No. _____

IN THE SUPREME COURT OF THE UNITED STATES

MARK R. MEADOWS,

Applicant,

v.

STATE OF GEORGIA,

Respondent.

APPLICATION TO THE HON. CLARENCE THOMAS FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Pursuant to Supreme Court Rule 13(5), Mark R. Meadows ("Applicant") hereby moves for an extension of time of 30 days, to and including June 27, 2024, for the filing of a petition for a writ of certiorari. Unless an extension is granted, the deadline for filing the petition for certiorari will be May 28, 2024.

In support of this request, Applicant states as follows:

1. The United States Court of Appeals for the Eleventh Circuit rendered its decision on December 18, 2023 (Exhibit A), and denied a timely petition for rehearing on February 28, 2024 (Exhibit B). This Court has jurisdiction under 28 U.S.C. §1254(1).

2. The Supremacy Clause immunizes federal officers from state prosecution for acts undertaken as part of their official duties. *See generally In re Neagle*, 135 U.S. 1 (1890). When a State has at least arguably brought such a

prosecution, the federal-officer removal statute provides a ready means for an officer to invoke federal jurisdiction and have the immunity defense adjudicated in federal court. That statute permits removal of an action against "any officer (or any person acting under that officer) . . . for or relating to any act under color of such office." 28 U.S.C. §1442(a)(1).

3. Like any jurisdictional inquiry, the test for federal-officer removal is readily administrable at the outset of a case. Under settled law, a court treats these jurisdictional thresholds as imposing a low bar: an officer "must both raise a colorable federal defense," *Jefferson County v. Acker*, 527 U.S. 423, 431 (1999), and establish that the suit is "for or relating to any act under color of . . . office," 28 U.S.C. 1442(a)(1). Courts are required to "credit the [removing officer's] theory of the case for purposes of both elements of [the] jurisdictional inquiry." *Acker*, 527 U.S. at 432. Courts do not ask whether the federal defense will ultimately prevail, *see id.* at 431, because the whole point of the federal-officer removal statute is to guarantee a federal forum for adjudicating that federal defense, *see Willingham v. Morgan*, 395 U.S. 402, 409 (1969).

4. Applicant served as the 29th Chief of Staff to the President of the United States from March 31, 2020, to January 20, 2021. In that capacity, he advised the President on virtually limitless issues affecting the federal government.

5. On August 14, 2023, Applicant was indicted alongside former President Trump and 17 others in Fulton County, Georgia on charges related to alleged interference in the 2020 presidential election. Of the 41 counts, only two implicated

Applicant. Both were founded on actions that he took predominantly in the West Wing as White House Chief of Staff to assist the President. Count 1 alleged racketeering conspiracy with the President, and Count 28 alleged solicitation of violation of oath by a public officer. The Indictment alleged Applicant engaged in eight overt acts in furtherance of the alleged conspiracy, all of which took place during his service as Chief of Staff.

6. Applicant promptly removed the case to federal court under §1442(a)(1). At a subsequent hearing at which he voluntarily testified, Applicant explained that all eight alleged overt acts related to his role as advisor, assistant, and coordinator for the President. All but one of the charged acts took place within the White House. Applicant testified that the final overt act, which occurred during a visit to Georgia, was to gather information for the President. Despite acknowledging that at least some alleged overt acts implicated Applicant's official duties, the district court nonetheless remanded the case to state court because, in the court's view, Applicant did not establish that a "heavy majority" of the acts related to his role as Chief of Staff.

7. The Eleventh Circuit affirmed. The Court became the first "in the 190-year history of the federal-officer removal statute" to hold that it "does not apply to *former* federal officers." Ex. A at 2, 17. The Eleventh Circuit conceded that its decision not only is unprecedented, but conflicts with countless cases "in other circuits" in which "former officers have removed actions." Ex. A at 17-18 (collecting cases).

8. The panel's decision is profoundly wrong—it defies text, precedent, and common sense—and profoundly consequential for federal officers past, present, and future. A majority of the panel acknowledged as much when conceding its holding could produce "nightmare scenario[s]" and even called for Congress to act. Ex. A, Concurring Op. at 3 (Rosenbaum, J.). But those "nightmare scenario[s]" were of the court's own making. For federal officers whose actions were taken under color of office, the federal-officer removal statute does not bar removal the moment they leave office, even as their substantive Supremacy Clause immunity remains intact. To make matters worse, the Eleventh Circuit ignored this Court's repeated instruction to construe the removal statute liberally and to avoid a "narrow, grudging interpretation." *Willingham*, 395 U.S. at 407. The court put a thumb on the scale *against* removal, reasoning that federal courts must hesitate to interfere with "a State's right to make and enforce its own criminal laws." Ex. A at 19.

9. Applicant respectfully requests an extension of time to consider ongoing judicial proceedings that could affect Applicant's intentions to file a petition for a writ of certiorari or this Court's resolution of such petition.

10. In *Trump v. United States*, No. 23-939 (argued Apr. 25, 2024), this Court is considering the question of whether and if so to what extent a former President enjoys presidential immunity from criminal prosecution for conduct alleged to involve official acts during his tenure in office. Although that case does not involve the federal-officer removal statute, the Court's resolution of the issue of *presidential* immunity from *federal* prosecution could significantly influence how lower courts

address issues of federal officials' *Supremacy Clause* immunity from *state* prosecution. *See* Brief for Former White House Chief of Staff Mark R. Meadows as *Amicus Curiae* in Support of Neither Party, No. 23-939. To the extent that this Court provides further guidance on the kinds of acts that a federal official can plausibly (even if mistakenly) believe to be within the scope of his official duty, those principles would apply with full force to a forthcoming petition from Applicant.

11. In the Georgia state court proceedings, the Georgia Court of Appeals will consider whether the Fulton County District Attorney and her team should be removed from prosecuting the case. Eight defendants, including Applicant, moved to dismiss the Indictment and disqualify the district attorney because she had a personal and financial stake in the outcome of the case. The Fulton County Superior Court found that there was "significant appearance of impropriety" but not an "actual conflict of interest" warranting recusal of the district attorney. Thus, the Superior Court declined to remove the district attorney from the case—although it did permit a member of her team to resign to remedy the concerns about appearances. Because defendants appealed the Superior Court's order, and the Georgia Court of Appeals accepted the issue for certified interlocutory appeal, the appeals court's resolution of the question could potentially end the underlying state court prosecution.

12. In addition to these potential developments, Applicant's counsel, Paul D. Clement, also requires additional time to prepare a petition that fully addresses the important and far-reaching issue raised by the decision below in a manner that will be most helpful to the Court. Mr. Clement has substantial briefing and argument

obligations between now and the current due date of the petition, including an argument in *Havana Docks Corp. v. Royal Caribbean Cruises, Ltd.*, Nos. 23-10151 & 23-10171 (11th Cir.) on May 17, 2024; a response brief in *Finesse Wireless LLC v. AT&T Mobility LLC*, No. 24-1039 (Fed. Cir.), due May 22, 2024; and a reply brief in *Cline v. Sunoco, Inc. (R&M)*, No. 23-7090 (10th Cir.), due June 6, 2024.

WHEREFORE, for the foregoing reasons, Applicant respectfully requests that an extension of time to and including June 27, 2024, be granted within which he may file a petition for a writ of certiorari.

Date: May 16, 2024

Respectfully submitted,

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