

MAY 24 2024

23A1091

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 Chiwanga v. Garland 2023WL 7314055 (5TH Cir. 2023)

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SUPREME COURT, U.S.

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,

A handwritten signature in blue ink, appearing to read 'J. Chiwanga', is written over a light blue circular stamp.

Jackson Peter Chiwanga-Pro se
c/o Edgar Chiwanga
8381 E VILLAGE LANE
ROSEMEAD, CALIF. 91770

Attachments: order denying petition for rehearing

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 2

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.