

No. _____

**THE SUPREME COURT
OF THE UNITED STATES**

MICHAEL LESLIE LAKE,
Applicant-Plaintiff,

v.

MICHAEL SKELTON,
Respondent-Defendant.

**Michael Lake's Application to Justice Clarence Thomas to
Extend Time to File Petition for Writ of Certiorari to
Review Judgment of the United States Court of Appeals
for the Eleventh Circuit**

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SUMMARY

Applicant-Plaintiff Michael Lake respectfully asks Justice Clarence Thomas, as Circuit Justice for the United States Court of Appeals for the Eleventh Circuit, to extend the time for Lake to file a petition for writ of certiorari. The current deadline for Lake to file his petition is Wednesday, December 27, 2017, which is ninety days from Thursday, September 28, 2017, the date when the Eleventh Circuit denied Lake's timely petition for rehearing *en banc*. Lake requests that the deadline be extended by thirty-five days, so that the new deadline would be Wednesday, January 31, 2018.

BACKGROUND

This is a civil action involving claims brought under the Religious Land Use And Institutionalized Persons Act and the Free Exercise of Religion and Due Process Clauses of the United States Constitution.

Plaintiff Michael Lake alleges that Defendant Michael Skelton violated Lake's religious rights and freedoms while Lake was detained at the Cobb County Adult Detention Center in Marietta, Georgia. Beginning on November 28, 2011 Skelton denied Lake's repeated oral and written requests for a vegetarian diet, despite the fact that Cobb County's food-services vendor had agreed, by contract, to provide vegetarian-meal trays on request and at no additional cost. And because Lake believed that his Christian faith required him to avoid knowingly eating

animal meat or otherwise be responsible for the death of any of God's animals, Lake suffered prolonged periods of starvation rather than abandon his religious beliefs. Eventually, Skelton agreed on November 29, 2012 to provide Lake with a vegetarian diet, by making a simple notation – “No Meat on tray/Give extra fruit/vegetables.” And Lake was released from detention on July 15, 2013, following a decision by the Cobb County Superior Court to grant Lake's motion to dismiss and order the Cobb County District Attorney to dismiss all charges.

The prolonged periods of starvation Lake suffered to maintain his Christian faith, though, resulted in substantial physical and emotional injuries to him. And so, through this civil action brought under RLUIPA and the Free Exercise and Due Process Clauses of the Constitution, Lake seeks to recover monetary damages from Skelton in Skelton's official capacity as a deputy for the Cobb County Sheriff.

Lake began this civil action, while he was detained, by filing a *pro se* complaint against Skelton and certain other Defendants in the United States District Court for the Northern District of Georgia on June 11, 2012. Skelton and the other Defendants later moved to dismiss Lake's complaint and also for judgment on the pleadings, which the District Court denied on July 16, 2014. After a period of discovery, and during which time Lake obtained *pro bono* representation, Skelton and the other Defendants moved for summary judgment, which the District Court denied as to Skelton on June 30, 2015. The District Court

then scheduled this action for a jury trial in September 2015.

However, Skelton had argued that he is entitled to immunity under the Eleventh Amendment, and so he filed an interlocutory appeal, pursuant to the collateral order doctrine, of the District Court's ruling on immunity with the United States Court of Appeals for the Eleventh Circuit. The Eleventh Circuit docketed the appeal on July 13, 2015. The appeal was fully briefed by December 31, 2015, and the Eleventh Circuit held oral argument on April 16, 2016.

The Eleventh Circuit issued a published decision deciding Skelton's appeal on November 3, 2016, reversing and remanding for judgment in favor of Skelton's argument that he is entitled to Eleventh Amendment immunity. Judge William H. Pryor Jr., wrote the majority opinion, with Judge Susan Black joining, and Judge Barrington D. Parker Jr. wrote a dissenting opinion. A copy of the Eleventh Circuit's November 3, 2016 decision is attached as Exhibit A to this Application.

Lake filed a timely petition for rehearing *en banc* on November 30, 2016. The Southern Center for Human Rights and Southern Poverty Law Center filed a joint *amicus curiae* brief in support of Lake's petition on December 12, 2016. Lake's petition for rehearing *en banc* then remained pending for nearly ten months.

The Eleventh Circuit issued a published decision deciding Lake's petition for rehearing *en banc* on September 28, 2017, with an active judge requesting a poll on whether the appeal should be reheard *en banc*, but with the majority of active

judges voting against rehearing *en banc*. Judge William H. Pryor Jr. wrote an opinion in support of the denial of rehearing *en banc*, again with Judge Susan Black joining. Judge Beverly B. Martin wrote a separate dissenting opinion against the denial of rehearing *en banc*. A copy of the Eleventh Circuit's September 28, 2017 decision is attached as Exhibit B to this Application.

Lake intends to petition this Court for a writ of certiorari to review the Eleventh Circuit's judgment and now asks for additional time to file such petition.

ARGUMENT

Recognizing that an extension of the time for the filing of a petition for writ of certiorari requires good cause and that requests for extensions of time are not favored, Lake respectfully asks Justice Thomas, as Circuit Justice for the Eleventh Circuit, to extend the time for Lake to file a petition for writ of certiorari. Lake requests that the deadline be extended by thirty-five days, so that the new deadline would be Wednesday, January 31, 2018. To establish good cause for his request, Lake makes the following five arguments in favor of extending the deadline.

First, Lake's application satisfies the express procedural requirements of Supreme Court Rule 14.5. This Court would have subject matter jurisdiction to hear Lake's petition for a writ of certiorari because Lake asserts claims under RLUIPA and the Free Exercise and Due Process Clauses of the Constitution, which provide federal question jurisdiction. This Court would also have appellate

jurisdiction to hear Lake's petition for a writ of certiorari because Lake timely filed a petition for rehearing *en banc*, which the Eleventh Circuit denied and Lake now seeks to timely file a petition for writ of certiorari.

The judgment that Lake seeks to review is the Eleventh Circuit's November 3, 2016 decision, which reversed the District Court's denial of the argument that Skelton is entitled to Eleventh Amendment immunity. And Lake has included a copy of both the November 3, 2016 decision (Exhibit A to this Application) reversing the District Court and the September 28, 2017 decision (Exhibit B to this Application) denying Lake's timely petition for rehearing *en banc*.

Lake files this application more than ten days before the date his petition is due because, as of now and without any extension, Lake's petition would be due on December 27, 2017. Lake also asks for an extension of time only for himself, as no other party has need to file a petition for writ of certiorari.

Second, Lake has good cause for his application because his attorneys are representing him *pro bono* and must balance their *pro bono* representation of Lake with their hourly-fee and contingency-fee representation of other clients. During the same time period in which Lake's attorneys will be preparing his petition for a writ of certiorari, they are subject to an unusual number of other deadlines for filings in other cases – including other deadlines with this Court, with the Eleventh Circuit, and with the Georgia Court of Appeals and Georgia Supreme Court.

To be sure, Lake's attorneys chose to represent Lake, and they chose to do so on a *pro bono* basis. However, to be able to make that choice and to be able to continue *pro bono* representation while maintaining substantial private practice (along with life's other demands), Lake's attorneys ask for an extension of the normal time period to accommodate for an unusually busy time period and to allow them to continue pro bono representation both in this case and others.

Third, Lake has good cause for his application because the current deadline of Wednesday, December 27, 2017 is just after the official United States Holiday of Christmas Day and just before the official United States Holiday of New Year's Day. Moreover, it is customary and encouraged for lawyers and their staff to spend time traveling and with family in the days surrounding these official holidays. Indeed, the offices of Lake's attorneys will be closed and their staff will not be working, at a minimum, on Thanksgiving, Christmas Eve, New Year's Eve, and other days surrounding these holidays. In short, a meaningful amount of the normal ninety-day period for preparing a petition for a writ of certiorari will be lost to Lake's counsel by virtue of the fact that the Eleventh Circuit's denial of his timely petition for rehearing *en banc* was not issued until September 28, 2017.

Of course, Lake's attorneys recognize that holidays are not normally a basis for extending deadlines, and there will almost always be some holiday covered during any ninety-day period. Yet, this specific deadline of Wednesday, December

27, 2017 is particularly challenging in the context of the Thanksgiving, Christmas, and New Year's holidays, especially when combined with the other deadlines and obligations faced by Lake's attorneys as discussed previously.

Fourth, Lake has good cause for his application because his attorneys have made a specific and studied decision both as to the decision to file a petition for a writ of certiorari and to ask for an extension of time.

As to the decision to file a petition for a writ of certiorari, Lake's attorneys can certify that this petition will raise important constitutional questions that this Court should address. Indeed, as Lake's attorneys expressly certified in his petition for rehearing *en banc*, the Eleventh Circuit's decision is contrary to this Court's opinion in *Hess v. Port Auth. Trans-Hudson Corp.*, 513 U.S. 30, 47 (1994); contrary to the Eleventh Circuit's own precedent and undermines uniformity within the Eleventh Circuit's case law; and raises questions of exceptional importance.

Lake's attorneys are not alone in their belief of the importance of the issues raised by the Eleventh Circuit's decision. Both the Magistrate Judge and District Court agreed with Lake and rejected the argument that Skelton is entitled to Eleventh Amendment immunity. Judge Barrington Parker, of the Second Circuit and sitting by designation, wrote an extensive dissenting opinion from the Eleventh Circuit's decision, and he remarked that the decision "significantly expands the reach of sovereign immunity" and renders "counties unanswerable for

constitutional violations.” Ex. A., Dissenting Op. at 22-23. And Judge Beverley Martin also wrote an extensive dissenting opinion from the denial of rehearing *en banc*, explaining that “the Lake panel opinion is a dramatic expansion of what had until now been a narrow reach of sovereign immunity,” “the consequences of the panel’s holding are large,” and “[t]he panel achieved this dramatic change in the law without convening *en banc*.” Ex. B, Dissenting Op. at 15.

As to the decision to ask for an extension of time, Lake’s attorneys can also certify that they do so reluctantly and only out of unusual circumstances. Put simply, Lake’s attorneys would not ask for this extension unless they felt strongly that it was warranted. In fact, Lake’s attorneys have a December 15, 2017 deadline to file a petition for a writ of certiorari with this Court in another case, and they have not sought an extension of time in that case. They do so in this case only because they feel that it is particularly warranted and only after first trying to prepare the petition without needing to request an extension.

Fifth, and finally, there would be no unfair prejudice if the Court were to grant Lake’s extension. This is a civil action for damages involving constitutional violations that occurred during the time period November 2011 through November 2012. There is no pressing event that would be affected by a thirty-five-day extension of time for filing a petition for a writ of certiorari.

Meanwhile, Lake has timely pursued his rights and prosecuted this action

throughout. Lake first filed his action *pro se* and while he was still being detained. The case was scheduled for jury trial in September 2015, when Skelton chose to pursue the interlocutory appeal process. And the Eleventh Circuit did not decide Lake's petition for rehearing *en banc* for nearly ten months, which is both an unusually long time period for a petition to remain pending and also a time period over which Lake's counsel had no control or ability to predict.

CONCLUSION

For those reasons, Lake respectfully asks Justice Thomas, as Circuit Justice for the Eleventh Circuit, to extend the time for Lake to file a petition for writ of certiorari. Lake requests that the deadline be extended by thirty-five days, so that the new deadline would be Wednesday, January 31, 2018.

This application is submitted on November 22, 2017.

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