No. ____

In the

Supreme Court of the United States

MICHAEL HORTON,
Petitioner,

v.

CAPTAIN GILCHRIST, JOHN DOE, OFFICER, RICHARD DOE, LT. THOMAS VANDA,
Respondents.

LIEUTENANT VANDER, ET. AL.,
Defendant

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

This Court's precedent is clear that federal courts "should generally not depart from the usual practice under the Federal Rules on the basis of perceived policy concerns." *Jones v. Bock*, 549 U.S. 199, 212 (2007). May federal courts implement an uncodified special report procedure that divests *pro se* prisoner litigants of discovery rights afforded them under the Federal Rules and improperly supplants Rule 56 summary judgment procedures in order to manage litigation brought by inmates alleging violations under §1983?

PARTIES TO THE PROCEEDING

Petitioners

Petitioner is Michael Horton, plaintiff and appellant below.

Defendant-Respondents

Respondents are Thomas Banda and Jody Gilchrist, defendants and appellees below.

STATEMENT OF RELATED PROCEEDINGS

Horton v. Gilchrist, et al, No. 23-13379, U.S. Court of Appeals for the Eleventh Circuit. Judgment entered February 13, 2025. Petition for Rehearing denied April 8, 2025

Horton v. Gilchrist, et al, No. 1:20-cv-00464-TFM-MU, U.S. District Court for the Southern District of Alabama. Judgment entered September 7, 2023.

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The Eleventh Circuit's denial of Mr. Horton's petition for rehearing or *en banc* rehearing is attached at App. 1. The Eleventh Circuit's panel opinion affirming the district court's judgment is reported at 128 F.4th 1221 and reproduced at App. 3. The district court's opinion is reproduced at App. 18.

JURISDICTION

The Eleventh Circuit issued its denial of Mr. Horton's petition for rehearing or *en banc* rehearing on April 8, 2025. App. 1. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Mr. Horton originally brought claims under U.S.C. §1983, alleging violations of his due process rights under the Fourteenth Amendment to the United States Constitution.

The special report procedure employed by the district court and affirmed by the Eleventh Circuit is judicially created and has no basis in statute.

STATEMENT OF THE CASE

This case centers on the use of "special reports" in prisoner litigation, an informal procedure operating outside the confines of the Federal Rules of Civil Procedure in which district courts order defendants facing claims brought by inmates to gather and submit evidence relevant to the plaintiff's claims. While the idea sounds innocuous (and perhaps even helpful) in theory, in practice defendants ordered to produce a special report are able to pick and choose the evidence they produce and often accompany their report with legal arguments seeking dismissal of plaintiff's claims. And while defendants are authorized to gather whatever evidence is helpful to their cause, the prisoner bringing the claims (typically proceeding *pro se*) is afforded no such luxury—indeed, they are likely to never have the opportunity to engage in discovery at all. Once the reports are submitted, district courts often convert them to a motion for summary judgment. Even then, the plaintiff is not permitted to engage in discovery. Instead, he must respond to the

motion and support his response with nothing more than his own affidavit or declaration. A failure to properly do so results, as here, in dismissal of his claims with prejudice. In short, the special report procedure is a flawed process that removes the protections afforded a prison litigant under the Federal Rules and places its thumb on the side of defendants facing litigation. This Court should grant cert to clarify the proper role such special reports can play in such litigation and restore to prison litigants the protections they are afforded under the Federal Rules.

I. Special Report Procedure

The special report procedure was originally devised by a special committee appointed by the Federal Judicial Center. The committee envisioned the process as a tool to help district courts assessing prison litigation in "making necessary determinations relating to in forma pauperis status, frivolity, or maliciousness." *Chapman v. Dunn*, 129 F.4th 1307, 1321 (11th Cir. 2025) (J. Jordan, concurring); *see also Johnson v. Parke*, 642 F.2d 377, 378 (10th Cir. 1981) (noting that use of special report to determine whether complaint was frivolous was proper). The committee hoped the process would also serve the additional purpose of assisting the district court "in the factual development of cases where traditional discovery may have been less efficient, less productive, or otherwise too difficult," *id.*, with the goal of "discover[ing] the defendant's version of the facts and in order to encourage

out-of-court settlements," *see* Prisoner Civil Rights Committee, *Recommended Procedures for Handling Prisoner Civil Rights Cases in the Federal Courts* 79 (Federal Judicial Center 1980).

Despite its implementation nearly fifty years ago, the special report procedure is not authorized by, or even mentioned in, the Federal Rules. There is therefore no specific procedure courts must follow in utilizing it, and the way courts use it varies greatly across the circuits. Indeed, while some courts still use special reports as originally intended—to investigate a prisoner's claims and file a factual report as part of the court's assessment under 28 U.S.C. § 1915, *see Helzer v. Michigan Dep't of Corr.*, 917 F.2d 1304 (6th Cir. 1990) (Using special report as part of frivolity assessment under 28 U.S.C. § 1915). Others order defendants file a report along with an answer or dispositive motion. *See, e.g.*, *Whitmore v. Hill*, 456 F. App'x 735, 737 (10th Cir. 2012). Still others, as here, describe the process as an "informal" one, but one that often ends with the court formally dismissing, with prejudice, an inmate's claim after *sua sponte* converting the special report to a motion for summary judgment. *See, e.g., Thomas v. Halley*, 2000 WL 362043, at *3 (S.D. Ala. Mar. 17, 2000). And in a direct departure from the procedure's original intent, the Southern District of Alabama only implements the procedure *after* conducting its initial review under 28 U.S.C. § 1915A:

[T]his court initially utilizes an informal special report proceeding in

> which prisoners or detainees allege that they have been deprived of constitutional rights. Under this special report procedure, once a complaint is reviewed pursuant to 28 U.S.C. § 1915A, the magistrate judge enters an order for [a] special report, directing the clerk of the court to send the named defendants a copy of the complaint and requesting [them] to submit a special report concerning the factual allegations made by the plaintiff in his complaint. [The] [d]efendants are also informed that they may submit their special report under oath or accompanied by affidavits so that the court may, if appropriate, consider the special report as a motion for summary judgment[.]

Id. Thus, in the Eleventh Circuit:

> [T]he special report process seems to consist of two essential elements. The first is an order issued soon after a pro se prisoner files a complaint under 42 U.S.C. § 1983 requiring the submission of a special report by the defendant. The second is the later possible *sua sponte* conversion of the special report by the magistrate judge or the district court into a motion for summary judgment by the defendant.

Chapman, 129 F.4th at 1321.

The informal nature of the special report process allows defendants to pick and choose which documents and other evidence to produce, while withholding other evidence that might be relevant to a prisoner's claims. *Id*. at 1323. And while a prisoner, often proceeding *pro se*, gets only one shot to respond to a converted special report, a defendant may get multiple bites at the apple when looking to have a plaintiff's complaint dismissed—there is no limit to the number of "supplemental reports" a court may order before converting a defendant's report to a motion for summary judgment. *See id*. at 1323 (Ordering five supplements to defendants' original special report).

II. Factual Background

On May 21, 2020, Defendants subjected Petitioner Michael Horton, an inmate at Fountain Correctional facility ("Fountain" or "prison"), to a series of three searches—the last of which was a body-cavity-strip search performed in full view of at least two female correctional officers, multiple prison officials, and several other prisoners. Mr. Horton contends that this final search was unjustified and unconstitutional, particularly given that Defendant Banda had performed a strip search on him less than half an hour earlier.

On the morning of May 21, 2020, Mr. Horton reported to his assigned post at the prison's G-Dorm barbershop, and members of the K-9 unit began a contraband search of the dorm. DE 1 at 8. Near the beginning of the search, officers entered the barbershop and searched it. *Id.* One of the officers performed a "pat" search of Mr. Horton. *Id.*, DE 46 ¶ 4. Satisfied that both Mr. Horton and the barbershop were free of contraband, the officers left and returned to G-Dorm. *Id.* at ¶ 5. Mr. Horton stayed behind in the barbershop. *Id.* Soon thereafter, Defendant Banda performed a second search of Mr. Horton, this time a full strip search. After this search, Mr. Horton remained outside his barbershop in the dorm hallway in full view of Defendants and other officers.

About twenty minutes after the first strip search (and second search overall), Mr. Horton remained standing in the doorway of the barbershop as the members of

the K-9 unit exited G-Dorm. DE 46 ¶ 4. Defendant Banda, the officer who had strip searched Mr. Horton less than half an hour earlier, asked if anyone had searched "the barber man," and the other officers responded that they hadn't. *Id.* Defendant Gilchrist then ordered Mr. Horton to get on the wall of the hallway and proceeded to pat search him. *Id.* ¶ 8. Following this search, Defendants Gilchrist and Banda decided to perform a body cavity search of Mr. Horton. *Id.* Rather than take him to a nearby restroom the prison barbershop, Defendants instructed Mr. Horton to take off all his clothes in the middle of the hallway in full view of two female correctional officers, numerous other K-9 officers, and countless inmates. *Id.* ¶ 8-11. Mr. Horton protested that it is against his religion to be nude in front of a member of the opposite sex other than his wife, but Defendants insisted that Mr. Horton remove all his clothes in the middle of the hallway and ultimately forced him to bend over, pull the cheeks of his buttocks apart, and squat and cough in front of the female officers. DE 1 at 1; DE 46 ¶ 8-11. No contraband was found in any of the three searches.

III. Procedural Background

Horton proceeding *pro se*, filed a Complaint in the United States Court for the Southern District of Alabama on September 18, 2020, naming Defendant Gilchrist as a defendant but misspelling Defendant Banda's name as "Lt. Vander".

Doc. 1. The court referred the action to a magistrate judge. Doc. 4.[1] Defendant Gilchrist waived service of the Complaint, Doc. 20, but the Court was unable to locate "Lt. Vander" due to the misspelling of his name and ordered Mr. Horton to provide the court with the correct spelling. DE 28. Mr. Horton responded by filing a Motion to Add Defendants under Fed. R. Civ. P. 21, seeking to substitute Defendant Banda for Lt. Vander and to add additional parties present at the time of the search. Doc. 31. The magistrate recommended the motion be granted as to the substitution of Defendant Banda but denied as to the additional parties. Doc. 37. The court adopted the magistrate's recommendations over Mr. Horton's objections. Doc 39.

The magistrate judge ordered Defendants Gilchrist and Banda to file Special Reports and Answers. Doc. 17. The court's order required defendants to conduct discovery and provide sworn statements from "all persons having knowledge of the subject matter of the complaint" and "interview all witnesses, including Plaintiff." *Id*. After conducting this discovery, Defendants filed special reports accompanied with legal briefing, seeking dismissal of the Complaint on several grounds,

[1] The magistrate judge initially recommended Mr. Horton's complaint be dismissed prior to service of process, contending that Mr. Horton had failed to accurately report all his prior litigation history on his motion to proceed without prepayment fees. DE 11. The magistrate judge withdrew the recommendation, however, when Mr. Horton pointed out that the Michael Horton referenced in the previous lawsuit is a different inmate who happened to have the same name. Doc. 13, Doc. 15.

including qualified immunity. Doc. 32, Doc. 42. The magistrate judge converted the Answers and Special Reports to motions for summary judgment and ordered Horton to respond. Doc. 43. Unlike Defendants, however, Mr. Horton was not authorized to engage in wide-ranging discovery. Instead, the order merely advised him that he may support his response "with, or without, supporting affidavits … or declarations." *Id*. Mr. Horton opposed the motion by filing an unsworn declaration containing additional factual allegations and case law in support of his legal theories. Doc. 46.

The magistrate judge entered a report and recommendation recommending that Mr. Horton's claims be dismissed on qualified immunity grounds. Doc. 47. Mr. Horton objected to the report and recommendation, DE 56, but the district court overruled his objections, adopted the magistrate's findings, and dismissed Mr. Horton's claims with prejudice, finding that Defendants were entitled to qualified immunity, App. at 18-20. The court entered judgment the same day. Doc. 58.

Mr. Horton appealed the district court's dismissal of his claims, arguing that under *Bank v. Pitt*, 928 F.2d 1108 (11th Cir. 1991)[2], the district court erred by dismissing his claims with prejudice without providing him the opportunity to amend his complaint. Mr. Horton further argued that even if the Panel held that

[2] Under the *Bank* rule, pro se litigants are afforded one opportunity to amend the substantive allegations in their complaint before a court dismisses it with prejudice. *See Bank v. Pitt*, 928 F.2d 1108, 1112 (11th Cir. 1991).

the *Bank* rule did not ordinarily apply in the summary judgment context, it should apply when a court employs the special report procedure because the procedure does not afford plaintiffs the same rights to discovery they would ordinarily enjoy under the Federal Rules. Instead, the procedure allows defendants to selectively collect facts in support of their arguments while affording plaintiffs no such right.

The Panel issued a 2-1 opinion affirming the district court, limiting application of the *Bank* rule to "a Rule 12(b)(6) dismissal with prejudice or the functional equivalent," and determining that the rule did not apply at either the summary judgment stage or following the special report procedure. In light of this ruling, the Panel held that district court did not err by refusing to provide Mr. Horton the opportunity to amend his Complaint before it dismissed his claims with prejudice. App at 4-5. As to Mr. Horton's arguments concerning the special report process, the Panel held that "Horton's argument misunderstands the purpose, nature, and benefits of an order requiring a special report," which the Panel described as "to require the defendants to produce evidence to the plaintiff and the court, thereby progressing litigation beyond arguments about the sufficiency of the prisoner's allegations and directly to a consideration of evidence at summary judgment or trial." App. at 11. The Panel therefore determined the process had been fair to Horton and affirmed the district court's dismissal of his claims.

Judge Wilson dissented, arguing that the district court erred by converting

Defendants' special report and answer to a motion for summary judgment and dismissing Mr. Horton's claims without affording him the opportunity to conduct discovery. App. at 15-17. While Judge Wilson agreed that the Panel's choice to not extend the Bank rule to the ordinary summary judgment context "seems like a logical restriction," he disagreed that such a rule should apply in the special report context. Noting that the case approving the use of special reports in the Circuit contained an important caveat—that the reports could not be used to "divest the [Section] 1983 plaintiff of any of the rights he enjoys under the Federal Rules of Civil Procedure." App. at 15-16 (quoting *Hardwick v. Ault*, 517 F.2d 295, 298 (5th Cir. 1975)[3], Judge Wilson cautioned that the way district courts ordinarily employ the special report procedure would do just that—it would divest *pro se* plaintiffs of their rights to discovery under the civil rules while allowing defendants to collect discovery to support their own arguments. . Indeed, while the procedure utilized by the district court not only authorized but mandated defendants "to conduct discovery and provide sworn statements and medical records," it gave Mr. Horton no such opportunity. Instead, Mr. Horton was afforded "a chance to submit [] his own affidavits to counter those of the officers." *Id*. Indeed, in contrast to the free-ranging authorization given defendants, the district court's order "does not allow the plaintiff to conduct *any* discovery or to depose the officers." *Id*. Because the

[3] Fifth Circuit precedent from before October 1, 1981 are binding in the Eleventh Circuit. *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc)

special report procedure used here allowed defendants the benefit of discovery while not allowing the same benefit to Mr. Horton, Judge Wilson "would find that the district court erred in sua sponte converting the special report to a motion for summary judgment." App. at 17.

Mr. Horton timely filed a petition for panel rehearing or for rehearing *en banc*, arguing that 1) the Panel's decision misapplied the *Bank* Rule and 2) the Panel's endorsement of the district court's use of the special report procedure ran afoul of binding precedent because it divested Mr. Horton of the right to discovery afforded him under the Federal Rules of Civil Procedure. Mr. Horton's petition was denied on April 8 2025. App. at 2.

REASONS FOR GRANTING THE PETITION

Review by this Court is necessary to ensure *pro se* litigants are afforded the rights and protections provided them under the Federal Rules of Civil Procedure. By endorsing a special report procedure that divests *pro se* plaintiffs of their rights to discovery under the Federal Rules and supplants the traditional, predictable summary judgment process, the Panel failed to follow this Court's precedent requiring that any departure from the Federal Rules be obtained by amending the Rules themselves, not by judicial fiat. *Leatherman v. Tarrant Cnty. Narcotics Intel. & Coordination Unit*, 507 U.S. 163, 168 (1993). Intervention is necessary to ensure that the implementation of the special report procedure does

not divest *pro se* litigants of the rights afforded them under the Federal Rules.

I. The Question Presented is Important and Recurring.

A. Whether courts may depart from the Federal Rules in prisoner litigation is an important and recurring issue with significant implications for inmates and prison officials.

The special report process was born of a special committee of the Federal Judicial Center's concern regarding "the burdens imposed upon the federal judicial system by the increasing volume of prisoner litigation." *Hardwick*, 517 F.2d at 298. While this Court has deemed such concerns "understandable," it has cautioned that federal courts "should generally not depart from the usual practice under the Federal Rules on the basis of perceived policy concerns." *Jones v. Bock*, 549 U.S. 199, 212 (2007). Indeed, a departure from the Federal Rules "must be obtained by the process of amending the Federal Rules, and not by judicial interpretation." *Leatherman*, 507 U.S. at 168. Yet the process endorsed by the Eleventh Circuit takes the opposite road—it finds no basis in the Federal Rules and departs significantly from the protections afforded under them. *See Chapman*, at 1320 (J. Jordan concurring) (Stating that the special report process "has morphed into an opaque pseudo-summary-judgment mechanism which improperly supplants the Rule 56 procedures and often leaves prisoners holding the short end of the discovery stick.").

When federal courts have previously ignored this caution and endorsed

procedures that departed from the Federal Rules, this Court has granted cert and reversed them—including when the justification for the departure was the need to expedite adjudication of prisoner litigation. In *Jones*, the Court considered Sixth Circuit rules designed to "facilitate early judicial screening" of claims brought under the Prison Litigation Reform Act ("PLRA"). *Jones*, 549 U.S. at 202-03. The rules at issue "required a prisoner to allege and demonstrate exhaustion in his complaint [rather than be raised by defendants as an affirmative defense] … and require[d] courts to dismiss the entire action if the prisoner fails to satisfy the exhaustion requirement as to any single claim in his complaint." *Id.* at 203. The Sixth Circuit contended that to effectively and efficiently screen claims brought by prisoners under the PLRA, "prisoner complaints must be treated outside of th[e] typical framework" mandated by the Federal Rules. *Id.* at 213.

This Court disagreed, holding that while it understood the policy reasons for the Sixth Circuit's departure from the Federal Rules, "that effort cannot fairly be viewed as an interpretation of the PLRA." *Id.* at 216. The Court reasoned that "[t]he PLRA dealt extensively with the subject of exhaustion … but was silent on the issue whether exhaustion must be pleaded by the plaintiff or is an affirmative defense." *Id.* at 212. Because Congress had not mandated a heightened pleading requirement under the PLRA, "the usual practice should be followed, and the usual practice under the Federal Rules is to regard exhaustion as an affirmative defense."

Id.

Jones is not the only instance in which this Court has reversed a circuit's attempt to depart from the Federal Rules with no statutory authority to do so. In *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S. 163 (1993), the Court unanimously reversed the Fifth Circuit's imposition of a heightened pleading standard in § 1983 suits against municipalities. The Court explained that "[p]erhaps if [the] Rules ... were rewritten today, claims against municipalities under § 1983 might be subjected to the added specificity requirement .... [b]ut that is a result which must be obtained by the process of amending the Federal Rules, and not by judicial interpretation." *Id*., at 168. This Court ruled likewise in *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506 (2002), unanimously reversing the Second Circuit for requiring employment discrimination plaintiffs to specifically allege the elements of a prima facie case of discrimination, holding that "the Federal Rules do not contain a heightened pleading standard for employment discrimination suits," and that implementing such a requirement would require amending the Federal Rules. *Id*., at 515. And in *Hill v. McDonough*, 547 U.S. 573 (2006), the Court unanimously rejected an Eleventh Circuit rule mandating § 1983 plaintiffs challenging a method of execution to identify an acceptable alternative. *Id*. at 582.

The Eleventh Circuit's special report procedure follows the same pattern as

those earlier cases—it allows marked departure from the Federal Rules while lacking any statutory authority for doing so. First, it authorizes (and even mandates) discovery for one party (state prison officials) while not affording the same opportunity to the prison litigant (like here, often proceeding *pro se*). *Compare* DE 17 (authorizing defendants to conduct discovery, provide sworn statements from "all persons having knowledge of the subject matter of the complaint" and "interview all witnesses, including Plaintiff") with DE 43 (only authorizing Mr. Horton to respond to converted motions for summary judgment with sworn affidavits and declarations). And the process does not even require that the defendants provide all documents responsive to the factual assertions present in the Complaint; they are free to "provide only the documents and information that they have cherry-picked while withholding relevant discovery." *Chapman*, 129 F.4th at 1323 (J. Jordan, concurring). The process therefore eviscerates the protections ordinarily afforded litigants under the Federal Rules. That it does so exclusively to *pro se* litigants only compounds the error.

Second, the informal, uncodified nature of the special report process also allows district courts to supplant ordinary summary judgment procedures under Rule 56. . The Eleventh Circuit's recent *Chapman* decision provides a stark example. In *Chapman*, like here, the Middle District of Alabama ordered a special report be prepared in response to a prisoner's § 1983 claim. 129 F4th at 1324-25 (J.

Jordan concurring). As described by Judge Jordan in his concurrence, what followed the court's order "turn[ed] the traditional model of adversarial civil litigation on its head." *Id*. at 1323. Multiple defendants missed the deadline for filing special reports by over a month, only filing then after receiving a show cause order. *Id*. at 1325. When they did file their reports, the defendants ignored the court's order concerning the documents they were to provide, instead providing only what they "had unilaterally decided to turn over." *Id*. at 1326. Instead of providing the court-ordered documents, defendants used the special report to raise a number of "frivolous" summary judgment arguments. *Id*. Rather than simply denying the motions and compelling the defendants to respond to plaintiff's discovery requests and proceed to trial (as would happen under the Federal Rules), the court ordered defendants to supplement their reports with additional facts and argument *five* times, before finally converting the reports to a motion for summary judgment and dismissing the case with prejudice. *Id*. at 1328.[4] As Judge Jordan summarized it, in contrast to "a normal Rule 56 setting" the informal nature of the special report process allowed the court to "continue to order and reorder [supplemental reports] … in the hopes that each individual submission might be enough to prevail [at] …

[4] The district court's decision in *Chapman* was reversed, not because of the special report process, but rather because the court failed to follow Circuit precedent in determining if certain claims were time-barred and failed to give plaintiffs sufficient time to respond to defendants' converted motions for summary judgment. *Id*. at 1319.

summary judgment." *Id.* at 1328-29.

Both this case and *Chapman* show the dangers of "depart[ing] from the usual practice under the Federal Rules on the basis of perceived policy concerns." *See Jones*, 549 U.S. at 212. Those dangers are amplified because of the very policy concern that led to creation of the special report process in the first place. In Alabama alone, district courts issued 45 opinions relying on the special report procedure in 2023. Under the circuit's now binding precedent, those courts are now authorized to implement summary judgment and discovery procedures not allowed under the Federal Rules, to the detriment of *pro se* litigants like Mr. Horton. Such procedures cannot be squared with this Court's binding precedent prohibiting such departures from the Federal Rules.

B. The Special Report Process is Implemented Differently Across Circuits.

In addition to inviting courts to run afoul of this Court's precedent, because the Special Report procedure is not codified in the Federal Rules, its implementation varies greatly across the circuits. As noted above, some courts, including those in the Sixth Circuit, still use special reports as originally intended—to investigate a prisoner's claims and file a factual report as part of the court's assessment under 28 U.S.C. § 1915, *see Helzer v. Michigan Dep't of Corr.*, 917 F.2d 1304 (6th Cir. 1990) (Using special report as part of frivolity assessment under 28

U.S.C. § 1915). Others, including courts in the Tenth Circuit, order defendants file a report along with an answer or dispositive motion. *See, e.g.*, *Whitmore v. Hill*, 456 F. App'x 735, 737 (10th Cir. 2012). Still others, including the Eleventh and Ninth Circuits, authorize courts to treat the special report as a motion for summary judgment and dismiss plaintiff's claims on with prejudice. *See, e.g., Thomas v. Halley*, 2000 WL 362043, at *3 (S.D. Ala. Mar. 17, 2000); *Aycox v. Marshall*, 1993 WL 197457, at *1 (N.D. Cal. May 27, 1993) (Treating special report as a motion for summary judgment under Rule 56).

In sum, the informal nature of the special report procedure has resulted in myriad ways of implementing the process in district courts across the country. Indeed, as Judge Jordan observed in *Chapman*, the lack of codification outlining the procedure to be followed results in courts simply implementing the special report procedure "*ad hoc* and the particulars can therefore vary from one judge to another. As a result, *pro se* prisoners and the defendants they sue have no advance notice of the process that will govern their case, and they learn about it only during the course of litigation." 129 F4th at 1323. This is a far cry from the "comprehensive, stable, and relatively predictable procedural architecture for the conduct of litigation in the nation's Article III courts" provided by the Federal Rules. *Id*. at 1322. *Pro se* litigants deserve better. This Court should grant cert to clarify that implementation of the special report procedure should not divest *pro se* litigants of

the rights afforded them under the Federal Rules.

CONCLUSION

Petitioner respectfully requests this Court grant this petition for writ of certiorari.

Respectfully submitted,

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