NO. 22-5946

In the Supreme Court of the United States

DAWUD CANAAN STURRUP GABRIEL,

Petitioner,

v.

WINDY HILL FOLIAGE INCORPORATED,

Respondent.

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

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

To provide a more specific statement of the issues to be resolved, Respondent restates the Questions Presented as follows:

1. Whether the district court abused its discretion by striking and dismissing Petitioner's nearly 3,000-page amended complaint as an impermissible shotgun pleading and providing one final opportunity for Petitioner to file an amended complaint complying with specific directions of the district court, which opportunity Petitioner forfeited by refusing to file a second amended complaint.

2. Whether the Eleventh Circuit Court of Appeals correctly affirmed the district court's dismissal of Petitioner's nearly 3,000-page amended complaint as a shotgun pleading, and further rejected Petitioner's claims of error with regard to the district judge's not *sua sponte* recusing herself, despite Petitioner's failing to file a motion requesting same in the district court and otherwise failing to support his argument for recusal before the Eleventh Circuit Court of Appeals.

RULE 29.6 CORPORATE DISCLOSURE STATEMENT

Respondent WINDY HILL FOLIAGE INCORPORATED has no parent corporation, and no publicly traded corporation owns 10% or more of its stock.

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STATEMENT OF THE CASE

This is an employment related action in which Dawud Canaan Sturrup Gabriel ("Petitioner") represents himself *pro se*. Petitioner initiated an action in the district court on April 21, 2021, by filing a complaint that totaled 192 pages in which he sought relief for alleged disability discrimination after Respondent did not hire him. Petitioner, as a matter of right, then filed an amended complaint that totaled 2,896 pages (more than fifteen (15) times longer than the original complaint) and included 820 ostensible causes of action for disability discrimination and retaliation arising out a single instance of an alleged failure to hire. However, in light of the shotgun and incomprehensible nature of the amended complaint, Respondent moved to dismiss.[1]

After reviewing the record before it—and the facially improper Amended Complaint—the district court *sua sponte* struck the Petitioner's amended complaint, which order likewise denied Respondent's Motion to Dismiss as moot. ([ECF No. 25].)

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[1] In its Motion to Dismiss, Respondent argued, in part, that the Amended Complaint should be dismissed pursuant to Fed. R. Civ. P. 12(b)(2) and 12(b)(5), for lack of personal jurisdiction and insufficient service of process. ([ECF No. 22] at 7-10.) The District Court never addressed or ruled on those arguments, and instead *sua sponte* dismissed the Amended Complaint as a frivolous shotgun pleading. ([ECF No. 25].) Respondent maintains its objections under FRCP 12(b)(2) and 12(b)(5), and the instant opposition to the Petition for Writ of Certiorari should not be construed as a waiver of same.

In that same order, the district court noted that Petitioner had not crafted a pleading that was capable of a response and then provided Petitioner with detailed guidance on how he should craft a viable pleading, including that the pleading should be no more than twenty-five (25) pages. (*Id.*)

Erroneously believing that the district court had "wrongfully" dismissed his amended complaint, Petitioner sought relief through a motion filed pursuant to Rule 60 of the Federal Rules of Civil Procedure. ([ECF No. 26][2].) Petitioner requested reconsideration of the district court's dismissal of his shotgun complaint. (*Id.*) The district court shortly thereafter entered an order denying the Rule 60 motion and allowed one final opportunity to file an amended complaint of twenty-five pages or less. ([ECF No. 28].) Petitioner had until August 31, 2021, to file a second amended complaint. (*Id.*) He refused and instead proceeded with an appeal to the Eleventh Circuit Court of Appeals. ([ECF No. 29].)

The Eleventh Circuit considered Petitioner's arguments that (i) the district court purportedly violated his constitutional right to due process by striking and dismissing his nearly 3,000-page amended complaint; and (ii) the district judge purportedly erred by failing to recuse herself from the case as a result of Petitioner's speculation of an improper relationship or bias (an issue never raised in the district court). The Eleventh Circuit rejected both arguments and affirmed the decision of the district

[2] The "ECF No." relate to the docket numbers of filings in the district court.

court. *Gabriel v. Windy Hill Foliage Inc.*, No. 21-12901, 2022 U.S. App. LEXIS 17454, at *6 (11th Cir. June 24, 2022). Petitioner never sought rehearing.

On October 24, 2022, Petitioner filed the instant Petition for Writ of Certiorari to the Eleventh Circuit Court of Appeals (the "Petition"), which was docketed as of October 31, 2022.

REASONS FOR DENYING THE PETITION

I. THE ELEVENTH CIRCUIT CORRECTLY AFFIRMED THE DISTRICT COURT'S DISMISSAL OF PETITIONER'S NEARLY 3,000-PAGE AMENDED COMPLAINT AS AN IMPERMISSIBLE SHOTGUN PLEADING THAT VIOLATED RULE 8(A) OF THE FEDERAL RULES OF CIVIL PROCEDURE, AND THE PETITION OTHERWISE FAILS TO SHOW ANY LEGALLY SUFFICIENT REASON TO SUPPORT GRANTING A WRIT OF CERTIORARI.

Rule 10 of the Rules of the Supreme Court of the United States outlines rather limited circumstances under which the Court will grant a petition for a writ of certiorari to a U.S. Court of Appeals, to wit[3]:

a) A U.S. Court of Appeals has entered a decision in conflict with that of another U.S. Court of Appeals "on the same important matter."

b) A U.S. Court of Appeals "has decided an important federal question that conflicts with a state court of last resort"; or

c) A U.S. Court of Appeals has "so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as o call for an exercise of this Court's supervisory power. . . . "

[3] The remaining criteria for granting a petition for writ of certiorari outlined in Rule 10 of the Rules of the Supreme Court of the United States have no bearing on the instant Petition.

See S. Ct. R. 10(a). Rule 10 further explains that petitions for writ of certiorari are "rarely granted" when the only error may be "misapplication of a properly stated rule of law." (*Id.*) Respondents submit that the Petition fails to articulate any justifiable basis to grant a writ, as Petitioner's primary gripe is that the district court simply required him to file a complaint that was no longer than twenty-five (25) pages and which complied with Rule 8(a) of the Federal Rules of Civil Procedure. (*See* Pet. at 24-27.)

A. Petitioner Failed to Identify Any Conflict Among the U.S. Courts of Appeals Regarding the Dismissal of His Nearly 3,00-Page Amended Complaint.

As an initial matter, the Petition fails to identify any conflict among the Courts of Appeals on the issue of whether Petitioner's nearly 3,000-page complaint should have been dismissed. To the contrary. Federal courts across the country have been clear that Rule 8(a) prohibits filing complaints that are hundreds or even thousands of pages of rambling and incoherent allegations, as such pleadings are often termed "shotgun pleadings." *See Weiland v. Palm Beach Cty. Sheriff's Office*, 792 F.3d 1313, 1324 (11th Cir. 2015). Petitioner himself is aware of the apt application of this principle, as he has attempted in several courts across the country to do precisely what he did in this action against Respondent, and he was met with the same result. *See, e.g.*, *Gabriel v. Trans Am. Trucking Co.*, No. 22-2126-JWB, 2022 U.S. Dist. LEXIS 98947, at *3 (D. Kan. June 2, 2022) (adopting report and recommendation and dismissing amended complaint after finding that Petitioner had violated Rule 8(a) with his 195-page initial complaint and his 190-page amended complaint), *aff'd*, *Gabriel v. Trans Am. Trucking Co.*, No. 22-3102, 2022 U.S. App. LEXIS 23829, at *3

(10th Cir. Aug. 25, 2022); *Gabriel v. Melton Truck Lines*, No. 21-CV-493-JFH-SH, 2022 U.S. Dist. LEXIS 145964, at *2 (N.D. Okla. Aug. 16, 2022) (dismissing Petitioner's action after finding that his complaints totaling hundreds of pages (288 pages, 317 pages, and 384 pages across three (3) similar cases), as well as his attempt to file a 3,000-page complaint, were improper). Thus, far from a conflict among the federal courts, it appears universally accepted that Petitioner is unable to follow basic pleading rules uniformly applied throughout the country. Indeed, the Petition never identifies any U.S. Court of Appeals that would disagree with the settled principle that Rule 8(a) requires pleadings to be a "short and plain statement," as opposed to "a morass of irrelevancies. . . . " *Melton Truck Lines*, 2022 U.S. Dist. LEXIS 145964, at *11. As such, the district court committed no abuse of discretion when dismissing Petitioner's amended complaint, and the Eleventh Circuit correctly affirmed that decision.

B. The Eleventh Circuit Did Not Decide an "Important Federal Question" When It Affirmed the Dismissal of His Nearly 3,00-Page Amended Complaint.

The Petition likewise fails to identify any "important federal question" that "conflicts with a state court of last resort." *See* S. Ct. R. 10(a). Petitioner, with his incessant pleas that he should be permitted to file a complaint that spans thousands of pages of incoherent and irrelevant statements arising out of a single failure to hire, has not identified any decision by any U.S. Court of Appeals—much less any decision by any court presiding over this case—that somehow conflicts with a decision of the Supreme Court of Florida. In fact, Florida state appellate courts all agree that a "shotgun pleading," or any pleading that embodies such characteristics, must be

dismissed. *See, e.g.*, *Eagletech Communs., Inc. v. Bryn Mawr Inv. Grp., Inc.*, 79 So.3d 855, 863 (Fla. 4th DCA 2012) (affirming dismissal of complaint that commingled allegations of multiple counts into a single count); *Aspsoft, Inc. v. WebClay, Inc.*, 983 So.2d 761, 768 (Fla. 5th DCA 2008) (noting that a trial court acts properly when dismissing a complaint that "impermissibly commingle[s] separate and distinct claims"). As such, the Petition cannot be granted on this basis either. There was no abuse of discretion in the district court, and the Eleventh Circuit correctly applied judicial precedent to affirm the dismissal of Petitioner's non-compliant amended complaint.

C. Because the Eleventh Circuit Acted Consistently with Other Courts That Have Dismissed Petitioner's Non-Compliant Pleadings, There Was No "Departure" from the "Accepted and Usual Course of Judicial Proceedings".

The Petition's incantations of an alleged "failure" of due process fall woefully short of showing that the Eleventh Circuit "so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power." (Pet. at 38.) The Petition merely alleges —in conclusory fashion—that the Petition should be granted on this basis. (*See* Pet. at 31-37.) The "accepted and usual course of judicial proceedings" is to dismiss complaints that fail to comply with Rule 8(a). Otherwise, Rules 8(a), 12(b)(6), and 12(e) have no meaning. Merely requiring a *pro se* litigant to abide by the same rules that apply to all litigants does not hinder that litigant's right of access to the courts. *See Moon v. Newsome*, 863 F.2d 835, 837 (11th Cir. 1989) (holding that *pro se* plaintiffs are entitled to "reasonable access to the courts" but, once in court,

they are "subject to the relevant laws and rules of court, including the Federal Rules of Civil Procedure"). This is *a fortiori* true here, where the district court provided Petitioner with clear instructions on how to fashion a compliant pleading and provided Petitioner with ample time for doing so. Far from ignoring due process, the system worked exactly as designed, with Petitioner being given notice of his pleading's problems as well as an opportunity to address and correct those problems. As noted above, Petitioner also has been the subject of multiple orders that have dismissed his prolix complaints for failure to comply with applicable rules of civil procedure. *Trans Am. Trucking Co.*, 2022 U.S. Dist. LEXIS 98947, at *3; *Melton Truck Lines*, 2022 U.S. Dist. LEXIS 145964, at *2. Petitioner has only himself to blame for his refusal to follow both the rules that apply to all litigants as well as the direction of judges regarding his deficient and abusive pleadings. Dismissal in such an instance, especially a dismissal without prejudice, is consistent with well-established judicial precedent in the federal courts. *See Henderson v. JP Morgan Chase Bank, NA*, 436 Fed. Appx. 935, 938 (11th Cir. 2011). There was no abuse of discretion by the district court, and the Eleventh Circuit's order affirming the decision of the district court was plainly correct.

D. Petitioner's Disagreement with the Dismissal of His Nearly 3,000-page Complaint Cannot Support Recusal.

The Petition also decries the district judge's purported "failure" to recuse herself from hearing the case. Strangely, Petitioner believes that the entire bench of the Southern District of Florida should have recused itself from hearing the case based entirely on speculative, unsupported, and baseless conspiracy theories. Petitioner has

attempted this argument in other cases, and, consistent with applicable judicial precedent, it has been rejected. *Melton Truck Lines*, 2022 U.S. App. LEXIS 11670, at *4 ("We also reject the argument that the district judge lacked impartiality and should have recused himself. [Petitioner] bases his argument on rulings by the district judge. But adverse rulings cannot in themselves form the appropriate grounds for disqualification." (citing *United States v. Wells*, 873 F.3d 1241, 1252 (10th Cir. 2017) (internal quotation marks omitted))); *Trans Am. Trucking Co.*, 2022 U.S. Dist. LEXIS 98947, at *3-4 ("[Petitioner] bases the allegation of bias on the court's conclusion that his complaint failed to comply with Rule 8(a), but judicial rulings alone almost never constitute a valid basis for a bias or partiality motion, and when, as here, the movant does not allege an extrajudicial source of bias, adverse rulings rarely evidence the degree of favoritism or antagonism required to disqualify the judge. The court harbors no personal bias or prejudice against [Petitioner], and no objective basis for recusal has been shown." (internal citations and quotations omitted)).

The Eleventh Circuit, relying on well-established precedent, correctly rejected Petitioner's assertion of impartiality, which was neither raised in the district court nor was legally insufficient. *Windy Hill Foliage Inc.*, 2022 U.S. App. LEXIS 17454, at *3. That Petitioner may disagree with being required to file a shorter complaint that complies with Rule 8(a) does not translate into improper bias. For this additional reason, the Petition insufficiently establishes a basis for this Court to grant certiorari.

E. Petitioner Recently Failed in a Prior Attempt to Seek Certiorari Based on Similar Arguments in *Melton Truck Lines*.

Finally, Petitioner previously has attempted to bring before this Court a case in which he made strikingly similar assignments of error as in the instant Petition. This Court correctly denied certiorari in that case. *See Gabriel v. Melton Truck Lines*, ____ U.S. ____, 214 L.Ed.2d 95 (U.S. Oct. 3, 2022). And, because Petitioner's arguments are largely the same as in *Melton Truck Lines*, the same result should abide in this case.

CONCLUSION

Properly stated, the answer to each Question Presented would be "no," as the decisions of the district court and the Eleventh Circuit were each eminently correct and consistent with other federal courts' decisions in dismissing Petitioner's impermissible pleadings, including those courts that likewise have encountered Petitioner's prolific filings. Accordingly, there exists no reason—legal or otherwise—to grant the Petition.

For each of the foregoing reasons, Respondent respectfully submits that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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