

In the Supreme Court of the United States

BALTIMORE COUNTY, MARYLAND,

Applicant,

v.

MICHAEL A. SCOTT; RUDOLPH ARMSTRONG; AARON KESSLER; MARK MARINER;
LAMAR MARTIN; JEFFREY MATTHEW WELSHONS; DESHAWN PENHA; AARON
SILWONUK; ADAM DULAJ; ASZMAR HINES; GREGORY MALICKI; JASON HADEL;
MICHAEL WELLS; VINCENT STONE; TONY BLACK; DONNELL FOSTER, JR.;
KENNETH NIERWIENSKI, JR.; CHRISTOPHER HACKLEY; EDWARD PENDERGAST;
SAIQUON WHITE; JOE MCDANIELS; ESPINAL OSVALDO; YUSEF OSIRUPHU-EL;
TAVIST JAMES; DAKOTA BARNARD; MAURICE RICHARDSON; SHAWN BROOKS;
RAYNARD STANCIL; JAMES PEACE; CLINTON REAGAN; MATTHEW BAHR; RICHARD
LEWIS; KENNETH LUCKEY, JR.; PERRY SENIOR; LAWRENCE ANDERSON; MARK
GANTT; RASHAD MILLS; LONDON BUTLER; JEREMY OGAS; GREGORY BLAIR;
DAVAUGHN CROSBY; CHRIS VELTE; MATTHEW CARSON; HAROLD SNYDER;
BRANDON BUCKMASTER; WILLIAM MOROME; THOMAS WILLIAMS; JOSEPH
DAWSON; KEVIN COOPER; DAMIEN WATERS; MATTHEW BERMAN; DUSTIN MOHR,

Respondents.

**APPLICATION TO THE HONORABLE CHIEF JUSTICE JOHN ROBERTS
FOR AN EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF
CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE
FOURTH CIRCUIT**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6, the undersigned counsel of record certifies that Applicant Baltimore County, Maryland does not have a parent corporation and does not issue stock.

/s/ Kraig B. Long

APPLICATION

To the Honorable John G. Roberts, Jr., Chief Justice of the Supreme Court of the United States and Circuit Justice for the Fourth Circuit:

Pursuant to Supreme Court Rule 13(5), Baltimore County, Maryland (“Baltimore County”) respectfully requests an extension by sixty days to and including Monday, November 4, 2024, for the filing of a petition for a writ of certiorari in this matter.¹ Unless an extension is granted, Baltimore County’s deadline for the filing of the petition will be September 4, 2024. This application is submitted more than ten days prior to the filing deadline.

In support of this request, Baltimore County states as follows:

1. The United States Court of Appeals for the Fourth Circuit denied rehearing en banc on June 6, 2024. App. 32-33. This Court has jurisdiction under 28 U.S.C. 1254.

2. The Respondents in this case are current or former inmates of the Baltimore County Detention Center (“BCDC”), all of whom sorted recyclables as part of a work detail at a Baltimore County-owned recycling center during their incarceration. App. 3.

3. Baltimore County paid Respondents \$20 per day for their labor. App. 4.

4. Respondent Michael Scott (“Scott”) filed suit, claiming that he and similarly inmates were “employees” of Baltimore County, and therefore entitled to a minimum and overtime wage for work at the recycling center under the Fair Labor

¹ The requested deadline is 61 days from the current deadline of September 4, 2024, given that November 3, 2024 is a Sunday.

Standards Act (“FLSA”), 29 U.S.C. § 201 *et seq.* and Maryland law. App. 4. At the conclusion of discovery, the district court granted summary judgment for Baltimore County, ruling that Respondents were not employees as a matter of law. App. 5. Given that the text of the FLSA does not directly address inmate coverage, the district court considered three principles that distinguished inmate labor from the traditional employment paradigm Congress intended to address with passage of the FLSA, including that: (1) inmates work for non-pecuniary reasons such as rehabilitation and job training, (2) inmates are subject to “virtually absolute control” by their custodian which is inconsistent with “bargained for exchange of labor” found in an employer-employee relationship, and (3) the legislative purpose of the FLSA – allowing workers to maintain their standard of living – is not furthered by application of the FLSA to inmates, who are provided food, shelter and other necessities by their custodian. App. 56-68.

5. Respondents appealed the district court’s ruling, and the Fourth Circuit reversed and remanded the case to the district court in a reported decision, holding that the “wrong legal standards” had been applied. App. 26.

6. The Fourth Circuit emphasized that the work detail was performed at a recycling center outside of BCDC, which was operated by Baltimore County’s Department of Public Works (“DPW”), rather than the Department of Corrections (“DOC”). App. 13, 16. Based on the analogy of Baltimore County’s DPW to a private, outside employer, the Fourth Circuit determined that the District Court was required to analyze whether DPW exercised “control” over the Respondent’s work, which the

Court opined “starts to make this case look more like the typical [FLSA] case[.]” App. 13-14. Likewise, the Fourth Circuit determined that the “the proper focus” under the FLSA is on whether DPW – as opposed to Baltimore County or the DOC – was primarily concerned with the rehabilitation of inmates at the recycling center. App. 19-24. Further, while the Respondents were provided all necessities of daily living by Baltimore County during their incarceration, the Fourth Circuit found that the FLSA’s additional purpose of preventing “unfair competition” with free workers and private businesses favored application of the FLSA because work was performed at an “offsite location” outside of BCDC. App. 14-18.

7. The Fourth Circuit’s emphasis on the location of inmate work and the analogy of a government agency to a private employer has significant implications for the FLSA’s application to inmates. This Court has never determined the FLSA’s application to inmate labor, and the circuit courts that had addressed this issue prior to the Fourth Circuit’s decision had refused to apply the FLSA to inmates, except where working for the benefit of private, outside employers. *See Carter v. Dutchess Cmty. Coll.*, 735 F.2d 8 (2d Cir. 1984) (work for a community college); *Watson v. Graves*, 909 F.2d 1549, 1550 (5th Cir. 1990) (work for a “private construction company”); *Burrell v. Staff*, 60 F.4th 25 (3d Cir. 2023) (work for a private recycling contractor). However, the Fourth Circuit’s holding has disturbed this bright-line distinction, and is the only reported decision from any federal circuit to hold that inmates working exclusively for the benefit of the government charged with their custody and care may qualify as “employees” under the FLSA. The Fourth Circuit’s

decision opens the door for thousands of inmates working in similar capacities across the country to assert that they are “employees” of the jurisdictions charged with their custody and care.

8. Baltimore County’s counsel needs additional time to prepare the petition in this case. Baltimore County’s counsel have had substantial case-related obligations since the denial of re-hearing en banc through the filing of this application, including:

- *Scott, et al. v. Baltimore County, MD*, No. 23-1731 (4th Cir.) (motion to stay mandate filed on June 12, 2024, and reply to opposition filed on July 8, 2024)
- *Scott, et al. v. Baltimore County, MD*, No. 1:21-cv-00034-SAG (D. Md.) (conference with counsel on schedule for litigation following remand, and joint status report submitted to the district court on August 9, 2024)
- *Sankano v. Major, Lindsey & Africa, et al.*, No. 8:24-cv-00951-TJS (D. Md) (memorandum in support of motion to dismiss filed on August 18, 2024)
- *Gaddis v. Green Analytics Massachusetts, LLC, et al.*, No. 2381CV01090 (Mass. Super. Ct.) (motion for summary judgment served on July 22, 2024, and reply to opposition motion served on August 20, 2024)
- *Hammond-Thompson v. Temple View Capital*, No 8:23-cv-01502-MJM (D. Md.) (ongoing written discovery, and motion for leave to file amended answer and counterclaim filed on August 7, 2024)

- *Marmon v. Children’s National Medical Center*, No. 2023-CAB-001329 (D.C. Super. Ct.) (pretrial statement filed on June 6, 2024, and pretrial conference held on June 13, 2024)
- *Jumett v. Health Services for Children with Special Needs, Inc.*, No. 1:23-cv-01966-LLA (D. D.C.) (resolution of putative class and collective action finalized on July 26, 2024)
- *Heidi Saas v. Major, Lindsey & Africa, LLC*, No. 24-1527 (4th Cir.) (appellate response brief filed on August 5, 2024)

9. Baltimore County’s counsel also have several upcoming case-related obligations, including:

- *Parker v. Children’s National Medical Center*, No. 24-1207 (4th Cir.) (appellate response brief due September 18, 2024)
- *Sankano v. Major, Lindsey & Africa, et al.*, No. 8:24-cv-00951-TJS (D. Md) (reply to opposition to motion to dismiss due on October 11, 2024)
- *Hammond-Thompson v. Temple View Capital*, No 8:23-cv-01502-MJM (D. Md.) (depositions, written discovery, and reply to opposition to motion for leave to file amended answer and counterclaim (likely due in early September of 2024, 14 days after opposition brief))
- *Scott, et al. v. Baltimore County, MD*, No. 1:21-cv-00034-SAG (D. Md.) (ongoing discovery on Respondents’ claimed damages)

- *Marmon v. Children’s National Medical Center*, No. 2023-CAB-001329 (D.C. Super. Ct.) (commencing trial preparation efforts and preparation of pretrial motions *in limine*)
- *Bender v. Children’s National Medical Center, et al.*, No. 2023-CAB-007318 (D.C. Super. Ct.) (ongoing discovery and scheduled depositions)
- *Walsh v. Children’s School Services*, No. 8:24-cv-01309-TDC (D. Md.) (ongoing discovery and scheduled depositions)

10. In addition to the above, undersigned counsel has dedicated significant time to pre-litigation resolution of several legal disputes, and has committed substantial time to advice and counseling matters.

11. Baltimore County’s attorneys have also taken family summer vacations following the Fourth Circuit’s denial of rehearing en banc but prior to the filing of the present Application, all of which were pre-scheduled and pre-paid.

12. Further, undersigned counsel, Kraig B. Long, is the Managing Partner of Nelson Mullins Riley and Scarborough, LLP’s Baltimore Office, and has been engaged in time-consuming personnel management and administrative matters throughout the summer, following the Fourth Circuit’s denial of rehearing en banc.

13. For these reasons, Baltimore County respectfully requests a sixty-day extension of time for counsel to prepare a petition that fully addresses the important issues raised by the decision below and frames those issues in a manner that will be most helpful to the Court.

Respectfully submitted,

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