stressed by the opinion here. *See* Op. 7. By contrast, systemic cases are those where a possible temptation lingers in every case that comes before the court, because the entity that stands to financially benefit is not a one-off party but an omnipresent arm or agent of the court. *Caliste*, 937 F.3d at 530–31. Such a structure creates an ever-present risk or possible temptation of prioritizing revenue. So the "vice inheres in the fee system," meaning "concerns of judicial administration [do not] necessarily require a high evidentiary barrier." *Brown*, 637 F.2d at 276, 284.

This case falls into that systemic category. No matter the identity of any particular defendant before the court, ETOH and its coordination with the judge were an omnipresent arm of that court, with the profit-driven company ready to reap the financial benefits of the court's coercive collection tools time and again (which is what happened, as detailed above). Accordingly, Appellants' due process claim attacking that profit-driven system was "levelled at the system" of that court and should have been assessed under *Brown v. Vance*'s vigilant due process standard. 637

F.2d at 284. Under that analysis, the company's ever-present profit incentive, its prodding of the judge to help it get paid, and the judge's acting upon that prodding should have been central and should have resulted in Appellants' due process claims proceeding. "As Judge Wisdom explained, . . . 'This vice inheres in the fee system. It is a fatal constitutional flaw.'" *Caliste*, 937 F.3d at 530 (quoting *Brown*, 637 F.2d at 276).

Simply put: Much like the omnipresent court funds lingering in the background of every case that came before the judges in *Cain* (937 F.3d 446) and *Caliste* (937 F.3d 525), the omnipresence of ETOH and its systemic inducement of the court's actions plausibly suggested an intolerably high "possible temptation" and "threat of []partiality" in favor of the company's profits in a manner that "violated due process." *Caliste*, 937 F.3d at 529–30. Appellants devoted the bulk of their argument to why this case should be assessed under that systemic line of cases. Opening Br. 21–41. Yet the panel did not address the distinction or explain why it disagreed with Appellants' view of the appropriate legal standard. The full Court should revisit that decision and hold that Appellants' claims proceed under the systemic line of cases. And,

crucially, it should do so based on the "totality of the situation," not just "any individual piece"—as the panel erroneously did by assessing only the campaign-contributions aspect of this case. *Cain*, 937 F.3d at 454.

That totality must account for how the system at issue here was designed and operated, including the underlying relationships, the money Judge Bonin's campaign owed to one of ETOH's owners, ETOH's profit incentives, ETOH's inducements of Judge Bonin's conduct, and the judge's own admission that ETOH was the court's "special service." Indeed, this case presents an opportunity for the Court to comprehensively explain what features do and do not make for a systemic-incentives claim—including, crucially, how to account for the systemic participation of a private, for-profit company in judicial procedures. Because the Court's prior systemic-incentives cases (*Cain*, *Caliste*, and *Brown*) lacked that feature, those cases did not present an opportunity to address that important aspect of such situations.

Indeed, doing so is particularly vital in part *because* the omnipresent entity whose incentives drove the judicial system at issue here was a private, for-profit company. That demands additional vigilance because the specter of financial interests influencing judicial

decisionmaking looms particularly large. *See Harper v. Prof. Prob. Servs., Inc.*, 976 F.3d 1236, 1243 (11th Cir. 2020). As explained in a report tracking the rising prevalence of private, for-profit companies in judicial systems, constitutional guardrails must check the risk of revenue-generating judicial capture. "[P]rivate companies can have economic incentives to engage in practices that extend individuals' involvement in the system and that extract as much money as possible, whether or not doing so serves the purposes of the criminal justice system or comports with due process." ABA, Privatization of Services in the Criminal Justice System 4 (June 2020).[3] Case in point: ETOH's systemic practice of "highlight[ing]" individuals for the judge's "attention," while seeking judicial "reminders" for those individuals to pay up—which directly resulted in judicial threats of jailing as a payment-coercion tool. ROA.73.

Conclusion

The Court should grant rehearing en banc to bring uniformity and clarity to its caselaw regarding due process in judicial administration, particularly with respect to the systemic participation of private, for-profit companies in judicial procedures.

[3] https://tinyurl.com/3pa36u6z.

Respectfully Submitted,

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Certificate of Service

This is to certify that the foregoing instrument has been served via the Court's ECF filing system in compliance with Rule 25(b) and (c) of the Federal Rules of Appellate Procedure, on June 20, 2025, on all registered counsel of record, and has been transmitted to the Clerk of the Court.

Certificate of Compliance

1. This brief complies with the type-volume limitation of Fed. R. App. P. 40(d)(3) because this brief contains 3,623 words.

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Century Schoolbook font with 12-point Century Schoolbook footnotes.

Dated: June 20, 2025 s/ Jaba Tsitsuashvili

United States Court of Appeals for the Fifth Circuit

No. 21-30620

HAKEEM MEADE, *on behalf of himself and all others similarly situated*; MARSHALL SOOKRAM,

Plaintiffs—Appellants,

versus

ETOH MONITORING, L.L.C.,

Defendant—Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:20-CV-1455

Before WIENER, RICHMAN, and WILLETT, *Circuit Judges*.

PRISCILLA RICHMAN, *Circuit Judge*:*

Hakeem Meade and Marshall Sookram filed this putative class action under 42 U.S.C. § 1983 against ETOH Monitoring, L.L.C. (ETOH). They allege that ties between ETOH and a former judge resulted in due process violations. ETOH filed a motion for judgment on the pleadings, which the

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

district court granted. Because the ties alleged do not create an unconstitutional risk of judicial bias, we affirm.

I

The case was dismissed under Federal Rule of Civil Procedure 12(c), so in this review, we accept all well-pleaded facts in the complaint as true.[1] Our statement of the facts is based on the complaint's allegations.

In 2006, lawyers Christian Helmke and Leonard Levenson founded ETOH, a company that supplies ankle monitors to defendants in various proceedings before the Orleans Parish Criminal District Court (OPCDC). Ankle monitors are GPS devices for supervising defendants' compliance with curfew and geographical restrictions. Defendants pay for their own ankle monitors, which cost about $300 per month. ETOH was one of three providers of ankle monitors to OPCDC.

In 2016, Paul Bonin was elected as a judge on the OPCDC. During his campaign, Bonin accepted donations totaling $3,550 and a loan of $1,000 from Helmke and Levenson through their law firms. Levenson is Judge Bonin's former law partner. Before serving on the district court, Judge Bonin had been a state appellate judge for eight years. Levenson and Helmke had donated $5,100 to his election campaigns for that position.

When ordering ankle monitoring, Judge Bonin regularly directed defendants to make arrangements with ETOH. He did not disclose the availability of other providers. After defendants obtained monitors, ETOH sent monthly reports to Judge Bonin about their payment status. Judge Bonin warned some defendants that nonpayment could result in their jailing. He conditioned some defendants' release from their ankle monitors on their

[1] *Garza v. Escobar*, 972 F.3d 721, 725 (5th Cir. 2020).

completing payments to ETOH. In one case, Judge Bonin conditioned a defendant's release on completing payment to ETOH even though Judge Bonin considered waiving other costs the defendant was obligated to pay.

Hakeem Meade and Marshall Sookram are former criminal defendants whom Judge Bonin directed to obtain ankle monitors from ETOH. They filed a putative class action against Judge Bonin and ETOH under 42 U.S.C. § 1983, alleging due process violations. They maintain that Judge Bonin's relationship with ETOH demonstrates the appearance or reality of unconstitutional bias.

Significantly, Judge Bonin is not a current party to this case. After Judge Bonin announced that he would not seek reelection in 2020, Meade and Sookram voluntarily dismissed him from the lawsuit.

ETOH is the only remaining defendant. ETOH moved for judgment on the pleadings under Rule 12(c). The district court granted the motion and dismissed the complaint with prejudice, reasoning that the allegations regarding the relationship between ETOH and Judge Bonin failed to state a claim that rose to the level of a due process violation. Meade and Sookram timely appealed to this court.

II

We review de novo the district court's dismissal of a complaint under Rule 12(c).[2] "The standard for Rule 12(c) motions for judgment on the pleadings is identical to the standard for Rule 12(b)(6) motions to dismiss for failure to state a claim."[3] To survive a Rule 12(c) motion, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief

[2] *Aldridge v. Miss. Dep't of Corr.*, 990 F.3d 868, 873 (5th Cir. 2021).

[3] *Waller v. Hanlon*, 922 F.3d 590, 599 (5th Cir. 2019).

that is plausible on its face.'"[4] "[T]he central issue is whether, in the light most favorable to the plaintiff, the complaint states a valid claim for relief."[5]

Section 1983 provides a cause of action against any person who, "under color of" state law, deprives another of "any rights, privileges, or immunities secured by the Constitution."[6] The constitutional right at issue is grounded in the Fourteenth Amendment's Due Process Clause, under which "[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law."[7] The Due Process Clause "demarks only the outer boundaries of judicial disqualifications."[8] The Supreme Court has recognized that "most matters relating to judicial disqualification [do] not rise to a constitutional level."[9] Instead, they are left to legislative discretion.[10] However, "[i]t is axiomatic that '[a] fair trial in a fair tribunal is a basic requirement of due process.'"[11] Accordingly, the Due Process Clause imposes a "requirement of neutrality in adjudicative proceedings."[12]

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[4] *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

[5] *Doe v. MySpace, Inc.*, 528 F.3d 413, 418 (5th Cir. 2008) (alteration in original) (quoting *Hughes v. Tobacco Inst., Inc.*, 278 F.3d 417, 420 (5th Cir. 2001)).

[6] 42 U.S.C. § 1983.

[7] U.S. CONST. amend. XIV, § 1.

[8] *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 889 (2009) (quoting *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 828 (1986)).

[9] *Id.* at 876 (alteration in original) (quoting *FTC v. Cement Inst.*, 333 U.S. 683, 702 (1948)).

[10] *Id.*

[11] *Id.* (second alteration in original) (quoting *In re Murchison*, 349 U.S. 133, 136 (1955)).

[12] *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980).

Actual bias "no doubt" may constitute grounds for relief, but it is unnecessary to establish a violation.[13] Rather, "the Due Process Clause has been implemented by objective standards that do not require proof of actual bias."[14] The test comes from the Supreme Court's 1927 decision in *Tumey v. Ohio*:[15]

> Every procedure which would offer *a possible temptation to the average man as a judge* to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear and true between the State and the accused, denies the latter due process of law.[16]

"This 'average man as judge' standard—focusing on the strength of the temptation rather than an actual showing of impartiality—has guided the due process inquiry ever since."[17] The inquiry asks whether, "'under a realistic appraisal of psychological tendencies and human weakness,' the interest 'poses such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented.'"[18]

Here, Judge Bonin did not disclose any actual bias in favor of ETOH. The question is whether an unconstitutional risk of bias can be inferred from his ties to ETOH. The complaint asserts three connections: the founders of ETOH made campaign contributions to Judge Bonin; an ETOH founder

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[13] *Caperton*, 556 U.S. at 883.

[14] *Id.*

[15] 273 U.S. 510 (1927).

[16] *Id.* at 532 (emphasis added).

[17] *Caliste v. Cantrell*, 937 F.3d 525, 529 (5th Cir. 2019).

[18] *Caperton*, 556 U.S. at 883-84 (quoting *Withrow v. Larkin*, 421 U.S. 35, 47 (1975)).

was a former law partner of Judge Bonin's; and ETOH sent reports to Judge Bonin about defendants' payment status.

In *Caperton v. A.T. Massey Coal Co.*,[19] the Supreme Court considered when judicial campaign contributions pose a risk of unconstitutional bias.[20] When assessing the risk, "[t]he inquiry centers on the contribution's relative size in comparison to the total amount of money contributed to the campaign, the total amount spent in the election, and the apparent effect such contribution had on the outcome of the election."[21] "[A]lso critical" is the "temporal relationship" between the campaign contributions, the judge's election, and the allegedly biased conduct.[22]

Applying these factors, the Court held that due process required a judge to recuse himself from a case because of "extraordinary contributions" he had received from a party's CEO.[23] The Court explained that "[n]ot every campaign contribution by a litigant or attorney creates a probability of bias that requires a judge's recusal, but this is an exceptional case."[24] The CEO's $3 million in contributions "eclipsed the total amount spent by all other . . . supporters" and was "$1 million more than the total amount spent by the campaign committees of both candidates combined."[25] The contributions "had a significant and disproportionate influence on the electoral outcome" and "were made at a time when [the CEO] had a vested

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[19] 556 U.S. 868 (2009).

[20] *Id.* at 872.

[21] *Id.* at 884.

[22] *Id.* at 886.

[23] *Id.* at 872-73, 886-87.

[24] *Id.* at 884.

[25] *Id.*

stake" in a case that the newly elected judge was likely to hear.[26] "On these extreme facts," the Court concluded, "the probability of actual bias rises to an unconstitutional level."[27]

The *Caperton* decision underscored the narrow scope of its holding.[28] The Court emphasized that its recusal jurisprudence has "[i]n each case . . . dealt with extreme facts," which "[t]he Court was careful to distinguish . . . from those interests that would not rise to a constitutional level."[29] "Our decision today addresses an extraordinary situation where the Constitution requires recusal," the Court said, noting that the parties had identified "no other instance involving judicial campaign contributions that presents a potential for bias comparable to the circumstances in this case."[30]

ETOH's contributions do not present an extraordinary instance. During his 2016 OPCDC campaign, Judge Bonin accepted donations from ETOH's founders totaling $3,550 and a loan of $1,000. The complaint does not allege that these contributions were outsized within the context of Judge Bonin's campaign or the election, or that they had any influence on his victory. The 2016 donations did occur close in time to the allegedly biased ankle monitoring decisions, which began in 2017. But temporal proximity alone does not establish a constitutional violation without otherwise

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[26] *Id.* at 885-86.

[27] *Id.* at 886-87.

[28] *See id.* at 887-90 ("The facts now before us are extreme by any measure. . . . Application of the constitutional standard implicated in this case will thus be confined to rare instances.").

[29] *Id.* at 887.

[30] *Id.*

unexceptional campaign contributions. The contributions here fall far short of the guidelines that *Caperton* satisfied.

The other connections between Judge Bonin and ETOH add little. The relationship between Judge Bonin and his former law partner who founded ETOH does not have constitutional significance. Since its 1927 decision in *Tumey*, and again in *Caperton*, the Court has reiterated that "matters of kinship, personal bias, state policy, remoteness of interest, would seem generally to be matters merely of legislative discretion."[31]

Nor do ETOH's reports to Judge Bonin raise due process concerns. ETOH noted defendants' payment status and asked that defendants be reminded of their payment obligations. There is no allegation that ETOH told Judge Bonin to extend defendants' ankle monitoring until they paid or told him to threaten imprisonment for nonpayment. These are conditions that Judge Bonin imposed without any alleged direction from ETOH.

Our decision does not address the general legality or propriety of Judge Bonin's conduct. We rule only on the question this case presents: whether ETOH had ties with Judge Bonin that created an unconstitutional risk of bias. Unexceptional campaign contributions and past business relations do not present an "extraordinary situation" in which due process is implicated.[32] Individually and in their totality, the ties between ETOH and Judge Bonin do not rise to the level of a constitutional violation.

III

Meade and Sookram also challenge the district court's decision to dismiss their complaint with prejudice. "We review the district court's

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[31] *Id.* at 876 (quoting *Tumey v. Ohio*, 273 U.S. 510, 523 (1927)).

[32] *See id.* at 887.

decision to grant a motion to dismiss with or without prejudice for abuse of discretion."[33]

Although leave to amend should be freely given, Meade and Sookram did not request it from the district court.[34] They raise it for the first time in their brief to this court.[35] In addition, they fail to indicate what additional facts they could plead to correct the complaint's deficiencies.[36] Under these circumstances, "we have no basis on which to find an abuse of discretion by the district court."[37]

* * *

For the reasons stated, we AFFIRM the district court's judgment.

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[33] *Sullivan v. Leor Energy, LLC*, 600 F.3d 542, 551 (5th Cir. 2010).

[34] *See Cinel v. Connick*, 15 F.3d 1338, 1346 (5th Cir. 1994).

[35] *See id.*

[36] *Sullivan*, 600 F.3d at 551.

[37] *Cinel*, 15 F.3d at 1346.

United States Court of Appeals

FIFTH CIRCUIT
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May 06, 2025

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing or Rehearing En Banc

No. 21-30620 Meade v. Bonin
USDC No. 2:20-CV-1455

Enclosed is a copy of the court's decision. The court has entered judgment under Fed. R. App. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

Fed. R. App. P. 39 through 41, and Fed. R. App. P. 39, 40, and 41 govern costs, rehearings, and mandates. **Fed. R. App. P. 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following Fed. R. App. P. 40 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. Fed. R. App. P. 41 provides that a motion for a stay of mandate under Fed. R. App. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

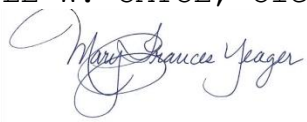
Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under Fed. R. App. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari**. Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

The judgment entered provides that Appellants pay to Appellee the costs on appeal. A bill of cost form is available on the court's website www.ca5.uscourts.gov.

Sincerely,

LYLE W. CAYCE, Clerk



By:_____
Mary Frances Yeager, Deputy Clerk

Enclosure(s)

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