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In the
Supreme Court of the United States

JEREMY BATES, *derivatively on behalf of
the United States of America,*

Applicant,

v.

DONALD J. TRUMP, *in his personal capacity, and the
UNITED STATES OF AMERICA,*

Respondents.

**Application for Extension of Time Within Which
To File a Petition for a Writ of Certiorari to the
United States Court of Appeals for the Second Circuit**

Jeremy Bates
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*Applicant pro Se,
derivatively
on behalf of the
United States of America*

April 12, 2022

To The Honorable Sonia Sotomayor, A.J.U.S., as Circuit Justice for the United States Court of Appeals for the Second Circuit:

Pursuant to this Court's Rules 13.5, 22, 30.2 and 30.3, Petitioner *pro Se* Jeremy Bates, derivatively on behalf of the United States of America, respectfully requests that his time to file a Petition for a Writ of Certiorari be extended 60 days, to and including July 15, 2022. The Second Circuit issued its Summary Order and Judgment on February 15, 2022. (App. 1.) Absent an extension, the petition is due on May 16, 2022. Petitioner files this Application over a month before that date.

The Court's jurisdiction rests on 28 U.S.C. § 1254(1).

On April 4, 2022, Bates informed Department of Justice ("DOJ") attorneys by e-mail that he would request a 60-day extension. On April 7, 2022, Bates e-mailed DOJ attorneys a draft of this Application. On April 11, 2022, Bates e-mailed them a near-final version. DOJ has yet to indicate any position.

Respondent Donald J. Trump was not served successfully in the district court. He was not a party, and he did not appear, in either court below.

Background

In January 2021, Bates sued then-President Trump in his individual capacity in Supreme Court, New York County. Bates did this derivatively on behalf of the United States. Bates alleged one claim: breach of fiduciary duty to the United States. Among other things, Bates alleged that then-President Trump had extorted Ukraine, obstructed justice, lied about covid, and incited the January 6 attack on the Capitol. Bates demanded four types of damages, all for the United States.

Bates named the United States as the Nominal Defendant. DOJ appeared and removed the case to the Southern District of New York.

Attempts to serve Respondent Trump were blocked by the U.S. Secret Service. Bates moved for special service. That motion was terminated when the district court (The Honorable Lewis Kaplan, U.S.D.J.) granted DOJ's motion.

DOJ moved to dismiss for lack of standing and lack of authority to sue. The district court granted the motion because "plaintiff lacks standing to sue on behalf of the United States substantially for the reasons advanced by the government."

On appeal, the Second Circuit affirmed for lack of Article III standing. App. 3. The Second Circuit also held statutorily that "Bates cannot assert standing to sue on behalf of the United States." App. 4. In so holding, the Court of Appeals relied on 28 U.S.C. § 516. (Section 516 centralizes much litigation conduct in DOJ. Section 516 will be the subject of a second question presented.)

Additionally, App. 4, the Court of Appeals also relied on 28 U.S.C. § 518:

We [] conclude that [Bates] cannot assert any standing the United States may have to sue. *See, e.g., Fed. Election Comm'n v. NRA Pol. Victory Fund*, 513 U.S. 88, 92 n.1, 92–94 (1994) (rejecting the FEC's asserted power to pursue litigation in the Supreme Court absent statutory authorization that would except it from 28 U.S.C. § 518(a)).

Expecting to file a petition, Bates makes this Application. Candidly, he does not do so because he needs more time. Bates expects to file the petition next week.

Rather, out of an abundance of caution, Bates requests this extension so as to obviate any issue that § 518(a) might be thought to generate.

Reasons for Granting This Application

Section 518 provides that “the Attorney General and the Solicitor General shall conduct and argue suits and appeals in the Supreme Court... in which the United States is interested.” 28 U.S.C. § 518(a).

Section 518(a) itself is not jurisdictional, but this Court’s 90-day rule is jurisdictional. In *FEC*, these two provisions interacted jurisdictionally to prevent the Solicitor General from retroactively allowing the FEC to proceed in this Court, after the FEC had petitioned for certiorari with two days left. 513 U.S. at 92–94.

With this Application, Bates seeks to prevent any similar outcome here. (Bates does not concede that § 518 applies to this case.)

If and when required, Bates has options to address § 518. Several of these options, however, raise issues that resemble merits matters under the second question he will present. These resemblances are reason enough to grant this Application, so that the Court may consider § 516 and § 518 together.

For example, Bates will argue that the corporate-neutrality rule should bar DOJ from invoking § 516 on behalf of the neutral Nominal Defendant in this derivative case. The same goes for § 518. Bates might raise this point by motion.

Bates will argue that the power to allow derivative actions is an inherent power, not defeated by § 516. The same goes for § 518. This argument has particular strength in this Court, the inherent powers of which may not be subject to any statutory limitation. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 47 (1991) (stating that “exercise of the inherent power of *lower* federal courts can be limited

by statute” because inferior federal courts, unlike this Court, are congressional creations) (*italics added*). Bates might raise this point by motion.

Similarly, Bates will argue that derivative actions are equitable remedies, not limited by § 516. The same goes for § 518. Another possible motion point.

DOJ also has options. If § 518 applies here, then the Attorney General may “direct[] otherwise” and allow Bates to conduct his case in this Court. 28 U.S.C. § 518(a). DOJ has not indicated whether such direction will be given.

Of course the Court has options. This Court could obviate any § 518 issue by appointing, if necessary, an *amicus curiae* to argue Bates’s case.

All of these are possibilities. For now, Bates merely requests an extension. This way, after he files, the Court, the Respondents, and Bates will have more time, if needed, to evaluate and handle any § 518 issue that the petition might raise.

Conclusion

This Application should be granted.

Respectfully submitted,

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Petitioner pro Se,
derivatively
on behalf of the
United States of America

Dated: New York, New York
April 12, 2022

21-1533
Bates v. Trump

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

1 At a stated term of the United States Court of Appeals for the Second Circuit,
2 held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of
3 New York, on the 15th day of February, two thousand twenty-two.
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5 **PRESENT:**

6 **MICHAEL H. PARK,**
7 **WILLIAM J. NARDINI,**
8 **MYRNA PÉREZ,**
9 *Circuit Judges.*

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12 **JEREMY BATES, derivatively on behalf of the**
13 **UNITED STATES OF AMERICA,**

14 *Plaintiff-Appellant,*

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17 v.

21-1533

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19 **DONALD J. TRUMP, in his personal capacity,**
20 **UNITED STATES OF AMERICA,**

21 *Defendants-Appellees.*
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23 _____

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25 **FOR PLAINTIFF-APPELLANT:**

Jeremy Bates, pro se, New York, NY.

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27 **FOR DEFENDANTS-APPELLEES:**

Brandon H. Cowart, Benjamin H.
Torrance, Assistant United States
Attorneys, *for* Audrey Strauss, United
States Attorney for the Southern District
of New York, New York, NY.

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1 Appeal from a judgment of the United States District Court for the Southern District of
2 New York (Kaplan, *J.*).

3 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND**
4 **DECREED** that the judgment of the district court is **AFFIRMED**.

5 Jeremy Bates, an attorney proceeding pro se, filed a lawsuit in January 2021 against then-
6 President Donald J. Trump in New York state court, naming Trump in his personal capacity and
7 the United States as the “nominal defendant.” Styling the action as one akin to a derivative lawsuit
8 in corporate law—and claiming that being a citizen and taxpayer was akin to being a shareholder—
9 Bates asserted that President Trump had breached a fiduciary duty to the country and requested
10 money damages and equitable relief on behalf of the United States. The government removed the
11 action to the United States District Court for the Southern District of New York under 28 U.S.C.
12 §§ 1441(a), 1442(a). It then moved to dismiss the complaint for lack of standing and failure to
13 state a claim, arguing that Bates could not show that he suffered a concrete and particularized
14 injury to himself and that he could not sue on behalf of the United States. The district court granted
15 the motion to dismiss, endorsing the government’s memorandum of law accompanying its motion.
16 Bates appealed. We assume the parties’ familiarity with the underlying facts, the procedural
17 history of the case, and the issues on appeal.

18 When a challenge to standing under Federal Rule of Civil Procedure 12(b)(1) is based
19 solely on the pleadings, we accept as true all factual allegations in the complaint. *Carter v.*
20 *HealthPort Techs., LLC*, 822 F.3d 47, 56–57 (2d Cir. 2016). Our review is de novo. *Id.*

21 To establish standing, a plaintiff must at a minimum allege that he has suffered an “injury
22 in fact that is concrete, particularized, and actual or imminent.” *TransUnion LLC v. Ramirez*, 141
23 S. Ct. 2190, 2203 (2021). For an injury to be particularized, the challenged conduct “must affect

1 the plaintiff in a personal and individual way,” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 n.1
2 (1992), rather than merely implicating “a general interest common to all members of the public,”
3 *Lance v. Coffman*, 549 U.S. 437, 440 (2007) (citation omitted). This requirement “avoid[s] having
4 the federal courts serve as merely publicly funded forums for the ventilation of public grievances.”
5 *Baur v. Veneman*, 352 F.3d 625, 632 (2d Cir. 2003) (cleaned up).

6 Bates has failed to establish a concrete, particularized injury sufficient for Article III
7 standing. Bates seeks relief for alleged injuries caused by President Trump to the United States.
8 To the extent that Bates has suffered any such injuries, it is only in his capacity as one of the
9 nation’s millions of “Citizen-Taxpayers.” Appellant’s Br. at 46. Bates thus asks us to contravene
10 the Supreme Court’s instruction in *Lujan*:

11 [A] plaintiff raising only a generally available grievance about government—
12 claiming only harm to his and every citizen’s interest in proper application of the
13 Constitution and laws, and seeking relief that no more directly and tangibly benefits
14 him than it does the public at large—does not state an Article III case or
15 controversy.

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17 504 U.S. at 573–74. Indeed, Bates concedes on appeal that he lacks a “direct, particularized injury-
18 in-fact to himself, as an individual.” Appellant’s Br. at 5.

19 Moreover, Bates cannot assert standing to sue on behalf of the United States. Federal law
20 generally grants the authority to bring litigation on behalf of the United States only to the
21 Department of Justice under the direction of the Attorney General. *See* 28 U.S.C. § 516 (“Except
22 as otherwise authorized by law, the conduct of litigation in which the United States, an agency, or
23 officer thereof is a party . . . is reserved to officers of the Department of Justice, under the direction
24 of the Attorney General.”); *United States v. San Jacinto Tin Co.*, 125 U.S. 273, 279–80 (1888)
25 (“There must . . . be an officer or officers of the government to determine when the United States
26 shall sue, to decide for what it shall sue, and to be responsible that such suits shall be brought in

1 appropriate cases. . . . In all this, . . . the attorney general acts as the head of one of the executive
2 departments, representing the authority of the president in the class of subjects within the domain
3 of that department, and under his control.”). Bates points to no statutory exception to section 516’s
4 requirements that would apply to his case. We thus conclude that he cannot assert any standing
5 the United States may have to sue. *See, e.g., Fed. Election Comm’n v. NRA Pol. Victory Fund*,
6 513 U.S. 88, 92 n.1, 92–94 (1994) (rejecting the FEC’s asserted power to pursue litigation in the
7 Supreme Court absent statutory authorization that would except it from 28 U.S.C. § 518(a)).

8 We have considered all of Bates’s remaining arguments and find them to be without merit.
9 We thus **AFFIRM** the judgment of the district court.

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FOR THE COURT:
Catherine O’Hagan Wolfe, Clerk of Court


