

NO. 22-7219

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

DAWUD C.S. GABRIEL,
Petitioner,

v.

MELTON TRUCK LINES, INC.,
Respondent.

On Petition For Writ of Certiorari
To The United States Court Of Appeals
For The Tenth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Did the United States District Court for the Northern District of Oklahoma err in dismissing *without prejudice* Petitioner's nearly 3,000-page Amended Complaint for violating the requirement of Rule 8 of the Federal Rules of Civil Procedure that a pleading only contain "a short and plain statement"?

II. Did the United States Court of Appeals for the Tenth Circuit err in dismissing Petitioner's appeal for lack of prosecution pursuant to Tenth Circuit Rule 42.1?

PARTIES TO THE PROCEEDING

The case caption contains the names of all the parties. At page vi, footnote 6, of the Petition for Writ of Certiorari (the “Petition”), Petitioner falsely states that Respondent, Melton Truck Lines, Inc. (“Melton”), “failed to appear [in] the lower courts” and that Melton “is not an active party to this matter.” Instead, as set out in more detail below, the record demonstrates that Melton timely appeared and moved to dismiss Petitioner’s Amended Complaint in the proceedings before the United States District Court for the Northern District of Oklahoma. Melton also timely appeared in the proceedings before the United States Court of Appeals for the Tenth Circuit.

CORPORATE DISCLOSURE STATEMENT PURSUANT TO RULE 29.6

Respondent, Melton Truck Lines, Inc.’s sole parent company is The Hawthorn Group Inc. No publicly held company owns 10% or more of Melton Truck Lines, Inc.’s stock or The Hawthorn Group Inc.’s stock.

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ORDERS AND OPINIONS BELOW

All orders and opinions cited in this Brief are either published in the West's Federal Reporter and Federal Supplement series or they are unpublished. All opinions and orders cited in this Brief are available through the Westlaw and Lexis electronic research services, are attached to Petitioner's Appendix, or are publicly available via PACER.¹

The District Court's August 16, 2022 Order, granting Melton's Motion to Dismiss pursuant to Fed. R. Civ. P. 8(a) can be found at Appendix B of Petitioner's Appendix, and at *Gabriel v. Melton Truck Lines*, No. 21-cv-493-JFH-SH, 2022 WL 3401949 (N.D. Okla. Aug. 16, 2022).

The Court of Appeals' December 19, 2022 Order, dismissing Petitioner's appeal for lack of prosecution can be found in Petitioner's Appendix A.

STATUTORY PROVISIONS AND RULES INVOLVED

Substantive provisions:

- None

Procedural provisions:

- Federal Rule of Civil Procedure 8.
- Tenth Circuit Rule 42.1.

¹ Unless otherwise noted, the record citations contained in this brief are to the record prepared by the United States District Court for the Northern District of Oklahoma, which was transmitted to the United States Court of Appeals for the Tenth Circuit. Citations to the record will identify the title of the document, the volume of the record, the document number, and the page numbers of the record.

STATEMENT OF THE CASE

This case presents an ordinary—and baseless—employment dispute that does not meet the Court’s criteria for certiorari. The case is remarkable only for Petitioner’s longwinded pleadings and relentless motion practice, which resulted in both lower courts’ imposition of filing restrictions upon Petitioner. Over the course of nearly 18 months, Melton has unfairly been forced to incur substantial costs defending against dozens of frivolous motions and other filings regarding sanctions, default judgment, judicial disqualification, and other improper relief. Finally, this case is reaching its end. As set out in more detail below, the Court should deny Petitioner’s Petition and bring this case to its overdue close.

I. Proceedings before the United States District Court for the Northern District of Oklahoma

Melton is a premiere over-the-road flatbed carrier based in Tulsa, Oklahoma. From August 2020 to September 2020, Melton briefly employed Petitioner as a truck driver. *See generally* (Am. Compl., R. Vol. II, Doc. 13 at 3–2980). On or about September 16, 2022, Melton terminated Petitioner’s employment for the legitimate, non-discriminatory reason of unsatisfactory job performance (i.e., for speeding in a construction zone). Unfortunately, this litigation followed.

On November 16, 2021, Petitioner began this litigation by filing his 288-page Complaint in the United States District Court for the Northern District of Oklahoma, alleging that Melton discriminated against him by delaying his employee onboarding by approximately two months. (Compl., R. Vol. I, Doc. 1 at 8–295); *see also* (Charge of Discrimination, R. Vol. I, Doc. 1 at 206–15). Thereafter, on

May 2, 2022, Petitioner filed his nearly 3,000-page Amended Complaint, alleging 1,074 discrete “claims” of disability discrimination under the Americans with Disabilities Act of 1990. (Am. Compl., R. Vol. II, Doc. 13 at 1–2978). In other words, Petitioner sought to recover \$333 million in damages for an allegedly discriminatory two-month delay of his hire date with Melton.

On May 24, 2022, Melton timely appeared and moved the Northern District of Oklahoma to dismiss Petitioner’s Amended Complaint under Rule 12(b)(6) of the Federal Rules of Civil Procedure. (Mot. to Dismiss, R. Vol. IV, Doc. 17 at 5–11). On June 13, 2022, Melton also moved the court to dismiss Petitioner’s Amended Complaint for Petitioner’s failure to submit a “short and plain statement” of his claim, as required by Rule 8 of the Federal Rules of Civil Procedure. (Mot. to Dismiss, R. Vol. IV, Doc. 26 at 26–31). Because Petitioner repeatedly abused the litigation process by filing numerous improper briefs and other filings, as well as groundless motions for default judgment and for sanctions, on July 18, 2022, Melton further moved the court to impose reasonable filing restrictions upon Petitioner. (Mot. for Filing Restrictions, R. Vol. IV, Doc. 45 at 199–216).² Ultimately, on August 16, 2022, the Northern District of Oklahoma dismissed Petitioner’s Amended Complaint *without prejudice* for Petitioner’s failure to comply with Rule 8 of the

² Petitioner’s abuses extend far beyond this litigation and were detailed in the Northern District of Oklahoma’s order dismissing Petitioner’s Amended Complaint and imposing filing restrictions. (Pet. App. B, at 9–12). This Court has denied no fewer than four petitions for certiorari filed by Petitioner. *See* (Case No. 22-6363, Case No. 22-5946, Case No. 22-5146, and Case No. 22-5087). At the time of the filing of this Brief, a PACER “party search” for Petitioner returned results for 30 proceedings in which Petitioner was the plaintiff.

Federal Rules of Civil Procedure and imposed limited and reasonable filing restrictions upon Petitioner. (Pet. App. B, at 15).

II. Proceedings before the United States Court of Appeals for the Tenth Circuit

On August 17, 2022, instead of simply filing a pleading that complied with Rule 8 of the Federal Rules of Civil Procedure, Petitioner appealed to the Tenth Circuit. That same day, Petitioner moved the Tenth Circuit to extend his deadline to file his opening brief. (Emergency Mot. for Leave, 10th Cir. Doc. 010110729290). On August 25, 2022, Melton’s counsel timely appeared in the appellate proceedings. (Entry of Appearance, 10th Cir. Doc. 010110730205). On September 30, 2022, the Tenth Circuit granted Petitioner’s request and extended Petitioner’s briefing deadline to November 14, 2022. (Sep. 30, 2022 Ord., 10th Cir. Doc. 010110747620). On November 16, 2022—two days after his extended briefing deadline had passed—Petitioner sought even more time to file his opening brief. (2d Mot. to Extend, 10th Cir. Doc. 010110769975). That same day, the Tenth Circuit further extended Petitioner’s briefing deadline to December 12, 2022, but advised Petitioner that “[n]o further extensions will be granted absent extraordinary circumstances.” (Nov. 16, 2022 Ord., 10th Cir. Doc. 010110770231).

Throughout the appellate proceedings, rather than devote his time to his substantive briefing, Petitioner filed numerous frivolous motions to disqualify the Clerk of Court, the Deputy Clerk of Court, and as many as nine of the circuit’s judges and repeatedly sought other improper relief. *See, e.g.*, (Resp. to Emergency Recusal Request, 10th Cir. Doc. 010110759121) (detailing Petitioner’s abusive

motion practice in the appellate court). Eventually, Petitioner's relentless abuses compelled the Tenth Circuit to order the Clerk of Court to stop accepting Petitioner's motions for filing. (Nov. 1, 2022 Ord., 10th Cir. Doc. 010110761528). On December 12, 2022, after denying Petitioner's motions to vacate and to reconsider and reminding Petitioner that "the court has repeatedly told [him that] his arguments for recusal are meritless," the Tenth Circuit admonished Petitioner one final time that his "opening brief remains due December 12, 2022"; that "[n]o extensions of this deadline will be granted"; and that "[f]ailure to timely file a compliant opening brief ... will result in ... dismissal" (Dec. 12, 2022 Ord., 10th Cir. Doc. 010110780370). On December 19, 2022, because Petitioner failed to file an opening brief, the Tenth Circuit dismissed Petitioner's appeal "for lack of prosecution pursuant to Tenth Circuit Rule 42.1." (Pet. App. A).

SUMMARY OF ARGUMENT

As set out in more detail below, the Court should deny Petitioner's Petition for at least three independently sufficient reasons. First, Plaintiff's Petition presents none of the "compelling reasons" for granting certiorari identified in Rule 10 of the Rules of the United States Supreme Court. Second, on the merits, the Northern District of Oklahoma's and the Tenth Circuit's rulings were correct. Third, Petitioner's Petition violates Rule 14 of the Rules of the United States Supreme Court. For any of these reasons, the Court should deny Petitioner's Petition.

REASONS FOR DENYING THE PETITION

I. The Petition Does Not Satisfy the Court's Criteria for Granting Certiorari.

First, the Court should deny the Petition because the Petition does not meet the Court's criteria for certiorari. In particular, Rule 10 of the Rules of the United States Supreme Court provides that "[a] petition for a writ of certiorari will be granted only for *compelling reasons*." (emphasis added). Rule 10 lists the following types of cases in which the Court may grant certiorari:

- (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has 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;
- (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;
- (c) a state court or United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Id. This case meets none of these criteria.

In the "Presented Questions" portion of his Petition, Petitioner vaguely and broadly defines the questions presented on appeal as follows:

1. Whether or not the U.S. Court of Appeals for the Tenth (10th) Circuit far departed from the accepted and usual course of

judicial proceedings (S. Ct. R. 10(a)), as to call for an exercise of the Court's supervisory authority under 28 U.S.C. § 1254(1)?

2. Whether or not the U.S. Court of Appeals for the Tenth (10th) Circuit sanctioned the far departure of trial court from the accepted and usual course of judicial proceedings (S. Ct. R. 10(a)), as to call for an exercise of the Court's supervisory authority under 28 U.S.C. § 1254(1)?

(Pet., at ii) (underlining in original). But, in other parts of his Petition, Petitioner sets out the basis for his Petition with specificity. In short, Petitioner alleges that his due process rights were violated because “false authorities, presenting themselves as if they are real” issued the decisions in the proceedings below. (Pet., at v, 11). Yet, Petitioner presents no evidence for this bizarre claim. Moreover, the record demonstrates patient and measured responses to Petitioner's relentless abuses of the litigation process by both the Northern District of Oklahoma and the Tenth Circuit. Petitioner simply has not identified any departure “from the accepted and usual course of judicial proceedings,” nor has Petitioner identified a conflict among any courts or an unsettled issue of law.

Additionally, the actual questions presented in this case do not meet the Court's criteria for granting certiorari. The Northern District of Oklahoma's dismissal of Petitioner's Amended Complaint *without prejudice* under Rule 8 of the Federal Rules of Civil Procedure and imposition of reasonable and limited filing restrictions was supported by ample case law (i.e., did not “depart[] from the accepted and usual course of judicial proceedings”); did not conflict with the decision of any other court; and did not address an unsettled issue of law. *See* (Pet. App. B, at 8–15). In fact, federal courts throughout the country have uniformly dismissed

Petitioner’s excessive pleadings. *Id.* at 9 (collecting cases in which federal courts have dismissed Petitioner’s pleadings pursuant to Fed. R. Civ. P. 8(a)). Similarly, the Tenth Circuit’s dismissal of Petitioner’s appeal for lack of prosecution—which was the result of Petitioner’s failure to file an opening brief after multiple extensions of his deadline—does not meet any of the Court’s criteria for granting certiorari. For these reasons, the Petition does not present any compelling reasons to grant certiorari, and the Court should deny the Petition.

II. The Lower Courts’ Decisions Were Correct.

Next, the Court should also deny Petitioner’s Petition because the lower courts’ decisions were correct. As noted above, the Northern District of Oklahoma’s decisions to dismiss Petitioner’s Amended Complaint *without prejudice* under Rule 8 of the Federal Rules of Civil Procedure and to impose reasonable and limited filing restrictions were supported by ample case law. (Pet. App. B, at 8–15). Federal courts throughout the country have uniformly dismissed Petitioner’s excessive pleadings. *Id.* at 9 (collecting cases in which federal courts have dismissed Petitioner’s pleadings pursuant to Fed. R. Civ. P. 8(a)). Similarly, the court’s decision to impose filing restrictions was supported by substantial Tenth Circuit guidance. *Id.* at 10–15.

Additionally, the Tenth Circuit’s decision to dismiss Petitioner’s appeal for lack of prosecution was correct on the merits. Congress permits courts of appeal to “prescribe rules for the conduct of their business.” 28 U.S.C. § 2071(a). Under this rule-making authority, the Tenth Circuit’s published court rules warn litigants that

failure to prosecute their appeals can result in dismissal. 10th Cir. R. 42.1 (available at <https://bit.ly/43ZyqIn>) (last accessed Apr. 24, 2023).

In this case, the Tenth Circuit granted Petitioner two extensions of time to file his opening brief and specifically warned Petitioner that his appeal would be dismissed if he failed to comply. Rather than focus on his opening brief, Petitioner relentlessly bombarded the Tenth Circuit with frivolous motions, which were nearly uniformly denied. *E.g.*, (Pet. App. F, at 1–2) (denying various requested relief and stating “[a]s this court has repeatedly told Mr. Gabriel, his arguments for recusal are meritless”). Ultimately, Petitioner failed to file his opening brief by his twice-extended deadline. (Pet. App. A).

This Court routinely denies petitions for certiorari where the lower appellate court dismissed for failure to prosecute. *See, e.g., Morris v. Florida*, 393 U.S. 850 (1968) (denying a petition for writ of certiorari following lower court’s dismissal for failure to prosecute when petitioner’s counsel failed to timely file a notice of appeal). Because the Northern District of Oklahoma’s and the Tenth Circuit’s decisions were correct on the merits, the Court should similarly deny Petitioner’s Petition.

III. The Petition Does Not Comply with Supreme Court Rule 14.

Finally, the Court should deny the Petition because Petitioner has failed to fulfill the briefing requirements in Supreme Court Rule 14.1 and has failed, more generally, to make any coherent argument that the Northern District of Oklahoma or the Tenth Circuit committed reversible error. These fundamental failures are sufficient grounds for denying the Petition. *See, e.g., Galveston Causeway Const. Co*

v. Galveston, H & S A. R Co, 262 U.S. 747, 747 (1923) (denying a petition under earlier rule for failure to include a summary, short statement of the matter involved, and the general reasons relied on for allowance of the writ).

Supreme Court Rule 14.1 provides the requirements for a petition for writ of certiorari. Among other things, the essential elements include (1) “[t]he questions presented for review, expressed concisely in relation to the circumstances of the case, without unnecessary detail” and (2) “[a] direct and concise argument amplifying the reasons relied on for allowance of the writ,” referring the party to Supreme Court Rule 10, which articulates the circumstances under which the Court will grant certiorari. S. Ct. R. 14.1(a), (h). The Petition violates both of these requirements.

First, the Petition does not contain a concise or coherent statement of the questions presented to the Court. In his “Presented Questions” section, Petitioner essentially asks the Court to review the record below and search for potential errors. (Petition, at ii). Second, the Petition contains no direct and concise argument amplifying the reasons relied on for allowance of the writ. Rather, Petitioner has submitted a brief full of unsubstantiated allegations regarding “fictitious” judges and other government malfeasance. *See, e.g.*, (Pet., at 2–4, 8–11). Petitioner also cites various Constitutional provisions and statutes without explaining how the authority is relevant or supports his Petition. Melton simply should not be compelled to guess at Petitioner’s potential arguments. Therefore, because

Petitioner has violated Supreme Court Rule 14.1(h), the Court should deny the Petition.

CONCLUSION AND RELIEF SOUGHT

For the reasons set forth above, Melton respectfully requests that the Court deny the Petition for Writ of Certiorari.

Respectfully submitted,



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