ORIGINAL

23-1212

In The

Supreme Court of the United States

IN RE: JUSTIN MAHWIKIZI,

Petitioner,

On Petition For A Writ Of Mandamus To The United States District Court For The Northern District Of Illinois

PETITION FOR A WRIT OF MANDAMUS

JUSTIN MAHWIKIZI
18430 Francisco Avenue
Homewood, IL 60430
(267) 252-3305
justin.mahwikizi@gmail.com

Petitioner Pro Se

QUESTIONS PRESENTED

District courts have always had inherent powers to dismiss a case when a dismissal is appropriate under the circumstances. Likewise, the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants has been acknowledged.

Here, the Federal Arbitration Act (FAA) seems to give the District Court an unreviewable discretion similar to *Boumediene v. Bush* where the district court appears to shield itself from being challenged on their erroneous decision that found Petitioner not to be exempt from The Federal Arbitration Act (FAA) under Section 1. The District Court accomplishes this by erroneously applying Section 3 of the FAA and staying the case, not the trial, pending arbitration.

The questions presented are:

Whether section 3 of the Federal Arbitration Act should be used to shield the Federal Arbitration Act's Section 1 exemption claim denials from judicial review, and whether this action premises the constitutional violation of the Equal Protection Clause, which prevents the differential governmental treatment of those attempting to exercise their right for judicial review when all claims are supposedly subject to arbitration.

Whether section 16 of the Federal Arbitration Act renders the whole Statute unconstitutional for violating litigants' equal protection under the Law

QUESTIONS PRESENTED—Continued

rights by prohibiting interlocutory appeals following a Section 1 exemption claim denial.

Whether the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act (EFASASHA) implicitly renders Congressional intent to promote arbitration moot, and renders the Federal Arbitration Act's constitutionality unfruitful.

PARTIES TO THE PROCEEDING

The Petitioner is Justin Mahwikizi and plaintiff-appellant below.

The Respondent is the United States District Court for the Northern District of Illinois.

Uber Technologies, Inc. and Raiser, LLC, are additional Respondents and the defendants-appellees below.

CORPORATE DISCLOSURE STATEMENT

Petitioner Justin Mahwikizi is neither a subsidiary nor a parent company of any other corporation under the laws of the United States, and no publicly traded corporation owns 10 percent or more of its stock.

LIST OF RELATED PROCEEDINGS

U.S. Court of Appeals for the Seventh Circuit, No. 23-3369, *Justin Mahwikizi v. Thomas M. Durkin*, order entered February 15, 2024.

U.S. District Court for the Northern District of Illinois, No. 1:2022cv03680, *Mahwikizi v. Uber Technologies, Inc. et al.*, order entered March 06, 2023.

U.S. Court of Appeals for the Ninth Circuit, No. 22-1218, *Wendy Smith, et al. v. Keith Spizzirri, et al.*, order entered March 16, 2023.

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PETITION FOR A WRIT OF MANDAMUS

Petitioner respectfully petitions for a Writ of Mandamus to the United States District Court for the Northern District of Illinois, requesting that the District Court be directed to vacate their order staying the case pending arbitration.

DECISIONS BELOW

The order of the United States Court of Appeals for the Seventh Circuit denying a Writ of Mandamus is reprinted at App.1a. The district court's order denying a motion for reconsideration is reprinted at App.2a. The memorandum opinion of the United States District Court for the Northern District of Illinois compelling arbitration is reprinted at App.8a. The order of the United States Court of Appeals for the Seventh Circuit denying a Petition for a Rehearing En Banc is reprinted at App.22a.

STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. 1651. In the alternative, the jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). The judgment of the district court was entered on July 19, 2023, and an order of the court of appeals was entered on February 15, 2024.

STATUTORY PROVISIONS INVOLVED

Section 3 of the Federal Arbitration Act, 9 U.S.C. 3, provides:

> If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

Section 16 of the Federal Arbitration Act, 9 U.S.C. 16, provides:

> An appeal may be taken from—an order—refusing a stay of any action under section 3 of this title, denying a petition under section 4 of this title to order arbitration to proceed, denying an application under section 206 of this title to compel arbitration, confirming or denying confirmation of an award or partial award, or modifying, correcting, or vacating an award; An interlocutory order granting, continuing, or modifying an injunction against an arbitration that is subject to this title; or a final decision with respect to an arbitration that is subject to this title. Except as otherwise provided in section 1292(b) of title

> 28, an appeal may not be taken from an interlocutory order—granting a stay of any action under section 3 of this title; directing arbitration to proceed under section 4 of this title; compelling arbitration under section 206 of this title; or refusing to enjoin an arbitration that is subject to this title.

Section 401 of the Federal Arbitration Act, 9 U.S.C. 401, provides:

> Notwithstanding any other provision of this title, at the election of the person alleging conduct constituting a sexual harassment dispute or sexual assault dispute, or the named representative of a class or in a collective action alleging such conduct, no predispute arbitration agreement or predispute joint-action waiver shall be valid or enforceable with respect to a case which is filed under Federal, Tribal, or State law and relates to the sexual assault dispute or the sexual harassment dispute.

The All Writs Act, 28 U.S.C. section 1651(a), provides:

> The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

INTRODUCTION

This case presents an undeniable conflict over a significant question under the Federal Arbitration Act: whether courts have an unreviewable discretion to stay a case pending arbitration or dismiss a suit when all claims are subject to arbitration.

Only this Court can stop the ongoing violation of Petitioner's Constitutional rights under the Equal Protection Clause.

In the proceedings below, a Seventh Circuit panel denied review of the District Court's reading of Section 3 of the FAA. In so holding, the panel readily admitted it was joining the Second, Third, Sixth, Seventh, Tenth, and Eleventh Circuits in permit[ting] district courts to stay proceedings pending the trial, while expressly rejecting the contrary decisions of the First, Fifth, Eighth, and Ninth, authorizing the right to dismiss a case where all issues have been deemed to be subject to arbitration. (*Green v. SuperShuttle Int'l, Inc.*, 653 F.3d 766, 769-770 (8th Cir. 2011).

This case easily satisfies the traditional criteria for granting review, and Mandamus where there is no other method to achieve a redress of an error in a lower court decision that boxes a Plaintiff out of seeking judicial review. The conflict is obvious, acknowledged, and entrenched. It has produced divided panels on multiple courts with an intractable 6-2 circuit conflict.

In addition to circuit conflict being present acutely on the issue of Section 3 of the Federal Arbitration Act;

Section 16 clearly presents a situation where Congressional intent was to put their thumbs on the scale of the Law and allowed a large corporation to be allowed all types of appeals; including an interlocutory appeal, while barring any appeal rights to the smaller person, typically an employee of a misclassified employee.

Congressional intent is even cloudier given the recent passing of the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act (EFASASHA) which exempts any FAA enforcement ability on any employment contracts that contain binding arbitration where grave crimes of sexual harassment, and sexual assault are committed. A clear sign that Congress recognizes that their own statute has hurt countless lives by restricting them in a process that continues the harm rather than allow courts to address them. What EFASASHA doesn't do is address what is to become of misclassified employees who are victims of sexual assault or sexual harassment crimes.

Clearly the current state of the Federal Arbitration Act is in an untenable Constitutional status where Districts are not uniform in their reading of the statute's provisions that box the smaller litigant from seeking judicial review. Congressional intent is questionable on who is exempt, and if the Statute itself lends to a violation of the Equal Protection Clause.

Because this case presents an ideal vehicle for resolving these important questions of Federal law, the Writ of Mandamus should be granted.

This Court has previously granted mandamus to correct a district court's refusal to exercise jurisdiction where imminent proceedings threatened to foreclose federal review entirely. *McClellan v. Carland*, 217 U.S. 268 (1910). It should do so here as well.

Alternatively, the Court could resolve the circuit split on this question of jurisdiction by construing this petition as one for certiorari before judgment and granting review to resolve this question that has divided the courts of appeals.

STATEMENT OF THE CASE

1. Petitioner is a "current and former rideshare driver" for respondents, Uber Technologies, and sued respondents in Federal court for multiple violations of federal employment laws, and for being a common carrier who is also a federal contractor and violated Petitioner's bill of rights as well as other drivers, and riders' rights. Respondents moved to compel arbitration and stay the proceedings, alleging that all of Petitioner's claims were "subject to mandatory arbitration." While Petitioner protested that the claims were not arbitrable because Uber drivers, as a class, are exempt from the FAA section 1 given Uber drivers were a class of transportation workers engaged in interstate commerce, they argued that "the FAA required the district court to *stay* the action pending arbitration."

2. Notwithstanding Petitioner's affirmative exemption request, the district court compelled arbitration and stayed the case pending arbitration.

As relevant here, Petitioner argued to the district court that th[e] action should be dismissed if the Court believed all issues were to be arbitrated, and allow Petitioner to at least ask for a judicial review on the District court's decision regarding exemption. The court maintained that respondents rightly point out that "the text of 9 U.S.C. § 3 suggests that the action should be stayed."

3. Petitioner sought to find remedy through a Writ of Mandamus, however The Seventh Circuit denied the petition without an opinion.

4. Petitioner sought a petition for a rehearing en banc, and here as well, the Seventh Circuit denied the petition without an opinion.

REASONS FOR GRANTING THE PETITION

The All Writs Act empowers the Court to "issue all writs necessary or appropriate in aid of [its] respective jurisdiction[] and agreeable to the usages and principles of law." 28 U.S.C. 1651(a). To remedy the harm he faces here and preserve this Court's appellate jurisdiction, Justin Mahwikizi seeks a Writ of Mandamus directing the district court to exercise its "reviewable" jurisdiction and vacate its order compelling arbitration and staying the case pending arbitration.

This Court will grant a Writ of Mandamus upon a party's showing that "(1) no other adequate means exist to attain the relief he desires, (2) the party's right to issuance of the writ is clear and indisputable, and (3) the writ is appropriate under the circumstances." *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (cleaned up). "The general power of the court to issue a Writ of Mandamus to an inferior court to take jurisdiction of a cause when it refuses to do so is settled by a long train of decisions." *In re Atl. City R. Co.*, 164 U.S. 633, 635 (1897) (collecting cases). The writ is likewise appropriate here—not "to control the [district court's] judgment . . . but only to compel it to entertain jurisdiction of the cause, and then to hear and decide according to the law and the allegations and proofs." *Ex parte Newman*, 81 U.S. 152, 160 (1871).

Justin Mahwikizi meets these elements. Petitioner has a clear and indisputable right to federal adjudication of his section 1 Federal Arbitration Act exemption claims. He has no other means to obtain the relief he seeks. And a writ would be appropriate under this Court's precedents. Alternatively, this Court should construe this petition as one for a writ of certiorari before judgment. Either way, the Court should grant relief to spare Petitioner from the district court's egregious error.

The Seventh Circuit's decision to deny without an opinion cements a widespread conflict over a core statutory question under the FAA: whether courts have discretion to dismiss if an entire dispute is subject to arbitration, notwithstanding Section 3's language

mandating a "stay." Six circuits hold that a stay is mandatory once a court compels arbitration, whereas four circuits squarely hold the opposite, adopting a "judicially-created exception" to Section 3. *Green v. SuperShuttle Int'l, Inc.*, 653 F.3d 766, 769-770 (8th Cir. 2011); App., *infra*, 5a n.4 (outlining 6-4 circuit conflict). The conflict has been openly acknowledged for decades in courts nationwide, and it is now fully entrenched: there is no chance it will somehow disappear on its own. A definitive answer is long overdue. The circuit conflict is undeniable and entrenched, and it should be resolved by this Court.

I. The Court Should Grant Mandamus.

A. MAHWIKIZI Has a Clear and Indisputable Right to Relief.

The district court's decision to read Section 3 of the Federal Arbitration Act in a way that would stay the case pending arbitration, rather than staying the trial of the action, rendered an incorrect and gravely erroneous decision.

The gravest error is that it turned the District's discretion of reading Section 3 as it did into an "unreviewable discretion" that reduced Mahwikizi's exemption claims into silence; see *Boumediene v. Bush*. Without a remedy to challenge this decision to a higher court other than through an extraordinary Writ of Mandamus. Without this Writ, Mahwikizi would be denied any relief.

B. MAHWIKIZI Has No Other Remedy.

The threat of shutting valid exemption claims up for judicial review into a forced arbitration that Petitioner does not belong in works as an ongoing harm to Petitioner's constitutional rights of speech, equal protection under the Law. Again, "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod*, 427 U.S. at 373 (plurality opinion). MAHWIKIZI is presently forced to "think twice" before he speaks, and seek protection in federal court of Uber's violations including misclassification of employees. The muzzling of Mahwikizi's FAA exemption claims is calculated—and will continue—to chill his speech of seeking access to Courts that properly interpret legislation rather than face legislation weaponized against him in favor of his permanent silence against injustice.

Mandamus is warranted because MAHWIKIZI has no other legal remedy to redress these harms from the district-court proceeding. Neither does MAHWIKIZI have any effective recourse remaining in the Seventh Circuit.

Nothing other than mandamus will provide MAHWIKIZI adequate relief. This Court has previously granted mandamus to save a litigant from the loss of its right to redress in the federal courts. MAHWIKIZI has no other avenue of relief; this Court should grant the writ.

C. A Writ of Mandamus Is Appropriate.

Finally, the equitable relief MAHWIKIZI seeks is appropriate. Mandamus is appropriate to require a lower court to exercise jurisdiction it has wrongfully declined when no other remedy can redress the Petitioner's harm. *In re Hohorst*, 150 U.S. at 664; *Ex parte Schollenberger*, 96 U.S. at 378; *McClellan*, 217 U.S. at 281–82. And it is especially appropriate here where that jurisdiction is necessary to prevent the chilling of First Amendment rights.

II. Section 16, and EFASASHA further dispel Congressional Intent.

Section 16 further exacerbates the dysfunction on how the FAA is constructed. Section 16 permits an appeal, or an interlocutory appeal for the corporate party that loses a motion to compel Arbitration. It however forbids an employee or misclassified employee from enjoying the same privileges if that small party loses their argument on a motion to compel arbitration. Combined with the incorrect reading of section 3, section 16 cements the second citizen status of an employee or misclassified employees claims of exemption from Section 1.

EFASASHA is a recognition by Congress that Section 3, and Section 16 did harm on employees for heinous crimes. Congress however, tripped up again by forgetting misclassified employees who may undergo the same victimization. Are we to understand as Congressional intent that misclassified employees do not

matter? How about misclassified employees that underwent Bill of Rights violation by a large Government contractor during the draconian Covid restrictions?

III. Alternatively, the Court Should Grant Certiorari Before Judgment.

In the alternative, this Court should grant certiorari before judgment. The Court has previously granted such interim relief—to preserve "issues for review in a manner conducive to careful study and consideration"—where a "case would [otherwise] be moot" on an important question. *Republican State Cent. Comm. of Ariz. v. Ripon Soc'y Inc.*, 409 U.S. 1222, 1225 (1972) (Rehnquist, J., in chambers). This case presents an important question of jurisdiction on which the circuits are sharply split, and MAHWIKIZI is highly likely to prevail. The lower courts need this Court's guidance on this important question. As the circuit caselaw shows, these demands have the potential to chill equal protection under the Law. There is no need for this Court to wait for further percolation of the issue in the lower courts. Should this Court deem it appropriate to grant review of this question now, it may construe this petition as one for writ of certiorari before judgment, and grant it.

CONCLUSION

For the foregoing reasons, this Court should issue a Writ of Mandamus directing the district court to vacate their order to Stay the case pending arbitration, and recognize that Uber drivers, as a class, are exempt from Section 1 of the Federal Arbitration Act. Alternatively, this Court should construe this petition as one for a writ of certiorari and direct the district court to vacate their order to Stay the case pending arbitration, and recognize that Uber drivers, as a class, are exempt from Section 1 of the Federal Arbitration Act.

Respectfully submitted,

JUSTIN MAHWIKIZI
18430 Francisco Avenue
Homewood, IL 60430
(267) 252-3305
justin.mahwikizi@gmail.com

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