No. 24-5781

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 REHEARING

Marquice Robinson
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Corporate Disclosure

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.

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PETITION FOR REHEARING

Petitioner Marquice Robinson (Petitioner) petitions for rehearing of this Court's December 9, 2024, Order denying Petitioner's petition for a writ of certiorari.

REASONS FOR GRANTING REHEARING

This Court's Rule 44.2 authorizes a petition for rehearing based on "intervening circumstances of a substantial . . . effect."

On December 2, 2024, while Petitioner's petition for a writ of certiorari was pending in this Court, The Eleventh Circuit Court of Appeals (The Eleventh Circuit) issued one opinion that demonstrated an intervening circumstance of a substantial effect because it (1) changed its position by acknowledging and affirming that it reviews the district court's judgment on summary judgment de novo and (2) continues to confuse the requirements of the 12(b)(6) motion to dismiss and 12(c) motion for judgment on the pleadings that warrants clarification from this Court. (*See Nehme v. Florida International University Board of Trustees,* No. 22-13945 __ F.4th __ | 2024 WL 4926195

(11th Cir. 2024)). (*See Stanton v. Larsh*, 239 F.2d 104 (5th Cir. 1956); *Perez v. Wells Fargo N.A.*, 774 F.3d 1329 (11th Cir. 2014)).

1. **This Court should grant a rehearing because The Eleventh Circuit recently acknowledged in a published opinion that it reviews the district court's judgment on summary judgment de novo.**

This Court should grant a rehearing because of the intervening circumstances of a substantial . . . effect that The Eleventh Circuit recently changed its position by acknowledging in a published opinion while Petitioner's petition was pending in this Court that it reviews the district court's judgment on summary judgment de novo, viewing the evidence in the light most favorable to the non-moving party and drawing all inferences in the non-moving party's favor. (*See Nehme,* __ F.4th at 8).

In *Nehme,* The Eleventh Circuit unequivocally changed its position by acknowledging and affirming that it reviews the district's court judgment on summary judgment de novo. (*Id.*). For example, it stated,

> "We review the district court's grant of summary judgment de novo, viewing the evidence in the light most favorable to Nehme and drawing all inferences in his favor. Pizarro v. Home Depot, Inc., 111 F.4th

> 1165, 1172 (11th Cir. 2024). Summary judgment is appropriate if "there is no genuine dispute as to any material fact" such that Florida International University is "entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a)." (*See Nehme,* __ F.4th at 8).

Unlike in this case, The Eleventh Circuit did not affirm and acknowledge that it reviews the district court's judgment on summary judgment de novo and that Petitioner was the non-moving party. (*See* App. A at pp. 1a-10a).

Also, in *Nehme,* The Eleventh Circuit viewed the evidence most favorable to the non-moving party because it provided a non-conclusory analysis applying the facts of the case to the law. For instance, "The medical school's handbook is plain: a student on probation may be recommended for dismissal" if her academic performance does not improve." (*See Nehme,* __ F.4th at 10).

Unlike in this case, The Eleventh Circuit viewed the evidence most favorable to the moving parties because it provided a conclusory analysis throughout its opinion. For example, The Eleventh Circuit stated, "[Petitioner] provided insufficient evidence to show that Holman was acting in furtherance and within the scope of his

employment when he struck [Petitioner]. (*See* App. A at p. 7a). Importantly, The Eleventh Circuit did not explain how or why the evidence was insufficient. (*Id.*).

Furthermore, 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)). Notably, "the correct standard requires that courts "break down" the matter and apply "the appropriate standard to each component." (*See Accord Pullman-Standard v. Swint*, 456 U.S. 273 (1982)).

Here, this Court should grant a rehearing because of an intervening circumstance of a substantial . . . effect that The Eleventh Circuit recently changed its position by acknowledging in a published opinion that it reviews the district court's judgment on summary judgment de novo, it viewed the evidence in the light most favorable to the non-moving party drawing all inferences in its favor, and that summary judgment is appropriate if there is no genuine dispute as to any material fact. (*See Nehme,* __ F.4th at 8).

However, in this case, The Eleventh Circuit did not

acknowledge that it reviewed the district court's judgment on summary judgment de novo, it viewed the evidence in the light most favorable to the non-moving party, drawing all inferences in its favor, and that summary judgment is appropriate if there is no genuine dispute as to any material fact. (*See* Pet. at pp. 9-25).

For example, in this case, Petitioner demonstrated that there is a disputed material fact of whether the changing of Petitioner's contractually shift-bidded work schedule that was governed by a Collective Bargaining Agreement is an adverse employment action that satisfies the second element to establish a prima facie case of retaliation under Title VII of the Civil Rights Act of 1964 as amended in line with this Court's decision on what constitutes an adverse employment held in *Burlington.* (*See* Pet. at pp. 9-12). (*see also Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006) (holding that "an adverse employment action is one that "well might have dissuaded a reasonable worker from making or supporting a charge of discrimination")).

Also, this court held in *Burlington* "[t]o determine

whether the shift change had a materially adverse effect, we consider the totality of circumstances judged from the perspective of a reasonable person in the plaintiff's position." (*Id.* at 71). As a result, The Eleventh Circuit should have reversed the district court's Order on summary judgment and remanded the case.

Thus, this Court should grant a rehearing because of the intervening circumstances of a substantial . . . effect that The Eleventh Circuit recently changed its position by acknowledging in a published opinion while Petitioner's petition was pending in this Court that it reviews the district court's judgment on summary judgment de novo viewing the evidence in the light most favorable to the non-moving party and drawing all inferences in the non-moving party's favor.

2. This Court should grant a rehearing because of the intervening circumstances of a substantial effect of The Eleventh Circuit's inconsistent application of a motion for judgment on the pleadings.

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[1] In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), The Eleventh Circuit adopted as precedent the decisions of the former Fifth Circuit handed down prior to October 1, 1981.

This Court should grant a rehearing because of the intervening circumstances of a substantial effect of The Eleventh Circuit's inconsistent application of the standards for a motion for judgment on the pleadings by confusing the standards with a motion to dismiss for failure to state a claim.

In *Stanton,* The Fifth Circuit Court of Appeals, when deciding the defendant's motion for judgment on the pleadings, reviewed both the complaint and answer. (*See Stanton*, 239 F.2d at 104-106). (holding that "a judgment on the pleadings alone, if sustained, must be based on the undisputed facts appearing in all the pleadings.").

Furthermore, in *Perez,* The Eleventh Circuit Court of Appeals reaffirmed that "if a comparison of the averments in the competing [Complaint and Answer] reveals a material dispute of fact, judgment on the pleadings must be denied." (*See Perez*, 774 F.3d at 1335).

However, in this case, The Eleventh Circuit essentially found that when there are material facts in dispute in the competing pleadings (i.e., Complaint and Answer), as a matter of law, the moving party is entitled to

judgment on the pleadings. (*See* App. A at pp. 7-9). (*But see* Pet. at pp. 15-20).

Here, this Court should grant a rehearing because of the intervening circumstance of a substantial . . . effect that The Eleventh Circuit has inconsistently applied the standard for judgment on the pleadings when there are material facts in dispute in the pleadings by confusing the standard with a motion to dismiss. (*See* Pet. at pp. 17-20). For example, in this case, Petitioner demonstrated there are material facts in dispute of whether or not Respondent Michael 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. (*Id.*).

As a result, The Eleventh Circuit should have reversed the district court's Order on judgment on the pleadings and remanded the case. Thus, this Court should grant a rehearing because of the intervening circumstances of a substantial effect of The Eleventh Circuit's inconsistent application of the standards for a motion for

judgment on the pleadings by confusing the standards with a motion to dismiss for failure to state a claim.

CONCLUSION

This Court should respectfully grant Petitioner's petition for rehearing.

Respectfully submitted,

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

January 27, 2025

CERTIFICATE OF A PARTY UNREPRESENTED BY COUNSEL

Pursuant to Rule 44.2, I, Petitioner Marquice Robinson, hereby certify that the petition for rehearing is restricted to the grounds specified in Rule 44.2. I further certify that the petition for rehearing is presented in good faith and not for delay.

Respectfully submitted,

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

January 27, 2025