

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

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STAFF INITIALS



ARUAN ALEMAN HERNANDEZ
Petitioner,

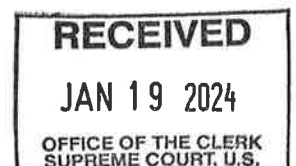
vs.

DAVE ARONBERG Esq.
Respondent.

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

Application Requesting an Extension of Time to File
Petition for Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

Aruan Aleman Hernandez
Pro Se



**APPLICATION REQUESTING AN EXTENSION OF TIME
TO FILE PETITION FOR WRIT OF CERTIORARI**

I, Aruan Aleman Hernandez, pro se, pursuant to United States Supreme Court Rule 30 and 13.5 in the interest of justice move this Honorable Justice Thomas for an extension of time to file a Writ of Certiorari's Petition to appeal the Eleventh Circuit decision dismissing my civil rights case in the amount of 50 days.

1. The Opinion and Order of the Eleventh Circuit of Appeal to review the merits appears of Appendix ("App.") A, entered 8/30.23. There is a post-order by the Eleventh Circuit denying my Motion to Vacate pursuant Fed. R. App. P. 27 decided 10/27/23 which appears as App. B.

JURISDICTION

2. The date on which the Eleventh Circuit Court of Appeals decided my case is August 30, 2023. A copy of that decision appears at App. A, but pursuant this Court Rule 13.5, the 90 days start to running after the decision to vacate or reconsider such decision was taken as noted in App. B. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 or in the alternative under 28 U.S.C. § 1253.

3. The date the petition is due is on or about January 25, 2024.

4. I respectfully request an extension in the amount of 50 days to appeal this case.

5. The new due date would be on or about March 15, 2024.

6. Opposing party did not object or respond to my request for a stance per the attached as App. C.

7. There is a whole host of issues and orders to appeals from which may diminish my constitutional protections to exercise in my condition if I am not granted time to effectively overturn the decision below denying my Motion to Vacate Circuit Court's Order dismissing my appeal (collectively incorporated herein. App. D.).

8. This case arose based on the Respondent and members of the Office of the State Attorney from Palm Beach County, Florida who through conflict of interest issues denied to me all the constitutional rights warranted by Fla. Constitution and United States Constitution well known commonly as the Marsy Law Rights punish me with the crimes against me (perjury offenses) by conflict of interest-animus in violation of my First Amendment private rights to petition, procedural due process, equal protection and others claims including but not limited to infliction of emotional distress, defamation, damages and possibly nominal relief.

9. I had no reason to believe 11th Circuit Court would deny my reasonable, necessary appeal to properly and legally address the constitutional claims hereto in order to preserve my fundamental rights and the eliminating my Marsy Law Rights to cause of action but for my exercise of fundamental right to equal protection and

a fair and meaningful opportunity to be heard under the 5th and 14th Amendments of the U.S. Constitution.

10. I am prejudiced without additional time. I require time under the 1st and the 14th Amendments to prevent this Court from vitiating my 1st Amendment rights to petition.

11. This Court must not vitiate my rights by creating obstacles to petition an extra time to properly plea a first impression claim with significant importance by denying additional time.

12. “To be sure, a State may not condition the grant of a privilege, (cause of action) or benefit upon the surrender of a constitutional right.” *Minn. Ass’n. Health Care v. Minn. Dep’t P.W.*, 742 F. 2d 442, 446 (8th Cir 1984); citing *Western Southern Life Insurance Co. v. State Board of Equalization*, 451 U.S 648, 657-58, 664-65 (1981); *Sherbert v. Verner*, 374 U.S. 398, 404-05 (1963).

13. Freedoms are not for sale, when prosecutors miscalculated causes, by self regulating mammon, not freedom, or the people is protected. Individuals and individual liberty are instead sacrificed under the lie money grant freedom when it creates slavery by how it is coined. U.S. Amend. I, XIII.

14. Prosecutors and Judges should be corrected within the purview of constitutional limits without threats of enslaving unprotected victims by prosecuting them in light of existent conflict of interest in contravention of the 13th

Amendment, as applied to me as a party of one within the scope of a victim suffering by the offense of perjury in violation of a State statutory law.

15. I must be afforded fair access to the Courts to invoke my Marsy Law rights and exercise of fundamental rights. Without compelling denial by dismissing the cause seeking a cause of action against those who are committing crimes against me. U.S. Amendment I, XIV.

16. I am utterly poor. Denial of time increases the possibility to missing the opportunity to plea this Court with a better documents in the Certiorari context that can quite show prima facie case for relief. Poverty and incarceration both creates a substantial burden to my access to this Court requiring an accommodation in the form of time.

17. Because this case implicates the [constitutionally protected] right of access to the Courts, require an accommodation for fair access to this Court under the circumstances in the form of additional time to avoid the denial of my first amendment right to petition fairly.

18. There is no compelling reason to deny my request for time.

19. There is no justification narrowly tailored to meet any compelling reason to deny 50 days for me to ascertain how I may effectively plea this case while my condition of incarcerated person with limited access to law materials in form of time and material as well as freedom without adequate time to prevent the same

from arising causing a burden so great as to vitiate my First Amendment right to petition and the 14th Amendment to access to the Court without intentional discrimination to prevent me from petitioning to defend and prevent the loss of my constitutional rights.

20. This case arises based on Florida Marsy Law rights. Their arms or their official violations of my private exercise of the First Amendment right to petition and unequal protection under the law based on conflict of interest and more recently procedural due process violations, intentional infliction of emotional distress resulting in physical manifestation.

21. I have constitutional objections to certain Florida Court rules and Federal rules and constitutional arguments against Florida State Attorney Office, and yet I and the public have an important interest in maintaining fair impartial Courts not controlled by partial selfish interest that inhibit their ability to uphold the impartial constitutional application to the rule of law.

22. Pursuant to U.S. Amendment XIV, I seek a reasonable fair opportunity in the form of additional time to defend the exercise my 1st Amendment right to petition to assert my claims in the civil rights case in order to prevent the permanent loss of the exercise of fundamental rights including my private 1st Amendment right to petition, 13th Amendment right against involuntary servitude in the form of incarceration by the crime committed against me, harm to health,

loss of property interest, constitutional arguments against prosecutorial conflict, other constitutional liberties and claims, not by free choice, but government compelled choice, should this Court not accommodate me by allowing a stay as not to forever deprive me of my Marsy law rights exercise without threat of punishment and other injuries caused by denial of a time.

23. I require adequate time to meaningful petition this Court to prevent deprivations of my liberties based on clear error of law, of fact creating manifest injustice.

I, therefore respectfully ask the Honorable Justice Thomas to extend the time for filing the petition for fifty (50) days, from January 27, 2024 to March 18, 2024.

Respectfully submitted this _____ day of January 2024.



Aruan Hernandez # C80313

APPENDIX - A

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-11024

ARUAN ALEMAN HERNANDEZ,

Plaintiff-Appellant,

versus

PALM BEACH COUNTY STATE ATTORNEY,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 9:22-cv-80985-RNS

Before NEWSOM, LUCK, and ABUDU, Circuit Judges.

BY THE COURT:

Aruan Hernandez, a Florida prisoner, brought a *pro se* complaint against Dave Aronberg, in his official capacity as Florida State Attorney. Hernandez's 75-page complaint was titled "§ 1331's Motion by a Victim Deprived of the Equal Protections of the Law and Due Process of the Law and a Denial to Access the Court to Start a Cause of Action Under his Fundamental Rights," and included detailed legal explanations related to federal question jurisdiction, Florida perjury law, and federal equal protection law. He appeared to raise a Fourteenth Amendment violation, asserting that he was denied equal protection of the law by the state's failure to prosecute two women, one of whom was the victim of his sexual battery convictions, for falsely testifying at his criminal trial.

The district court determined that the complaint was frivolous, failed to state a claim, and was subject to dismissal under 28 U.S.C. § 1915(e)(2). It noted that the complaint contained lengthy discussions of law that did not appear relevant or to establish a clear cause of action, but it construed the complaint as being brought under 42 U.S.C. § 1983 and appearing to raise a Fourteenth Amendment equal protection claim.

The district court concluded that Hernandez, however, failed to establish a viable equal protection claim, and, further, the claim was frivolous because he could not prove that he was in a similarly situated class as the women who testified against him, and the record did not support that the victim testified falsely. Additionally, to the extent that Hernandez attempted to assert due

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process violations and denial of access to the courts, the district court concluded, without explanation, that neither claim was plausible on its face.

Because it concluded that the claims were clearly frivolous, the district court dismissed the complaint with prejudice. Hernandez appealed and moved to appeal IFP, which the district court denied. He now moves this Court for LTP.

All prisoners seeking to commence or appeal a judgment in a civil non-habeas action must pay the filing fees, regardless of whether they are indigent, or the appeal is non-frivolous. 28 U.S.C. § 1915(a), (b). Because Hernandez has agreed to pay the filing fee, the only remaining issue regarding his leave to proceed motion is whether an appeal would be frivolous. See *id.* § 1915(e)(2)(B). “[A]n action is frivolous if it is without arguable merit either in law or fact.” *Napier v. Preslicka*, 314 F.3d 528, 531 (11th Cir. 2002) (quotation omitted), *overruled on other grounds by Hoever v. Marks*, 993 F.3d 1353 (11th Cir. 2021) (en banc).

This Court reviews a district court’s *sua sponte* dismissal of a complaint under § 1915(e)(2)(B) for an abuse of discretion. *Hughes v. Lott*, 350 F.3d 1157, 1160 (11th Cir. 2003). A district court must dismiss an IFP action if the court determines that the action is “frivolous or malicious.” 28 U.S.C. § 1915(e)(2)(B)(i). Prior to dismissing a civil action *sua sponte*, a court normally must provide the plaintiff “with notice of its intent to dismiss and an opportunity to respond.” *Surtain v. Hamlin Terrace Found.*, 789 F.3d 1239, 1248 (11th Cir. 2015). “An exception to this requirement exists, however,

when amending the complaint would be futile, or when the complaint is patently frivolous.” *Id.*

The Fourteenth Amendment’s Equal Protection Clause provides that no state shall “deny to any person within its jurisdiction the equal protection of the laws.” To state an equal protection claim, a plaintiff must allege that similarly-situated persons have been treated disparately through state action. *Campbell v. Rainbow City, Ala.*, 434 F.3d 1306, 1314 (11th Cir. 2006). Different treatment of persons who are dissimilarly situated, however, does not violate the Equal Protection Clause. *Id.* Individuals are similarly situated if they are “*prima facie* identical in all relevant respects.” *See id.* (citation omitted).

Here, there is no meritorious argument that the district court erred in dismissing the case. Beyond Hernandez’s speculation, there is no indication that the witnesses in his criminal trial testified falsely. Additionally, he cannot establish that he was similarly situated as the two women whom he believes were treated disparately from him, as they were witnesses at his criminal trial, and one was the victim of his sexual batteries. *See Campbell*, 434 F.3d at 1314.

Further, the district court did not err in its conclusion that Hernandez’s due process and access to courts claims, to the extent that he raised them, were not plausible on their face, as Hernandez failed to show that the witnesses testified falsely. The district court also did not abuse its discretion by dismissing the complaint with

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prejudice, as the complaint was patently frivolous. *See Surtain*, 789 F.3d at 1248.

Accordingly, this Court now finds that the appeal is frivolous, DENIES leave to proceed, and DISMISSES the appeal.

APPENDIX - B

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For the Eleventh Circuit

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versus

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Defendant-Appellee.

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Before NEWSOM, LUCK, and ABUDU, Circuit Judges.

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BY THE COURT:

Aruan Hernandez has filed a motion for reconsideration, pursuant to 11th Cir. R. 27-2, of this Court's order dated August 31, 2023, denying his motion for leave to proceed. Upon review, Hernandez's motion for reconsideration is DENIED because he has not alleged any points of law or fact that this Court overlooked or misapprehended in denying his motions.

**Additional material
from this filing is
available in the
Clerk's Office.**

PROOF OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of the foregoing request for Extension of Time to submit the Petition of Writ of Certiorari has been furnished by prepaid U.S. Post Office Mail to: Dave Aronberg, State Attorney, West Palm Beach at: 401 N. Dixie Hwy., West Palm Beach, Florida 33401 on this

9th day of January, 2024.



Aruan Hernandez # C80313
Everglades Correctional Institution
1599 S.W. 187th Avenue
Miami, Florida 33194-2801