ORIGINAL

IN THE
Supreme Court of the United States

IN RE LOUIS MATTHEW CLEMENTS,
Petitioner,

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

PETITION FOR A WRIT MANDAMUS

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QUESTION PRESENTED

1) Whether a writ of mandamus should issue directing the court of appeals to comply with this Courts previous ruling in *Semtek International Inc. v. Lockheed Martin Corp.*, which held that "federal common law governs the claim-preclusive effect of a dismissal by a federal court sitting in diversity," and that federal common law should be derived from "the law that would be applied by state courts in the State in which the federal diversity court sits." 531 U.S. 497, 508 (2001)..?

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RELIEF SOUGHT

Pursuant to FRAP 21 and 28 U.S.C. § 1651, Petitioner respectfully petitions for a writ of mandamus to the United States Court of Appeals for the Eleventh Circuit, requesting that the Eleventh Circuit be directed to remand this case to the district court to proceed in a manner consistent with a decision *for the Petitioner*.

ISSUES PRESENTED

In *Clements II*, the 11th Cir. Court of Appeals refuses to comply with this Court's ruling in *Semtek* and instead relies on its own interpretation.

That decision denies Petitioner of an important right guaranteed by the State of Florida, that of the "manifest injustice" doctrine.

In *Clements I*, the Petitioner was not able to add any claims before it was dismissed, without the court acknowledging his request to amend to add claims. In *Clements II*, the District Court ruled that he did not receive a full and fair opportunity to be heard. To wit, applying claim preclusion would be a "manifest

injustice" according to the State of Florida. *See State v. McBride,* 848 So.2d 287, 291 (Fla. 2003).

FACTS NECESSARY TO UNDERSTAND THE ISSUE PRESENTED BY THE PETITION

Clearly, State Law must be applied to issue preclusion in *Clements II* because Florida recognizes the "manifest injustice" doctrine. The 11th Cir. own citation of case law verifies this conclusion (See Page 13 of the 11th Cir. order). "The one purported substantive difference between Florida and federal law that is highlighted by the parties is the existence, under Florida law, of equitable exceptions that militate against preclusion where the "ends of justice" or "manifest injustice" so require." *SFM Holdings, Ltd. v. Banc of Am. Sec., LLC*, 764 F.3d 1327, 1337 (11th Cir. 2014) (collecting and comparing Florida and Eleventh Circuit preclusion cases).

Additionally, the 11th Cir. clearly applies the "full and fair opportunity to be heard" standard when applying the "manifest injustice" standard, (*See Shell v. Schwartz*, 357 F. App'x 250 (11th Cir. 2009). It is apparent that since the District Court in *Clements II* ruled that Appellant did not receive a "full and fair opportunity to be heard" in *Clements I* that the application of res judicata in *Clements II* would "defeat the ends of justice" and result in "manifest injustice".

Yet, confusingly, the 11th Cir. also claims that it refuses to fashion a manifest injustice exception regarding res judicata or in this case, claim preclusion, "such exceptions do not exist under federal preclusion law, as applied in this circuit". See *Maldonado v. U.S. Attorney Gen.*, 664 F.3d 1369, 1375 (11th Cir.2011)).

Other Federal circuits apply "manifest injustice" to claim preclusion:

- **1st Cir.** – Nevertheless, in the context of administrative proceedings, *res judicata* is not automatically and rigidly applied in the face of contrary public policy. *Quinones Candelario v. Postmaster Gen. of U.S.* 906 F.2d 798 (1st Cir. 1990) quoting *Gregory v. Bowen,* 844 F.2d 664, 666 (9th Cir. 1988).
- **2nd Cir.**- *United States v. Beggerly,* 524 U.S. 38, 47 (1998).
- **4th Cir.** - *Grose v. Cohen,* 406 F.2d 823, 824-25 (4th Cir. 1969).
- **5th Cir.** - *Ferguson v. Winn Parish Police Jury,* 589 F.2d 173, 176 n.6 (5th Cir. 1979).
- **6th Cir.** - For example, *res judicata* should not be applied when it would result in a "manifest injustice." *See Marlene Indus. Corp. v. NLRB,* 712 F.2d 1011, 1017 (6th Cir. 1983); *Tipler v. E.I. duPont deNemours and Co.,* 443 F.2d 125, 128 (6th Cir. 1971).

- **7th Cir.** - *International Harvester Co. v. Occupational Safety and Health Review Comm'n,* 628 F.2d 982, 986 (7th Cir. 1980).
- **9th Cir.** - Nevertheless, in the context of administrative proceedings, *res judicata* is not automatically and rigidly applied in the face of contrary public policy. *See, e.g., Gregory v. Bowen,* 844 F.2d 664, 666 (9th Cir. 1988).

REASONS FOR GRANTING THE PETITION

No controversy exists in this case. It's already been decided in *Semtek*. The only issue is defiance by the 11th Cir. Court of Appeals to refuse to comply with this Court's ruling in *Semtek*. There is no clearer rule in all appellate jurisprudence than the rule that a lower court must comply with the mandate of a superior court and that the issues decided by the superior court are not subject to relitigation below:

> "[w]hatever was before the Court, and is disposed of, is considered as finally settled. The inferior court is bound by the decree as the law of the case; and must carry it into execution, according to the mandate. They cannot vary it, or examine it for any other purpose than execution; or give any other or further relief; or review it upon any matter decided on appeal for error apparent; or intermeddle with it, further than to settle so much as has been remanded." *Sibbald v. United States, 12 Pet. 488, 492 (1838).*

There is a very serious and upsetting trend of lower Courts defying this Courts mandates and precedents. See *IN RE WHOLE WOMAN'S HEALTH, ET AL* 595 U. S. 21–962 (2022).

This defiance redesignates those Courts as an improper venue of finality, a distinction not rendered upon them from any authority. This wastes time and resources of Courts and ruins the public's faith in the Court system (*See* https://studyfinds.org/lost-trust-in-supreme-court/). The court should grant this petition to reaffirm to the lower Courts the futility of defying their mandates and superiority. After all, ...

No other adequate means exists to obtain Petitioners' requested relief. "[T]he Court has indicated that mandamus is the only proper remedy available to a party who has prevailed in the Supreme Court where the lower court, in the words of *United States v. Fossatt*, 62 U.S. (21 How.) 445, 446 (1858), 'does not proceed to execute the mandate, or disobeys and mistakes its meaning.'" Stephen M. Shapiro, et al., Supreme Court Practice 665 (10th ed. 2013).

Absent intervention by the Court, the Eleventh Circuit is poised to entertain questions in future cases by the Courts own interpretation of *Semtek* in direct violation of this Court's mandate and delay further resolution of this case in the district court by at least weeks, and potentially months or more. Therefore, Petitioner has no recourse in any other court. *In re Sanford Fork & Tool Co.*, 160 U.S. at

255; *Will v. United States*, 389 U.S. 90, 95–96 (1967); Stephen M. Shapiro et al., Supreme Court Practice 665 (10th ed. 2013) ("One function of the writ of mandamus is to force a lower court to comply with the mandate of an appellate court. When the mandate or judgment in question is that of the Supreme Court, application for the writ must, of course, be made to that Court.").

An order to comply with its previous ruling in *Semtek* from this Court would settle this issue. An order from this Court would also serve a useful purpose in re-stating its superior position of power over the lower Courts. This Court could order the 11th Cir. to comply with its ruling in *Semtek* in this and any future cases. Petitioner and future appellants in that circuit would continue to suffer irreparable harm if this Court does not issue an order. There is no remedy at law because the merits of Semtek have already been decided by this Court. Only an order by this Court would allow the Petitioner's case to be properly decided in his favor.

CONCLUSION

For the foregoing reasons, this Court should grant the Petition for Writ of Mandamus.