

**In the Supreme Court
of the United States**

JASON EDWARD RHEINSTEIN,
Petitioner,

v.

**ATTORNEY GRIEVANCE COMMISSION
OF MARYLAND,**
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit

PETITION FOR REHEARING

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October 30, 2020

TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
PETITION FOR REHEARING	1
CONCLUSION.....	6

TABLE OF AUTHORITIES

Cases

<i>Atty. Griev. Comm'n. of Md. v. Rheinstein,</i> 750 Fed. Appx. 225 (4 th Cir. 2019)	5
<i>B.P., p.l.c. v. Mayor and City Council of Baltimore,</i> -- S.Ct. ---, 2020 WL 5847132 (Mem) (Oct. 2, 2020)	1, 2
<i>Braniff Airways, Inc. v. Curtiss-Wright Corp.,</i> 424 F.2d 427, 428-30 (2d Cir. 1970)	6
<i>Gondeck v. Pan American World Airways, Inc.,</i> 382 U.S. 25, 26 (1965)	4
<i>Mayor and City Council of Baltimore v. B.P., p.l.c.,</i> 952 F.3d 452 (4 th Cir. 2020)	5
<i>Rheinstein v. Att'y Griev. Comm'n of Md.,</i> 140 S. Ct. 226 (Mem) (Oct. 8, 2019)	2
<i>Rheinstein v. Att'y. Griev. Comm'n. of Md.,</i> -- S.Ct. ---, 2020 WL 5883371 (Mem) (Oct. 5, 2020)	5
<i>Straight v. Wainwright,</i> 476 U.S. 1132, 1135 (1986) (Brennan, Marshall & Blackmun, JJ., dissenting) ..	3, 4
<i>United States v. Johnson,</i> 457 U.S. 537, 555-56 (1982)	4
<i>United States v. Ohio Power Company,</i> 353 U.S. 98 (1957)	4
<i>United States v. Skandier,</i> 125 F.3d 178, 182-83 (3d Cir. 1997)	6

Statutes

28 U.S.C. §1442	1, 4
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28 U.S.C. §1447(d)	1
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Supreme Court Filings

Brief of Respondent Mayor and City Council of Baltimore in Opposition, filed June 29, 2020, <i>B.P., p.l.c., et al. v. Mayor and City Council of Baltimore</i> , No. 11-1189, Supr. Ct. U.S., at p.2	2
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Reply Brief of the Petitioners, filed July 15, 2020, <i>B.P., p.l.c., et al. v. Mayor and City Council of Baltimore</i> , No. 11-1189, Supr. Ct. U.S., at p. 11 n. 2.....	3
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Supreme Court Rules

Rule 44.2	3
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PETITION FOR REHEARING

Pursuant to Rule 44 of this Court, Petitioner, Jason Edward Rheinstein, hereby respectfully petitions for rehearing of this Court's October 8, 2019 order denying certiorari in this matter in light of its recent decision on October 2, 2020 to grant certiorari in *B.P., p.l.c., et al. v. Mayor and City Council of Baltimore*, No. 19-1189. *See B.P., p.l.c. v. Mayor and City Council of Baltimore*, No. 19-1189--- S.Ct. ---, 2020 WL 5847132 (Mem) (Oct. 2, 2020).¹ Petitioner further requests that this Court defer consideration regarding redisposition of this matter pending its final decision on the merits of *B.P., p.l.c., et al. v. Mayor and City Council of Baltimore*, No. 19-1189. If this Court ultimately decides the merits of *B.P., p.l.c., et al. v. Mayor and City Council of Baltimore*, No. 19-1189 in favor of the petitioners therein, and holds that 28 U.S.C. §1447(d) permits a court of appeals to review any issue encompassed in a district court's order remanding a removed case to state court where the removing defendant premised removal in part on the federal-officer removal statute, 28 U.S.C. §1442, the proper resolution of this case would be to grant the Petition for Writ of Certiorari, vacate the decision of the United States Court of Appeals for the Fourth Circuit, and remand this matter to that Court for final resolution consistent with its decision in *B.P., p.l.c., et al. v. Mayor and City Council of Baltimore*, No. 19-1189.

¹ In light of this Court's October 2, 2020 decision to grant certiorari in *B.P., p.l.c., et al. v. Mayor and City Council of Baltimore*, No. 19-1189, and in light of the fact that the litigation giving rise to this Petition was still pending as of October 2, 2020, this Petition is filed along with a *Motion for Leave to File Petition for Rehearing Out of Time*.

As grounds for this petition for rehearing, Petitioner states the following:

1. On October 2, 2020, since its denial of the Petition for Writ of Certiorari for which Petitioner seeks rehearing, this Court granted certiorari in another case raising the exact same legal question. *B.P., p.l.c. v. Mayor and City Council of Baltimore*, -- S.Ct. --, 2020 WL 5847132 (Mem) (Oct. 2, 2020). Indeed, not only did the Petitioner present the exact same legal question as the petitioners in *B.P., p.l.c., et al. v. Mayor and City Council of Baltimore*, No. 19-1189 (hereinafter, sometimes referred to as the “Plenary Case”), he presented the same arguments as to why the petition for writ of certiorari should be granted, a fact noted by respondent Mayor and City Council of Baltimore in its brief in opposition filed in the Plenary Case. Specifically, in its Brief in Opposition, the respondent in the Plenary Case noted in relevant part:

Less than one year ago, this Court denied certiorari in another Fourth Circuit case raising the identical question presented. *Rheinstein v. Att'y Grievance Comm'n of Md.*, 140 S. Ct. 226 (2019) (Mem). The issue in Rheinstein, as here, was whether on appeal from an order remanding a case to state court for lack of subject-matter jurisdiction, Section 1447(d) authorizes appellate courts to review any jurisdictional grounds for removal rejected in the remand order other than federal-officer jurisdiction. Petition for Writ of Certiorari, *Rheinstein v. Att'y Grievance Comm'n of Md.*, 140 S. Ct. 226 (2019) (No. 19-140), 2019 WL 3496290. The Petition in this case raises the same arguments as the petition in Rheinstein.

Brief of Respondent Mayor and City Council of Baltimore in Opposition, filed June 29, 2020, *B.P., p.l.c., et al. v. Mayor and City Council of Baltimore*, No. 11-1189, Supr. Ct. U.S., at p.2, available at,

<https://www.supremecourt.gov/DocketPDF/19/19->

pdfa.pdf (emphasis added).²

2. Rule 44.2 provides that one of the instances in which petitions for rehearing of an order denying certiorari are generally granted is if a petitioner can demonstrate “intervening circumstances of a substantial or controlling effect.” The Court’s recent decision to grant certiorari on the same question presented in *B.P., p.l.c., et al. v. Mayor and City Council of Baltimore*, No. 11-1189 is an “intervening circumstance of a substantial and controlling effect” regarding what should happen with respect to the petition in this case. Generally speaking, when this Court has granted certiorari to rule on a particular question, the Court’s usual practice is not to deny similar petitions, but instead to hold them on its docket until the plenary decision comes down. *See e.g., Straight v. Wainwright*, 476 U.S. 1132, 1135 (1986) (Brennan, Marshall and Blackmun, JJ., dissenting) (Discussing hold rule). Once the decision is announced, the Court then summarily vacates the decisions in potentially-affected and held cases and remands them so that the lower courts can apply the new law and make any appropriate modifications. *Id.*

3. A major reason for granting rehearing is to ensure that the same rule applies to all litigants who are similarly situated. *See Gondeck v. Pan American*

² The petitioners in the Plenary Case also acknowledged that this case and the Plenary Case presented the exact same question. *See* Reply Brief of the Petitioners, filed July 15, 2020, *B.P., p.l.c., et al. v. Mayor and City Council of Baltimore*, No. 11-1189, Supr. Ct. U.S., at p. 11 n. 2 (“[R]espodent correctly notes (Br. In Opp. 2) that this Court denied review on the question presented in *Rheinstein v. Attorney Grievance Commission*, 140 S. Ct. 226 (2019) (No. 19-140)...”).

World Airways, Inc., 382 U.S. 25, 26 (1965) (Granting petition for rehearing three years after denial of certiorari because, based upon intervening circumstances, it was in the interests of justice to do so because it ensured the same rule applied to similarly-situated litigants); *United States v. Ohio Power Company*, 353 U.S. 98 (1957) (vacating, *sua sponte*, its earlier orders denying certiorari and a petition for rehearing so that the case could be disposed of consistently with two other cases raising the same issue in which certiorari had been granted).³

4. The Petitioner in this case and the petitioners in *B.P., p.l.c., et al. v. Mayor and City Council of Baltimore*, No. 11-1189 are similarly (if not identically-) situated. Both removed cases from the Maryland state courts to the United States District Court for the District of Maryland citing as a basis for removal, the federal officer removal statute (28 U.S.C. §1442). Both the Petitioner here and the B.P., p.l.c. petitioners had their removal arguments rejected by the District Court, and as a result, their respective cases were remanded. Both the Petitioner here and the B.P., p.l.c. petitioners filed timely notices of appeal to seek review of the remand order to the United States Court of Appeals for the Fourth Circuit. In both the case *sub judice* and the B.P., p.l.c. case, the Fourth Circuit affirmed the portion of the remand order pertaining to the federal officer removal statute, but dismissed the portion of the appeal pertaining to the remaining parts of the remand order on the

³ Case outcomes should not turn on purely arbitrary matters such as, for example, timing and whether two cases proceeded through the judicial system at the same rate. See e.g., *Straight*, 476 U.S. at 1135 (Brennan, Marshall and Blackmun, JJ., dissenting); *United States v. Johnson*, 457 U.S. 537, 555-56 (1982).

grounds that 28 U.S.C. §1447(d) only allowed appellate review as to that portion of the remand order pertaining to the federal officer removal statute.⁴ Both the Petitioner here and the petitioners in the B.P., p.l.c. case filed timely petitions for writ of certiorari in this Court seeking review of the Fourth Circuit's decision on the grounds that they had been entitled to appellate review of the entire remand order and not just a portion thereof. If this Court declines to grant rehearing in this case and hold the petition pending its final decision on the merits in *B.P., p.l.c., et al. v. Mayor and City Council of Baltimore*, No. 19-1189, then the Petitioner here will necessarily be treated differently than the similarly-situated B.P., p.l.c. petitioners in the event this Court decides the question presented in the Plenary Case in favor of the B.P., p.l.c. petitioners.

5. As of the time this Court issued its decision to grant certiorari in *B.P., p.l.c., et al. v. Mayor and City Council of Baltimore*, No. 11-1189, the litigation giving rise to the petition for writ of certiorari for which the Petitioner seeks rehearing had not yet become final, and this Petition for Rehearing is filed within 25 days of the date the litigation became final.⁵ See e.g. *Braniff Airways, Inc. v.*

⁴ The decision of the Fourth Circuit from which the petition for writ of certiorari in this case was filed is *Atty. Griev. Comm'n. of Md. v. Rheinstein*, 750 Fed. Appx. 225 (4th Cir. 2019). The decision of the Fourth Circuit from which the petition for writ of certiorari in the Plenary Case was filed is *Mayor and City Council of Baltimore v. B.P., p.l.c.*, 952 F.3d 452 (4th Cir. 2020).

⁵ The litigation did not become final until October 5, 2020 when this Court denied certiorari on a subsequent petition for writ of certiorari regarding other issues. See *Rheinstein v. Atty. Griev. Comm'n.*, --- S.Ct. ---, 2020 WL 5883371 (Mem) (Oct. 8, 2020). The subsequent petition for writ of certiorari would be mooted if this Court grants this petition for rehearing and ultimately vacates the decision of the United States Court of Appeals for the Fourth Circuit from which the petition was taken.

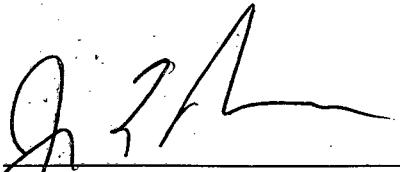
Curtiss-Wright Corp., 424 F.2d 427, 428-30 (2d Cir. 1970) (granting rehearing out of time-and after the denial of certiorari-where a change in law had occurred before the case became final); *United States v. Skandier*, 125 F.3d 178, 182-83 (3d Cir. 1997) (recalling the mandate and granting rehearing based on a Supreme Court decision issued approximately one month after the prior ruling of the court of appeals).

CONCLUSION

The Petition for Rehearing should be GRANTED, and this Court should defer its decision as to final redispension of this matter pending its final decision on the merits in *B.P., p.l.c., et al. v. Mayor and City Council of Baltimore*, No. 19-1189. If this Court ultimately decides the merits of *B.P., p.l.c., et al. v. Mayor and City Council of Baltimore*, No. 19-1189 in favor of the petitioners therein, it should summarily vacate the decision of the United States Court of Appeals for the Fourth Circuit in this case, and remand this matter to that Court for final resolution consistent with its decision in *B.P., p.l.c., et al. v. Mayor and City Council of Baltimore*, No. 19-1189.

Dated: October 30, 2020

Respectfully submitted,



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CERTIFICATE OF PETITIONER

No. 19-140

Jason Edward Rheinstein,
Petitioner

v.

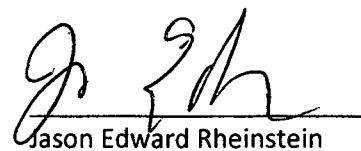
Attorney Grievance Comm'n. of Maryland,
Respondent

I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 44.2.



Jason Edward Rheinstein

I hereby certify that the non-exempt portions of this Petition for Rehearing contain a total of 1,758 words.



Jason Edward Rheinstein

