

FILED

DEC 04 2025

U.S. Court of Appeals  
Eighth Circuit

No. 25-02352

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In the United States Court of Appeals  
for the Eighth Circuit

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TERRY LEE HINDS,  
*Plaintiff/Petitioner - Appellant, (“[P/A]”),*

v.

DONALD TRUMP, ET AL.,  
PURSUANT TO FED. R. APP. P 43(c)(2)

*Defendants, Appellees (“[D/A]”)*  
*Defendants/Respondents/Interested Party (“[D/R/I P]”) same as [D/A].*

On Appeal from the United States District Court for the  
Eastern District of Missouri  
No. 4:25-CV-00047 AGF  
Hon. Judge Audrey G. Fleissig, District Judge

RECEIVED

DEC 04 2025

U.S. COURT OF APPEALS  
EIGHTH CIRCUIT

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**MOTION FOR LEAVE TO EXCEED TYPE-VOLUME LIMITATION  
& FOR EXTENSION OF PAGE LIMITS FOR “GOOD CAUSE”**

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**Comes now**, Plaintiff/Petitioner - Appellant, (“[P/A]”) TERRY LEE HINDS respectfully moves this Court for permission to file a combined Petition for Panel Rehearing and Rehearing En Banc that exceeds the 3,900-word limit and would exceed a 15-page limit as prescribed by Federal Rule of Appellate Procedure 40(d)(3). Movant requests leave to file an oversized combined petition, specifying the requested word count (6,800 words) and page count (31 pages). The Appellees’ counsel, ROBERT J. BRANMAN was contacted on 12/02/2025 and does not consent to this motion, reason unstated.

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Appellant’s Motion For Leave thereby to Exceed Word & Page Count

For “Good Cause” [P/A] states these key legal arguments:

## I. Complex and multifaceted legal issues

### Justification:

- This appeal involves multiple intricate legal questions, *inter alia*, from “inextricably intertwined” jurisdictional challenge, the APA claims not addressed, to sovereign immunity as a “jurisdictional bar” vs. Article III powers of “case or controversies” clause, or congressional enumerated authority Article I, Section 8 & *doctrines of separation of powers, stare decisis* all under an ***issue of a first impression*** regarding the [P/A]’s *free exercise of a religious liberty* of FAITH in [LAW].

### Summary:

- This argument as described above combines several distinct & complex legal claims, creating a highly specific theory for a "first impression" case. The argument weaves together First Amendment principles, the Religious Freedom Restoration Act (RFRA), the Administrative Procedure Act (APA), and doctrines regarding federal sovereign immunity and subject matter jurisdiction.

### Point of Law

- [P/A]’s FAITH in [LAW] specific facts are “inextricably intertwined” under the United States Constitution, 1st Amendment & constitutional provisions of 3rd, 4th, 5th, 9th, 10th, 13th & 16th Amends. & Art. III, § 2, & Supreme Court doctrines *all applicable to or identical to an issue of a first impression*.
- **This first impression challenge:** This case of *first impression* in these areas of law presents a specific set of facts that have not been previously litigated under any evolving legal standard. The court's analysis should focus heavily on whether the secular exemption used (consent/waiver to sue”) granted to the government is "comparable" to the religious practices at issue with [P/A]’s FAITH in [LAW]. This requires the government to provide a comparable religious exemption. Here, it

provided a new analysis for determining *when that bar is overcome in the specific context of the APA & RFRA* and governmental control of religious liberty. [P/A]'s FAITH in [LAW] of which is a pivotal point of contention in this *free exercise* of a religious liberty case.

### 1. "Inextricably intertwined" facts and constitutional rights

This is a core component of the argument, contending that the [P/A]'s religious convictions of FAITH in [LAW] are so fundamentally tied to the specific facts of the case that they cannot be separated for judicial analysis.

- **First Amendment:** The First Amendment's Free Exercise Clause is the central constitutional provision, protecting the right to practice one's religion.
- **Other constitutional provisions:** The inclusion of multiple other amendments (3rd, 4th, 5th, 9th, 10th, 13th, 16th, and Article III, § 2) suggests a "hybrid-rights" claim. This type of claim argues that a free exercise violation, when combined with a violation of another constitutional right, requires a higher level of judicial scrutiny. The argument is that the government's action infringes on a broad range of fundamental rights, not just religious liberty.

### 2. Comparable secular exemption under RFRA

This argument is based on the evolving Free Exercise Clause jurisprudence, which has held that a law is not neutral and generally applicable if it treats any comparable secular activity more favorably than religious exercise.

- **The comparator:** The secular comparator identified in this controversy is a "consent/waiver to sue" exemption granted to the government. This is a very novel point, arguing that the government's ability to create exceptions to its sovereign immunity should be treated as a comparable secular exemption, triggering strict scrutiny under RFRA.
- **RFRA's standard:** The Religious Freedom Restoration Act (RFRA) requires that any federal action substantially burdening religious

exercise must be justified by a compelling governmental interest and be the least restrictive means of furthering that interest.

### 3. Waiver of sovereign immunity through APA and RFRA

This is a critical point that directly confronts the procedural defense of sovereign immunity, which can be raised under a Federal Rule of Civil Procedure (FRCP) Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction.

- **Sovereign immunity and money damages:** As a general rule, RFRA does not waive the federal government's sovereign immunity against claims for money damages. It does, *however, waive sovereign immunity for injunctive or equitable relief*, which is sought to stop a governmental action or restore a previous situation. This distinction is critical to determining what remedies are available when suing the government for a RFRA violation.
- **APA and RFRA:** The argument asserted that the APA or RFRA statutes themselves provide a waiver of sovereign immunity under these specific facts. The APA, for instance, allows for judicial review of agency action, including whether it is contrary to statutory rights. This argument would need to demonstrate that the agency action was illegal under RFRA, thereby creating a basis for judicial review under the APA.

### 4. Intertwined jurisdictional facts and merits

This procedural argument asserts that the motion to dismiss should be denied because the facts required to establish subject matter jurisdiction are the same as those that determine the merits of the case.

- **The doctrine:** When jurisdictional facts are "inextricably intertwined" with the merits of a claim, a court should generally reserve judgment on jurisdiction until a more developed record exists, allowing the case to proceed to the merits. This prevents a premature dismissal that might violate due process.

- **Relevance to the case:** In this scenario, the facts will prove the RFRA violation (e.g., that the government's action substantially burdened religious exercise) are also the facts that might be used to establish a waiver of sovereign immunity under the APA.

### **Summary of the legal challenge**

- This legal point attempts to establish jurisdiction by arguing that the government's sovereign immunity defense is defeated due to federal statutes (RFRA and APA) and the factual context of the case. By framing the issue as a novel "first impression" case where facts are "inextricably intertwined" with jurisdiction and the merits, the [P/A] attempts to prevent a wrongful dismissal and force the court to address the substance of the religious liberty claims.
- Therefore, [D/A]'s sovereign immunity defense was factually or legally invalid or was *defeated on substantive grounds* demonstrating that immunity was either waived by federal statutes under APA law or does not apply when Religious Freedom Restoration Act of 1993, codified at 42 U.S.C. § 2000bb through 42 U.S.C. § 2000bb-4 (RFRA) vs FRCP Rule 12(b)(1) for "a lack of subject matter jurisdiction".
- Lastly the doctrine that jurisdictional facts "inextricably intertwined" with the merits of a case should be resolved on the merits is relevant in specific circumstances but does not override the fundamental barrier of federal sovereign immunity. A court cannot hear a case against the federal government unless Congress has explicitly consented to the suit through a waiver of sovereign immunity, like those provided in 28 U.S. Code § 1346. United States as defendant.
- The central conflict in this appeal is the tension between jurisdictional rules (like sovereign immunity) and fundamental constitutional rights (like free exercise). The "inextricably intertwined" doctrine serves as the [P/A]'s key strategy to overcome the procedural barrier of sovereign immunity and have his APA & constitutional claims fully litigated. The courts must decide if the novel free exercise claim or this *case of first*

*impression* is compelling enough to justify an exception to the normal rules for government lawsuits, or as herein, *a petition as a suit of equity*.

- The Panel’s wrongful action & its dogmatic practice, now being its only defense using a “jurisdictional bar” vs interplay with the Administrative Procedure Act., Religious Freedom Restoration Act of 1993 ("RFRA") Judiciary Act of 1789, *inter alia*, must be defined and properly explains.
- The panel's opinion addressed **no grounds** for affirming the district decision other than “*that the district court lacked subject matter jurisdiction*” which requires a very precise & detailed analysis to demonstrate that the court overlooked controlling precedent and misinterpreted the jurisdiction to hear the case as an error of law; under the *intersection of federal equity jurisdiction* and the *common law doctrine* of federal sovereign immunity; when this authority is rooted in the Judiciary Act of 1789.
- This combined petition for panel rehearing and rehearing *en banc* has fully articulated the **ten questions** of exceptional importance presented; involving the panel's holding, based on an unduly broad application of *federal sovereign immunity*, that expressly repudiates the core conflicts with fundamental constitutional principles, precedents or controlling law as established within 1. *Langford v. United States* 101 U.S. 341, 1 (1879), 2. *United States v. Lee* 106 U.S. 196 (1882), 3. *Marbury v. Madison* 5 U.S. (1 Cranch) 137 (1803), 4. *United States v. Klein* 80 U.S. 128 (1871) 5. *Yick Wo v. Hopkins* 118 U.S. 356, 370 (1886), 6. *Louisville & Nashville Railroad Co. v. Mottley* 211 U.S. 149 (1908), 7. *Loper Bright v. Raimondo* 603 U.S. 369 (2024).

## II. Consolidated appeal (combined petition) and extensive record

### Justification:

- [P/A] has written, prepared, and completed this combined petition on 12/01/25, of which consists of a total 21 pages. However, upon submitting this document to “TypeLaw,” a legal brief formatting company this document disclosed 31 pages were generated due to Fed. R. App. P. Following all FRAP is important for significant reasons. But

protected speech (pure speech – as written here) has to have significant meaning to the Federal Courts when protecting First Amendment rights or has a *visible due process practice*.

- The panel's decision failed to address the specific arguments raised by Appellant. A consolidated appeal as a combined petition for panel rehearing & rehearing *en banc* involved the Panel's *de novo review* of a vital case that has extensive record. The arguments concerned subject matter jurisdiction analysis, *inter alia* of mixed law and specific facts by misapprehending controlling authority, & misunderstood material facts of [P/A]'s FAITH in [LAW].
- As addressed above in the Point of Law section these legal matters are all present under an *issue of a first impression* regarding the [P/A]'s *free exercise of a religious liberty* of FAITH in [LAW].
- The section of *ten questions of exceptional importance* consumed over 9 pages alone and used additional 2054 words to explain how the panel's decision conflicts with U.S. Supreme Court, *doctrine of stare decisis*, fundamental constitutional principles, precedents or controlling law which requires additional pages and words requested, as additional space & document length is necessary.

### **III. Clear and indisputable error in applying precedents, important considerations & mischaracterization of the case as a summary.**

#### **Justification:**

- The panel's decision overlooks controlling & highly relevant precedents from both the Supreme Court and one case of this Circuit. The petition must dedicate additional space for words & pages needed to detail the factual similarities between the controlling case and the current matter under review, and to explain how the panel's decision directly conflicts with the established legal framework. The following list of important considerations & precedents of [P/A]'s arguments for Panel rehearing and Rehearing En Banc; as a procedural due process right, that cannot be adequately explained without exceeding the standard word count and page limits to avoid potential prejudice to the Appellant.

## 1) Mischaracterization of the Case

- [P/A] argues that the panel mischaracterized the case has required a detailed explanations that exceeds the standard word count. Addressing this foundational error requires a detailed discussion of the record and the controlling precedent that was misapplied or ignored, which necessitates an expansion of the standard word count & pages required.

- **The panel's error in framing the case:**

The panel reviewed the case *de novo* but incorrectly framed it as a "*pro se* complaint" about a "lack of subject matter jurisdiction" versus "jurisdictional bar" under a common law as a court doctrine of federal sovereignty immunity to prevent "monetary claims" not equity claims.

- **The substance of the claims:**

The core of [P/A]'s argument is that the panel failed to properly identify the fundamental nature of the *suit as one in equity*, rather than a typical legal action seeking monetary damages.

- **Conflation of jurisdiction with merits:**

The panel's mischaracterization led to a flawed jurisdictional analysis. [P/A] contend that the court improperly conflated the existence of a "jurisdictional bar" with the actual substance of the claims, which [P/A] describe as "inextricably intertwined" with the merits of the case.

## 2) Jurisdictional error

- **Lack of subject-matter jurisdiction:**

[P/A] argue that the panel's error regarding the nature of the case led it to incorrectly find a lack of subject-matter jurisdiction. This error, [P/A] contend, prevented the court from performing a proper review of the case's *unique facts*.

- **Constitutional claims:**

[P/A] state that this jurisdictional error is particularly problematic because the claims involve constitutional protections, specifically free speech, petitioning rights, and religious liberty based on "FAITH in [LAW]," which are protected & exercised under Article III's "case or controversy" clause. This case is applicable to or operates under, as an issue of a *first impression*

#### **IV. Departure from precedent or misapprehension of controlling authority**

- **Failure to apply "totality of the circumstances":**

A crucial point of [P/A] argument is that the panel failed to conduct the "totality of the circumstances" review mandated for constitutional claims in the Eighth Circuit. This is a direct challenge to the panel's application of established law.

- **Ignoring *United States v. Spotted Elk*:** [P/A] specifically cite *United States v. Spotted Elk*, 548 F.3d 641, 653 (8th Cir. 2008), arguing that the panel departed from its own precedent, which requires a holistic review for constitutional claims.

- [P/A]'s petition explains how the panel's jurisdictional analysis was fatally flawed. [P/A] state the panel erred in its *de novo review* by framing the case as a routine "pro se complaint" regarding subject-matter jurisdiction. [P/A] argues this is a mischaracterization that led the court down an incorrect legal path. [P/A] elaborate on the distinction between [P/A] equitable action verse a standard civil lawsuit to make this point clear.

- **Judicial review should not be barred:** Opponents of broad agency deference argue that courts must retain the ability to review and correct an agency's errors, especially when constitutional rights are at stake. The Administrative Procedure Act (APA) also explicitly provides for judicial review of agency actions that are "contrary to constitutional right". Consent to sue the government is within 28 U.S. Code § 1346 - **United States as defendant.**

- **28 U.S. Code § 1346** is a key statute that outlines circumstances in which the federal government consents to be sued in federal court. Under the legal doctrine of sovereign immunity, the federal government cannot be sued without its consent. This statute, along with others, provides that consent for specific types of claims.

## **V. Evidence of potential bias**

- **Presumptive bias against *pro se* litigants:**

[P/A]'s claims the panel viewed the case through a "prejudiced lens" due to [P/A]'s *pro se* status. [P/A] suggest this alleged bias led to a fundamental error of mischaracterization and an abuse of discretion.

- **Speed of the decision:**

As evidence of the panel's alleged systemic error or bias, [P/A] cites the short turnaround time between the case being submitted (November 10, 2025) and the opinion being filed (November 14, 2025), a decision that ended with a summary affirmance under 8th Circuit Rule 47B.

- **The legal error of invoking Rule 47B:**

[P/A] contend the panel made a "serious legal error" by invoking Eighth Circuit Rule 47B, which allows for an affirmance without a written opinion in certain circumstances. This rule is typically used when the panel finds no error of law and no issue of exceptional importance. By concluding that [P/A]'s appeal warranted such a summary disposition. [P/A]'s can argue the panel must have "failed in enunciating the law" by overlooking &/or misapprehending a significant legal point [P/A] raised

## **VI. Exceptional importance and misapplied precedent or law**

- **Failure to apply the correct standard**

[P/A] has argued that the panel failed to apply the correct standard for a subject-matter jurisdiction analysis involving "mixed law and facts," which [P/A] stated was necessitated by the case's unique circumstances.

This is a critical point that goes to the heart of the panel's alleged legal error.

- **Checks and balances:**

The argument that agencies are improperly evading review is rooted in the principle of separation of powers. Limiting judicial review in this manner is seen as allowing the executive branch to exercise undue power without proper oversight from the judicial branch.

- **Misunderstanding material facts and novel legal questions**

[P/A] petition explains the panel "overlooked, and failed to address" material facts, including [P/A]'s "FAITH in [LAW]" and the constitutional nature of [P/A]'s claims *with no monetary relief sought*. When constitutional rights are implicated, a stricter standard of review may apply. By failing to understand the material facts and [P/A] unique equitable claims. [P/A] argues the panel also failed to recognize that the *case and its controversies* present new or unresolved questions of law.

- **Misapplication of precedent in *Laclede Gas Co.***

[P/A] has a strong point in highlighting the panel's alleged erroneous reliance on *Laclede Gas Co. v. St. Charles County*. The facts of that case, involving the Pipeline Safety Act and property rights, or involve questions about the relocation costs of gas lines are entirely different from [P/A]'s equitable and constitutional claims. The core of [P/A]'s argument is that the panel's use of a factually distinct precedent resulted in a flawed analysis, which [P/A] can argue is a clear legal error.

**Propose the correct legal framework:** The correct precedent or legal principles that the court should have applied to the case, and how the outcome would have been different if those principles or precedent had been carefully considered are addressed within this combined petition.

## **VII. General Facts:**

- **[P/A] acknowledge the court's stance:**

This motion respectfully acknowledges that a petition to exceed word or page limitations is generally disfavored and is granted only for extraordinary reasons. [P/A]’s genuinely believes, respectful of the court’s time & resources, [P/A] has listed such extraordinary reasons.

- **Demonstrate inability to condense:**

[P/A] has explained why the issues are so complex that they cannot be addressed within the standard limit, rather than simply stating that more words or pages are needed.

- **Local rules checked:**

**Local Rule 28A(i)(1) governs overlength briefs:**

This motion for leave to file an overlength brief has been filed at least seven calendar days before the brief's due date.

**Requirements of Eighth Circuit Local Rule 35A:**

Eighth Circuit Local Rule 35A outlines the specific grounds on which a petition for panel rehearing must be based. The rule does not permit simply rearguing the case or rehashing previously considered arguments. Instead, the petition must highlight one of the following:

- A material factual or legal issue that was overlooked in the decision.
- A conflict between the opinion and a decision from the U.S. Supreme Court, the Eighth Circuit, or another court of appeals that was not addressed.
- The proceeding involves questions of exceptional importance.

The rule cautions that filing a petition solely for delay or to reargue the case is considered an abuse of privilege and may lead to sanctions.

**Applying this rule to [P/A]’s arguments**

[P/A]'s arguments, which address alleged errors of law and fact by the panel, will align with the grounds for a petition for rehearing as outlined in Local Rule 35A. Specifically:

- **Argument A** claims the panel erred in its subject-matter jurisdiction analysis due to a misapprehension of controlling authority and unique facts, which could be framed as pointing out a material legal error.
- **Argument B** asserts that the panel "overlooked and failed to address" the correct standard for analyzing mixed questions of law and fact and "misunderstood material facts," fitting within the permissible grounds of overlooked points and misunderstood facts.
- **Point 1** challenges the panel's reliance on *Laclede Gas Co. v. St. Charles County*, presenting a specific claim of misapplied precedent, which is a proper basis for a rehearing petition under the local rules.

[P/A] has adhered to local rules, structured arguments to demonstrate that the court overlooked a material point or misapprehended the law, rather than merely disagreeing with the conclusion. All argument is consistent with the specific local rules of the circuit court.

- **Certificate of Compliance:**

[P/A] has included a certificate of compliance stating the word count of this motion and the combined petition was computer-generated.

The combined petition, when filed, must include a certificate of compliance stating the word count, as required by Federal Rule of Appellate Procedure 32(g).

- a. **Why this relief is important:**

- **Legal analysis:** It demonstrates a deep understanding of the law, not just the black-letter rule.
- **Persuasion:** It provides a logical and evidence-based argument that is more persuasive than simply stating the rule.

- **Accuracy:** It ensures that the legal principle is being used in a way that is consistent with the facts, avoiding misunderstood material facts, overgeneralization or misapplication of the law.

Dated the 4<sup>th</sup> day of December 2025

*Respectfully Submitted,*



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### **CERTIFICATE OF COMPLIANCE**

Pursuant to Eighth Circuit Local Rule & under Federal Rule of Appellate Procedure 32, I hereby certify that this motion has a total number of 3561 words according to Microsoft 10, rely on the word-processing software's word count.

### **CERTIFICATE OF SERVICE AND DELIVERY**

I hereby certify that the foregoing was filed on this 4<sup>th</sup> day of December 2025 with the court, with a true and correct copy, served upon [D/R/I P] through their counsel for the defense, by First Class U.S. Mail, postage prepaid, at the following address and named attorney:

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*Respectfully Submitted,*



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