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No. _____

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MAY 22 2024
FOR MAILING BY CLERK
FILED
APR 17 2024
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

In Re CHRISTOPHER L TAKHVAR — PETITIONER
(Your Name)

ON PETITION FOR A WRIT OF MANDAMUS

PETITION FOR WRIT OF MANDAMUS

CHRISTOPHER L TAKHVAR
(Your Name) DL# F60391
Santarosa Correctional Institution Annex
5850 EAST MILTON ROAD
(Address)

MILTON, FL 32583
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

In a federal US Court, Is an Indigent Pro-Se Plaintiff in a federal civil complaint guaranteed the right to appeal, the dismissal of a civil rights complaint in the US District Court, to the US Court of Appeal; and is No Payment and No further authorization required when the plaintiff/Appellant was ordered to proceed In forma Pauperis in the US District Court action, and there is No record of Certification or statement by the US District Court that the appeal is Not taken in good faith. 28 USC 1915(a)(3)

LIST OF PARTIES

- ☐ All parties appear in the caption of the case on the cover page.
- ☒ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

CHRISTOPHER L TAKHVAR

DAVID J SMITH (Clerk of Court 11th Circuit)
ELEVENTH CIRCUIT U.S. COURT OF APPEALS
SOLICITOR GENERAL OF THE UNITED STATES

RELATED CASES

CHRISTOPHER L TAKHVAR V WARNER BROS DISCOVERY INC., et al
US District Court Middle District of Florida: 5-22-CV-576
Judgment entered on Aug 17, 2023

CHRISTOPHER L TAKHVAR V WARNER BROS DISCOVERY INC., et al
US Court of Appeals Eleventh Circuit: 23-12809-G
Judgment entered on Sept 28, 2023

CHRISTOPHER L TAKHVAR V WARNER BROS DISCOVERY INC., et al
United States Supreme Court : 23-6071
Petition for Certiorari Denied on 1-22-2024
Petition for Rehearing Denied on 3-18-2024

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APPENDIX F	NOTICE	NOV. 1, 2023
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TABLE OF AUTHORITIES CITED

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OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF MANDAMUS

Petitioner respectfully prays that a writ of mandamus issue.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was September 28, 2023.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1651(a)

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Art III Sect. 2 United States Constitution

"The Judicial Power shall extend to all cases, in law and Equity arising under this Constitution the laws of the United States and treaties made or which shall be made under their authority;"

Amendment VII United States Constitution

"In suits in Common law where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and No fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law."

STATEMENT OF THE CASE

On Aug 17, 2023 the US District Court, Middle District of Florida, issued an Order dismissing a Second Amended Civil Complaint
Case No: 5:22-cv-000576-PGB-PRL
TAKHVAR V WARNER BROS DISCOVERY INC. et al

After timely filing a Notice of appeal, the appeal was docketed on 8-29-2023 in the US Court of APPEALS for the Eleventh Circuit. case No: 23-12809-G

On 9-13-2023 the clerk of the US Court of Appeals for the eleventh circuit docketed a Motion for appointment of Counsel.

On 9-28-2023 the clerk David J Smith of the US Court of Appeals Eleventh Circuit issued an order dismissing the petitioner's appeal stating, "Appellant Christopher L TAKHVAR failed to pay the filing and docketing fees (or file a motion in the district court for relief from the obligation to pay in advance the full fee) to the district court within the time fixed by the rules."

On 10-5-2023 the petitioner timely filed a "Motion to Reconsider Vacate or Modify" regarding the erroneous clerk's action. (Appendix B)

On 10-13-2023 the clerk issued a deficiency Notice

On 10-27-2023 the docket shows receipt of Appellant Brief.

On 10-31-2023 the clerk issued a deficiency Notice

On 11-1-2023 the clerk issued a deficiency Notice

On 11-1-2023 The United States Supreme Court Docketed the case for Certiorari case No: 23-6071

On 1-4-2024 the petition was distributed

On 1-22-2024 the petition for Certiorari was denied

On 3-18-2024 a timely filed petition for Rehearing was denied, wherein the grounds raised were the same procedural issues raised in the instant petition for Mandamus.

REASONS FOR GRANTING THE PETITION

The petitioner CHRISTOPHER L TAKHVAR respectfully seeks a Writ of Mandamus compelling the Clerk David J Smith of the US Court of APPEALS for the ELEVENTH CIRCUIT to Re-Docket the appeal of Case No: 23-12809-G TAKHVAR V WARNER BROS DISCOVERY INC., et al

DAVID J SMITH has significantly affected the rights of the petitioner. The petitioner seeks Equitable Relief of Mandamus to prevent further harm to the petitioner's Constitutional right to access to the Court.

DAVID J SMITH Clerk of Court for the US Court of Appeal for the ELEVENTH CIRCUIT has denied the petitioner's right to access to the court for an indigent Pro-Se Prisoner.

BOUND V SMITH 430 US 817 824, 828 97 S.Ct. 1491 52 LEd. 2d 72. by dismissing the appeal of the US District Court's dismissal of a 42 USC 1483 and 42 USC 1985 civil rights civil suit.

The clerk issued the dismissal citing:

"CHRISTOPHER L TAKHVAR failed to pay the filing and docketing fees (or file a motion in the US District Court for relief from the obligation to pay in advance the full fee) to the district court within the time fixed by the rules" (APPENDIX A)

The petitioner in the instant Petition for Mandamus states that he was Ordered to proceed in the US District Court action (Second Amended Civil Complaint) In forma Pauperis on March 1, 2023

The petitioner avers that there is a clear duty under the law to docket the Appeal Fed.R.APP.P. Rule 4 and the clerk had a duty to maintain the docket pursuant to Fed.R.APP.P. Rule 45(b)(1) wherein the clerk's duty is ministerial and not subject to discretion.

The petitioner has exhausted all available remedies to correct the clerk's action that has significantly affected the rights of the petitioner and continues to cause irreparable and immediate harm.

The petitioner timely filed a "Motion to Reconsider Vacate or Modify" the clerk's Order in the US Court of Appeal for the ELEVENTH CIRCUIT. (APPENDIX B) pursuant to Fed.R.APP.P. Rule 27(b)

"The Motion to Reconsider Vacate or Modify" directly addresses the fact that the petitioner was ordered to Proceed In forma Pauperis in the US District Court action pursuant to Fed.R.APP.P. Rule 24(3)(A)

"A party who was permitted to Proceed In forma Pauperis in the district court action, or was determined to be financially unable to obtain an adequate defense in a criminal case may proceed on appeal In forma Pauperis without further Authorization." (APPENDIX C)

The clerk DAVID J. SMITH refused to docket the "Motion to Reconsider Vacate or Modify".

The petitioner timely filed a petition for Certiorari in the Supreme Court of the United States seeking emergency appellate jurisdiction pursuant to 28 USC 2101(e)

The petition for Certiorari was denied on Jan 22, 2024 (Exhibit G)

The Petitioner timely filed a petition for Rehearing in the SUPREME Court of the United States with grounds addressing the erroneous clerks action dismissing the appeal.

the petition for Rehearing was denied

NO other remedy is available by law, rule or Statute to correct the clerks action which has violated statute and significantly impacted Constitutional right of the petitioner and continues to cause irreputable and immediate harm due to denial of access to the court.

United States v WT Grant Co. 345 US 629 633
97 LEd 1303 73 Sct 844 (1953)

Mandamus is an appropriate Equitable remedy to address the erroneous clerks dismissal of the appeal by David J. Smith, and a Writ of Mandamus should issue directing the clerk David J. Smith to Re-Docket Case No: 23-12809-G

TAKHVAR V WARNER BRO DISCOVERY INC., et al

In Re: Anthony Johnson 810 F3d 1247 2016 US APP LEXIS 970
"A court's traditional equitable authority includes the power to make adjustments that will avoid the waste of a tentative decision as well as friction of a premature constitutional adjudication."

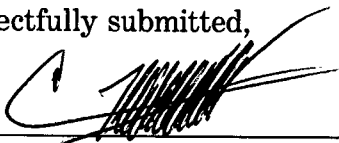
Writ of Mandamus is within this courts equitable Jurisprudence.

JAKALSKI V CARRICK, Clerk 351 US 902
100 LEd 1439 76 Sct 700

CONCLUSION

The petition for a writ of mandamus should be granted.

Respectfully submitted,



Date: May 22, 2024