

# CREED & GOWDY

AN APPELLATE LAW FIRM

865 May Street, Jacksonville, Florida 32204

Rebecca Bowen Creed\*  
Bryan S. Gowdy\*  
Meredith A. Ross  
Dimitri A. Peteves  
D. Gray Thomas\*, *of counsel*  
Thomas A. Burns\*, *of counsel*

(904) 350 0075 Telephone  
(904) 503 0441 Facsimile  
www.appellate-firm.com

\* Board Certified as Appellate Specialist by The Florida Bar

May 20, 2021

***Submitted via The Supreme Court's Electronic Filing System***

The Honorable Scott. S. Harris, Clerk  
United States Supreme Court  
1 First Street, NE  
Washington, D.C. 20543

**Re: *Gianinna Gallardo v. Simone Marsteller, In Her Official Capacity as Secretary of the Florida Agency for Health Care Administration, Case No. 20-1263***

**Response to Respondent's Extension Request**

Dear Mr. Harris:

Based on an already granted 45-day (unopposed) extension, the response in this matter is due May 27, 2021. The petitioner, Ms. Gallardo, opposes respondent's request, dated today, for an additional 60-day extension, which, if granted, would allow the response to be filed on July 26, 2021. The petitioner opposes because, as a practical matter, the extension will prevent the Court from considering the petition at a June conference and instead will compel consideration at the September conference.

Petitioner believes that the Court would appreciate the opportunity to consider this petition in June as it attempts to fill its calendar for the fall. The case involves a direct and acknowledged conflict between the Eleventh Circuit and the Florida Supreme Court (and other state courts of last resort) on an issue of federal Medicaid law that has repeatedly required the Court's intervention to resolve conflicts. If the extension is denied, then petitioner waives the 14-day waiting period so the petition and any response may be promptly distributed on June 1st for the Court's consideration at its June 17th conference. *See* Sup. Ct. R. 15.5.

Respondent is the Florida Agency for Health Care Administration. It has ample resources and has had abundant time to prepare a response. In the Eleventh Circuit, the agency was represented by Gray Robinson, a private law firm with fifteen offices. In October 2020, petitioner notified the agency that she intended to petition for certiorari, as the attached letter from the agency's private counsel indicates. In December 2020 and January 2021, the undersigned counsel communicated multiple times with the agency's private counsel—by phone and email—to discuss whether the agency might acquiesce to the petition because it would be in the agency's interest to

have the conflict between the Florida Supreme Court and the Eleventh Circuit resolved. Ultimately, however, the agency did not commit to acquiescing, and the undersigned counsel proceeded to draft the petition on the assumption it would be opposed. Though the deadline for the petition was March 19, 2021, the petitioner filed it ten days earlier on March 9th, with the expectation that, if the respondent obtained one 30-day extension, the Court would consider the petition before its summer recess.

After the petition was filed, the agency's in-house counsel notified the undersigned counsel that the Florida Solicitor General would be representing the agency in this Court. The undersigned counsel could not have assumed this representation because Florida sometimes retains private counsel for matters in this Court. *See, e.g., Florida v. Jardines*, 569 U.S. 1 (2013). In mid-March, the Florida Solicitor General's office contacted the undersigned counsel and requested a 60-day extension for the reasons stated in the respondent's March 24th letter to this Court—that is the office had “multiple pressing deadlines with limited staff assistance,” and the attorney handling the matter, Kevin Golembiewski, was “just returning from parental leave” after the birth of a child. In discussing this initial extension request with Mr. Golembiewski by phone, the undersigned counsel stated that the petitioner wanted the petition considered at a June conference, and he sent Mr. Golembiewski a detailed email outlining when the petition would be considered at conference based on various response dates. As a result of these telephone and email communications, Mr. Golembiewski wrote the undersigned counsel, “Our plan is to request a 45-day extension, rather than 60, with an eye towards filing in time for the June conferences.” At no time during these March discussions was there any mention of the possibility of a second extension request because of imminent personnel changes in the Florida Solicitor General's office.

The Florida Solicitor General's office is part of the Florida Attorney General's office, and according to that office's website, the “majority” of its 1300 employees are attorneys. The respondent's letter does not state that Mr. Golembiewski—the attorney handling this matter—is leaving the Solicitor General's office. It merely states that the Solicitor General “is leaving” the Attorney General's office—at some unspecified time—and that the Chief Deputy is “transitioning” to a new position within the Attorney General's office—also at some unspecified time. Furthermore, the letter fails to specify when the new Solicitor General and Chief Deputy will begin their employment or assume responsibility for this case.

For all these reasons, petitioner requests that the respondent's extension request be denied. If it is denied, petitioner waives the 14-day waiting period so the petition and any response may be promptly distributed on June 1st for the Court's consideration at its June 17th conference.

Respectfully Submitted,

s/Bryan S. Gowdy  
Bryan S. Gowdy  
*Counsel of Record*

cc: James H. Percival  
*Counsel of Record*

October 30, 2020

**Sent Via Email**

Bryan S. Gowdy  
Creed & Gowdy, P.A.  
865 May Street  
Jacksonville, Florida 32204  
bgowdy@appellate-firm.com

Re: *Gallardo* Appeal

Dear Bryan:

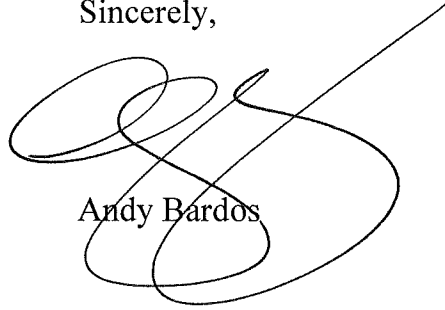
I write to confirm our recent discussions.

It is my understanding that your client, Gianinna Gallardo, intends to petition the United States Supreme Court to review the Eleventh Circuit's decision in *Gallardo v. Dudek*, 963 F.3d 1167 (11th Cir. 2020). It is also my understanding that the DOAH proceeding initiated on Ms. Gallardo's behalf pursuant to section 409.910(17)(b), Florida Statutes, which the administrative law judge initially placed in abeyance when Ms. Gallardo filed her federal-court action, was closed in December 2016 and has remained closed ever since. *See Gallardo v. State of Florida, Agency for Health Care Admin.*, No. 15-006960MTR (Fla. DOAH filed Dec. 8, 2015).

AHCA has authorized me to represent that it will not seek to reopen the DOAH proceeding before the conclusion of certiorari proceedings in the United States Supreme Court. AHCA does not waive any other rights and specifically reserves the right to reopen the DOAH proceeding if Ms. Gallardo does not timely file a petition for writ of certiorari, or upon conclusion of certiorari proceedings in the United States Supreme Court. In light this agreement, your client has agreed not to seek to stay, recall, or otherwise interrupt the efficacy of the Eleventh Circuit's mandate. Your client has also agreed, as Florida law requires, to maintain the third-party benefits at issue in these proceedings in an interest-bearing trust account pending DOAH's determination of AHCA's right to the benefits under section 409.910(17).

Please confirm your agreement, and thank you for your cooperation.

Sincerely,

A handwritten signature in black ink, consisting of several overlapping loops and a long, sweeping line that extends upwards and to the right.

Andy Bardos