

No. 24A263

IN THE
SUPREME COURT OF THE UNITED STATES

MARQUICE ROBINSON, APPLICANT/PETITIONER

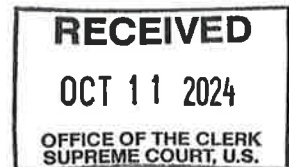
v.

MICHAEL HOLMAN, ET AL, RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

**APPLICANT/PETITIONER MARQUICE ROBINSON'S FURTHER
APPLICATION FOR AN EXTENSION OF TIME TO FILE PETITION FOR A
WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

Marquice Robinson
6400 Oakley Road Apt #4208
Union City, GA 30291
770-527-6568



CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6 of this Court's Rules, Petitioner states that Petitioner has no parent or publicly held company owning 10% or more of the corporation's stock.

To the Honorable Justice Clarence Thomas, as Circuit Justice for the United States Court of Appeals for the Eleventh Circuit:

In accordance with this Court's Rules 13.5, 22, 30.2, and 30.3, Applicant/Petitioner Marquice Robinson (Applicant) respectfully requests that the time to file Applicant's petition for a writ of certiorari be extended for 30 days up to and including Monday, December 9, 2024. This Court, on September 13, 2024, granted Applicant's application for an extension of time to file a petition for writ of certiorari up to and including November 9, 2024. Absent an extension of time, the petition would be due on November 09, 2024. Applicant is filing this application more than ten days before the November 09, 2024, due date for Applicant's petition for writ of certiorari. (See S. Ct. R. 13.5).

The jurisdiction of this Court is based on 28 U.S.C. § 1254(1). Respondent: The United States Marshal Service (USMS) does not oppose Applicant's application. However, Respondent's Akal Security (Akal) and Michael Holman (Holman) do oppose the application.

I. BACKGROUND

This case is about preventing circuit splits. (See Main Doc. Ex. C, Pet'r's. Draft.

¹It is important to note that Applicant does not attach The Eleventh Circuit's June 6, 2024, opinion, its order denying panel rehearing and rehearing en banc, Applicant's draft petition, and motion to recall the mandate to this application because Applicant submitted the documents with Applicant's application for an extension of time to file a writ of certiorari. The only document Applicant submits with this application is a copy of Applicant's motion to expedite The Eleventh Circuit decision on Applicant's motion to recall the mandate. (See Ex. 1). Also, Applicant removed the exhibits attached to Applicant's motion to expedite because Applicant submitted the exhibits with Applicant's application for an extension of time to file a writ of certiorari.

Pet. at p. 1). Also, this case is about this Court exercising its supervisory power to correct the Court of Appeals deviation from the accepted and usual course of judicial proceedings. (*Id.*) The first question is whether The Eleventh Circuit Court of Appeals (The Eleventh Circuit) erred in holding in conflict with The Ninth Circuit Court of Appeals that a violation of a Collective Bargaining Agreement (CBA) is not an adverse employment action. (*Id.*) The Eleventh Circuit Court held that Petitioner's schedule changes that were not subject to change and based on CBA were not material adverse employment actions. (*Id.*) However, to the contrary, its sister circuit, The Ninth Circuit Court of Appeals (The Ninth Circuit), held that a violation of CBA is an adverse employment action. (*Id.* at pp. 1-2).

The second question is whether The Eleventh Circuit erred in holding in conflict with The Federal Circuit Court of Appeals (The Federal Circuit) that judgment on the pleadings can be granted when there are material facts in dispute. (*Id.*) The Eleventh Circuit granted Respondent Michael Holman (Holman) judgment on the pleadings on Petitioner's assault and battery claims when there were material facts in dispute of whether Holman committed the intentional torts and whether Petitioner sustained any injuries. (*Id.*) However, in contrast to its sister circuit The Federal Circuit held if issues of material fact are unresolved in the pleadings, a motion for judgment on the pleadings cannot be granted. (*Id.*)

Importantly, The Eleventh Circuit's actions of granting a party judgment on

²Main doc refers to Main document as it is listed on this Court docket.

the pleadings when there are material facts in dispute could cause chaos throughout the federal judicial system because The Eleventh Circuit's decision goes against the guiding principle of federal rules of civil procedure 12(c) that the moving party must show that there are no material facts in dispute and establish law that issues of fact are for a jury to decide when the material facts are in dispute, not the Court when a jury trial is requested as in Petitioner's case. (*Id.* at p. 9).

The third question is whether The Eleventh Circuit has so far departed from the accepted and usual course of judicial proceedings when it entered a decision on a state law claim in conflict with the state's law. (*Id.* at p. 2.). The Eleventh Circuit found that Holman was not accomplishing the ends of employment, acknowledging that Petitioner presented some evidence of Holman's duties. (*Id.*). However, the law in the State of Georgia specifically highlights that the determination of whether an employee was acting within the scope of employment is a question for the jury when evidence is submitted that demonstrates an employee's duties. (*Id.*).

Notably, The Eleventh Circuit, departing from the accepted and usual course of judicial proceedings that federal courts are to apply state precedent when dealing with state law claims, could have chilling effect on state sovereignty in violation 10th Amendment Section 4 to the US Constitution that "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people" because federal courts would be able to

arbitrarily disregard a state's ability to write, create, and interpret its own laws. (*Id.* at p. 12).

The fourth question is whether The Eleventh Circuit Court of Appeals has so far departed from the accepted and usual course of judicial proceedings when it viewed the summary judgment record in the light most favorable to the moving party. (*Id.* at p. 2). The Eleventh Circuit, in its opinion, failed to cite, acknowledge, and apply the summary judgment standard by viewing the facts most favorable to the non-moving party as required by The Federal Rules of Civil Procedure 56(a) and case law. (*Id.*).

The Eleventh Circuit's actions of reviewing the summary judgment record most favorable to the moving parties, Akal, and the USMS and drawing all reasonable inferences in favor of Akal and the USMS as the moving parties could have a chilling effect on summary judgment decisions within the federal court system because it changes the requirements and standards of the Federal Rules of Civil Procedure 56(a) that the moving party bears the burden to show that there are no material facts in dispute, not the non-moving party. (*Id.* at p. 14).

II. REASONS FOR GRANTING A FURTHER EXTENSION OF TIME

A. This Court should grant Applicant a further extension of time to file a writ of certiorari because The Eleventh Circuit still has not made a decision on Applicant's pending motion to recall the mandate.

This Court should grant Applicant a further extension of time to file a writ of certiorari because The Eleventh Circuit still has not made a decision on Applicant's pending motion to recall the mandate, reconsideration of Applicant's petition for

rehearing en banc, and to stay the mandate. Applicant filed a motion to recall the mandate to prevent injustice because the Eleventh Circuit created unnecessary circuit splits and wholesale departed from the accepted and usual course of judicial proceedings in its June 6, 2024 opinion. (See Main Doc. Ex. D). (See background above supra). (see also Main Doc. Ex. A).

Also, this Court should grant Applicant a further extension of time because if and when The Eleventh Circuit grants Applicant's motion to recall the mandate, this Court would no longer have jurisdiction pursuant to 28 U.S.C. § 1254(1) as The Eleventh Circuit's June 6, 2024, final opinion would be recalled and the case would be back under the jurisdiction of The Eleventh Circuit pursuant to 28 U.S.C. § 1291. (See Main Doc. Ex. D). (See Main Doc. Ex. A).

Additionally, this Court should grant Applicant a further extension of time because if and when The Eleventh Circuit grants Applicant's motion to recall the mandate, it would render Applicant's further application for an extension of time to file Applicant's petition for a writ of certiorari in this Court moot. (See Main Doc. Ex. D).

Thus, this Court should grant Applicant a further extension of time because Applicant has a pending motion to recall the mandate, reconsideration of Applicant's petition for rehearing en banc, and to stay the mandate in The Eleventh Circuit.

B. This Court should grant Applicant a further extension of time to file a writ of certiorari because Applicant filed a motion to expedite the decision on Applicant's motion to recall the mandate in The Eleventh Circuit.

This Court should grant Applicant a further extension of time to file a writ of certiorari because Applicant filed a motion to expedite the decision on Applicant's motion to recall the mandate in The Eleventh Circuit. (*See* Ex. 1).

Here, this Court should grant Applicant a further extension of time because Applicant simultaneously files with this application a motion to expedite The Eleventh Circuit decision on Applicant's motion to recall the mandate in The Eleventh Circuit. (*Id.*).

Thus, this Court should grant Applicant a further extension of time to file a writ of certiorari because Applicant filed a motion to expedite the decision on Applicant's motion to recall the mandate in The Eleventh Circuit.

III. CONCLUSION

For the foregoing reasons, Applicant respectfully requests that the time to file a petition for a writ of certiorari in the above-captioned matter be extended 30 days, up to and including December 9, 2024.

Dated this 7th day of October, 2024.

Respectfully submitted,

/s/ Marquice Robinson, PhD., LL.M., JD., MSCJ

Applicant/Petitioner Marquice Robinson
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770-527-6568

No. 24A263

IN THE
SUPREME COURT OF THE UNITED STATES

MARQUICE ROBINSON, PETITIONER

v.

MICHAEL HOLMAN, ET AL, RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

CERTIFICATE OF SERVICE

I, Marquice Robinson, hereby certify that on October 07, 2024, pursuant to Supreme Court Rule 22.2, I mailed three copies of this application for an extension of time to file a writ certiorari by way of USPS priority mail to The Honorable Justice Clarence Thomas. Also, pursuant to Supreme Court Rule 29.3, I served a copy of this application by way of email to the counsels of record listed below per our agreement to accept the service of documents by way of electronic mail.

Counsel for Respondent the USMS

Elizabeth B. Prelogar
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SupremeCtBriefs@usdoj.gov

Counsel for Respondents Akal and Holman

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Atlanta, GA 30363
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Exhibit 1

No. 23-11735-A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

MARQUICE ROBINSON,

Plaintiff-Appellant,

v.

MICHAEL HOLMAN, ET AL.,

Defendants-Appellees.

On Appeal from the United States District Court
from the Northern District of Georgia
Honorable William M. Ray II., District Court Judge
Case No. 1:17-cv-03658

**PLAINTIFF/APPELLANT MARQUICE ROBINSON'S
MOTION TO EXPEDITE THIS COURT'S DECISION ON PLAINTIFF'S
MOTION TO RECALL THE MANDATE RECONSIDERATION OF
PLAINTIFF'S PETITION FOR REHEARING EN BANC AND TO STAY
THE MANDATE**

Marquice Robinson
6400 Oakley Road Apt #4208
Union City, GA 30291
770-527-6568

Marquice Robinson v. Michael Holman, et al.
No. 23-11735-A

**STATEMENT OF INTERESTED PERSONS AND CORPORATE
DISCLOSURE STATEMENT**

Plaintiff/Appellant, pursuant to Fed. R. App. P. 26.1 and 11th Cir. R. 26.1-1, files this Certificate of Interested Persons and Corporate Disclosure Statement.

Plaintiff/Appellant is not a publicly held corporation and has no parent corporations, affiliates, or subsidiaries with interest in the outcome of this case. Other identifiable interested parties to the action are:

**CERTIFICATE OF INTERESTED PERSONS AND CORPORATE
DISCLOSURE STATEMENT**

Barr, William Former US Attorney General

Bly, Christopher. C U.S. Magistrate Judge

Buchanan, Ryan U.S. Attorney for The Northern District of Georgia

Cohan, Louis, R. Plaintiff/Appellant's former counsel

Cooper, Lisa Former Counsel for Defendant/Appellee the USMS

Dillingham, Tiffany Counsel for Defendant/Appellee the USMS

Erskine, Kurt Former Acting US Attorney for The Northern District of Georgia

Marquice Robinson v. Michael Holman, et al.
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Fenster, Ariel D. Plaintiff/Appellant's former counsel

Fuller, Clay U.S. Magistrate Judge

Garland, Merrick US Attorney General

Jones, Steve C. U.S. District Court Judge

Kitt Company Defendant/Appellee Akal Security's parent corporation

Krinsky, Erin. J Plaintiff's former counsel

Kohler, Dion Counsel for Defendant's Akal and Holman- Appellees

Lui, Ellis Plaintiff's former counsel

Malone, Jason Former Counsel for Defendant/Appellees Akal and Holman

McBath, Elizabeth Former Appellate Counsel for USMS

Mendel, Gabriel Former Appellate Counsel for Defendant the USMS

Noebes, Pierre Former Counsel for Defendant's Akal and Holman

O'Donnell, Michael Former Plaintiff

Pak, BJay Former US Attorney For the Northern District of Georgia

Marquice Robinson v. Michael Holman, et al.
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Peterson, Kurt Former Counsel for Defendant/Appellees Akal and Holman

Ray, William. M II U.S. District Court Judge

Robinson, Marquice Plaintiff/Appellant

Sessions, Jeff Former US Attorney General

Traynor, William Former Appellate counsel for the Defendant USMS

U.S Government Defendant/Appellee

US Marshal Service Defendant/Appellee

Respectfully submitted this 7th day of October, 2024.

/s/ Marquice Robinson, PhD., LL.M., JD., MSCJ
Marquice Robinson, PhD., LL.M., JD., MSCJ

No. 23-11735-A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

MARQUICE ROBINSON,
Plaintiff-Appellant,

v.

MICHAEL HOLMAN, ET AL.,

Defendants-Appellees.

On Appeal from the United States District Court
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**PLAINTIFF/APPELLANT MARQUICE ROBINSON'S
MOTION TO EXPEDITE THIS COURT'S DECISION ON PLAINTIFF'S
MOTION TO RECALL THE MANDATE, RECONSIDERATION OF
PLAINTIFF'S PETITION FOR REHEARING EN BANC, AND TO STAY
THE MANDATE**

I. INTRODUCTION

Comes now pursuant to Fed. R. App. P 2(a) Plaintiff/Appellant Marquice Robinson (Plaintiff) files this motion respectfully asking this Court to expedite its

decision on Plaintiff's motion to recall the mandate, reconsideration of Plaintiff's petition for rehearing en banc, and to stay the mandate (recall the mandate) for good cause as shown below. (*See Ex. 2A*).

On August 7, 2024, Plaintiff filed a motion to recall the mandate and it is still pending before this Court. (*Id.*). Furthermore, on September 7, 2024, Plaintiff filed an application for an extension of time to file Plaintiff's petition for a writ of certiorari in The United States Supreme Court (US Supreme Court). (*See Ex. 2B*). The US Supreme Court granted Plaintiff's application on September 13, 2024, and extended the time to November 9, 2024, for Plaintiff to file a petition for a writ of certiorari. (*See Ex. 2C*).

Plaintiff conferred with counsel for Defendants/Appellees, The United States Marshal Service (USMS), Akal Security (Akal), and Michael Holman (Holman) about their position on this motion. Akal and Holman do not oppose the motion. However, the USMS did not answer Plaintiff's question about whether or not it opposes this motion.

II. ARGUMENT AND CITATIONS OF AUTHORITY

This Court should respectfully expedite its decision on Plaintiff's motion to recall the mandate for good cause shown because The US Supreme Court is waiting for its decision on the motion.

¹ Importantly, Plaintiff will be simultaneously filing with this motion a further application for an extension of time (30 days up to and including December 9, 2024) to file a petition for a writ of certiorari in The US Supreme Court because pursuant to 28 U.S.C. 2101(c) and Supreme Court Rule 13, "a petition for a writ of certiorari must be filed within 90 days after the entry of the Court of appeals' judgment (or the denial of rehearing) and a Justice can only extend the deadline up to 60 days." (*See Ex. 2E*).

This Court should respectfully expedite its decision on Plaintiff's motion to recall the mandate for good cause shown because The US Supreme Court is waiting for its decision on the motion. Importantly, pursuant to Fed. R. App. P 2(a) "this Court on its own or a party's motion may expedite its decision for good cause."

Here, there is good cause to expedite this Court's decision on Plaintiff's motion to recall the mandate because The US Supreme Court granted Plaintiff's application for an extension of time to file a writ of certiorari for good cause. (*See* Exs. 2B-2C).

Also, there is good cause to expedite this Court's decision on Plaintiff's motion to recall the mandate because if and when this Court grants Plaintiff's motion to recall, The US Supreme Court would no longer have jurisdiction pursuant to 28 U.S.C. § 1254(1) as this Court's June 6, 2024, final opinion would be recalled. (*See* Ex. 2D). As a result, pursuant to 28 U.S.C. § 1291, the case would be back under the jurisdiction of this Court.

Thus, this Court should respectfully expedite its decision on Plaintiff's motion to recall the mandate for good cause shown because The US Supreme Court is waiting for its decision on the motion.

III. CONCLUSION

For the foregoing reasons, Plaintiff respectfully asks that this Court to expedite its decision on Plaintiff's motion to recall the mandate, reconsideration of Plaintiff's petition for rehearing en banc, and to stay the mandate.

Respectfully submitted this 7th day of October, 2024.

/s/ Marquice Robinson, PhD., LL.M., JD., MSCJ
Marquice Robinson, PhD., LL.M., JD., MSCJ

CERTIFICATE OF COMPLIANCE

I hereby certify that:

1. This document complies with the type-volume limit of Fed. R. App. P. 32(a)(7)(B)(i) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 773 words.
2. This document complies with the typeface requirements of the Fed. R. App. P. 32(a)(5)(A) and the typestyle requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in proportionally spaced typeface using Microsoft Word processing software in 14-point Times New Roman.

DATED: October 7, 2024

/s/ Marquice Robinson, PhD., LL.M., JD., MSCJ
Marquice Robinson, PhD., LL.M., JD., MSCJ

CERTIFICATE OF SERVICE

I, Marquice Robinson, hereby certify that on October 7, 2024, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit by using the appellate CM/ECF system, which automatically sends a notification to the parties and counsels of record who are registered in the system. Pursuant to Fed. R. App. P. 25 I will also send electronic mail of such filing to all counsels and parties of record exempt from electronic filing. My address is below, to which all correspondence from the Court should be sent.

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