

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

MUGE CODY

Petitioner,

v.

MANTECH INTERNATIONAL CORPORATION,

Respondent.

APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE
PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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**PETITIONER'S APPLICATION TO EXTEND TIME TO
FILE PETITION FOR A WRIT OF CERTIORARI**

To the Honorable John G. Roberts, as Circuit Justice for the United States Court of Appeals for the Fourth Circuit:

Petitioner Muge Cody respectfully requests that the time to file a Petition for a Writ of Certiorari in this case be extended by 60 days, up to and including February 4, 2019. The District Court for the Eastern District of Virginia denied Respondent's motion under Rule 50(b) as to liability on May 17, 2017 as reported at 260 F.Supp.3d 556 (E.D. Va. 2017). A panel of the Fourth Circuit issued an opinion on August 8, 2018, *United States ex rel. Cody v. ManTech Int'l Corp.*, ___ F. App'x ___, 2018 WL 3770141 (4th Cir. Aug. 8, 2018), affirming in part, reversing in part, and remanding. The Fourth Circuit denied Petitioner's Request for a Rehearing *En Banc* on September 5, 2018. *See App.* Absent an extension of time, the petition would be due on December 4, 2018. Petitioner is filing this Application at least ten (10) days before that date. *See S. Ct. R. 13.5.* The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Background

Petitioner seeks review of the decision of the United States Court of Appeals for the Fourth Circuit in *United States ex rel. Cody v. ManTech Int'l Corp.*, ___ F. App'x ___, 2018 WL 3770141 (4th Cir. Aug. 8, 2018), rehearing and rehearing *en banc* denied Sept. 5, 2018; *see also United States ex rel. Cody v. ManTech Int'l Corp.*, 260 F.Supp.3d 556 (E.D. Va. 2017).

This case arises from allegations that ManTech International unlawfully terminated Kevin Cody and Muge Cody, a married couple who were both executives at ManTech, after the Codys filed a *qui tam* lawsuit against ManTech related to its bidding for a new five year contract with the United States Army for the maintenance of Mine Resistant Ambush Protected (MRAP)

vehicles. Their contention was that ManTech was materially understating the costs of the contract, to win the bid. Kevin Cody was President of the business unit that managed the contract, and Muge Cody served as Program Manager on the MRAP contract. The Codys alleged that after they raised concerns, internally, about the MRAP bid and subsequent billing on the contract, ManTech removed the contract from Kevin Cody's business unit, purportedly due to Muge Cody's conduct, and assigned a Deputy Program Manager to work alongside Muge Cody. The Codys continued to raise concerns internally in 2013 about the billing for the costs on the MRAP contract, and both complained of retaliation due to their whistleblowing. The Codys eventually filed the *qui tam* suit that gave rise to the present matter on December 12, 2013. That suit also asserted claims of retaliation under the False Claims Act, 31 U.S.C. § 3730(h) and the Defense Contractor Whistleblower Protection Act, 10 U.S.C. § 2409. .

ManTech learned of the lawsuit in December 2014 after it became unsealed, and in January 2015, ManTech placed both of the Codys on administrative leave pending an investigation. ManTech then terminated Kevin Cody's employment in March 2015, purportedly due to a decline in revenue. In June 2015, ManTech terminated Muge Cody's employment, purportedly because the United States Army removed the Program Manager position from the contract.

The Codys amended their complaint in March 2016 to remove their *qui tam* claim and continued the case asserting their retaliation claims under the False Claims Act and the Defense Contractor Whistleblower Protection Act. In its memorandum opinion granting in part and denying in part ManTech's motion for summary judgment, the District Court concluded that the only protected activity by the Codys to proceed to trial would be the filing of the *qui tam* lawsuit itself in December 2013. *United States ex rel. Cody v. ManTech Int'l Corp.*, 207 F.Supp.3d 610,

623-24 (E.D. Va. 2016). After a five day trial, the jury returned a verdict in favor of both Kevin Cody and Muge Cody, finding that the filing of the *qui tam* lawsuit was a contributing factor in ManTech's decision to terminate the Codys.

ManTech filed a motion under Rule 50(b), which the District Court denied. Judge Anthony Trenga held:

[I]t was reasonable for the jury to infer that this lawsuit, as the culmination of the dispute between the Codys and ManTech, was the last straw for ManTech and that ManTech placed the Codys on administrative leave without any intention to ever allow them to return to work, an intention further reflected in ManTech's decision not to afford either an opportunity to be considered for other positions in ManTech despite testimony from its Chief Compliance Officer that in recent years ManTech has placed an emphasis on attempting to find other positions for employees who may otherwise be terminated.

Cody, 207 F.Supp.3d at 562. In so holding, Judge Trenga noted "a finding of motive should not be set aside by the reviewing court unless the evidence clearly compels rejection." *Id.* (quoting *Whalen v. Roanoke Co. Bd. of Sup'rs*, 769 F.2d 221 (4th Cir. 1985)).

A panel of the Fourth Circuit, in a 2-1 decision, reversed in part, affirmed in part, and remanded. The panel affirmed the District Court's denial of ManTech's Rule 50(b) motion as to liability for Kevin Cody, but it reversed the District Court's denial as to liability for Muge Cody and vacated the jury's verdict for Muge Cody. *Cody*, 2018 WL 3770141, at *13. The majority gave controlling weight to ManTech's disputed and contradicted contention that it terminated Muge Cody's employment only in response to the Army's decision to eliminate the position from the contract. *Id.* at *11. And the majority also held that there was a lesser motive for ManTech to retaliate against Muge Cody and labeled Kevin Cody "the primary complainant stirring the pot about the accuracy of ManTech's bid." *Id.* at *12.

Judge Diaz dissented from the panel’s decision to reverse the District Court’s ruling as to Muge Cody and to vacate her jury verdict, but concurred with the remainder of the decision. Judge Diaz’s dissent noted that “the distinctions the majority points to are not strong enough to overcome the deference owed to jury verdicts, nor do they support the divergent outcomes for Kevin and Muge Cody we now reach on appeal. *Id.* at *14 (Diaz, dissenting). In his dissent, Judge Diaz also wrote that deciding questions of motive is “a function peculiarly within the province of the fact finder, because so much depends on the opportunity to appraise the antagonists as they testify.” *Id.* at *15 (quoting *Whalen*, 769 F.2d at 225-26)). The Fourth Circuit denied Muge Cody’s petition for rehearing and rehearing *en banc* on September 5, 2018.

The issues now presented involve (1) whether the Fourth Circuit’s decision conflicts with this Court’s unanimous and longstanding precedent established in *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150-51 (2000), (2) whether the Fourth Circuit’s decision ignores this Court’s decision in *Desert Palace, Inc. v. Costa*, 529 U.S. 90 (2003), and the limited role of appellate courts in reviewing factual determinations made by a jury and accepted by the trial judge.

Reasons for Granting an Extension of Time

The time to file a Petition for a Writ of Certiorari should be extended by the requested 60 days for several reasons:

1. The Penn State Law’s Civil Rights Appellate Clinic has only recently agreed to serve as co-counsel for the petitioner in this matter; and this matter is unusual based upon its complexity, its record, and the issues of importance to the role of appellate courts as a whole.
2. Petitioner initiated this action in 2013, and later amended the complaint, which resulted in a complicated factual and procedural history.

3. The legal issues in this matter involve whether the Fourth Circuit's decision conflicts with the decisions of this Court.

4. Additionally, this case concerns the appropriate role of appellate courts in reviewing and overturning a jury verdict that has been affirmed by a trial judge.

5. Given the record in this case, an intervening holiday, and the fact that the Penn State School of Law's Civil Rights Appellate Clinic has only recently agreed to serve as co-counsel, additional time is necessary and warranted to allow new counsel to fully review the record, analyze the significance of the issues presented, and prepare a focused and concise petition for certiorari for the Court's review.

6. No prejudice would result from this extension.

Conclusion

For the foregoing reasons, the time to file a Petition for a Writ of Certiorari in this matter should be extended by 60 days, to and including February 4, 2019.

Respectfully submitted,

/s/ Michael L. Foreman

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