

APPNO. _____

IN THE SUPREME COURT OF THE UNITED STATES

YOSEPH YADESSA KENNO,

Petitioner,

v.

GOVERNOR'S OFFICE OF INFORMATION TECHNOLOGY,

LYUBOV LOGACHEVA, in her individual capacity,

BOB MCINTYRE, in his individual capacity,

DON WILSON, in his individual and official capacity,

Respondent.

On Application for an Extension of Time

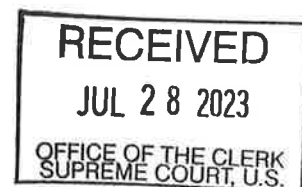
to File Petition for a Writ of Certiorari

PETITIONER'S APPLICATION TO EXTEND TIME

TO FILE PETITION FOR WRIT OF CERTIORARI

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Pro se Petitioner



To the Honorable Neil Gorsuch, as Circuit Justice for the United States Court of Appeals for the Tenth Circuit:

Pursuant to this Court's Rules 13.5, 22, 30.2, and 30.3, I respectfully request that the time to file my Petition for Writ of Certiorari in this matter be extended for 60 days, up to and including September 26, 2023. The Tenth Circuit issued its opinion on April 17, 2023. (Appendix ("App.") A) and denied rehearing en banc on May 15, 2023 (App. B, at 2, emphasis added). Absent an extension of time, the Petition for Writ of Certiorari would be due on August 13, 2023. I am filing this Application more than ten days before that date. See S. Ct. R. 13 .5. This Court would have jurisdiction over the judgment under 28 U.S.C. 1254(1). Respondents are opposed to this request.

Background

I am a former employee for the State of Colorado's Governor's Office of Information Technology ("GOIT"). I decided to take the job believing my contributions as a government employee would make a difference. Unfortunately, it became the biggest mistake of my life. As a government employee, I repeatedly faced discrimination. When I reported the discrimination, my management retaliated and terminated me. After being terminated, I brought a lawsuit in The United States District Court for The District of Colorado against GOIT and three of my immediate managers at GOIT -- all of whom will be collectively referred to as

“Respondents.” *Kenno v. GOIT et al*, Civil Action No. 19-cv-00165-MEH.¹ The Respondents succeeded in getting my lawsuit dismissed after claiming that I had produced fabricated evidence during discovery. *Kenno v. GOIT et al*, No. 19-165-MEH (D. Colo. June 30, 2021).

After trial, newly discovered evidence withheld by Respondents revealed that the key evidence used against me had been falsified. *Kenno v. GOIT et al*, No. 19-165-MEH (D. Colo. July 30, 2021), at 3. The newly discovered evidence also uncovered perjured testimony offered by Respondents’ key witnesses during trial. *Id.*, at 8 – 12. Given the damning nature of the newly discovered evidence, I timely filed a post-trial motion pursuant to Rule 59(a) of the Federal Rules of Civil Procedure (“FRCP”) (“59(a) motion”). *Id.* The District Court denied my 59(a) motion, even though Respondents did not dispute withholding and/or falsifying evidence, as well as perjured testimony offered by Respondents’ key witnesses. *Kenno v. GOIT et al*, No. 19-165-MEH (D. Colo. August 12, 2021). In denying my 59(a) motion, the District Court used the wrong standard of review that is applicable to FRCP Rule 59(e) motions. *Kenno v. GOIT et al*, No. 19-165-MEH (D. Colo. Sept. 14, 2021). The District Court’s error in using 59(e) standard was so clear that, during appellate briefings, Respondents did not dispute it. *Kenno v. GOIT et al*, No. 21-1353 (10th Cir. May 9, 2022), at 61. Despite the undisputed nature of the District Court’s error,

¹ A second lawsuit against Defendants was also filed under No. 1:19-CV-03263-MEH in the same District Court. When litigation started, 1:19-cv-03263-MEH was later consolidated into 1:19-CV-165-MEH. Even though my three immediate managers were dismissed from 1:19-CV-165-MEH, after

the Tenth Circuit affirmed. *Kenno v. GOIT et al*, No. 21-1353 (10th Cir. Apr. 17, 2023), at 23.

Much of the newly discovered evidence that formed the basis for my 59(a) motion was the direct consequence of the District Court's repeated denials of my discovery motions to allow equal access to key evidence before trial. *Kenno v. GOIT et al*, No. 21-1353 (10th Cir. February 25, 2022), at 13 – 17. While the District Court consistently denied my discovery motions before trial, the District Court allowed Respondents' experts to "pull off whatever they pull off" from my family's personal devices. *Id.*, at 14. The District Court also repeatedly denied my post-trial discovery motions, including motions for the disclosure of public documents. *Id.*, at 16 – 17. The Tenth Circuit affirmed the District Court's repeated denials of my discovery motions. *Kenno v. GOIT et al*, No. 21-1353 (10th Cir. Apr. 17, 2023), at 19.² Before the Tenth Circuit affirmed the District Court's repeated denials of my discovery motions, the Tenth Circuit denied my motion seeking equal access to the certified appellate records. *Kenno v. GOIT et al*, No. 21-1353 (10th Cir. June 13, 2022).

The lack of equal access to key evidence during trial was amplified by Respondents extensive destruction of evidence after litigation started, including the shredding of hard drives. *Kenno v. GOIT et al*, No. 19-165-MEH (D. Colo. February 26, 2021), at 10 ¶ 26. Yet, both the District Court and the Tenth Circuit ignored Respondents' willful failure to preserve evidence.

² The Tenth Circuit denied my motion seeking equal access to the certified appellate records. *Kenno v. GOIT et al*, No. 21-1353 (10th Cir. June 13, 2022)

Reasons For Granting An Extension of Time

I am seeking an extension of 60 days to file a Petition for a Writ of Certiorari for the reasons discussed below:

1. I am defending a parallel litigation, as a pro se, that is currently pending at the Colorado Court of Appeal, pertaining to an appeal of termination I had filed with the Colorado State Personnel Board ("Board"). As a former state employee, I am entitled to a mandatory hearing before the Board as to the reasons for termination from a state position. Colorado Constitution Article XII, § 13(8) 8); C.R.S. § 24-50-125(3), (5). Shortly after the Tenth Circuit denied my Petition for Rehearing En Banc, the Colorado Court of Appeals issued an order for briefs to be filed with strict deadlines. As a result, much of my time has been devoted to the timely filing of briefs ordered by the Colorado Court of Appeals.
2. There is a high probability that this Court will grant certiorari and reverse the District Court's numerous clearly erroneous decisions. One of these errors is the District Court's improper application of Rule 59(e) standards to evaluate my Rule 59(a) motion. This District Court's use of 59(e) standards not only blatantly disregarded the liberal standards that should have been applied to my pro se 59(a) motion, as unanimously established by this Court in *Haines v. Kerner*, 404 U.S. 519 (1972), but it also contravened Rule 8(a)(2) and Cf. Fed. Rule Civ. Proc. 8(f). Furthermore, the Tenth Circuit's

subsequent affirmation of the District Court's use of 59(e) standards, which was based on the title of my 59(a) motion containing the term "reconsideration," also conflicts with this Court's precedent in *Gonzalez v. Crosby*, 545 U.S. 531 (2005), which dictates that the relief sought, not the title of a motion, determines a motion's construction. Most concerning is that the Tenth Circuit's affirmation of the District's Court's use of 59(e) standards has created a circuit split. For instance, the Eleventh Circuit determined that "to present newly discovered evidence after a nonjury trial ... Rule 59(e) is the wrong vehicle. Indeed, Rule 59(a)(2) specifically allows a district court to open the judgment, take additional evidence, amend its findings of fact and conclusions of law, and enter a new judgment." *Jenkins v. Anton*, 922 F.3d 1257, 1264 n.6 (11th Cir. 2019). Additionally, my petition will raise other questions of significant importance, including, but not limited to:

- Whether withheld documents produced after a non-jury trial qualify as newly discovered evidence for the purposes of Federal Rules of Civil Procedure Rule 59(a) or (e) motions, particularly when the disclosures of withheld documents occurred subsequent to the District Court's decision to deny the admission of any newly discovered evidence before rendering a decision on a dispositive motion.
- Whether Rule 37(a)(2) of the Federal Rules of Civil Procedure prohibits the consideration of newly discovered evidence produced by a moving party in support of a 59(a) motion.

- Whether the District Court abused its discretion by imposing Federal Rules of Civil Procedure Rule 37 sanctions against me for disclosing a document, despite completely overlooking the Respondents' deliberate destruction of the same documents during ongoing discovery and even rewarding them for it.
 - Whether a District Court's repeated denials of discovery motions for the disclosure of, and equal access to, public documents that are highly relevant to the claims and defenses of the moving party, violates the Due Process Clause of the Fourteenth Amendment, especially in light of the District Court's decision allowing the non-moving party to "pull off what they pull off" from the moving party's family devices.
 - Whether the District Court's award of attorneys' fees was prejudicial in light of newly discovered evidence that showed Respondents' willingness to falsify and withhold key evidence, provide perjured testimony and destroying relevant evidence.
3. An extension will not cause prejudice to the Respondents, as this Court would likely hear oral argument and issue its opinion in the October 2023 Term regardless of whether an extension is granted. Rather, an extension of 60 days will allow me sufficient time to include convincing arguments that is worthy of this Court's review.

Conclusion

For the reasons mentioned above, I respectfully request that the time to file my Petition for a Writ of Certiorari in this matter be extended to 60 days, up to and including September 26, 2023.

CERTIFICATE OF SERVICE

A copy of this application was served by email and U.S. mail to the counsels listed below in accordance with Supreme Court Rule 22.2 and 29.3:

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Sincerely,



Yoseph Kenno
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Date: Wednesday, July 26, 2023