Supreme Court, U.S. FILED

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Supreme Court of The United States

OCTOBER TERM 2024

	No	_
JACKSON PETER CHIWANGA,		
Petitioner,		
V.		
MERRICK GARLAND, U.S. ATTORNEY GENERAL,		
Respondent.		

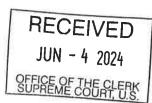
MOTION TO STAY AND/OR RECALL MANDATE PENDING FILING OF PETITION FOR WRIT OF CERTIORARI

Jackson Peter Chiwanga, pro se, respectfully moves this Court for an order staying and/or recalling the mandate issued by the United States Court of Appeals for the Fifth Circuit in case number 22-60573¹, pending the filing of a petition for writ of certiorari with this Court. In support of this motion, Mr. Chiwanga states the following:

1. **Background**: The petitioner, Jackson Peter Chiwanga, is seeking a stay and/or recall of the mandate issued by the Fifth Circuit in the case against Merrick Garland, U.S.

Attorney General. The underlying case involves the Immigration-related consequences of a conviction for domestic assault by strangulation in Oklahoma, with specific regard to whether such a conviction constitutes an aggravated felony under federal immigration law.

¹ The fifth circuit decision is published on westlaw at <u>Chiwanga v. Garland</u> 2023WL 7314055 (5TH Cir.



- 2. **Legal Issues to be Raised**: The forthcoming petition for writ of certiorari will present the following important questions:
 - Whether federal authorities can ignore a State classification of its own law when determining whether a conviction constitutes an aggravated felony under the Immigration Act.
 - Whether an Oklahoma domestic assault by strangulation conviction should be considered an aggravated felony under the Act.
- 3. **Standard for Stay and/or Recall**: A stay or recall of mandate is appropriate where there is a reasonable probability that four Justices will vote to grant certiorari, a fair prospect that a majority of the Court will vote to reverse the judgment below, and a likelihood of irreparable harm if the stay is not granted.
- 4. **Likelihood of Success**: The legal issues raised in this case are of significant importance and have far-reaching implications for the interpretation of federal Immigration law in relation to State criminal law classifications. There is a fair prospect that the Supreme Court will grant certiorari and potentially reverse or remand the Fifth Circuit's decision.
- 5. **Irreparable Harm**: If the mandate is not stayed and/or recalled, Mr. Chiwanga faces the consequences associated with an aggravated felony designation including inability to return to the United States, constituting irreparable harm.
- 6. **Minimal Harm to Respondent**: Staying and/or recalling the mandate would not cause significant harm to the respondent, as it merely preserves the status quo while the petition for writ of certiorari is prepared and filed.

- 7. **Balance of Equities and Public Interest**: The balance of equities and public interest strongly favor granting the requested relief. The question of federal interpretation of State laws for Immigration purposes is a matter of considerable importance, with broad implications.
- 8. **Conclusion**: For the reasons set forth, Mr. Chiwanga respectfully requests that this Court grant a stay and/or recall the mandate issued by the Fifth Circuit in case number 22-60573, pending the filing of a petition for writ of certiorari.

Respectfully submitted,

Jackson Peter Chiwanga-Pro se

c/o Edgar Chiwanga

8381 E VILLAGE LANE

ROSEMEAD, CALIF. 91770

CERTIFICATE OF SERVICE

I certify that I have served a true and correct copy of the foregoing motion on the opposing counsel, via US postal Service, postage prepaid, properly affixed and addressed to:

Kathryn McKinney Office of Immigration Litigation U.S. Department of Justice-Civil Division P.O. Box 878, Ben Franklin Station Washington, D.C. 20044

On this 13th day of May 2024.

Respectfully Submitted,

Jackson Peter Chiwanga-Pro se

c/o Edgar Chiwanga

8381 E VILLAGE LANE

ROSEMEAD, CALIF. 91770

Attachments: order denying petition for rehearing

ATTACHMENT 1

United States Court of Appeals for the Fifth Circuit

No. 22-60573

United States Court of Appeals Fifth Circuit

FILED

March 19, 2024

Lyle W. Cayce Clerk

Petitioner,

Jackson Peter Chiwanga,

versus

MERRICK GARLAND, U.S. Attorney General,

Respondent.

Appeal from the Board of Immigration Appeals Agency No. A095 555 938

ON PETITION FOR REHEARING

Before GRAVES, HIGGINSON, and HO, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing is DENIED.

ATTACHMENT Z

United States Court of Appeals for the Fifth Circuit

No. 22-60573

United States Court of Appeals Fifth Circuit

FILED

May 1, 2024

Lyle W. Cayce Clerk

Jackson Peter Chiwanga,

Petitioner,

versus

MERRICK GARLAND, U.S. Attorney General,

Respondent.

Appeal from the Board of Immigration Appeals
Agency No. A095 555 938

UNPUBLISHED ORDER

Before GRAVES, HIGGINSON, and Ho, Circuit Judges.

PER CURIAM:

IT IS ORDERED that Petitioner's motion to recall the mandate is DENIED.