NO. 23-576

In the Supreme Court of the United States

SOHAIL M. ABDULLA,

Petitioner,

v.

SOUTHERN BANK,

Respondent.

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

BRIEF IN OPPOSITION

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December 20, 2023 *Counsel for Respondent*

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COUNTERSTATEMENT OF THE QUESTIONS PRESENTED

1. Does it violate any fundamental due process right to dismiss a pro se plaintiff's amended complaint when the pro se plaintiff disobeys the district court's ordered instructions for re-pleading and fails to correct his pleading deficiencies?

2. Should the Supreme Court invent out of whole cloth new pleading standards for pro se plaintiffs to eliminate dismissal of pro se complaints in the federal district courts?

CORPORATE DISCLOSURE STATEMENT

Pursuant to this Court's Rule 29.6, Respondent states as follows: Southern Bank is a domestic bank chartered under the laws of Georgia in 1945. All stock of Southern Bank is owned by Southern Financial Corporation, a South Carolina domestic corporation. No publicly held corporation owns 10% of more of the stock of Southern Financial Corporation. Southern Financial Corporation is not traded on any public index, but it has an OTC listing for common stock under the ticker SFCO.

STATEMENT OF RELATED PROCEEDINGS

The case arises from the following unreported proceedings:

Abdulla v. Southern Bank et. al., No. 22-12037 (11th Cir.) (opinion affirming judgment of district court, issued April 18, 2023), *leave to file untimely petition for reh'g denied*, No. 22-12037 (order denying leave to file untimely petition for rehearing entered July 19, 2023).

Abdulla v. Southern Bank et. al., CV 121-099 (S.D. Ga) (order dismissing Petitioner's Amended Complaint pursuant to Rules 8(a)(2), 10(b), and 41(b), Fed. R. Civ. P., issued May 10, 2022).

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES – Continued

Page

TABLE OF AUTHORITIES – Continued

Page

JUDICIAL RULES

TABLE OF AUTHORITIES – Continued

Page

OTHER AUTHORITIES

OBJECTION TO JURISDICTION

Petitioner was granted a 30-day filing extension (Sup. Ct. No. 23A327), based on a misrepresentation in his Application for Extension ("Application") of the reference date, which he stated was July 19, 2023. That was the date the Eleventh Circuit issued an order denying Petitioner leave to file an untimely petition for rehearing. The correct reference date is the date of the Eleventh Circuit Opinion, April 18, 2023. The Application was submitted on October 7, 2023, well beyond the 90-day deadline, and thus the Application should have been denied. *See infra,* Reasons for Denying the Petition.

INTRODUCTION

Petitioner advocates for an unwarranted and unworkable sea change in the manner in which the federal courts are required to allow *pro se* litigants to litigate in the federal courts. Petitioner's proposal would have this Court instruct the federal district courts to disregard the Federal Rules of Civil Procedure and conduct a trial on the merits in every case involving a *pro se* litigant. This would incentivize litigants to represent themselves rather than hiring competent legal counsel, and it would exact a heavy toll on the lower courts.

Even if the Court is inclined to at some point re-examine the manner in which *pro se* litigation is handled in the lower courts, this is neither the case,

nor the litigant, that warrants such review. Petitioner, despite his claims of due process violations and discrimination against him in his Petition, is not unsophisticated. On the contrary, as he states in his Petition, Petitioner has been litigating the facts at-issue in this litigation for almost fifteen years. He is a semi-professional litigant who argued in the lower courts that he understood the Federal Rules of Civil Procedure and binding case law and had not violated them. Only now that he is before this Court does he argue that he could not possibly have been expected to follow the procedural rules or understand the binding precedent from the Eleventh Circuit.

The Petition is untimely and fails in all respects to raise any compelling grounds which warrant this Court's review. As to the substance of his Petition, Petitioner identifies no due process violation or discriminatory behavior. Without any support for such a drastic proposition, Petitioner asks this Court to take away from the federal district courts and circuit courts the sort of docket and procedural control it has long permitted them to exercise. Petitioner's vague proposal to turn the federal district courts into interstate small claims courts in all litigation involving a *pro se* party would wreak havoc on the dockets of the federal courts. The Petition should therefore be denied.

STATEMENT OF THE CASE

Rule 14(f) and Rule 14(g) of this Court require separate "concise statements" of the facts and of the legal argument in favor of granting a petition for certiorari. Because Petitioner Sohail Abdulla ("Petitioner") conflates these two into the "Statement of the Case" section of his Petition, Respondent Southern Bank ("Respondent") sets forth the relevant facts as succinctly as possible, addressing misstatements of fact as directed by this Court in Rule 15(2) in its Statement of the Case Section and misapprehensions of law in its Argument Section.

1. Background Facts

Petitioner's Amended Complaint, which amounts to 292 pages when the many exhibits to it are included, tells a winding and often confusing story of the debtor-creditor relationship between Petitioner and Respondent. *See generally Abdulla v. Southern Bank et. al.*, CV 121-099 (S.D. Ga), Amended Complaint, Dkt. 35. Petitioner's allegations in his Amended Complaint date as far back as June 2001, when Petitioner signed a promissory note and an accompanying security deed in favor of Respondent. *Abdulla v. Southern Bank et. al.*, CV 121-099 (S.D. Ga), Amended Complaint, Dkt. 35, ¶ 4.[1] Petitioner apparently alleges that Respondent took a variety of wrongful acts in collecting on debts accumulated by Petitioner to Respondent, though the number of instances of such purportedly wrongful

[1] All citations are to the electronic docket numbers of the district court and Eleventh Circuit proceedings as displayed on PACER.

conduct is unclear within Petitioner's "shotgun complaint."[2] *See generally id*.

Petitioner also complains of a purported illegal entry by Respondent into a safe deposit box Petitioner allegedly owned. *See id.*, ¶¶ 83-84. Petitioner admits that the allegedly wrongful conduct occurred after Petitioner failed to pay the rent on the box for over ten years, and Petitioner does not appear to know what the box contained. *See id.*, ¶ 83. Petitioner has no theory of relief other than that the opening of the safe deposit box was "beyond suspicious." *See id.*, ¶ 83.

2. District Court Proceedings

Petitioner filed his original complaint against Respondent and another defendant[3] on June 23, 2021. *Abdulla v. Southern Bank et. al.*, CV 121-099 (S.D. Ga), Complaint, Dkt. 1. Respondent thereafter filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b) for lack of subject matter jurisdiction, insufficiency of process, and failure to state a claim upon which relief might be granted, and in the alternative, for a more definite statement pursuant to Fed. R. Civ. P. 12(e). *Abdulla v. Southern Bank et. al.*, CV 121-099 (S.D. Ga), Defendants' Motion to Dismiss and Motion for More Definite Statement, Dkt. 6. The matter was fully briefed by the parties.

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[2] "Shotgun pleadings" or "kitchen sink pleadings" are terms used by the various federal circuit courts to describe pleadings which might face dismissal for failure to comply with Fed. R. Civ. P. 8(a)(2) and 10(b). *See, e.g.*, *Weiland v. Palm Beach Cnty. Sheriff's Off.*, 792 F.3d 1313 (11th Cir. 2015).

[3] This defendant was dismissed by the consent of the parties.

On January 3, 2022, District Court Judge J. Randal Hall ruled only on the subject matter jurisdiction and more definite statement arguments. *See Abdulla v. Southern Bank et. al.*, CV 121-099 (S.D. Ga), Dkt. 30, p. 8; pp. 11-12 (entered January 3, 2022). The district court dismissed with prejudice the three counts of the Complaint that were based on specific federal statutes. *See Id.*, pp. 6-8. All were dismissed because Plaintiff lacked a private cause of action pursuant to the federal statutes under which he pleaded those claims. *See Id.*, pp. 6-8. This portion of Judge Hall's Order is not before this Court.

As to the portion regarding Defendants' motion for more definite statement, the district court found that the Plaintiff's complaint as a whole was an impermissible shotgun pleading under prevailing Eleventh Circuit precedent. *See id.*, pp. 8-12. The district court gave Petitioner "one chance to fix his defective Complaint." *See id.*, p. 11.

Petitioner claims that the district court instructed him "to remove certain counts within the complaint," but this is an inaccurate characterization of the district court's order. *See* Petition for Writ of Certiorari ("Pet.") at 7. Rather, the district court directed Plaintiff to file an amended complaint within fourteen days and admonished him to follow the pleading rules of Fed. R. Civ. P. 8(a)(2) and 10(b) in re-pleading the remaining state law causes of action. *See Abdulla v. Southern Bank et. al.*, CV 121-099 (S.D. Ga), Dkt. 30, pp. 11-12 (entered January 3, 2022). The district court instructed him to "set forth each of his remaining claims as separate counts and clearly allege the appropriate facts under each of the claims." *Id.*, pp. 11-12. It further directed that the claims be "separately

and distinctly numbered," and that Petitioner should "avoid conclusory and vague statements and state the specific facts that support each claim." *Id.*, pp. 11-12.

Petitioner filed his Amended Complaint on January 18, 2022. In it, he identified three state law causes of action as claims for breach of contract, an accounting, and "illegal entry of safety deposit box." *See Abdulla v. Southern Bank et. al.*, CV 121-099 (S.D. Ga), Amended Complaint, Dkt. 35, pp. 16-19. The bulk of Petitioner's lengthy complaint remained identical, and he actually increased the number of exhibits and paragraphs. *See generally Abdulla v. Southern Bank et. al.*, CV 121-099 (S.D. Ga), Amended Complaint, Dkt. 35; Exhibits to Amended Complaint, Dkt. 35-1.

Respondent filed a motion to dismiss the Amended Complaint, as well as, in the alternative, a motion to strike certain impertinent statements in Petitioner's Amended Complaint. *Abdulla v. Southern Bank et. al.*, CV 121-099 (S.D. Ga), Defendants' Motion to Dismiss, Dkt. 39; Defendants' Motion to Strike, Dkt. 40. Respondent argued that Petitioner failed to follow the Court's directive in its Order of January 3, 2022 and again failed to plead his Amended Complaint in compliance with Fed. R. Civ. P. 8(a)(2) and 10(b). Thus, Respondent argued Plaintiff's Amended Com plaint should be dismissed under Fed. R. Civ. P. 41(b). *See id.*, Dkt. 39, pp. 1-6. These motions were fully briefed by the parties.

On May 10, 2022, the district court issued an Order granting Defendant's motion to dismiss. *Abdulla v. Southern Bank et. al.*, CV 121-099 (S.D. Ga), Dkt. 46 (entered May 10, 2022). The district court determined that Petitioner's willful failure to follow the district court's mandate and directive of January 3, 2022 was

sufficient to dismiss Plaintiff's Amended Complaint with prejudice because lesser sanctions would not suffice. *See id.*, pp. 14-15.

3. Eleventh Circuit Proceedings

Petitioner's notice of appeal to the Eleventh Circuit was filed and docketed on June 9, 2022. *Abdulla v. Southern Bank et. al.*, No. 22-12037 (11th Cir.), Docketing Notice, Dkt. 1. Petitioner filed his brief on appeal on September 15, 2022. *Abdulla v. Southern Bank et. al.*, No. 22-12037 (11th Cir.), Appellant's Brief, Dkt. 12. In it, Petitioner argued (1) that his Amended Complaint was not a shotgun complaint and was therefore not improper under Fed R. Civ. P. 8(a)(2) and 10(b), (2) that dismissal of the Amended Complaint under Fed. R. Civ. P. 41(b) was improper because he did not disobey the district court's Order of January 3, 2022, and (3) that even if the claims could have been dismissed, the lower court erred in dismissing his claims with prejudice. *See generally Abdulla v. Southern Bank et. al.*, No. 22-12037 (11th Cir.), Appellant's Brief, Dkt. 12. Respondent filed its brief in opposition on October 13, 2022. *Abdulla v. Southern Bank et. al.*, No. 22-12037 (11th Cir.), Appellee's Brief, Dkt. 13.

The Eleventh Circuit issued its *per curiam* opinion affirming the district court in all respects on April 18, 2023. *Abdulla v. Southern Bank et. al.*, No. 22-12037 (11th Cir.), Dkt. 18 (issued April 18, 2023). The Eleventh Circuit affirmed the district court's order of May 10, 2022 dismissing the Petitioner's Amended Complaint with prejudice under Fed. R. Civ. P. 8(a)(2), 10(b), and 41(b), concluding "the district court did not abuse its discretion by dismissing with prejudice [Petitioner's] amended complaint as a shotgun

pleading." *Id.*, p. 5. The Eleventh Circuit recognized that, as a *pro se* litigant, Petitioner was entitled to additional leeway in pleading, but found specifically that dismissal was not an abuse of discretion, stating that Petitioner "failed to fix the deficiencies" in his original complaint despite "another opportunity" to do so. *Id.*, p. 6, n.2. The Eleventh Circuit further found that dismissal with prejudice by the district court was proper because his "amended complaint contained no federal law claims, and he asserted diversity jurisdiction as the basis for his claims being in federal court," rather than supplemental or pendant jurisdiction. *Id.*, p. 7.

Petitioner thereafter filed a number of motions in the Eleventh Circuit. These motions resulted in a single-sentence order from the appellate court on July 19, 2023, which construed his motions as a motion for leave to file an untimely petition for rehearing. The Eleventh Circuit thereupon denied Petitioner's motion for leave, refusing to allow Petitioner to make an untimely application for rehearing. *See Abdulla v. Southern Bank et. al.*, No. 22-12037 (11th Cir.), Dkt. 26 (entered July 19, 2023).

In this Court, Petitioner filed an application for extension of time to file his petition for a writ of certiorari, outside of the 90 days from April 18, 2023 permitted for filing a petition by Rule 13 of this Court. *See* Application. His application, which was filed on October 7, 2023, did not explain the post-opinion flurry of motions he filed below in the Eleventh Circuit, nor the result of those motions. *See generally* Application. This application was granted by Justice Thomas on October 13, 2023. Petitioner filed his

Petition on November 14, 2023, and it was docketed on November 29, 2023. *See generally* Pet.

4. Petitioner's Misstatements of Facts

Petitioner's Petition, much like all of his filings during the course of this litigation, is difficult to follow and contains many redundancies and irrelevancies. He dedicates a large portion of his twenty-page "Statement of the Case" to discussing an affidavit filed in the district court by Respondent's longtime outside counsel, Mark Wilhelmi (the "Affidavit"). *Abdulla v. Southern Bank et. al.*, CV 121-099 (S.D. Ga), Supplemental Affidavit of Mark L. Wilhelmi, Dkt. 13. Respondent categorically denies that any statement in the Affidavit is false, misleading, or inaccurate, as alleged by Petitioner, in any way whatsoever. *See id.*; *See also* Pet. at 7-9, 11-15. In any event, much or all of the Affidavit is unrelated to any issue presented in the Petition. *See generally Pet.* Nearly all of the Affidavit is in response to Petitioner's claims that he properly served Respondent by attempting to serve Mr. Wilhelmi and that Respondent was not the proper defendant in the district court – issues that were resolved long ago by the parties in the district court and are not on appeal to this Court. *See Abdulla v. Southern Bank et. al.*, CV 121-099 (S.D. Ga), Supplemental Affidavit of Mark L. Wilhelmi, Dkt. 13; *See also* Acknowledgment of Service, Dkt. 28; Stipulation and Motion of Parties, Dkt. 29.

The Affidavit was also intended to advise the Court of two parallel proceedings pursued by Petitioner in the Court of Common Pleas (one of which

eventually Court of Appeals) in South Carolina,[4] in which Petitioner, as plaintiff, was represented by counsel. *See Abdulla v. Southern Bank et. al.*, CV 121-099 (S.D. Ga), Supplemental Affidavit of Mark L. Wilhelmi, Dkt. 13. These cases, which while factually related to the allegations in Petitioner's complaints in the district court, are also impertinent to the issues on appeal. *See id.* The final paragraph of the Affidavit was intended to try to make some sense of the 243 pages of exhibits filed by Petitioner with his original complaint[5] (which expanded to 272 pages of exhibits in his Amended Complaint). *See id.* None of the reasons for which the Affidavit was submitted to the district court are even at issue before this Court, and yet, consistent with his prior litigation conduct, Petitioner spends an inordinate amount of time on facts that appear to be mostly or completely irrelevant to his arguments, then ultimately concludes that this impertinent information "should have prompted the District Court to initiate a hearing *sua sponte* to

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[4] Both of which were dismissed by the trial courts: *Abdulla v. Southern Bank*, 2017-CP-02-00283, Court of Common Pleas for Aiken County, South Carolina; *Abdulla v. SRP Federal Credit Union and Southern Bank*, 2018-CP-02-02912, Court of Common Pleas for Aiken County, South Carolina.

[5] This was important to Respondent's arguments under Fed. R. Civ. P. 12(b)(6), given that under the prevailing Eleventh Circuit precedent, the trial court is entitled to consider the exhibits attached to the complaint and to consider whether they conflict with the pleadings, in which case, the exhibits control. *See, e.g., Crenshaw v. Lister*, 556 F.3d 1283, 1292 (11th Cir. 2009) (quoting *Griffin Industries, Inc. v. Irvin*, 496 F.3d 1189, 1206 (11th Cir.2007)). The district court ultimately did not reach these Fed. R. Civ. P. 12(b)(6) arguments because it dismissed the shotgun complaint under Fed R. Civ. P. 8(a)(2), 10(b), and 41(b).

thoroughly investigate the matter and delve into the case" and "clearly demonstrates that the Petitioner had a meritorious case." Pet. at 8, 15. Respondent disputes any and all characterizations of the Affidavit as anything but truthful and appropriate, though ultimately, the relevance of the Affidavit to these proceedings is nil.

Petitioner also takes issue with the Eleventh Circuit, claiming that the Court of Appeals misstated facts in its ruling affirming the district court, and asseverating at length (but not under oath) about his attempts to make a timely filing of his "Motions for Reconsideration," including his criticisms of the United States Postal Service mail system. Pet., pp. 9-10; 16-18. As Respondent argued in its opposition to Petitioner's various motions in the Eleventh Circuit, his deficient and meritless motion was properly denied by the Eleventh Circuit because it was both untimely and materially failed to comply with the applicable Eleventh Circuit Rules. *See Abdulla v. Southern Bank et. al.*, No. 22-12037 (11th Cir.), Response to Motions, Dkt. 24; *see also* Dkt 26 (entered July 19, 2023).

Respondent has no first-hand knowledge of Petitioner's purported troubles with the mailing system and filing in the Eleventh Circuit, but the lengthy, unsupported statements in the Petition are impertinent to the purported issues on appeal. As to the Eleventh Circuit's supposed confusion about Petitioner's fact pleadings, Respondent would submit that if the Eleventh Circuit had difficulty making sense of Petitioner's fact pleadings, that difficulty supports, rather than undercuts, the appellate court's affirmance of the order dismissing the Petitioner's

Amended Complaint as an impermissibly unclear second shotgun pleading. *Abdulla v. Southern Bank et. al.*, No. 22-12037 (11th Cir.), Dkt. 18 (issued April 18, 2023).

Finally, in his attempt to have this Court re-write the standards developed by the Eleventh Circuit to control its own docket, Petitioner makes unsubstantiated fact claims regarding the rate at which *pro se* claims are unsuccessful. *See* Pet. pp. 18-19, 22-24. Petitioner claims that because *pro se* plaintiffs have less resources than "large corporations and institutions," over 90% of pro se plaintiffs lose in court. *See* Pet. pp. 22-23. Petitioner further claims that this cannot be explained as anything other than unfairness, negative bias, and prejudice, which amounts to "discrimination" that this Court must correct. *See* Pet. pp. 18-19, 22-24. These purported facts appear to be the primary underpinning of Petitioner's argument, yet he includes no citation to any source for these contentions. The Court should disregard them.

REASONS FOR DENYING THE PETITION

1. The Petition is Untimely and Should be Denied.

The Petition should be denied on technical grounds because Petitioner's Application for extension to Justice Thomas dated October 8, 2023 misrepresented the time for Petitioner to file his Petition. Petitioner claimed in his Application for extension that his Petition was due to be filed on October 17, 2023. Application, p. 2. This is not correct under Rule 13 of this Court. A petitioner must file his petition "within 90 days after entry of the judgment." Sup. Ct. R. 13. There is an exception to this rule where "a petition for rehearing is timely filed in the lower court by any party, or if the lower court appropriately entertains an untimely petition for rehearing or *sua sponte* considers rehearing." Sup. Ct. R. 13(3). This is not what occurred in the instant proceedings.

According to Fed. R. App. P. 40(a), a petition for panel rehearing must be filed within 14 days after entry of judgment. In this instance, the opinion affirming the district court was entered on April 18, 2023. *Abdulla v. Southern Bank et. al.*, No. 22-12037 (11th Cir.), Dkt. 18 (issued April 18, 2023). Fourteen days from this date is May 2, 2023. Yet, Petitioner's "Motion for Reconsideration" was not filed in the Eleventh Circuit until May 8, 2023. *See Abdulla v. Southern Bank et. al.*, No. 22-12037 (11th Cir.), Motion for Reconsideration, Dkt. 20. After a flurry of other motions filed by Petitioner, the Eleventh Circuit entered an Order on July 19, 2023, indicating that it

construed Petitioner's motions as a motion for leave to file an untimely petition for rehearing, and it denied that motion in the Order. *Abdulla v. Southern Bank et. al.*, No. 22-12037 (11th Cir.), Dkt. 26 (issued July 19, 2023). Thus, the Eleventh Circuit never "entertain[ed] an untimely petition for rehearing," as is required under Rule 13(3) of this Court to toll the 90-day filing period, because it denied Petitioner leave to file the untimely petition. *See Id.* Petitioner's time to file his petition under Rule 13 of this Court ran from April 18, 2023 to July 17, 2023.

Petitioner failed to include these critical details in his Application for Extension of Time to Justice Thomas. *See* Application. Petitioner explains his tardy filing in the Eleventh Circuit in his Petition by blaming it on a broken-down mail truck and outrageously claiming that the Eleventh Circuit "mishandled" his motion and "alter[ed] the date on the official record" in his Petition. Pet., pp. 15-18. These claims are unsupported and unfounded. The Petition in this Court is untimely, and the merits need not be considered.

2. Petitioner Fails to Set Forth Proper Grounds for Review in This Court.

The Petition is also technically deficient because it fails to set forth any colorable ground for review by this Court. Petitioner fails to mention any of the compelling reasons for a grant of certiorari specifically enumerated in Rule 10 of this Court, and he raises no other compelling reason for review. The sole "issue" he seeks to bring before this Court is a general complaint that *pro se* litigants are disadvantaged, to the extent of a due process violation, by the standards developed by the circuit courts to address complaints that fail to

conform to the ordinary rules of pleading established by the Federal Rules of Civil Procedure. *See generally* Pet. This "issue," which is a case-specific matter ill-suited for review by this Court on certiorari, is one that Petitioner now raises for the first time. Petitioner did not present it either to the district court or to the appellate court below and has thus waived review of the point in this Court.

A. The Petition Fails to Raise Any Compelling Reason for Certiorari.

"Review on a writ of certiorari is not a matter of right, but of judicial discretion," and review "will be granted only for compelling reasons." Sup. Ct. R. 10. This Court's Rule 10 sets forth three typical grounds that warrant review on certiorari. The first ground set forth in Rule 10(a) is multi-pronged: (i) that a federal court of appeals has entered a decision that conflicts with the decision of another federal court of appeals on the same matter of importance, (ii) that a federal court of appeals has decided an important federal question in a way that conflicts with a decision by a state court of last resort, (iii) that a federal 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 to call for an exercise of this Court's supervisory power." Sup. Ct. R. 10(a). The second ground is that "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." Sup. Ct. R. 10(b). The third and final typical ground is that "a state court or a 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." Sup. Ct. R. 10(c). Rule 10 of this Court also instructs that petitions are rarely granted when the asserted error "consists of erroneous factual findings or the misapplication of a properly stated rule of law." *Id.*

The Petition now before this Court is exactly the kind of petition that seeks to re-argue factual findings and the application of prevailing Eleventh Circuit law. Petitioner does not attempt to make any explicit showing that his Petition satisfies any of the grounds under Rule 10 of this Court. *See generally* Pet. Even construed charitably, there is no indication in the Petition that it seeks to argue any of the three specific grounds for review set forth by this Court. There is no question presented regarding the application of state law, or the application of federal substantive law by state courts, that could possibly be raised. Petitioner identifies no circuit dispute. On the contrary, he seems to imply that *all* federal courts are unfair to *pro se* litigants. *See* Pet., p. 22.

In support of this proposition, Petitioner cites one Supreme Court case: *Turner v. Rogers*, 564 U.S. 431 (2011). Petitioner claims that this case stands for the proposition that "the Court also emphasized the necessity of implementing proper procedures to safeguard the 'fundamental fairness of the proceeding even where the State does not pay for counsel for an indigent Defendant.'" Pet., p. 21 (quoting in part *Turner*, 564 U.S. at 448). This quote cited by Petitioner, which Petitioner represents as an emphasis of the Court, is not the Court's position in *Turner*. Rather, it is the Court summarizing an argument by the United States

government in its *amicus curiae* brief filed with the Court in the *Turner* matter. *See Turner*, 564 U.S. at 448. This single quote, which Petitioner misunderstands or misrepresents, is the only quote from any authority of this Court in Petitioner's entire Petition.

The actual result of *Turner* was that this Court found that the Fourteenth Amendment's Due Process Clause did not require the State to provide court-appointed counsel even to an indigent person responding to a civil contempt petition, even if that respondent faced potential incarceration at the civil contempt hearing, so long as the state has "alternative procedural safeguards." *Turner*, 564 U.S. at 431. Put simply, the facts of the *Turner* case, and the findings of the Court therein, have no bearing whatsoever on the instant matter, where Petitioner (who instituted these proceedings himself as plaintiff below, has never pleaded indigence over the course of these proceedings, and faces no risk of incarceration or fines) had his civil complaint dismissed for multiple violations of the Federal Rules of Civil Procedure. Though Petitioner astoundingly argues in his Petition that the purported harms he has experienced as a plaintiff in a civil suit "exceed those of a criminal conviction" because he has "been confined by this case for a period of almost fifteen years," the similarities between the *Turner* matter and this matter are negligible. *See* Pet., pp. 29-30. Petitioner fails to raise any legitimate due process issue, and *Turner* certainly does not create or extend a precedent of this Court applicable to Petitioner that the Eleventh Circuit's decision below contradicts.

In his quest to re-argue facts that are irrelevant to the merits of his Petition, Petitioner spends no less than five pages of his Petition arguing about the fact

conclusions that the district court and Eleventh Circuit should have drawn from an Affidavit filed in the district court that have no bearing on the issues presented in the Petition. Pet., pp. 7-9, 11-15. In between his impertinent discussions regarding the Affidavit, Petitioner complains about fact determinations made by the Eleventh Circuit that he claims "were not significant and easily refuted," and he accuses the Eleventh Circuit of misquoting him. Pet., pp. 9-10.

Petitioner also accuses the Eleventh Circuit of misapplying its own precedent regarding shotgun pleadings. *See* Pet., pp. 12-13. Petitioner claims that, because the Eleventh Circuit recently reversed a district court for finding that a complaint that was "long and may not be a paragon of clarity" was a shotgun complaint under the prevailing Eleventh Circuit precedent, that his long and unclear Amended Complaint must necessarily not be a shotgun complaint worthy of dismissal. Pet, pp. 12-13; *see also Inform Inc. v. Google LLC*, No. 21-13289, 2022 WL 3703958, at *4 (11th Cir. Aug. 26, 2022).

There is no inconsistency, certainly not any inconsistency raising an issue worthy of this Court's review, in the Eleventh Circuit deciding on a case-by-case basis that one vague complaint is sufficiently understandable while another is not. These discussions are the entire first half of the Petition and account for the entirety of the issues that Petitioner raises with the decision below. The Petition presents no legitimate grounds for review by this Court.

B. Petitioner Waived the Issues Raised in His Petition by Failing to Raise Them Below.

Even if the Petition raised legitimate grounds for review by writ of certiorari, which it does not, Petitioner waived these grounds for review by failing to raise them below. "It is indeed the general rule that issues must be raised in the lower courts in order to be preserved as potential grounds of decision in higher courts." *Nelson v. Adams USA, Inc.*, 529 U.S. 460, 469 (2000). Though this principle does not require "the incantation of particular words," it does require "that the lower court be fairly put on notice as to the substance of the issue." *Id.* In the *Nelson* case, this Court held that the due process issue was preserved for review by this Court only because it was explained at the intermediate appellate level that "the core of [the] argument was the fundamental unfairness of imposing judgment without going through the process of litigation our rules of civil procedure prescribe." *Id.* at 462. That is not the case here.

In the district court, in response to Respondent's motion to dismiss the Amended Complaint, Petitioner filed a 19-page response arguing strenuously that he "[had] in no way violated the Court's order" instructing him to re-plead his original complaint in compliance with the Federal Rules of Civil Procedure. *Abdulla v. Southern Bank et. al.*, CV 121-099 (S.D. Ga), Plaintiff's Response in Opposition to Defendants' Motion to Dismiss, Dkt. 41, p. 16. After the district court entered its order dismissing his claims, on appeal to the Eleventh Circuit, Petitioner argued that "the District Court's entire ruling is that the [Petitioner] disobeyed the court's order dated January 3, 2022 . . . the [Petitioner]

will show that the lower court abused its discretion, and that the Amended Complaint falls within the boundaries set forth by this honorable Court and should not have been dismissed." *Abdulla v. Southern Bank et. al.*, No. 22-12037 (11th Cir.), Appellant's Brief, Dkt. 12, p. 11 (cleaned up). Petitioner continued on to state that he "recognize[d] this honorable Court's standard for a shotgun complaint and would point out that his Amended Complaint…does not commit the sins listed." *Id.*, p. 12 (internal citations omitted).

Now, for the first time in this proceeding, Petitioner claims that dismissal of his Complaint was a violation of a nebulous and unexplained "fundamental right to due process" due to his lack of legal acumen and financial means, and he asks this Court to refashion the rules and standards for *pro se* pleading. Pet., Questions Presented. Petitioner argues that his due process rights were violated by the district court's dismissal of his Amended Complaint pursuant to Fed. R. Civ P. 8(a)(2), 10(b), and 41(b) because he, as a *pro se* litigant, could not possibly be expected to comply with the Federal Rules of Civil Procedure. *See* Pet., Questions Presented. He does not, however, explain how he has been deprived of any due process right.

Petitioner never made any such argument below, and, to the contrary, represented to the district court and to the Eleventh Circuit that he well understood the prevailing Eleventh Circuit precedent on shotgun pleadings. He never argued to the Eleventh Circuit that it should reform its manner of handling shotgun complaints; rather, he argued that he did comply with the Eleventh Circuit precedent on the issue and that his pleading was *not* a shotgun pleading. *Abdulla v.*

Southern Bank et. al., No. 22-12037 (11th Cir.), Appellant's Brief, Dkt. 12, p. 11-12 (emphases supplied).

Petitioner well understands this general rule of issue preservation, as he has personally been admonished by the Eleventh Circuit in another matter for raising issues for the first time on appeal:

> We conclude that Abdulla has abandoned any challenge that he might have made to the denial of his request for the disgorgement of fees. "While we read briefs filed by pro se litigants liberally, issues not briefed on appeal by a pro se litigant are deemed abandoned." *Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir.2008) (internal citations omitted). Abdulla states that he "do [es] not expect any money from this case" and requests that we review the denial of his request for his "allegations and . . . evidence to be investigated and considered by an independent authority." We deem abandoned Abdulla's request for the disgorgement of fees.

Sportman's Link, Inc. v. Klosinski Overstreet, LLP, 591 F. App'x 865, 867 (11th Cir. 2014), *cert. denied*, 577 U.S. 874 (October 5, 2015).

To grant certiorari would effectively allow Petitioner to argue in this Court the opposite of what he argued below. That, combined with the fact Petitioner knows from his prior time in the Eleventh Circuit that he must raise issues at the trial court level in order to preserve them, should lead this Court to conclude that Petitioner waived the grounds for review by certiorari he now raises in his Petition.

3. Petitioner Fails to Identify any Due Process Violation in the District Court's Dismissal of His Amended Complaint or the Eleventh Circuit's Opinion Affirming This Dismissal.

Even if the Court considers the substance of the Petition, which is unnecessary given the above-explained deficiencies of the Petition in the instant case, Petitioner fails to identify any issue worth of review on certiorari. Petitioner claims that his Petition "presents a significant procedural issue concerning the due process rights and treatment of *pro se* civil litigants in the United States courts." Pet., p. 7. Specifically, Petitioner appears to argue (with no citation to authority) that trial courts disproportionately grant motions to dismiss under Fed. R. Civ. P. 8(a)(2), 10(b), and 12(b)(6) against *pro se* plaintiffs, and that these dismissals violate the due process rights of *pro se* plaintiffs. Pet., p. 22. Petitioner also claims that pro se litigants face "a clear and undeniable instance of discrimination." Pet., p. 23. Petitioner fails to cite any authority for these propositions outside of the *Turner* case, discussed *supra*, which is easily distinguished. *See Turner v. Rogers*, 564 U.S. 431 (2011).

Plaintiff's entire argument appears to be that he need not follow the procedural rules because he is a *pro se* litigant. This is plainly contrary to this Court's precedent. "The right of self-representation is not a license to abuse the dignity of the courtroom. Neither is it a license not to comply with relevant rules of procedural and substantive law." *Faretta v. California*, 422 U.S. 806, 834 n.46 (1975). To the extent Petitioner argues that his due process rights were violated because he was entitled to a hearing on any of the matters below, as he intimates he was not given

a "fair hearing" on page 22 of his Petition and advocates on page 27 of his Petition for all *pro se* litigants to receive a "hearing where both parties are given the opportunity to present their respective cases," this Court has plainly held that "the right of oral argument as a matter of procedural due process varies from case to case in accordance with differing circumstances, as do other procedural regulations." *Fed. Commc'ns Comm'n v. WJR, The Goodwill Station*, 337 U.S. 265, 276 (1949).

This case-by-case nature of the issue in question makes the question presented here ill-suited for review on certiorari in this Court. Petitioner's failure to identify any recognized due process right, let alone set forth any explanation as to how that right was violated, is fatal to his Petition.

4. Petitioner Cannot Set Forth A Theory of Relief in This Court, and His Vague Proposal to Correct an Illusory Issue Related to *Pro Se* Pleadings Would Exact a Heavy and Impractical Toll on the Dockets of Federal Courts.

Petitioner also fails to set forth a legitimate theory of relief worthy of consideration by this Court. Because of the purported due process violations and discrimination identified by Petitioner, he asks this Court, in contravention of its longstanding policy to leave to the lower courts control of their dockets and procedural rules, to fashion a generalized system of guidelines that will prevent the dismissal of *pro se* complaints. Pet., Questions Presented. Petitioner claims, without any citation to authority whatsoever, that pro se litigants face "disparate treatment…across various districts and circuits," and that this justifies

the intervention of this Court. Pet., p. 30. This position is unsupported by the facts and prevailing case law on the issue. Without suggesting a workable suggestion of his own, Petitioner directs "this esteemed Court [to] proffer a viable solution." Pet., p. 19. Petitioner does not propose a legitimately workable solution, and he suggests that this Court might instruct district courts to ignore the Federal Rules of Civil Procedure and turn the federal courts into interstate small claims courts once *pro s*e litigants become involved. Pet, pp. 19, 26-27.

This Court has given the courts of appeals supervisory powers to promulgate their own procedural rules regarding the management of litigation. *Thomas v. Arn*, 474 U.S. 140, 146-147 (1985). The Eleventh Circuit has exercised that power in instructing the district courts within that circuit how to address "shotgun pleadings." Petitioner's Amended Complaint was dismissed as a second impermissible "shotgun pleading" by the district court, after he failed to correct his errors in his original complaint. *See Abdulla v. Southern Bank et. al.*, CV 121-099 (S.D. Ga), Dkt. 46 (entered May 10, 2022).

"A shotgun pleading is a complaint that violates either Federal Rule of Civil Procedure 8(a)(2) or Rule 10(b), or both.*"* *Barmapov v. Amuial*, 986 F.3d 1321, 1324 (11th Cir. 2021) (citing *Weiland v. Palm Beach Cnty. Sheriff's Off.*, 792 F.3d 1313, 1320 (11th Cir. 2015). The Eleventh Circuit has suggested "shotgun pleadings" should be challenged by defendants by way of motion to dismiss or motion for more definite statement. *Paylor v. Hartford Fire Ins. Co.*, 748 F.3d 1117, 1126-1127 (11th Cir. 2014). "Where a plaintiff [thereafter] fails to make meaningful modifications to

her complaint, a district court may dismiss the case under the authority of either Rule 41(b) or the court's inherent power to manage its docket." *Weiland v. Palm Beach Cnty. Sheriff's Off.*, 792 F.3d 1313, 1321 n.10 (11th Cir. 2015). "Rule 41(b) gives a court the authority to dismiss a case for failure of the plaintiff to comply with an order or rule of the court. This measure is available to the district court as a tool to manage its docket and to avoid unnecessary burdens on the court and opposing parties." *Palasty v. Hawk*, 15 F. App'x 197, 199 (6th Cir. 2001).

The district court dismissed Petitioner's original complaint for failure to comply with the Federal Rules of Civil Procedure, with specific instruction as to how to correct his pleading errors. *Abdulla v. Southern Bank et. al.*, CV 121-099 (S.D. Ga), Dkt. 30 (filed January 3, 2022), pp. 11-12. Petitioner failed to heed the district court's instructions and instead filed a still overly-lengthy Amended Complaint replete with vague and conclusory allegations and facts seemingly unconnected to any stated cause of action. *See generally Abdulla v. Southern Bank et. al.*, CV 121-099 (S.D. Ga), Dkt. 35. He also added an additional 29 pages of exhibits to the 243 pages of exhibits filed with the original complaint. *See generally Abdulla v. Southern Bank et. al.*, CV 121-099 (S.D. Ga), Dkt. 35-1. Contrary to what Petitioner now argues, it does not take a "legal scholar" or someone who "possess[es] the ability or resources to conduct extensive legal research or cite cases like a law firm with numerous legal experts and resources at their disposal" to follow less than 2 full pages of instructions from the district court. *See* Pet., p 20; *see also Abdulla v. Southern Bank et. al.*, CV 121-099 (S.D. Ga), Dkt. 30 (filed January 3, 2022), pp. 11-12.

As the Seventh Circuit has observed, it cannot be that the district court has "an affirmative duty to coach or second-guess the choices that parties, even *pro se* parties, make about how to litigate their cases." *Kiebala v. Boris*, 928 F.3d 680, 681 (7th Cir. 2019). Rather, the district court should only be required to compare any later iterations of the complaint to its orders instructing *pro se* plaintiffs to re-plead their complaints, and failures to follow these directions may be properly dismissed under Fed. R. Civ. P. 41(b). This sort of case-specific analysis is ill-suited for review on certiorari and best left to the lower courts.

Further, rather than specifying the relief desired from this Court, Petitioner tells this Court it is "imperative that this esteemed Court proffer a viable solution," shifting the burden of fashioning Petitioner's theory of relief onto this Court. Pet., p. 19. Petitioner vaguely proposes that this "viable solution" would "cater to *pro se* litigants" by requiring the district courts to conduct a state small claims court style trial on the merits in every case involving a *pro se* litigant. Pet., pp. 26-28. But the diversity jurisdiction rules of the federal courts are intentionally structured to prevent the federal courts from "becom[ing] an interstate small claims court." *Page v. Democratic Nat'l Comm.*, 2 F.4th 630, 634 (7th Cir. 2021) (citing R. Marcus et al., CIVIL PROCEDURE A MODERN APPROACH 878 (2d ed. 2018)), *cert. denied*, 142 S. Ct. 776 (2022)). Such a *pro se* litigation system would undermine that legislative goal.

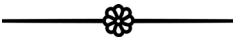
The very point of the Eleventh Circuit's jurisprudence on shotgun pleadings is to prevent those pleadings that "exact an intolerable toll on the district court's docket, lead to unnecessary and unchanneled

discovery, and impose unwarranted expense on the litigants, the court and the court's parajudicial personnel and resources" and block cases of merit from proceeding. *Cramer v. State of Fla.*, 117 F.3d 1258, 1263 (11th Cir. 1997). "While *pro se* litigants may be given a certain amount of latitude in interpreting procedural rules, that latitude cannot be so wide as to prejudice the other party, and it is reasonable to expect all litigants, including those acting *pro se*, to adhere to procedural rules." 7A C.J.S. Attorney & Client § 247; *accord Ogden v. San Juan Cnty.*, 32 F.3d 452, 455 (10th Cir. 1994) ("an appellant's *pro se* status does not excuse the obligation of any litigant to comply with the fundamental requirements of the Federal Rules of Civil and Appellate Procedure."). What Petitioner suggests would effectively incentivize persons to represent themselves *pro se*, in that (under his proposal), every *pro se* litigant would be guaranteed a trial on the merits regardless of the deficiencies of his case or pleadings. Though it cannot be doubted that a wild west style trial is what Petitioner sought to force in this case by twice filing 20-plus pages of fact pleadings and well over 200 pages of exhibits to support three purported state law causes of action, this half-baked proposal by Petitioner is not a legitimately workable system in the federal courts and would needlessly clog the dockets of the federal courts.

Petitioner has also failed to show any need for such a radical change to the federal court system. Contrary to Petitioner's unsupported contention that *pro se* litigants face "disparate treatment across various district and circuits." Pet., p. 30. Instead, nearly all of the circuit courts, like the Eleventh Circuit, have voiced at least some level of displeasure

with "shotgun" or "kitchen sink" pleadings. *Figueroa v. Dinitto*, 52 F. App'x 522, 524 (1st Cir. 2002); *Decker v. Massey-Ferguson, Ltd.*, 681 F.2d 111, 114-115 (2d Cir. 1982); *Washington v. Warden SCI-Greene*, 608 F. App'x 49, 51 (3d Cir. 2015); *Thomas v. Cap. Sec. Servs., Inc.*, 812 F.2d 984, 986, 990 (5th Cir. 1987); *Lee v. Ohio Educ. Ass'n*, 951 F.3d 386, 392-393 (6th Cir. 2020); *Srivastava v. Daniels*, 409 F. App'x 953, 954-955 (7th Cir. 2011); *Rowles v. Curators of Univ. of Missouri*, 983 F.3d 345, 353 (8th Cir. 2020); *Destfino v. Reiswig*, 630 F.3d 952, 958-959 (9th Cir. 2011); *Hart v. Salois*, 605 F. App'x 694, 701 (10th Cir. 2015). No circuit court has ever criticized the Eleventh Circuit's definition of shotgun pleadings as set forth by the Eleventh Circuit in *Weiland*. *See Weiland v. Palm Beach Cnty. Sheriff's Off.*, 792 F.3d 1313, 1321-23 (11th Cir. 2015).

Petitioner's claim of disparate treatment is illusory, has no basis in case law, and is intended to manufacture an issue worthy of certiorari where none exists. It would be a large departure from this court's general policy of permitting the circuits to manage their own procedural rules and dockets to grant certiorari in this instance and to create an unprecedented, unwarranted, and unworkable system of *pro se* litigation whereby every *pro se* litigant would be entitled to trial on the merits and the Federal Rules of Civil Procedure would be disregarded. Accordingly, the Court should deny the Petition.



CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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