No. 23A309

In The
Supreme Court of the United States

AARON MOHANLAL,

Applicant,

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent.

APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Joel B. Rothman
SRIPLAW
21301 Powerline Road
Suite 100
Boca Raton, Florida 33433
(561) 404-4350
(joel.rothman@sriplaw.com)

Counsel for Applicant

November 15, 2023

PARTIES TO THE PROCEEDINGS

Applicant Aaron Mohanlal was the plaintiff and appellant in the proceedings below.

Respondent Secretary, Florida Department of Corrections, was the defendant and the appellee in the proceedings below.

APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

To the Honorable Clarence Thomas, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Eleventh Circuit:

Pursuant to 28 U.S.C. § 2101(c) and Rules 13.5, 22, and 30.3 of the Rules of this Court, applicant Aaron Mohanlal respectfully requests a 30-day extension of time, up to and including December 26, 2023, within which to file a petition for a writ of certiorari in this case to review the judgment of the United States Court of Appeals for the Eleventh Circuit. The Eleventh Circuit entered its judgment on May 30, 2023 (the court of appeals' opinion, reported at DE 32, is attached hereto as Exhibit A).

After requesting and obtaining leave to file a petition for a rehearing en banc one day past the due date (filed at DE 34, 35, and 36), Mohanlal filed a Petition for a Rehearing En Banc on June 26, 2023, filed at DE 37 and attached hereto as Exhibit B. On July 28, 2023, the Eleventh Circuit denied Mohanlal's Petition because "no judge in regular active service on the Court [had] requested that the Court be polled on

rehearing en banc." The court of appeals' opinion, which consists of a two-sentence paragraph, is reported at DE 38 and is attached hereto as Exhibit C. The court of appeals also noted it was treating Mohanlal's Petition as a Petition for Rehearing before the original panel and it was denied.

The petition for a writ of certiorari would be due on November 27, 2023. This application is made more than 10 days before that date. The application could not be made earlier because of counsel's busy docket including hearings in other matters. Undersigned counsel is the only attorney at this firm admitted to the bar of this court and requests the Honorable Justice Thomas accept this petition and grant the relief requested. The petitioner is a pro bono client and an incarcerated inmate and it would work a hardship and prejudice the petitioner if the additional time requested were not granted.

This Court's jurisdiction would be invoked under 28 U.S.C. § 1254(1).

1. 28 U.S.C. § 2254 sets forth the requirements for a petitioner like Aaron Mohanlal, who is in prison, to obtain habeas corpus relief from state conviction and imprisonment in the federal courts. Section

2254 does not dictate procedural requirements. Those requirements are contained in the Rules Governing Section 2254 Cases adopted by the U.S. Supreme Court. Section 3 of the rules provides:

> (c) Form. The petition must:
>
> > (1) specify all the grounds for relief available to the petitioner;
> >
> > (2) state the facts supporting each ground;
> >
> > (3) state the relief requested;
> >
> > (4) be printed, typewritten, or legibly handwritten; and
> >
> > (5) be signed under penalty of perjury by the petitioner or by a person authorized to sign it for the petitioner under 28 U.S.C. § 2242.
>
> (d) Standard Form. The petition must substantially follow either the form appended to these rules or a form prescribed by a local district-court rule. The clerk must make forms available to petitioners without charge.

Section 2254, Rule 3.

2. Mohanlal *pro se* filed his habeas petition on June 7, 2021. The petition was fifty-one pages long. On August 2, 2021, the district court denied Mohanlal's motion to enlarge the page limits for his petition, and ordered Mohanlal to file a new petition because the petition "significantly exceed[ed] this District's 20-page limit for motions and legal memoranda." Mohanlal subsequently filed a 35-page amended petition. On November 8, 2021, the district court dismissed the amended

petition, and ordered him to file a second amended petition, stating the petition "exceeds this District's 20-page limit for motions and legal memoranda, and even though the local rule page limits do "not expressly apply to § 2254 petitions," the court again used it as a guide "to impose page limits on § 2254 petitions." The court also reminded Mohanlal that "Federal Rule of Civil Procedure 8(a) requires that pleadings… contain 'a short and plain statement of each claim showing that the pleader is entitled to relief.'"

3. On November 22, 2021, Mohanlal placed his second amended petition, which was 29 pages typewritten, into the prison mailing system. On March 30, 2022, the district court dismissed Mohanlal's 29-page habeas petition with prejudice because it did not believe "Petitioner is willing to file a petition pursuant to 28 U.S.C. § 2254 in compliance with the applicable law and rules," and specifically because after informing Mohanlal that "the 'excessive length' of his petitions 'interfered with the Court's ability to efficiently and effectively screen the Petition,'" Mohanlal responded by "inundating the court with filings."

4. The Anti-terrorism and Effective Death Penalty Act of 1996

(AEDPA), 110 Stat. 1214, which took effect on April 24, 1996, sets forth the requirements for *habeas corpus* relief by inmates like Mohanlal in federal court. A prisoner who follows the directions in Form AO 242 promulgated under the Section 2254 Rules and adopted in the Southern District of Florida, and files a completed form containing all the information called for in the form and under Rule 3 has complied with the petition requirements of § 2254.

5. The district court was required to liberally construe Mohanlal's pro se habeas corpus petitions. *See Williams v. Griswald*, 743 F.2d 1533, 1542 (11th Cir. 1984) ("It is well established that the standards governing the sufficiency of habeas corpus petitions are less stringent when the petition is drafted pro se and without the aid of counsel"); *see also Gunn v. Newsome*, 881 F.2d 949, 961 (11th Cir. 1989) ("we have never wavered from the rule that courts should construe a habeas petition filed *pro se* more liberally than one drawn up by an attorney").

6. District courts may apply the Federal Rules of Civil Procedure in habeas cases "to the extent that [the civil rules] are not inconsistent with any statutory provisions or [the habeas] rules." *Mayle v. Felix*, 545 U.S. 644, 654-55 (2005); see also Fed. R. Civ. P. 81(a)(2) (the

civil rules "are applicable to proceedings for . . . habeas corpus"). While the pleading requirements in Fed. R. Civ. P. 8(a) demand only that the petitioner provide the defendant with "fair notice of what the plaintiff's claim is and the grounds upon which it rests," *Mayle*, 545 U.S. at 655 (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)), the applicable § 2254 form explicitly cautioned Mohanlal, and the Supreme Court has held, that his petition must (1) include all grounds on which he sought relief, and (2) allege facts in support of each ground asserted. See *McFarland v. Scott*, 512 U.S. 849, 856 (1994) (requiring habeas corpus petitions "meet heightened pleading requirements" and holding that "federal courts are authorized to dismiss summarily any habeas petition that appears legally insufficient on its face" and citing 28 U.S.C. § 2254 Rule 4).

7. The Eleventh Circuit has previously held that a local rule that, in its application, is incompatible with the federal rules is invalid. *Tampa Bay Water v. HDR Eng'g, Inc.*, 731 F.3d 1171, 1186 (11th Cir. 2013). In unpublished opinions, the Eleventh Circuit has previously reversed district courts that enforced page limits when those limits interfered with a *pro se* petitioner's ability to comply with the § 2254 Rules

and the heightened pleading requirements imposed on *habeas corpus* petitioners like Mohanlal. See *Frederick v. Sec'y, Dep't of Corr.,* No. 18-12294-E, 2018 U.S. App. LEXIS 27387, at *1 (11th Cir. Sep. 25, 2018) (vacating district court decision that dismissed *pro se habeas corpus* petition for violating a local court rule limiting pleadings to 25 pages); *Benjamin v. Sec'y for the Dep't of Corr.,* 151 F. App'x 869, 874 (11th Cir. 2005) (vacating and remanding district court's dismissal based on petitioner's attachment of additional pages of facts and the length of his petition); *Lazo v. Sec'y, Fla. Dep't of Corr.,* No. 21-11779, 2022 U.S. App. LEXIS 25818, at *11 n.5 (11th Cir. Sep. 15, 2022) (noting "nothing in the local rules indicates that the 20-page limitation applies to habeas petitions, and it does not appear that this rule is regularly or uniformly enforced in habeas proceedings").

8. The Eleventh Circuit panel, however, affirmed the district court's dismissal with prejudice, finding no abuse because even though there is no twenty-page limit rule for petitions in the local rules, Mohanlal was aware of the court's rule and ignored the court's explicit orders to limit his petition to twenty pages. The panel interpreted Mohanlal's actions as willful despite conceding that the district court never

"expressly" considered whether a lesser sanction than final and permanent dismissal of Mohanlal's one shot at federal *habeas corpus* relief would have been sufficient.

9. The question to be presented by the petition is the appropriate test for abuse of discretion when reviewing a Rule 41(b) dismissal of a petition for *habeas corpus*. The Eleventh Circuit's uncabined standard for abuse of discretion when reviewing Rule 41(b) dismissals is subjective, weak, malleable, subject to abuse, and provides no guidance to district courts.

10. The standard applied in this case conflicts with that at least eight other United States Courts of Appeal, most of which apply a more rigorous test than the Eleventh. Almost every other federal circuit has adopted a multi-part test applicable to Rule 41(b) dismissals that appropriately cabin the district court's discretion while leaving the district court free to control its docket within certain parameters. See *Robson v. Hallenbeck*, 81 F.3d 1, 2-3 (1st Cir. 1996) (The "important considerations" that are "commonly mentioned" include (1) "the severity of the violation," (2) "the legitimacy of the party's excuse," (3) "repetition of violations," (4) "the deliberateness *vel non* of the misconduct," (5)

"mitigating excuses," (6) "prejudice to the other side and to the operations of the court," and (7) "the adequacy of lesser sanctions."); *Lucas v. Miles*, 84 F.3d 532, 535 (2d Cir. 1996)("[T]he correctness of a Rule 41(b) dismissal is determined in light of five factors. They are: (1) the duration of the plaintiff's failure to comply with the court order, (2) whether plaintiff was on notice that failure to comply would result in dismissal, (3) whether the defendants are likely to be prejudiced by further delay in the proceedings, (4) a balancing of the court's interest in managing its docket with the plaintiff's interest in receiving a fair chance to be heard, and (5) whether the judge has adequately considered a sanction less drastic than dismissal."); *Poulis v. State Farm Fire & Cas. Co.,* 747 F.2d 863, 868 (3d Cir. 1984)("In exercising our appellate function to determine whether the trial court has abused its discretion in dismissing [pursuant to Rule 41(b)] . . . we will be guided by the manner in which the trial court balanced the following factors . . . : (1) the extent of the party's personal responsibility; (2) the prejudice to the adversary caused by the failure to meet scheduling orders and respond to discovery; (3) a history of dilatoriness; (4) whether the conduct of the party or the attorney was willful or in bad faith; (5) the effectiveness of sanctions

other than dismissal, which entails an analysis of alternative sanctions; and (6) the meritoriousness of the claim or defense."); *Hillig v. C.I.R.*, 916 F.2d 171, 174 (4th Cir. 1990)(Recognizing the severity of dismissal as a sanction, we have required "that the trial court consider four factors before dismissing a case [under Rule 41(b)]: (1) the plaintiff's degree of personal responsibility; (2) the amount of prejudice caused the defendant; (3) the presence of a drawn out history of deliberately proceeding in a dilatory fashion; and (4) the effectiveness of sanctions less drastic than dismissal."); *Campbell v. Wilkinson*, 988 F.3d 798, 802 (5th Cir. 2021)("[I]n most cases where we have affirmed a dismissal with prejudice, we have found at least one of three aggravating factors: (1) delay caused by [the] plaintiff himself and not his attorney; (2) actual prejudice to the defendant; or (3) delay caused by intentional conduct." In addition, "[w]e will affirm dismissals with prejudice for failure to prosecute only when (1) there is a clear record of delay or contumacious conduct by the plaintiff, and (2) the district court has expressly determined that lesser sanctions would not prompt diligent prosecution, or the record shows that the district court employed lesser sanctions that proved to be futile."); *Hutchins v. A. G. Edwards & Sons*, 116 F.3d 1256,

1260 (8th Cir. 1997)(**"**Because dismissal with prejudice is an extreme sanction, it should be used only in cases (1) of willful disobedience of a court order, or (2) where a litigant exhibits a pattern of intentional delay. A district court should (3) weigh its need to advance its burdened docket against the consequence of irrevocably extinguishing the litigant's claim and (4) consider whether a less severe sanction could remedy the effect of the litigant's transgressions on the court and the resulting prejudice to the opposing party. Those criteria, however, are not a rigid four-prong test. Rather, the propriety of an involuntary dismissal ultimately depends on the facts of each case, which we review to determine whether the trial court exercised sound discretion."); *Allen v. Bayer Corp. (In re: Phenylpropanolamine (PPA) Prods. Liab. Litig.)*, 460 F.3d 1217, 1226 (9th Cir. 2006)("Courts are to weigh five factors in deciding whether to dismiss a case for failure to comply with a court order: (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions."); *Ehrenhaus v. Reynolds*, 965 F.2d 916, 921 (10th Cir. 1992)("Before choosing dismissal

as a just sanction, a court should ordinarily consider a number of factors, including: (1) the degree of actual prejudice to the defendant; (2) the amount of interference with the judicial process; (3) the culpability of the litigant; (4) whether the court warned the party in advance that dismissal of the action would be a likely sanction for noncompliance; and (5) the efficacy of lesser sanctions. These factors do not constitute a rigid test; rather, they represent criteria for the district court to consider prior to imposing dismissal as a sanction. The court should ordinarily evaluate these factors on the record.").

11. Counsel previously requested a 60 day extension but the Court granted only a 30 day extension until November 27, 2023.

12. The additional 30-day extension to file a certiorari petition is necessary because undersigned counsel needs the additional time to prepare the petition and appendix, and because of other, previously engaged matters, including: (1) an answer brief due on November 20, 2023 in *Affordable Aerial Photography, Inc. v. WC Realty Group, Inc.,* No. 23-12051 (11th Cir.); (2) hearings on a motion for preliminary injunction on November 13, 2023 in *Betty's Best, Inc. v. The Individuals, Partnerships and Unincorporated Associations Identified on Schedule "A"*, Case No.

1:23-cv-22322 (S.D.Fla.); (3) numerous other motions, answers and responses in other federal court litigation. In addition, counsel has a law firm retreat scheduled during this period.

Accordingly, applicant respectfully requests a 30-day extension of time, up to and including December 26, 2023, within which to file a petition for a writ of certiorari in this case to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

DATED: November 15, 2023 Respectfully submitted,

/s/ Joel B. Rothman

JOEL B. ROTHMAN
Counsel of Record

SRIPLAW
21301 Powerline Road, Suite 100
Boca Raton, FL 33433
561.404.4350 – Telephone
561.404.4353 – Facsimile

Attorneys for Applicant
Aaron Mohanlal

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on November 15, 2023, I caused the forgoing to be served by the method indicated upon the following:

BY EMAIL:

ASHLEY MOODY
Attorney General
Tallahassee, Florida
KIMBERLY T. ACUÑA
Assistant Attorney General
Florida Bar No. 846619
1515 North Flagler Drive, Suite 900
West Palm Beach, FL 33401-3432
Tel: (561) 837-5016
crimappwbp@myfloridalegal.com
kimberly.acuna@myfloridalegal.com

/s/ Joel B. Rothman
JOEL B. ROTHMAN