No. 19-7672

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 2019

DONTE DESHAWN ALSTON,
Petitioner

-v-

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari
To the United States Court of Appeals
For the Eleventh Circuit

REPLY IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

I. Whether the Eleventh Circuit's Prior-Precedent Rule violates due process when the precedent is based on a second or successive 28 U.S.C. § 2255 application usually filed *pro se*, that must be decided without meaningful briefing, without a record, without oral argument and within 30 days of filing.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Donte Deshawn Alston respectfully petitions for a writ of certiorari to review the judgment of the Eleventh Circuit Court of Appeals.

REASONS FOR GRANTING THE PETITION

I. The Eleventh Circuit's Prior-Precedent Rule, violates due process when the precedent is based on second or successive applications usually filed by inmates proceeding *pro se*, that must be decided without meaningful briefing, without a record, without oral argument and within 30 days of filing.

In asking that this Court not grant Mr. Alston's Petition for a Writ of Certiorari, the government argues that the Eleventh Circuit has the discretion to adopt its own procedural rules as long as the rules and procedures are consistent with federal law. Gov't Brief, at 12-13, *Mack v. United States*, No. 19-6355 (Apr. 10, 2020).[1] The problem with the government's argument is that the Rule instituted by the Eleventh Circuit Court of Appeals violates due process.

While a court of appeals may have broad discretion to construct its own procedural rules, this discretion is not unfettered. As noted in Mr.

[1] The government is relying on the arguments it raised in the *Mack* case.

Alston's petition, the Eleventh Circuit has held that prior published orders from SOS applications brought by *pro se* litigants, in a standard form limited to 100 words, as opposed to 13,000 words, without meaningful briefing, without a record and without oral argument binds all future panels. FRAP 32(a)7(B)(i); *United States v. St. Hubert,* 909 F.3d 335, 346 (11th Cir. 2018) (cert petition pending No. 195267 (July 18, 2019)). The Eleventh Circuit's rules regarding SOS petitions as binding precedent deprive litigants of what the Due Process Clause requires: "the opportunity to present his case and have its merits fairly judged." *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 433, 102 S. Ct. 1148, 1156 (1982).

Even the Eleventh Circuit recognizes that this procedural rule is subject to challenge. In *St. Hubert*, a member of the Eleventh Circuit Court in active service requested a poll on whether the case should be reheard by the circuit court sitting *en banc*. *United States v. St. Hubert,* 918 F.3d. 1174 (Mem) (March 19, 2019). While the circuit court voted against granting a rehearing *en banc*, Judge Jill Pryor noted that the "institutional (and, possibly, constitutional) problems with treating published [SOS] panel orders as binding on all subsequent panels are significant, and, at a minimum, worthy of *en banc* review." *St. Hubert*,

918 F.3d at 1210. (Pryor, Jill, dissenting). Yet, Mr. Alston is bound by an SOS order.

The government recognizes that in some instances, binding non litigants to a judgment in a prior case can result in a violation of the Due Process Clause. *Mack v. United States*, Gov't Brief, at 13 (citing *Taylor v. Sturgell*, 553 U.S. 880, 896-898 (2008). But then the government invokes the *stare decisis* doctrine in asking this Court to reject Mr. Alston's argument that the binding nature of published SOS orders violate due process.

This Court has found that the *stare decisis* doctrine does not apply in all cases. There are a number of factors for a court to consider in deciding whether or not to apply this doctrine. Among those factors is consideration as to whether a decision was "well reasoned." *Citizens United v. Federal Election Com'n*, 558 U.S. 310, 363, 130 S. Ct. 876, 912 (2010) (citing *Montejo v. Louisiana*, 556 U.S. 778, 792-93, 106 S. Ct. 2079, 2088-89 (2009). Here, as pointed out by at least one Judge in the Eleventh Circuit, the very nature of the SOS application process, its constraints, and the thirty-day deadline in which to adjudicate a petition can lead to "odd results that we would likely not accept in merits appeals." *In re*

Octavious Williams, 898 F.3d 1098, 1103 (11th Cir. 2018) (Wilson, J., concurring). Yet, the government is asking this Court to apply the *stare decisis* doctrine and accept these "odd results" as not violative of the Due Process Clause.

The government also argues that in conducting a due process analysis, this Court should look to *Medina v. California*, 505 U.S. 437 (1997) and not *Matthews v. Eldridge*, 424 U.S. 319 (1976) to determine the due process analysis to apply in a case. Given the disagreement between the parties as to which standard to apply, this Court could resolve the issue by granting Mr. Alston's petition.

Finally, in its Response, the government discusses whether or not armed bank robbery under 18 U.S.C. §§ 2113(a) and (d) is a crime of violence. This is not an issue raised by Mr. Alston's petition for a writ of certiorari and a reply is not necessary, unless the Court wishes to hear from Mr. Alston on this issue.

CONCLUSION

The flaws in the Eleventh Circuit's SOS decision-making process, set forth in Mr. Alston's initial petition for a writ of certiorari, are well-documented by its own judges in its own opinions. Yet the rule persists.

This Court should grant relief so that Mr. Alston and other litigants will not be deprived of their due process right to a fair hearing under the outlier procedural rules of one circuit.

Wherefore, Mr. Alston respectfully requests that this Court grant the writ.

This 29th day of April, 2020.

Respectfully Submitted,

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