24-5781

No. 24A263

IN THE

SUPREME COURT OF THE UNITED STATES

MARQUICE ROBINSON, PETITIONER

v.

MICHAEL HOLMAN, ET AL, RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Marquice Robinson
6400 Oakley Road Apt #4208
Union City, GA 30291
770-527-6568

QUESTIONS PRESENTED

1. Whether The Eleventh Circuit Court of Appeals erred in essentially holding in conflict with The Ninth Circuit Court of Appeals that a violation of collective bargaining agreement is not an adverse employment action.

2. Whether The Eleventh Circuit Court of Appeals erred in essentially holding in conflict with The Federal Circuit Court of Appeals that judgment on the pleadings can be granted when there are material facts in dispute.

3. Whether The Eleventh Circuit Court of Appeals has so far departed from the accepted and usual course of judicial proceedings when it entered a decision on a state law claim in conflict with the state's law in violation of the 10th amendment to the United States Constitution.

4. Whether The Eleventh Circuit Court of Appeals has so far departed from the accepted and usual course of judicial proceedings when it viewed the summary judgment record most favorable to the moving party instead of reviewing the record favorable to the non-moving party by failing to acknowledge and apply the correct summary judgment standard.

LIST OF PARTIES

Petitioner (Plaintiff/Appellant in the court of appeals) is Marquice Robinson.

Respondents (Defendants/Appellees in the court of appeals) are Michael Holman, Akal Security, and The United States Marshal Service.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6 of this Court's Rules, Petitioner states that Petitioner has no parent or publicly held company owning 10% or more of the corporation's stock.

RELATED CASES

- *Robinson v. Akal Security*, No. 1:17-cv-03658, U.S. District Court for the Northern District of Georgia. Judgment entered April 24, 2023.
- *Marquice D. Robinson v. Akal Security Inc.*, No. 20-11574, U.S. Court of Appeals for the Eleventh Circuit. Judgment entered June 1, 2020.
- *Marquice D. Robinson v. Akal Security Inc.*, Nos. 20-12143 & 20-1379, U.S. Court of Appeals for the Eleventh Circuit. Judgment entered November 7, 2022.
- *Marquice D. Robinson v. Akal Security Inc.*, No. 23-11735, U.S. Court of Appeals for the Eleventh Circuit. Judgment entered June 6, 2024.

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES

Cases: **Page**

Cases continued:

Federal statutes and rules

Georgia Workers Compensation Act Exclusive Remedy Statute

PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari be issued to review the judgment of The United States Court of Appeals for The Eleventh Circuit.

OPINIONS BELOW

The opinion of the court of appeals is unreported. (*See* App. A at pp. 1a-10a) Prior opinions of the court of appeals are unreported. (*See* App. B at pp. 11a-22a; C at pp. 23a-24a). The district court's order on judgment on the pleadings and summary judgment are unreported. (*See* App. D at pp. 25a-45a; E at pp. 46a-62a).

JURISDICTION

The judgment of the court of appeal was entered on June 6, 2024. (*See* App. A at pp. 1a-10a). A petition for rehearing was denied on July 12, 2024. (*See* App. G at pp. 143a-144a). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant provisions of the US Constitution and the Federal Rules of Civil Procedure are reproduced in the appendix. (*See* App. J at p. 149a; K at p. 150a).

STATEMENT OF THE CASE

This case is about correcting circuit splits. Also, this case is about this Court exercising its supervisory power to correct the court appeals deviation from the usual course of judicial proceedings. The first question is whether The Eleventh Circuit Court of Appeals (The Eleventh Circuit) erred in holding in conflict with The Ninth Circuit Court of Appeals that a violation of a Collective Bargaining Agreement (CBA) is not an adverse employment action. The Eleventh Circuit Court held that Petitioner's schedule changes that were not subject to change and based on CBA were not material adverse employment actions. However, to the contrary, its sister circuit, The Ninth Circuit Court of Appeals (The Ninth Circuit), held that a violation of CBA is an adverse employment action.

The second question is whether The Eleventh Circuit erred in holding in conflict with The Federal Circuit Court of Appeals (The Federal Circuit) that judgment on the pleadings can be granted when there are material facts in dispute. The Eleventh Circuit granted Respondent Michael Holman (Holman) judgment on the pleadings on

Petitioner's assault and battery claims when there were material facts in dispute of whether Holman committed the intentional torts and whether Petitioner sustained any injuries. However, in contrast to its sister circuit The Federal Circuit held if issues of material fact are unresolved in the pleadings, a motion for judgment on the pleadings cannot be granted.

The third question is whether The Eleventh Circuit has so far departed from the accepted and usual course of judicial proceedings when it entered a decision on a state law claim in conflict with the state's law. The Eleventh Circuit found that Holman was not accomplishing the ends of employment, acknowledging that Petitioner presented some evidence of Holman's duties. However, the law in the State of Georgia specifically highlights that the determination of whether an employee was acting within the scope of employment is a question for the jury when evidence is submitted that demonstrates an employee's duties.

The fourth question is whether The Eleventh Circuit Court of Appeals has so far departed from the accepted and

usual course of judicial proceedings when it viewed the summary judgment record in the light most favorable to the moving party. The Eleventh Circuit, in its opinion, failed to cite, acknowledge, and apply the summary judgment standard by viewing the facts most favorable to the non-moving party as required by The Federal Rules of Civil Procedure 56(a) and case law. (*See* App. J at p. 149a)

A. Background facts

Petitioner was hired in June 2014 as a Special Security Officer (SSO) by Respondent Akal Security (Akal) with the final approval of Petitioner hire for the SSO position decided by the ultimate decision maker in the hiring of Court Security Officers (CSO) SSO Respondent The United States Marshal Service (USMS). (*See* App. F at p. 85a).

Petitioner employment, including Petitioner's work schedule, was governed by a CBA (i.e., contract). (*See* App. A at p. 5a). Importantly, Akal, the USMS, and Holman changed Petitioner's contractual bidded work schedule of 0800-1630, in which, pursuant to the CBA between Akal and the CSO union, Petitioner's work schedule was

mandated for a year and bound until the next year's contractual shift bidding process. (*See* App. N at p. 163a). Holman, in his official role as Senior Lead Court Security Officer (SLCSO) was a managerial type employee and one of the persons in charge of making and addressing issues with the weekly work schedules. (*See* App A. at p. 7a).

Furthermore, in Petitioner well pleaded first complaint for damage, Petitioner pleaded that on August 19, 2016, in his official role as an SLCSO, while discussing issues with the weekly work schedule with Petitioner, Holman struck Petitioner in the mouth and causing Petitioner to bleed. (*See* App. D at p. 27a). However, Holman, in his amended answer, denied that he struck Petitioner and that Petitioner suffered any injuries. (*Id.*).

B. Procedural history

On March 20, 2020, the district court entered a final order adopting and approving the Magistrate's Report and Recommendation, but Petitioner had one remaining claim in the district court against Holman. (*See* App. E at pp. 46a-62a; F at pp. 63a-142a). Petitioner appealed the district court's March 20, 2020, order to The Eleventh Circuit, but

on June 1, 2020, The Eleventh Circuit dismissed and remanded Petitioner's appeal. (*See* App. C at pp. 23a-24a). Petitioner then appealed for a second time to The Eleventh Circuit Court, but on November 7, 2022, The Eleventh Circuit dismissed and remanded Petitioner's appeal. (*See* App. B at pp. 11a-22a).

Later, on April 24, 2023, the district court granted Holman's judgment on the pleadings. (*See* App. D at pp. 25a-45a). Petitioner then appealed for a third time to The Eleventh Circuit, and on June 6, 2024, The Eleventh Circuit affirmed the district court's judgment. (*See* App. A at pp. 1a-10a). Petitioner subsequently filed a petition for panel rehearing and rehearing en banc, and The Eleventh Circuit denied Petitioner's petition on July 12, 2024. (*See* App. G at pp. 143a-144a).

Further, Petitioner filed a motion to vacate the panel's opinion and to stay the mandate and on August 6, 2024, The Eleventh Circuit denied the motion. (*See* App. H at pp. 145a-146a). Finally, on August 7, 2024, Petitioner filed a motion to recall the mandate and reconsideration of Petitioner's motion to stay the mandate and petition for

rehearing en banc, and The Eleventh Circuit denied the motion on October 7, 2024 (*See* App. I at pp. 147a-148a).

REASONS FOR GRANTING THE WRIT

It is important to note that this Court once valued the concerns of lower courts erroneously failing to acknowledge and or apply the correct standard of review when granting summary judgment in the light most favorable to the non-moving party and judgment on the pleadings if there are material dispute of facts in a complaint in and answer [procedural issues], so deeply that in unusual cases, it issued Grant, Vacate, Remand (GVR) orders even where purportedly independent grounds, decided by the Court below, supported the judgment. (*See Wellons v. Hall*, 558 U. S. 220, 222, 224 (2010)) (per curiam) ("issuing a GVR order where a Court of Appeals erroneously applied a procedural bar and . . . leaving this Court unsure whether the merits determination really was independent of the error").

Here, this Court should issue a GVR order because, as discussed below infra under letter "D," The Eleventh Circuit erroneously failed to apply and acknowledge the

standard of review, in its opinion. (*See* App. A at pp. 1a-10a). Also, this Court should issue a GVR order because The Eleventh Circuit's actions of not acknowledging and applying the summary judgment standard in the light favorable to the non-moving party is a procedural issue, which leaves this Court unsure whether the merits determination really was independent of the errors discussed below infra A-D.

Furthermore, if this Court orders a GVR, it will change the outcome of the case because when the facts are viewed in the light most favorable to Petitioner as the non-moving party, they demonstrate as discussed below infra under letters A and C that (1) the USMS and Akal violated the material terms of the CBA as a result is an adverse employment action, and (2) Holman was accomplishing the ends of his employment of addressing issues with the weekly work schedule when he assaulted and battered Petitioner. As a result, Akal and the USMS should not been granted summary judgment, and The Eleventh Circuit should have remanded the case.

Additionally, if this Court orders a GVR, it will change the outcome of the case because when there are issues of material facts in the complaint and answer as evidence of Holman denying striking Petitioner and denying that Petitioner suffering injuries from the strike as the evidence discussed below infra under B discusses The Eleventh Circuit must reverse the district court order granting Holman judgment on the pleadings. As a result, Holman should not have been granted judgment on the pleadings, and The Eleventh Circuit should have remanded the case. Thus, if this Court orders a GVR, there will be no need for further review of these issues.

A. The Eleventh Circuit's opinion that schedule changes that are based on a collective bargaining agreement are not an adverse employment action is in conflict with another United States Court of Appeals on the same matter.

The Eleventh Circuit's opinion that schedule changes that are based on a CBA are not adverse employment actions is in conflict with another United States Court of Appeals on the same matter because the Ninth Circuit found that a violation/breach of a collective bargaining agreement is an adverse employment action.

Admittedly, Petitioner indicated to The Eleventh Circuit that Petitioner accidentally submitted an outdated version of the CBA in summary judgment because of the voluminous amount of documents produced in this case. However, the outdated version of the CBA Petitioner submitted in summary judgment, and the dated version of the CBA is almost identical, notwithstanding the years of implementation of the CBA and pay raises. Petitioner can produce the correct version of the CBA to the Court.

Moreover, The Eleventh Circuit acknowledged that a CBA (i.e., a contract) governed Petitioner's employment and work schedule because it highlighted in the relevant part, "even though [Petitioner] should have always started at 8:00 am according to the collective bargaining agreement." (*See* App. A at p. 5a). However, The Eleventh Circuit held that "as alleged that [Petitioner's] schedule changes were not materially adverse employment actions" wholesale disregarding the undisputed fact that Petitioner's schedule was governed by a CBA and other similarly situated Court Security Officers contractually, shit-bidded schedules were not changed. (*Id.*). Moreover,

Lead Court Security Officer Teresa McLaurin (LCSO McLaurin) stated in the relevant part:

> "The schedule has been changed to different hours that the CSO's did not bid for originally. This caused a major confusion among the [CSOs]. [Petitioner] had worked that schedule. [Petitioner] was all of a sudden moved to the loading dock booth. [Petitioner] schedule changed again. These hours were a conflict [for] [Petitioner] and there had been several discussions on [Petitioner's] hours being changed. No resolution was ever was accomplished; it was never addressed that this was a hardship for [Petitioner]. [Petitioner] came in and opened the loading dock and worked those hours documenting and noting that other officers were allowed to come in and work and get off whenever they chose not following the schedule at all." (*See* App. L at pp. 151a-153a).

Also, LCSO McLaurin stated in the relevant part:

> "There were efforts to try and separate [Petitioner and O'Donnell] closeness through scheduling. [Petitioner] was moved to a different report time than O'Donnell. [LCSO McLaurin] tried to see if the scheduling could go back to its original, but management was not trying to change what they had on the schedule for [Petitioner] and O'Donnell." (*Id.* at p. 153a).

Furthermore, The Eleventh Circuit's finding that the changes to Petitioner's contractual shift bidded work schedule, which was not subject to change and was based on CBA, was not a violation/breach of the CBA/contract, is not adverse employment action conflicts with at least one

of its sister circuit, The Ninth Circuit. Importantly, The Ninth Circuit held in the relevant part "an adverse employment action where a [plaintiff] was repeatedly denied overtime opportunities and timely compensation in violation of collective bargaining agreement while [others] were not . . . " (*See Fonseca v. Sysco Food Services of Arizona, Inc.*, 374 F.3d 840, 849 (9th Cir. 2004)).

Thus, The Eleventh Circuit's opinion that schedule changes that are based on a collective bargaining agreement are not an adverse employment action is in conflict with another United States Court of Appeals on the same matter because The Ninth Circuit found that a violation/breach of a collective bargaining agreement is an adverse employment action.

1. **The Eleventh Circuit's opinion that Petitioner's contractually shift-bidded work schedule is not an adverse employment action is of national importance because it encourages parties to a contract to arbitrarily breach the material terms in a CBA.**

The Eleventh Circuit opinion that Petitioner's contractually shift-bidded work schedule is not an adverse employment action is of national importance because it permits/allows/encourages parties to a contract to

arbitrarily and capriciously violate/breach/change/not adhere to the material terms in a CBA/contract without fear and consequence of committing an adverse employment action. Notably, "[m]anifest injustice refers to injustice that is apparent to the point of almost being indisputable." (*See Lone Star Indus., Inc. v. United States,* 111 Fed. Cl. 257, 258 (2013)).

Here, this Court's finding that the changes to Petitioner's contractual shift bidded work schedule that was not subject to change and was based on CBA was not a violation/breach of the CBA/contract is not adverse employment action is of national importance and injustice because it permits/allows/encourages parties to a contract to arbitrarily and capriciously violate/breach/change/not adhere to the material terms in a CBA/contract without fear and consequence of committing an adverse employment action. Significantly, "to constitute a vital or material breach, a party's nonperformance must go to the essence of the contract." (*See MDS (Canada) Inc. v. Rad Source Techs., Inc.*, 720 F.3d 833, 849 (11th Cir. 2013)).

Thus, The Eleventh Circuit opinion that Petitioner's contractually shift-bidded work schedule is not an adverse employment action is of national importance because it permits/allows/encourages parties to a contract to arbitrarily and capriciously violate/breach/change/not adhere to the material terms in a CBA/contract without fear and consequence of committing an adverse employment action.

2. There is precedential value of this Court holding that a breach of contractually shift bidded work schedule is an adverse employment action because it will undo the circuit split created by The Eleventh Circuit.

There is precedential value of this Court holding that a violation/breach/change of a contractual shift-bidded work schedule is an adverse employment action because it will undo the circuit split created by The Eleventh Circuit when it essentially found that a change to a contractual shift-bidded schedule was not a materially adverse employment action that was based on a CBA.

Moreover, if this Court finds that a violation/breach/change to a contractual shift-bidded work schedule is an adverse employment action, the decision

would create a precedent that a violation of material terms in a CBA is undoubtedly an adverse employment action.

Thus, there is precedential value of this Court holding that a violation/breach/change of contractually shift-bidded work schedule is an adverse employment action because it will undo the circuit split created by The Eleventh Circuit when it essentially found that a change to a contractual shift-bidded schedule was not a materially adverse employment action that was based on a CBA.

B. The Eleventh Circuit opinion that when there are material facts in dispute the moving party is granted judgment on the pleadings is in conflict with another United States Court of Appeals on the same matter.

The Eleventh Circuit's opinion that when there are material facts in dispute, the moving party is granted judgment on the pleadings is in conflict with another United States Court of Appeals on the same matter because The Federal Circuit held that "if issues of material fact are unresolved in the pleadings, a motion for judgment on the pleadings cannot be granted." (*See J.M. Huber Corp. v. United States*, 27 Fed. Cl. 659, 661 (1993)). Shockingly, The Eleventh Circuit granted Holman judgment on the

pleadings when there were material facts in dispute of whether or not he assaulted and battered Petitioner during the course of the meeting and whether or not Petitioner sustained any injuries from the assault and battery during the course of the meeting. (*See* App. D at p. 27a).

Here, The Eleventh Circuit's decision to grant a party judgment on the pleadings when there were material facts in dispute is in conflict with the decision of another circuit court of appeals because The Federal Circuit held "[i]f issues of material fact are unresolved in the pleadings, a motion for judgment on the pleadings cannot be granted." (*See J.M. Huber Corp*, 27 Fed. Cl. at 661).

Notably, The Eleventh Circuit's actions granting a party judgment on the pleadings when there were material facts in dispute created an unnecessary circuit split of national importance because two federal circuit courts of appeals, The Eleventh and The Federal Circuits, have ruled differently on the same issue of whether a party can be granted judgment on the pleadings when there are material facts in dispute.

Furthermore, The Eleventh Circuit's actions of granting a party judgment on the pleadings when there were material facts in dispute could cause chaos throughout the federal judicial system because The Eleventh Circuit's decision goes against the guiding principle of federal rules of civil procedure 12(c) that the moving party [Holman] must show that there are no material facts in dispute (*See* App. J at p. 149a) and establish law that issues of fact are for a jury to decide when the material facts are in dispute, not the court when a jury trial is requested as in Petitioner's case.

Thus, The Eleventh Circuit's opinion that when there are material facts in dispute, the moving party is granted judgment on the pleadings is in conflict with another United States Court of Appeals on the same matter because The Federal Circuit found that if issues of material fact are unresolved in the pleadings, a motion for judgment on the pleadings cannot be granted.

The Eleventh Circuit has so far departed from the accepted and usual course of judicial proceedings because it wholesale disregarded its own binding precedent.

The Eleventh Circuit has so far departed from the accepted and usual course of judicial proceedings because it wholesale disregarded its own binding precedent that if a comparison of the averments in the competing pleadings reveals a material dispute of fact, judgment on the pleadings must be denied as to call for an exercise of this Court's supervisory power. Chiefly, The Eleventh Circuit disregarded its own binding precedent that "if a comparison of the averments in the competing pleadings reveals a material dispute of fact, judgment on the pleadings must be denied." (*See Perez v. Wells Fargo N.A.*, 774 F.3d 1329, 1335 (11th Cir. 2014)). (*see also* US Supreme Court rule 10(a)).

Importantly, The Eleventh Court departed from the accepted and usual course of judicial proceedings when it granted Holman judgment on the pleadings based on "The Georgia Workers Compensation Act [being] the exclusive remedy for injuries sustained by an employee based on intentional torts committed by a coworker..." because a comparison of the averments in the competing pleadings revealed material dispute of facts regarding whether

Petitioner sustained an injury based on Holman's assault and battery that he committed against Petitioner. (*See* App. A at pp. 8a-9a). (*see also Webster v. Dodson*, 522 S.E.2d 487, 489 (Ga. Ct. App. 1999)). (*But see* App. D at p. 27a). (*but see also Perez*, 774 F.3d at 1335). Respectfully, the "pleadings" include both the complaint and the answer. (*See* Fed. R. Civ. P. 7(a)). (*See* App. J at p. 149a).

Here, Petitioner pleaded in Petitioner's first amended complaint that Holman struck Petitioner, causing Petitioner to bleed during the course of the meeting. (*See* App. D at p. 27a). However, Holman, in his amended answer, denied striking Petitioner during the course of the meeting, and he also denied causing Petitioner's injuries during the course of the meeting. (*Id.*).

As a result of the averments in the pleadings in Petitioner's first amended complaint and Holman's amended answer revealing material facts in dispute of whether or not Holman assaulted and battered Petitioner during the course of the meeting and whether or not Petitioner sustained any injuries from the assault and battery during the course of the meeting, judgment on the

pleadings respectfully must be denied. (*See Perez,* 774 F.3d. at 1335).

Thus, the Eleventh Circuit has so far departed from the accepted and usual course of judicial proceedings because it wholesale disregarded its own binding precedent that if a comparison of the averments in the competing pleadings reveals a material dispute of fact, judgment on the pleadings must be denied as to call for an exercise of this Court's supervisory power to reverse the decision.

C. The Eleventh Circuit has so far departed from the accepted and usual course of judicial proceedings because it entered a decision in conflict with Georgia state law that governed state law torts.

The Eleventh Circuit has so far departed from the accepted and usual course of judicial proceedings because it entered a decision in conflict with Georgia state law that governed state law torts of assault and battery.

The Eleventh Court found that "Holman was not accomplishing the ends of employment when he assaulted and battered Plaintiff, citing the case of *Waters v. Steak & Ale of Georgia, Inc.*, 527 S.E.2d 592, 595 (Ga. Ct. App. 2000)." (*See* App. A at p. 7a). However, this Court has held

in binding precedent that "The broad command of *Erie* [...] federal courts are to apply state substantive law and federal procedural law." (*See Hanna v. Plumer*, 380 U.S. 460, 465 (1965)).

Here, The Eleventh Circuit has so far departed from the accepted and usual course of judicial proceedings that federal courts are to apply state precedent when dealing with state law claims such as Petitioner's claims of assault and battery because The Eleventh Circuit wholesale disregarded that Georgia state law says "[a]s a general rule, the determination of whether an employee was acting within the scope of his employment is a question for the jury [when evidence is submitted that demonstrates that the employee was acting within the course of his duties]." (*See Waters*, 527 S.E.2d at 594).

For example, Petitioner submitted overwhelming evidence that Holman was acting within the course of his duties when he struck Petitioner and caused Petitioner to bleed. First, Petitioner submitted a declaration from USMS Assistant Chief Cornelious, who declared in the relevant part, "On or around August 19, 2016, Assistant Chief

Deputy Marshal in the Northern District of Georgia, Daniel Hall, notified me that two CSOs, [Petitioner] and Michael O'Donnell, had reportedly engaged in a verbal and/or physical altercation with their supervisors, Thomas Shell and [Holman]." (*See* App. M p. 155a at ¶¶ 4-5).

Second, Petitioner submitted a letter from USMS Contracting Officer Angelica S. Spriggs (CO Spriggs), who stated in the relevant part, "On 8/18/16 LCSO [Holman] was discussing with CSO [Petitioner] his third time being late to post that week, but CSO [Petitioner] was upset and was claiming that the Daily Schedule said 8:00 am reporting for shift." (*See* App. O at p. 164a). CO Spriggs also stated in the relevant part, "This is a violation of the performance standards to not neglect duties as well as failing to follow a supervisor's order because [Petitioner] had already been spoken to by LCSO Holman on both Wednesday and Thursday about being late." (*Id.*).

Third, Petitioner submitted a letter from LCSO McLaurin, who stated in the relevant part, "The schedule was being done the way [Holman] wanted the schedule to go, and I had to change things to make the schedule flow

more consistent with the bidding of the CSOs. [Holman] changed the schedule just before he went on vacation." (*See* App L at p. 151a).

Fourth, Petitioner submitted Holman's interview transcript of an interview that was conducted by Akal where Holman was asked, based on his duties of making the weekly work schedules and role as one Petitioner's supervisor in the relevant part "Have you ever had a discussion with [Petitioner] telling [Petitioner] that [Petitioner] has to be at the loading dock post no later than 0800 every day? Holman answered No." (*See* App. Q at p. 169a).

Last, Petitioner submitted Holman's written statement where he stated in the relevant part, "I must express now that I have great concern about my safety with both of these individuals working under my supervision." (*See* App. P at p. 166a).

Furthermore, The Eleventh Circuit, departing from the accepted and usual course of judicial proceedings that federal courts are to apply state precedent when dealing with state law claims, could have a chilling effect on state

sovereignty in violation of the 10th Amendment Section 4 to the US Constitution that "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people" (*See* App. K at p. 150) because federal courts would be able to arbitrarily disregard a state's ability to write, create, and interpret its own laws.

Thus, The Eleventh Circuit has so far departed from the accepted and usual course of judicial proceedings because it entered a decision in conflict with Georgia state law that governed state law torts of assault and battery.

The issue of a federal circuit court of appeals and a district court wholesale disregarding a decision of this Court is of national importance because, in our adversarial system of adjudication the courts follow the principle of party presentation.

The issue of The Eleventh Circuit and a US district court in The Northern District of Georgia wholesale disregarding a decision of this Court is of national importance because, in our adversarial system of adjudication, the courts follow the principle of party presentation Chiefly, "[t]he general rule of long standing is that the law announced in the Court's decision controls the

case at bar." (*See Agostini v. Felton*, 521 U.S. 203, 237 (1997)).

Here, The Eleventh Circuit and the US district court have so far departed from the accepted and usual course of judicial proceedings when they cited evidence and brought forth facts that Akal, the party, did not cite nor bring forth itself of the CBA stating that "court security officers do not have full formal supervisory authority and d[id] not directly supervise other employees" because this Court has made clear that "in our adversarial system of adjudication, we follow the principle of party presentation." (*See* App A. at p. 7a). (*But see Greenlaw v. United States*, 554 U. S. 237, 243 (2008)).

Thus, the issue of the Eleventh Circuit and a US district court in The Northern District of Georgia wholesale disregarding a decision of this Court is of national importance because, in our adversarial system of adjudication, the courts follow the principle of party presentation.

D. The Eleventh Circuit has so far departed from the accepted and usual course of judicial proceedings because it failed to cite and

acknowledge the summary judgment standard in its opinion.

The Eleventh Circuit has so far departed from the accepted and usual course of judicial proceedings because it failed to cite, acknowledge, and apply the summary judgment standard in its opinion. This Court has affirmatively stated that "appellate courts look at the record on summary judgment in the light most favorable to non-movant." (*See Poller v. Columbia Broadcasting System*, 368 U.S. 464, 474 (1962)). "The correct standard requires that courts "break down" the matter and apply "the appropriate standard to each component." *(See Meridian Bank v. Alten*, 958 F.2d 1226, 1229 (3d Cir. 1992)). (*see also Accord Pullman-Standard v. Swint*, 456 U.S. 273 (1982)).

Here, The Eleventh Circuit has so far departed from the accepted and usual course of judicial proceedings because it failed to cite, apply, and acknowledge the summary judgment standard as to Petitioner as the non-moving party, in its opinion. (*See* App. A at pp. 1a-10a).

Also, The Eleventh Circuit has so far departed from the accepted and usual course of judicial proceedings

because it failed to state and view the summary judgment record in the light most favorable to Petitioner as the non-moving party and to draw all reasonable inferences in favor of Petitioner as the non-moving party. (*See Poller*, 368 U.S. at 474).

Furthermore, The Eleventh Circuit's actions of reviewing the summary judgment record most favorable to the moving parties, Akal, and the USMS and drawing all reasonable inferences in favor of Akal and the USMS as the moving parties could have a chilling effect on summary judgment decisions within the federal court system because it changes the requirements and standards of the Federal Rules of Civil Procedure 56(a) "that the moving party [Akal and the USMS] bears the burden to show that there are no material facts in dispute, not the non-moving party [Petitioner]." (*See* App. J at p. 149a).

Thus, The Eleventh Circuit has so far departed from the accepted and usual course of judicial proceedings because it failed to cite, acknowledge, and apply the summary judgment standard in its opinion.

CONCLUSION

This court should respectfully grant Petitioner's petition for a writ of certiorari and or order a GVR.

Respectfully submitted,

/s/ Marquice Robinson, PhD., LLM., JD., MSCJ

October 15, 2024