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 BY THE PANEL

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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

   William R. Maurer; Jaba Tsitsuashvili; Institute for Justice; William Brock Most; Law Office of William Most

4. Counsel for Defendants-Appellees

   Leonard Louis Levenson; Christian Wayne Helmke; Donna R. Barrios; Leonard L. Levenson & Associates; Clare Roubio; Dane S. Ciolino; Louisiana Legal Ethics LLC

Dated: June 20, 2025

s/ Jaba Tsitsuashvili
Counsel for Plaintiffs-Appellants

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Introduction

Pursuant to Fifth Circuit Rule 40.1.2, Appellants Hakeem Meade and Marshall Sookram respectfully "bring to the attention of the panel claimed errors of fact [and] law in the opinion" attached. That opinion affirmed the district court's pleading-stage dismissal of Appellants' procedural due process claims. Those claims arose from the private, for-profit ankle-monitoring system of the Orleans Parish Criminal District Court. Upon closer examination of the allegations and the law, the Court should reconsider and reverse its decision for two independent reasons (the first being most straightforward).

I. The panel should easily reconsider and reverse because—contrary to the opinion's erroneous assertion—Appellants' complaint does indeed allege, in great detail, how "Judge Bonin did . . . disclose . . . actual bias in favor of ETOH" (Op. 5).[1] *See* ROA.66–67, 68–69, 71–77. As detailed in the briefing but undiscussed in the opinion, the complaint alleges that the judge "actually succumbed" to systematically using his

[1] Notably, the opinion's 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*. Regardless, Appellants' allegations meet even the opinion's new, unduly strict pleading-stage standard.

courthouse as ETOH's contract-feeder and its on-demand debt-collector. *Cain v. White*, 937 F.3d 446, 454 n.7 (5th Cir. 2019). He did so by making pretrial defendants contract with ETOH (which he called his "special service," ROA.75) and then threatening pretrial jailing and extended ankle-monitoring based on *nothing* except ETOH's desire to get paid. ROA.66–67, 69, 71–77. Notably, ETOH systematically expressed that desire to the judge by "highlight[ing]" particular individuals for "attention"—i.e., seeking judicial "remind[ers]" of ETOH payment status, which the judge obliged (ROA.73). Simply put, the court's ankle-monitoring system demonstrated actual bias in favor of ETOH's pocketbook over necessity or public safety, which were conspicuously absent from the judge's *pay ETOH or go to jail/stay on ankle-monitoring* coercions. *E.g.*, ROA.66–67, 69, 72, 74. The court also prioritized ETOH's collections over defendants' ability to pay, defendants' other financial obligations, and other ankle-monitoring providers' ability to compete. *E.g.*, ROA.74, 75, 76. Comparing those well-pleaded allegations to the opinion's erroneous assertion regarding actual bias opens the simplest route to reconsideration and reversal because, as the opinion recognized,

"[a]ctual bias 'no doubt' may constitute grounds for relief." Op. 5 (citation omitted). The complaint details just that. The Court should address it.

II. Because the complaint describes a judicial system *actually* biased in favor of ETOH's bottom line, the opinion's assessment of a *possible temptation* for bias is unnecessary and can be withdrawn. Alternatively, a possible-temptation analysis must be the systemic, totality-of-circumstances inquiry required by Circuit law, based on all of the complaint's allegations—which the opinion did not do.

Argument

I. The opinion disregarded the complaint's detailed allegations demonstrating actual judicial bias in the systemic conditioning of liberty on nothing but ETOH's bottom line, requiring reconsideration and reversal to align with Circuit law.

The opinion rightly noted: "Actual bias 'no doubt' may constitute grounds for relief, but it is unnecessary to establish a violation." Op. 5 (citation omitted). However, in conclusory fashion the opinion stated: "Here, Judge Bonin did not disclose any actual bias in favor of ETOH." *Id.* That was the entirety of its actual-bias analysis, with no assessment of Appellants' argument that the complaint alleged not only "the possible temptation or appearance of interested decision-making, but also the

reality of it." Opening Br. 29 (ECF page). The Court should now address the facts alleging that biased reality and hold that they state a due process claim. At the least, the Court should explain why it is departing from similar cases that warned against the erosion of due process in adjudication and therefore recognized due process claims in the face of "plausible actual bias based on well-pleaded facts." *Tesla, Inc. v. La. Auto. Dealers Ass'n*, 113 F.4th 511, 524 n.14 (5th Cir. 2024), *rehearing denied*.

1. The Court should grapple with the complaint's actual-bias allegations. The complaint details how Judge Bonin and ETOH operated a property- and liberty-depriving judicial system in which maximizing ETOH's private profit was the priority, without even gesturing at necessity or public safety:

- 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);[2]
- 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);

[2] *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 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.").

- "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);
- 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);[3]

- 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);
- 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

[3] *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 practices of Judge Bonin and the other judges of the Orleans Parish Criminal District Court (ROA.72).

Such *actual and targeted use of the judicial system for the profit of a private company* (even ignoring the personal and financial backdrops against which it occurred) "pushes beyond what due process allows"; that conduct crosses the line from the "mere threat of []partiality" (which itself suffices to state a due process claim) into its *actualization*. *Caliste v. Cantrell*, 937 F.3d 525, 530, 532 (5th Cir. 2019). Such actualization eliminates the need for theorizing about *possible* temptations, because the judge "actually succumbed" to using his courthouse as ETOH's contract-feeder and on-demand debt-collector. *Cain v. White*, 937 F.3d 446, 454 n.7 (5th Cir. 2019). What else to make of the judge's own admission of his partiality to ETOH, when he called the company his "special service" while expressly excluding other providers? ROA.75.

In short, the complaint details precisely how the judge actually succumbed, time and again. Yet the opinion did not grapple with those extensive allegations (and briefing) about the judge's actually-biased operation of the court's ankle-monitoring system. The opinion simply asserted without analysis that "Judge Bonin did not disclose any actual

bias in favor of ETOH." Op. 5. That conclusion is untenable. It is hard to see how the debtor's-prison-like 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. Only by overlooking the complaint's suite of detailed allegations could the opinion hold otherwise.

2. When the opinion did briefly address the actual operation of Judge Bonin's and ETOH's system, it misconstrued the complaint's allegations and misperceived a key vice as a saving virtue. To be sure, the opinion did not perform an actual-bias analysis. But part of its possible-temptation analysis included the following assertion: ETOH's "reports to Judge Bonin [do not] raise due process concerns" because 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." Op. 8. That assessment suffers from two critical legal errors. Correction of those errors further highlights the strength of Appellants' actual-bias allegations and arguments.

First, reading the complaint's allegations in the light most favorable to Appellants, Judge Bonin's payment-coercion methods *did* flow directly from ETOH's unsubtle reports. In the company's own words: ETOH systematically "highlighted" individuals for the judge's "attention" and asked that particular individuals be "reminded of [their] continuing obligation to make payments to our company." ROA.73. That was the company inducing what the judge invariably did: tell those individuals (without inquiry into ability to pay or any need for ongoing supervision) to pay up upon threat of jailing or extended monitoring (and more fees). ROA.66–67, 69, 72–77. That ETOH-inducement reading of the system is especially plausible because Judge Bonin *told* ETOH what he was doing with the information it gave him about individuals' payment statuses. *E.g.*, ROA.69 ("Mr. Sookram will be able to have the monitor removed once his balance is paid in full."). So the opinion was wrong to miscast Judge Bonin's ETOH-benefiting threats as occurring in a vacuum free of ETOH's influence. Quite the contrary; ETOH's reports were essential to the court's demonstrations of actual bias for ETOH's benefit. *See, e.g.*, ROA.65–66 ("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*.") (emphasis added).

Second, even if the court's payment-coercing threats were "imposed without any alleged direction from ETOH" (Op. 8), that would be no saving virtue—neither as a matter of the due process violation nor ETOH's liability for it. The fact that the financially-motivated liberty deprivations were conducted directly by the judge is precisely why Appellants *have* pleaded a judicial-bias claim. In other words: Even taking for granted the implausible assumption that Judge Bonin was imposing the court's ETOH-profiting conditions without inducement from ETOH, the showing of the court's actual bias is only heightened, not alleviated. The point of Appellants' judicial-bias claim is that *the judge* was demonstrating "actual bias in favor of ETOH" (Op. 5), rather than making decisions based on necessity or public safety. Accordingly, using the coercive power of the court is what *inculpates* Judge Bonin's and ETOH's for-profit system, not what exculpates it. And it is blackletter Circuit law that as a state-actor participant (and creditor-beneficiary) in that debtor's-prison-like judicial system, ETOH is subject to suit and

liability for it under § 1983, even though "Judge Bonin is not a current party to this case" (Op. 3). *Ballard v. Wall*, 413 F.3d 510, 517–20 (5th Cir. 2005) (even where judicial immunity shielded the judge from a § 1983 due-process claim arising from his conditioning of the plaintiff's liberty on payment to private-party creditors, the claim could proceed against those participating creditors because they satisfied the state-actor analysis).[4]

In short, no matter how one looks at the detailed factual allegations about the actual operation of Judge Bonin's and ETOH's for-profit system, they "disclose . . . actual bias in favor of ETOH" (Op. 5). Those allegations amount to a well-pleaded due process claim for which ETOH (the system's active participant and primary beneficiary) can be held liable with or without the judge's liability.

3. Upon confronting all the allegations detailed above and the true import of the judge's and ETOH's coordinated actions, this case becomes

[4] The district court rightly held that ETOH is a state actor for the due process claims at issue here because they arise from ETOH's performance of a public function. ROA.284–293. ETOH waived any argument to the contrary by declining to appeal that holding. *Art Midwest Inc. v. Atl. Ltd. P'ship XII*, 742 F.3d 206, 211 (5th Cir. 2014). And ETOH's public-function role is "determinative" in "subject[ing]" the company to Appellants' due process claims. *Rosborough v. Mgmt. & Training Corp.*, 350 F.3d 459, 461 (5th Cir. 2003).

a clear candidate for reconsideration and reversal—the rare but particularly pernicious actual-bias case. Indeed, if the facts alleged here do not meet that actual-bias standard (especially at the pleading stage), it is hard to imagine what private-profit-generating judicial system could. To treat the allegations of Judge Bonin's systemic bias for ETOH's coffers as insufficient to state a due process claim would jettison this Circuit'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's targeting of the plaintiff that they hoped for. *Tesla, Inc.*, 113 F.4th at 524 n.14. That sounds a lot like the arrangement between ETOH and Judge Bonin (whose judicial role demanded an especially stringent maintenance of neutrality, and its appearance). Appellants are no less entitled to § 1983's promise of protection against governmental predation than the multibillion-dollar corporation whose rights were vindicated in *Tesla*.

II. The opinion's possible-temptation analysis was not the systemic, totality-of-circumstances inquiry required by Circuit law.

The Court need not conduct a possible-temptation analysis after holding, upon reconsideration, that Appellants have adequately pleaded an actual-bias claim, as detailed above. But any renewed possible-temptation analysis should be the systemic, totality-of-circumstances inquiry required by Circuit law—neither of which the opinion did. Those legal errors, individually and cumulatively, were dispositive of the result.

1. The opinion's erroneous analysis stems from the fact that it "sorted" this case into the wrong "group[]" of possible-temptation caselaw, thereby failing to treat the situation as the systemic one it was. *Caliste*, 937 F.3d at 530. Under that systemic approach, ETOH would be rightly seen as an arm or agent of the court; and the company's ever-present financial incentives would guide the analysis, given the pervasive threat that the profit-generating system would prioritize revenue over justice. That means the opinion's legal error was almost certainly dispositive of the result. So, at the least, the Court should explain why it does not think the situation here falls into the systemic line of caselaw, as Appellants argued (Opening Br. 21–41).

In this Circuit, judicial due process 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," without regard to the identities of the parties appearing before the decisionmaking judge in any given adjudication. *Caliste*, 937 F.3d at 530. That distinction matters because it dictates the evidentiary standard and what facts get prioritized in the 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 (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 opinion did not address the distinction or explain why it disagreed with Appellants' view of the appropriate legal standard. The Court should revisit that decision and hold that Appellants' claims proceed to the merits under the systemic line of cases. At the least, the Court should explain why that line of cases does not apply.

2. To be sure, even in conducting the appropriate systemic analysis, the Court may note a distinction between the system at issue here and those at issue in *Cain* and *Caliste*. In those cases, the decisionmaking judges had control of the court funds their decisions benefited. Here, Appellants are not (yet) aware of any such control by Judge Bonin of money he funneled into ETOH's coffers. But by assessing the "totality of this situation, not any individual piece," Appellants' claim is just as viable. *Cain*, 937 F.3d at 454. Because the opinion here did not conduct that totality analysis, the Court should revisit it, as follows.

Contrary to Circuit precedent requiring a totality approach, the opinion focused only on one aspect of the situation: the campaign contributions from ETOH's owners to Judge Bonin. Op. 7–8. Meanwhile, the opinion dismissed the relevance of the "relationship between Judge Bonin and his former law partner who founded ETOH," as well as "ETOH's reports to Judge Bonin." Op. 8. To start, Appellants maintain that even if the background relationships could not alone raise due process concerns, they must factor into the totality analysis. Even more central to the totality analysis: the crucial role that ETOH's reports played in the court's payment-coercion system, as detailed above. And the totality analysis must also account for additional important considerations:

- Judge Bonin's campaign had an outstanding $1,000 debt to one of ETOH's owners (ROA.70); that is: at all relevant times, the judge's campaign *owed money* to the beneficiary of the judge's fee-collection efforts;
- unlike in *Cain* and *Caliste*, the entity benefiting here was a for-profit, private company with no public accountability, which

relied on ankle-monitoring fees for its sole function: making money ($300 a month per individual) (ROA.64); and

- Judge Bonin's actual conduct (detailed at length above) *demonstrated* that ETOH's systematic prodding of the judge to help the company get paid were the driving force of the court's coercions of payment upon threat of jailing (ROA.70–77).

Taking those allegations and the ones detailed above, the following picture emerges: A judge required criminal defendants to contract with a particular for-profit company—which he called his "special service," and to which his campaign was literally indebted—to the exclusion of other providers; he did so without disclosing that debt or his other ties to the company; then, that company prodded the judge to help collect its fees; invariably, the judge obliged; he did so by coercing payment upon threat of jailing or extended ankle-monitoring (resulting in even more fees for the company); and the judge's threats were not only based on the company's prodding and desire to get paid, but also without inquiry into ability to pay or the necessity of continued surveillance. As discussed above, Appellants maintain that those features suffice to plausibly allege actual bias, obviating the need for a possible-temptation analysis.

Alternatively, the situation raises constitutional concerns about the "appearance of justice," the "threat of []partiality," and "[p]ossible temptation [that] bloomed into questionable behavior." *Cain*, 937 F.3d at 453; *Caliste*, 937 F.3d at 530; *Brown*, 637 F.2d at 286. Under any standard, "this uncommon arrangement violates due process." *Caliste*, 937 F.3d at 532; *see* ROA.70–72 (explaining how uncommon the arrangement was).

Conclusion

The panel should withdraw its opinion, hold that Appellants have pleaded an actual-bias claim and/or a possible temptation claim, reverse, and remand for further proceedings. Appellants are prepared to conduct oral argument if it would aid the Court's reconsideration.

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 3,861 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.

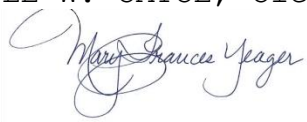
Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under Fed. R. App. P. 41. The issuance of the mandate does not affect the time,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