

NO.

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IN THE  
SUPREME COURT OF THE UNITED STATES

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DAWUD C.S. GABRIEL,  
Petitioner,

v.

WINDY HILL FOLIAGE INC.,  
Respondent.

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To the Attention  
of

The Honorable Associate Justice  
Clarence Thomas

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On Petition for Writ of Certiorari To  
The United States Court of Appeals  
For the Eleventh (11<sup>th</sup>) Circuit  
(Eleventh (11th) Cir. Case No. 21-12901)

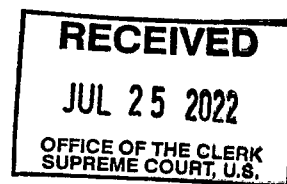
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Petitioner's Application for Relief-  
Motion for an Extension  
To File  
Petition for Writ of Certiorari

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Dawud C.S. Gabriel  
Non-Attorney, Pro Se Petitioner  
1307 Thurston Avenue  
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ORIGINAL COPY



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**PETITIONER'S APPLICATION FOR RELIEF-  
MOTION FOR AN EXTENSION TO FILE PETITION FOR WRIT OF CERTIORARI**

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**I. INTRODUCTION**

July 18, 2022

Pursuant to 28 U.S.C. § 2101(c), S.Ct.R.13.5, & S.Ct.R.30.2, Petitioner **DAWUD C.S. GABRIEL** ("Gabriel") motions the Court for an extension to file a petition for Writ of Certiorari, to request the US Supreme Court to review the June 24, 2022, Judgment of the Eleventh (11th) Cir. Court of Appeals [Ex. A]. Gabriel request the Court to extend the time until November 21, 2022, for reason that he lacks the financial means to file a petition that requires him to file an appendix, that may very well consist of over 7000 pages. For such good cause reason, the Court should grant Gabriel's request for relief and extend the time to November 21, 2022, to file a petition for Writ of Certiorari.

**II. RELEVANT PROCEDURAL HISTORY**

1. On July 6, 2020, Gabriel timely filed a Charge of Discrimination ("Charge") against the Respondent **WINDY HILL FOLIAGE INC.** ("Windy Hill") with the Government's Equal Employment Opportunity Commission ("EEOC") (EEOC Case No. 510-2020-04516) for violations of 42 U.S.C. § 12112(a), pursuant to 42 U.S.C. §§ 12117 & 2000e-5(e)<sup>1</sup>. See District Court's ("D.C.") DE 01, Pg. 194-196.
2. On January 29, 2021, the EEOC issued Gabriel a Right-to-Sue letter, to file civil action in US district court for the allegations therein the Charge, in the case of Gabriel v. Windy Hill Foliage Inc., EEOC Case No. 510-2020-04516. 42 U.S.C. § 2000e-5(f)(1)<sup>2</sup>. See D.C. DE 01, Pg. 198.
3. On April 21, 2021, Gabriel timely filed civil action (Case no. 2:21-CV-14177) against Windy Hill in US District Court for the Southern District of Florida<sup>3</sup> ("US District Court-F.L.S.D."), for the allegations therein the Charge related to the case of Gabriel v. Windy Hill Foliage Inc., EEOC Case No. 510-2020-04516. 42 U.S.C. § 2000e-5(f)(1)<sup>4</sup>. See D.C. DE 01, Pg. 1-198.
4. On April 21, 2021, the Honorable US District Judge Aileen Cannon ("Judge Cannon") was assigned to preside over this matter. See D.C. DE 02.

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<sup>1</sup> Basis for District Court's jurisdiction.

<sup>2</sup> Basis for District Court's jurisdiction.

<sup>3</sup> US District Court-F.L.S.D. had subject-matter jurisdiction to hear Gabriel's claims because the allegations therein the Charge occurred within the State of Florida. 42 U.S.C. § 2000e-5(f)(3).

<sup>4</sup> Basis for District Court's jurisdiction.

5. On June 7, 2021, Gabriel filed the Amended Complaint (printed on over **2,900 pages**), that consisted of **820 claims**, valued at \$82 million<sup>5</sup>. See D.C. DE 17, 17-1 through 17-11.
6. On July 8, 2021, service of the summons [D.C. DE 13] and the Amended Complaint was processed on Windy Hill. See D.C. DE 18.
7. On July 29, 2021, Gabriel filed a Fed.R.Civ.P.15(a)(1)(A) motion to amend the Amended Complaint [D.C. DE 17, 17-1 through 17-11] and a proposed Second (2<sup>nd</sup>) Amended Complaint<sup>6</sup> (printed on over **3,000 pages**), that consisted of **820 claims**, valued at \$82 million<sup>7</sup>. See D.C. DE 24.
8. On July 29, 2021, Windy Hill filed a Fed.R.Civ.P.12(b)(2), (5), (6), & (f)(2) Motion to Dismiss<sup>8</sup> the Amended Complaint. See D.C. DE 22.
9. On August 6, 2021, District Court<sup>9</sup> improperly sua sponte **DISMISSED**<sup>10</sup> the Amended Complaint [D.C. DE 17, 17-1 through 17-11] and the deemed the Amended Complaint [D.C. DE 17, 17-1 through 17-11], as well the proposed Second (2<sup>nd</sup>) Amended Complaint<sup>11</sup>, frivolous and shotgun pleadings. See D.C. DE 25.
10. On August 23, 2021, Gabriel filed a Notice of Appeal, asserting that his First (1st), Fifth (5th), and Fourteenth (14th) Amendments' rights were violated. See D.C. DE 29.
11. On August 27, 2021, Gabriel was issued Case No. 21-12901-J for his appeal in the Eleventh (11<sup>th</sup>) Cir. Court of Appeals. See D.C. DE 32.
12. On October 18, 2021, Gabriel filed an Opening Brief<sup>12</sup>.
13. On December 7, 2021, Windy Hill filed a Response Brief<sup>13</sup>.

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<sup>5</sup> During the administrative proceedings in the EEOC, Windy Hill alleged to employ an average of 175 people. Because of such, the Congressional cap for damages under 42 U.S.C. § 1981a(b)(3)(B) is \$100,000 per claim. See D.C. DE 17-11, Pg. 217.

<sup>6</sup> Such pleading was never filed by the Clerk of District Court.

<sup>7</sup> During the administrative proceedings in the EEOC, Windy Hill alleged to employ an average of 175 people. Because of such, the Congressional cap for damages under 42 U.S.C. § 1981a(b)(3)(B) is \$100,000 per claim. See D.C. DE 17-11, Pg. 217.

<sup>8</sup> On July 29, 2021, Windy Hill waived District Court's personal jurisdiction, falsely alleging insufficient service. See DE 22, Pgs. 8-10.

<sup>9</sup> Judge Cannon has extrajudicial ties to Windy Hill's attorney, Mendy Halberstam ("Halberstam"). While Halberstam was in law school, the Honorable US Chief District Judge Cecelia Altonaga (Judge Cannon's current superior) and the Honorable US District Judge K. Michael Moore (Judge Cannon's former superior) awarded Halberstam the First (1<sup>st</sup>) Runner up Best Orator Award. Also, Judge Cannon worked as an Assistant US Attorney - F.L.S.D., serving from 2013 – 2020. See 11<sup>th</sup> Cir. Opening Brief at Pgs. 40-41, filed on October 18, 2021.

<sup>10</sup> At the time District Court dismissed the Amended Complaint [D.C. DE 17, 17-1 through 17-11] was within the time (fourteen (14) day deadline of August 12, 2021, set by S.D.Fla.L.R.7.1(c)(1)) for Gabriel to provide a Response to Windy Hill's July 29, 2021, Fed.R.Civ.P.12(b)(2), (5), (6), & (f)(2) Motion to Dismiss [D.C. DE 22].

<sup>11</sup> Judge Cannon never reviewed this pleading. Judge Cannon's chambers is located in Fort Pierce, Florida. Gabriel sent his July 29, 2021, Fed.R.Civ.P.15(a)(1)(A) motion [D.C. DE 24] along with the proposed pleading to F.L.S.D. Fort Lauderdale, Florida location (approximately one hundred (100) miles distance between both locations). Such pleading was noted to be received, yet the Clerk of District Court never filed the pleading for Judge Cannon to make such false assessment. See D.C. DE 24.

<sup>12</sup> Appellate Clerk did not assign this filing a docket number.

<sup>13</sup> Appellate Clerk did not assign this filing a docket number.

14. On January 4, 2022, Gabriel filed a Motion for Leave-Excess Words/Pages and a proposed Reply Brief. See 11<sup>th</sup> Cir. DE 9566515-1.
15. On June 24, 2022, the Eleventh (11<sup>th</sup>) Cir. Court of Appeals<sup>14</sup> entered a non-published Judgment, **AFFIRMING**<sup>15</sup> District Court's dismissal of Gabriel's Amended Complaint [D.C. DE 17, 17-1 through 17-11]. See Ex. A.
16. Gabriel now motions the Court for an extension to filing a petition for writ of Certiorari.

### **III. LEGAL STANDARD**

#### **A. Pro Se Standard**

"[P]ro se [papers]... we hold to less stringent standards than [papers] drafted by lawyers[.]" Haines v. Kerner, 404 U.S. 519, 520-21, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972); Estelle v. Gamble, 429 US 97, 106, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1976).

#### **B. Extensions To Petitioning For Writ of Certiorari**

"[28 U.S.C. §] 2101(c) also permits a Justice of this Court, "for good cause shown," to grant an extension of time for the filing of a petition for certiorari in a civil case for a period not exceeding 60 days. In civil cases, applications for extension of time must be presented during the original 90-day period." Missouri v. Jenkins, 495 US 33, 81 n.12, 110 S. Ct. 1651, 109 L. Ed. 2d 31 (1990); S.Ct.R.30.2. "[The Court] ha[s] no authority to extend the period for filing except as Congress permits." Federal Election Comm'n v. NRA Political Victory Fund, 513 US 88, 99, 115 S. Ct. 537, 130 L. Ed. 2d 439 (1994); Missouri v. Jenkins, 495 US 33, 45, 110 S. Ct. 1651, 109 L. Ed. 2d 31 (1990).

#### **C. Good Cause Standard**

"[W]here specific allegations before the court show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is . . . entitled to relief, it is the duty of the court to provide the necessary facilities and procedures for an adequate inquiry. Bracy v. Gramley, 520 US 899, 908-909, 117 S. Ct. 1793, 138 L. Ed. 2d 97 (1997); Harris v. Nelson, 394 US 286, 300, 89 S. Ct. 1082, 22 L. Ed. 2d 281 (1969).

### **IV. REASON FOR GRANTING EXTENSION REQUEST**

#### **A. Large Appendix to File**

When petitioning the Court for writ of Certiorari, Gabriel plans to assert the compelling reasons that the Eleventh (11<sup>th</sup>) Cir. Court of Appeals has so far departed the accepted and usual course of judicial proceedings<sup>16</sup> and

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<sup>14</sup> The Honorable US Circuit Judge Barbara Lagoa ("Madam Judge Lagoa") was on the panel that entered Judgment on June 24, 2022. Madam Judge Lagoa has extrajudicial ties to Halberstam. While Halberstam was in law school, Madam Judge Lagoa awarded Halberstam the First (1<sup>st</sup>) Runner up Best Orator Award. Also, Madam Judge Lagoa worked in the US Attorney Office – F.L.S.D., prior to Judge Cannon being employed at the same location. In the proposed Reply Brief (filed with the January 4, 2022 Motion for Leave – Excess Words/Pages), Gabriel requested Madam Judge Lagoa's recusal. See 11<sup>th</sup> Cir. DE 9566515-1.

<sup>15</sup> The Court has jurisdiction to grant certiorari and to approve this motion, under 28 U.S.C. § 1254(1). Hohn v. United States, 524 US 236, 241, 118 S. Ct. 1969, 141 L. Ed. 2d 242 (1998); Felker v. Turpin, 518 US 651, 666, 116 S. Ct. 2333, 135 L. Ed. 2d 827 (1996). Petitioner timely files this motion within the time constraints to file a petition for writ of Certiorari, set by 28 U.S.C. § 2101(c). Federal Election Comm'n v. NRA Political Victory Fund, 513 US 88, 90, 115 S. Ct. 537, 130 L. Ed. 2d 439 (1994); Missouri v. Jenkins, 495 US 33, 45, 110 S. Ct. 1651, 109 L. Ed. 2d 31 (1990).

<sup>16</sup> There were approximately **ninety (90) proceedings** that took place in the Eleventh (11<sup>th</sup>) Cir. Court of Appeals, many of which the lower court entered arbitrary and capricious, adverse orders against Gabriel, without stating any legal justifications. See entire 11<sup>th</sup> Cir. COA Docket Report for Gabriel v. Windy Hill Foliage Inc., Case. No. 21-12901 (11<sup>th</sup> Cir. 2021).

sanctioned District Court's far departure the accepted and usual course of judicial proceedings<sup>17</sup>, as to call for the Court's supervisory jurisdiction<sup>18</sup>. S.Ct.R.10(a). S.Ct.R.14(i) requires Gabriel to file an appendix simultaneously when petitioning for writ of Certiorari, for which Gabriel has to serve Windy Hill a copy of.

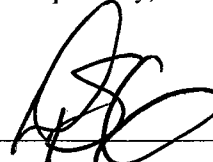
At the present time, Gabriel is unemployed and has been unemployed since June 3, 2022, when he was terminated from his last employer for discriminatory reasons<sup>19</sup>. Bracy v. Gramley, 520 US 899, 908-909, 117 S. Ct. 1793, 138 L. Ed. 2d 97 (1997); Harris v. Nelson, 394 US 286, 300, 89 S. Ct. 1082, 22 L. Ed. 2d 281 (1969). Because of Gabriel's current financial hardships, he is unable to develop an extensive appendix, for which he must put together before composing his petition, requesting the Court to intervene in the improprieties has was subjected to during the lower courts' proceedings. Bracy v. Gramley, 520 US 899, 908-909, 117 S. Ct. 1793, 138 L. Ed. 2d 97 (1997); Harris v. Nelson, 394 US 286, 300, 89 S. Ct. 1082, 22 L. Ed. 2d 281 (1969). Respectfully, Gabriel has shown good cause for the Court to grant his request for relief. Bracy v. Gramley, 520 US 899, 908-909, 117 S. Ct. 1793, 138 L. Ed. 2d 97 (1997); Harris v. Nelson, 394 US 286, 300, 89 S. Ct. 1082, 22 L. Ed. 2d 281 (1969).

#### **IX. CONCLUSION**

For the foregoing reasons, the Court should grant Gabriel's request for relief, by extending the time until November 21, 2022, to file a petition of Writ of Certiorari, requesting the Court review the June 24, 2022, Judgment of the Eleventh (11th) Cir. Court of Appeals.

July 18, 2022

Respectfully,



Dawud C.S. Gabriel  
Non Attorney - Pro Se Petitioner  
1307 Thurston Avenue  
Sebring, FL 33870  
(561) 398-3829

<sup>17</sup> There were approximately **twenty-eight (28) proceedings** that took place in District Court. See D.C. Docket Report for Gabriel v. Windy Hill Foliage Inc., Case. No. 2:21-CV-14177 (F.L.S.D. 2021).

<sup>18</sup> Gabriel also will assert that Eleventh (11<sup>th</sup>) Cir. Court of Appeals has decided an important federal question in a way that conflicts with relevant decisions of the Court in Liteky v. US, 510 US 540, 548, 114 S. Ct. 1147, 127 L. Ed. 2d 474 (1994) and Liljeberg v. Health Services Acquisition Corp., 486 US 847, 874 n.7, 108 S. Ct. 2194, 100 L. Ed. 2d 855 (1988). S.Ct.R.10(c).

<sup>19</sup> Gabriel intends to file a Charge of Discrimination against his former employer (Waste Connections) in the very near future. 42 U.S.C. § 2000e-5(e).

[DO NOT PUBLISH]

In the  
United States Court of Appeals  
For the Eleventh Circuit

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No. 21-12901

Non-Argument Calendar

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DAWUD CANAAN STURRUP GABRIEL,

Plaintiff-Appellant,

*versus*

WINDY HILL FOLIAGE INCORPORATED,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Southern District of Florida  
D.C. Docket No. 2:21-cv-14177-AMC

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Before WILSON, LAGOA, and ANDERSON, Circuit Judges.

PER CURIAM:

Dawud Canaan Sturrup Gabriel, *pro se*, appeals the district court (1) striking without prejudice of his amended complaint as an impermissible shotgun pleading, (2) denying without prejudice his proposed second amended complaint because it too was a shotgun pleading, and (3) denying his motion to set aside those rulings as void. He contends that the district court abused its discretion in making those rulings. He also contends, for the first time on appeal, that the district court judge erred by not *sua sponte* recusing herself. After careful review, we find no error and affirm.

### I.

Forfeiture occurs automatically whenever a party fails to timely assert their rights. *United States v. Campbell*, 26 F.4th 860, 874 (11th Cir. 2022) (en banc). But courts do have the ability to “resurrect” forfeited issues *sua sponte* in “extraordinary circumstances.” *Id.* at 872 (quoting *Wood v. Milyard*, 566 U.S. 463, 471 n.5 (2012)). We have identified five situations in which we may exercise our discretion to consider a forfeited issue:

- (1) the issue involves a pure question of law and refusal to consider it would result in a miscarriage of justice;
- (2) the party lacked an opportunity to raise the issue at the district court level;
- (3) the interest of substantial justice is at stake;
- (4) the proper resolution is beyond any doubt; or
- (5) the issue presents significant

questions of general impact or of great public concern.

*Id.* at 873. Additionally, *pro se* pleadings and other filings are liberally construed. See *Gomez-Diaz v. United States*, 433 F.3d 788, 791 (11th Cir. 2005).

A district judge must disqualify herself from any proceeding in which her impartiality might reasonably be questioned. 28 U.S.C. § 455(a). “Section 455(a) requires recusal when the objective circumstances create an appearance of partiality.” *United States v. Cerceda*, 188 F.3d 1291, 1293 (11th Cir. 1999). But a charge of partiality must be supported by some factual basis. *Id.* “Recusal cannot be based on ‘unsupported, irrational or highly tenuous speculation.’” *Id.* (quoting *In re United States*, 666 F.2d 690, 694 (1st Cir. 1981)). Furthermore, under 28 U.S.C. § 144,

[w]henver a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

Here, although Gabriel has forfeited the recusal issue by failing to raise it below, we exercise our discretion to consider the forfeited issue because the proper resolution is beyond any doubt: the district judge did not err by not recusing herself *sua sponte*. Gabriel’s claims to the contrary are based on unsupported



speculation. And § 144 does not apply because Gabriel did not file an affidavit with the district court stating that he believed the district judge harbored personal bias or prejudice against him. Accordingly, we affirm on this issue.

## II.

We review orders dismissing complaints based on non-compliance with federal rules for an abuse of discretion. *Goforth v. Owens*, 766 F.2d 1533, 1535 (11th Cir. 1985). We review *de novo* a district court's ruling on a Federal Rule of Civil Procedure 60(b)(4) motion to set aside a judgment as void. *Burke v. Smith*, 252 F.3d 1260, 1263 (11th Cir. 2001).

To state a claim for relief, a pleading must include "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). "A party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances." Fed. R. Civ. P. 10(b). "If doing so would promote clarity, each claim founded on a separate transaction or occurrence . . . must be stated in a separate count." *Id.* *Pro se* litigants are "subject to the relevant law and rules of court, including the Federal Rules of Civil Procedure." *Moon v. Newsome*, 863 F.2d 835, 837 (11th Cir. 1989).

Complaints that violate either Rule 8(a)(2) or Rule 10(b), or both, are often referred to as "shotgun pleadings." *Weiland v. Palm Beach Cnty. Sheriff's Off.*, 792 F.3d 1313, 1320 (11th Cir. 2015). We have identified four rough types of shotgun pleadings:

(1) complaints “containing multiple counts where each count adopts the allegations of all preceding counts, causing each successive count to carry all that came before and the last count to be a combination of the entire complaint”; (2) complaints containing “conclusory, vague, and immaterial facts not obviously connected to any particular cause of action”; (3) complaints that do “not separat[e] into a different count each cause of action or claim for relief”; and (4) complaints that “assert[] multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions, or which of the defendants the claim is brought against.” *Id.* at 1322–23. Shotgun pleadings violate Rule 8(a)(2)’s “short and plain statement” requirement by “fail[ing] . . . to give the defendants adequate notice of the claims against them and the grounds upon which each claim rests.” *Vibe Micro, Inc. v. Shabanets*, 878 F.3d 1291, 1294–95 (11th Cir. 2018) (alteration in original) (quoting *Weiland*, 792 F.3d at 1323). Shotgun pleadings “waste scarce judicial resources, ‘inexorably broaden[] the scope of discovery,’ ‘wreak havoc on appellate court dockets,’ and ‘undermine[] the public’s respect for the courts.’” *Id.* (alterations in original) (quoting *Davis v. Coca-Cola Bottling Co. Consol.*, 516 F.3d 955, 979–80 & n.54 (11th Cir. 2008)).

While district courts may *sua sponte* dismiss a complaint on shotgun pleading grounds, we require them to allow a litigant one chance to remedy such deficiencies. *Id.* For example, in *Shabanets*, the plaintiff filed a “mostly incoherent complaint” with “duplicative,” “inconsistent,” and “wholly conclusory” allegations in

paragraphs spanning multiple pages. *Id.* at 1294. The district court gave the plaintiff an opportunity to replead and remedy his shotgun pleading issues, “and provided him with a veritable instruction manual on how to do so.” *Id.* at 1293–95. We endorsed this approach, stating that, “[i]n these cases, even if the parties do not request it, the district court ‘should strike the complaint and instruct counsel to replead the case.’” *Id.* at 1295 (quoting *Byrne v. Nezhat*, 261 F.3d 1075, 1133 n.113 (11th Cir. 2001)).

Under Rule 60(b)(4), “[o]n motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding [if] . . . the judgment is void.” Generally, a judgment is void under this rule if the court that rendered it lacked jurisdiction, acted in a manner inconsistent with due process of law, or was powerless to enter it. *Burke*, 252 F.3d at 1263.

Here, the district court did not abuse its discretion in dismissing Gabriel’s amended complaint as a shotgun pleading. First, the court properly concluded that the nearly 3,000-page amended complaint was a shotgun pleading. Second, the court followed our directive by giving Gabriel one chance to amend, along with a veritable instruction manual on how to do so. Finally, Gabriel has failed to explain why it was “impossible” for him to comply with the 25-page limit imposed by the court on his second amended complaint. As to his proposed second amended complaint, the minor alterations he claimed to have made make it no less of a shotgun pleading than his first amended complaint.

21-12901

Opinion of the Court

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Additionally, the district court properly denied Gabriel's motion to set aside as void its order striking his shotgun pleading. Because, as explained above, the court properly complied with our precedent regarding shotgun pleadings and amendment, the order was not void. Accordingly, we affirm on this issue as well.

**AFFIRMED.**

NO. \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

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DAWUD C.S. GABRIEL,  
Petitioner,  
v.  
WINDY HILL FOLIAGE INC.,  
Respondent.

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**PROOF OF SERVICE**

I, Dawud C.S. Gabriel, do declare that on July 18, 2022, as required by S.Ct.R.29, I have served the enclosed 28 U.S.C. § 2101(c), S.Ct.R.13.5, & S.Ct.R.30.2 Motion for Extension to File Petition of Writ of Certiorari, on the party on the Service List below. Service was processed by first-class mail, depositing an envelope, containing the motion, with prepaid postage for delivery.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 18, 2022

Respectfully,

  
Dawud C.S. Gabriel  
Non-Attorney- Pro Se Petitioner  
1307 Thurston Avenue  
Sebring, FL 33870  
(561) 398-3829

Service List

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