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In the  
SUPREME COURT OF THE UNITED STATES  
October term 2021

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DeMarco Nichols  
vs.  
Illinois Department of Transportation

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APPLICATION/MOTION TO DIRECT CLERK TO FILE OUT OF TIME ATTACHED  
PETITION FOR WRIT OF CERTIORARI

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**Application to the Honorable Justice Amy Coney Barrett**

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**J.M.J.**  
**LONGO AND ASSOCIATES LTD.**  
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**JUDGMENT FOR WHICH REVIEW IS SOUGHT**

The decision for which review is sought is attached to the petition for writ of certiorari,  
Nichols vs. Illinois Department of Transportation, #19-1456 (7th Cir. 7/6/2021).

**JURISDICTION**

This Court has jurisdiction pursuant to 28 USC §1257.

**JUSTIFYING REASONS TO GRANT THE APPLICATION/MOTION**

The petitioner's petition for writ of certiorari was due on 3 December 2021. Timely, the petitioner filed electronically the petition for writ of certiorari on 2 December 2021. Also, on 2 December 2021, the petitioner electronically served all interested parties.

Sporadically, the petitioner checked the Supreme Court's docket to determine the status of this case. The docket just showed that the case had been electronically filed. It showed no other activity. On or about 4 February 2022, the petitioner telephoned the clerk's office of the Supreme Court to inquire about the status of the case. The petitioner was informed that the petition for writ of certiorari was not timely as a paper copy had not been postmarked by the due date.

Unfortunately, the petitioner was unaware that a paper copy of the petition had to be postmarked by the due date for the petition to be considered timely. From the petitioner's experience, as long as a federal filing has been electronically filed before 11:59 PM on the due date, it is considered timely. Thereafter, for example in the Seventh Circuit, the clerk of the court will direct the parties when to provide paper copies. Because the petition for writ of certiorari was timely filed electronically and all interested parties were served timely, it is respectfully requested that Her Honor be inclined to direct the clerk's office to file the petition for writ of certiorari.

The petitioner, a sole practitioner, represents victims of civil rights violations. The petitioner had the true honor and privilege to argue orally before Her Honor in Smith vs. Rosebud Farmstand, 898 F.3d 747 (7th Cir. 2018), Barrett, J, another case involving civil rights violations.

Over the last approximately one one-half years in particular, our country has suffered unrest, riots and so forth because of accusations of civil rights violations. If the petitioner's memory is correct, Justice Barrett referred to it in the Senate confirmation hearings. Protecting victims of civil rights violations is important. Indeed, the Supreme Court has held that lower courts should entice the plaintiff's bar to represent persons whose constitutional rights had been violated by providing reasonable attorney's fees commensurate with what such attorneys would receive in other cases.

Unfortunately, though the principal sounds and seems nice in theory, a different story occurs in practice. Attorney David Lee, former president of the National Employment Lawyers Association (NELA), our country's largest employment, civil rights organization, having published, spoken on related topics nationwide (R290-3, ¶18), testified in his affidavit:

the...bar is concerned about the dearth of younger lawyers...one of the most important reasons for the dearth...(is)...the obstacles to making a living...Any failure.... to award a reasonable...fee...very likely contribute(s) to a continuing dearth.

It appears that the precipitous decline in private attorneys willing to accept the high risk and substantial hours (e.g., 2000, 3000 hours) associated with representing victims of civil rights violations may have resulted partly or wholly from courts not providing reasonable attorney's fees. It can be surmised that reasonable compensation entices people, in this case, attorneys.

Some may think and feel that *Nichols vs. Illinois Department of Transportation* (attached to the attached petition for writ of certiorari) further deters attorneys from civil rights cases and being committed to working the required substantial hours. In *Nichols*, excluding the caps set by

Title VII, the applicant acquired a recovery of approximately \$3,500,000 for the plaintiff. \$1,500,000 of this comprises the jury's verdict for the plaintiff's emotional harm. The plaintiff had no bills, medical or otherwise. Younger and seasoned lawyers may find that this amount is outstanding, given that the plaintiff had no medical, psychological or any other type of treatment. Indeed, attorneys have informed the petitioner that the petitioner has acquired unusually high verdicts in these type of cases.

After reading *Nichols* and similar cases, private attorneys may be chilled and deterred from accepting civil rights cases. For example, in *Nichols*, despite the "excellent results", *Hensley v. Eckardt*, 461 US 424,435(1983), *Nichols* reduced the attorney's fees by 65% and compensated with only 35%. This is true though the defendant presented no countering affidavits to the petitioner's 8 undisputed affidavits.

As demonstrated by the attached petition, it appears that confusion, unpredictability and inconsistency exists in fee shifting jurisprudence. Many fee shifting statutes exist. This confusion, unpredictability and inconsistency is unfortunate because it causes further anxiety for attorneys, deterring them from civil rights cases.

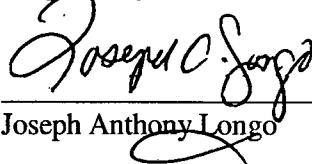
This is troubling because older attorneys, such as the petitioner, will retire/die and younger attorneys will not be there to replace them. If younger lawyers will not replace older lawyers when they die or retire, then our important civil rights laws will become impotent. The petitioner hopes to present the issues in the attached petition for writ of certiorari to the Supreme Court, if Her Honor gives the petitioner permission.

## **CONCLUSION**

For the aforementioned reasons, the petitioner respectfully prays that Her Honor will consider granting the petitioner's application/motion to direct the clerk to file out of time the

petition for writ of certiorari, particularly as it was electronically filed timely and all parties were served timely.

Respectfully submitted,

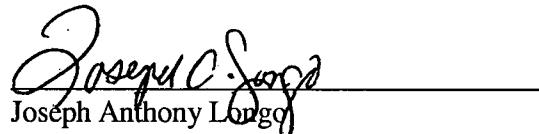
  
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#### **CERTIFICATE OF SERVICE**

I, Joseph Anthony Longo, an attorney, certify that I served this APPLICATION/MOTION TO DIRECT CLERK TO FILE OUT OF TIME ATTACHED PETITION FOR WRIT OF CERTIORARI by electronic filing and by electronic service to those below on 22 February 2022 before 5pm. Under penalties as provided by law pursuant to 735 ILCS, Sec 5/1-109, I certify that the statements set forth in this Certificate of Service are true and correct.

  
Joseph Anthony Longo

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