

No. 20-1763

**IN THE SUPREME COURT
OF THE UNITED STATES**

FENYANG STEWART,

Petitioner,

v.

WILBUR ROSS, Jr. and ANDRE IANCU,

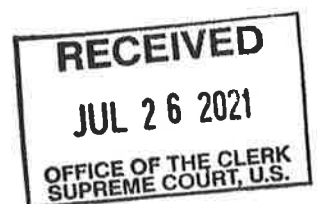
Respondents.

**ON PETITION FOR WRIT OF CERTIORARI FROM
THE FOURTH CIRCUIT**

**APPLICATION TO RECALL THE MANDATE AND STAY THE CASE
PENDING DISPOSITION OF PETITION FOR WRIT OF CERTIORARI**

**Fenyang Stewart
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DATED: July 19, 2021



To the Honorable John G. Roberts, Jr., Chief Justice of the United States and Circuit Justice for the Fourth Circuit.

Petitioner Fenyang Stewart respectfully requests, pursuant to Supreme Court Rule 23.1 and 28 U.S.C. § 2101(f), that the Court recall and stay the Fourth Circuit's mandate while the instant petition for certiorari is pending. The mandate issued on June 2, 2021 in the appeal in the lower court was issued due to mistake since Appellant filed a petition for writ of certiorari with the U.S. Supreme Court on April 12, 2021 (Dkt. No. 20-1763)¹. The Fourth Circuit court was presented with a motion to stay the mandate since priority jurisdiction lied in the Supreme Court based on the effective filing date of April 12, 2021, which was perfected on June 22, 2021, but that motion was summarily denied on July 12, 2021.

Petitioner readily acknowledges that he is seeking extraordinary relief, and he does not make this request lightly. But the record here compellingly shows why such relief is necessary. As more fully described below, each of the four factors on which the Court relies in considering such requests is clearly present here. See *Rostker v. Goldberg*, 448 U.S. 1306, 1308 (1980) (Brennan, J., in chambers). First, there is a “reasonable

¹ Stewart, Fenyang. Petition For Writ of Certiori. United States Supreme Court. Filed April 12, 2021. <https://www.supremecourt.gov/search.aspx?filename=/docket/DocketFiles/html/Public/20-1763.html>

probability” that the Court will grant certiorari and, second, a “fair prospect” that it will at least vacate the decision below. First, statistically, although petitioner is pro se, he filed a paid case, and has a 5% chance of being granted cert, which is reasonable in comparison to the 1% chance that petitions that are filed under *in forma pauperis* status have. Second, the petition is not frivolous, as it presents a Constitutional Question related to due process and also seeks to resolve a circuit split on whether interference claims brought under the Rehabilitation Act should be treated as retaliation claims under 42 U.S.C. 12203(a) or resolved according to its own statutory text 42 U.S.C. 12203(b). Third, the Supreme Court has granted stays in similar situations as the petitioner when in order to correct a mistake made by a circuit court in issuing the mandate after the effective filing date of the petition for a writ of certiorari. *Brown v. Davenport*, 141 S. Ct. 1288, 209 L. Ed. 2d 21 (2021):

Application to recall and stay mandate, presented to Justice Kavanaugh and by him referred to the Court, is granted, and the mandate of the United States Court of Appeals for the Sixth Circuit in case No. 17–2267 is recalled and stayed pending the disposition of the petition for writ of certiorari. Should the petition for writ of certiorari be denied, this stay shall terminate automatically. In the event the petition for writ of certiorari is granted, the stay shall terminate upon the sending down of the judgment of this Court.

Third, Petitioner will suffer irreparable harm if the stay is denied. Issuance of the mandate essentially opens the door to depriving Stewart of his Constitutionally guaranteed right of Due Process, specifically the right to move for leave to amend his complaint at the Eastern District Court of Virginia, Alexandria Division, since Judge Brinkema has barred him from filing any motions in the case, and would allow the Respondents-Defendants to claim laches or lack of due diligence in a possible opposition that would surely be granted in accordance with her prior orders favoring defendants, including granting them extensions of time to file dispositive motions without being moved to do so but denying written requests from Petitioner-Plaintiff to respond. Fourth, the balance of equities overwhelmingly favors Petitioner.

Appellant plans on filing a motion for leave to file an amended consolidated complaint in the lower district court if the writ is not granted and may be denied in the basis of laches or lack of due diligence if the mandate is not recalled, a violation of his Constitutional right of due process, and a manifest injustice since the consolidated complaint was dismissed without prejudice. In order to balance equity and maintain the integrity of the Court, the motion must be granted or else Fenyang Stewart will not have a chance to amend his consolidated complaint in the future

absent such intervention, even though the issues in such an amended complaint would be ripe and have not been ruled on prior.

For the following reasons, Petitioner Fenyang Stewart prays the panel grant his request to recall the issuance of the mandate pending a decision on the petition for a writ of certiorari.

Respectfully Submitted on this 19th day of July 2021,



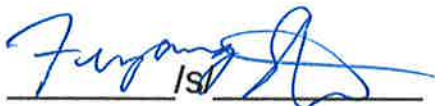
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*******CERTIFICATE OF SERVICE*******

I certify under penalty of perjury that on 7/19/21, I served a copy of this motion with the U.S. Supreme Court and on all parties, by mailing a copy to the Court of Clerk, 1 First Street, NE Washington, DC 20543 via First-Class U.S. mail and by emailing the respondents at the email addresses below, who have consented to electronic service of all documents.

Catherine Yang,
2100 Jamieson Avenue,
Alexandria, VA 22314,
email: Catherine.Yang@usdoj.gov,
Attorney for respondents; and

Hon. Elizabeth Prelogar,
Solicitor General of the United States,
Room 5614, Department of Justice,
950 Pennsylvania Ave.,
N. W., Washington, DC 20530-0001;
email: SupremeCtBriefs@USDOJ.gov.

A handwritten signature in blue ink, appearing to read 'Fenyang Stewart', is written over a horizontal line. The signature is stylized and includes a small 'sl' or similar mark.

Fenyang Stewart,
Petitioner, *Pro Se*

CERTIFICATION

I HEREBY CERTIFY that on 7/19/21, and declare under penalty of perjury that the matters sworn herein are made from my personal knowledge, and I am competent to testify thereto.

A handwritten signature in blue ink, appearing to read 'Fenyang Stewart', is written over a horizontal line. The signature is stylized and includes a small 'sl' or similar mark.

Fenyang Stewart
Petitioner, *Pro Se*

FILED: July 12, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-1514
(1:18-cv-01369-LMB-TCB)
(1:16-cv-00213-LMB-JFA)

FENYANG STEWART

Plaintiff - Appellant

v.

WILBUR L. ROSS, JR., Hon., in his official capacity as Secretary, U.S.
Department of Commerce; ANDREI IANCU, in his official capacity as Director,
United States Patent & Trademark Office

Defendants - Appellees

O R D E R

Upon consideration of submissions relative to the motion to recall the
mandate, the court denies the motion.

For the Court--By Direction

/s/ Patricia S. Connor, Clerk