

24-6997

No. \_\_\_\_\_

ORIGINAL

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IN THE SUPREME COURT OF THE UNITED STATES

Eric Ellis

FILED  
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OFFICE OF THE CLERK  
SUPREME COURT, U.S.

Vs

CARGILL MEAT SOLUTIONS

AND UKG (ULTIMATE KRONOUS GROUP)

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ON PETITION FOR WRIT OF CERTIORARI

TO THE

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Eric L. Ellis

/s/*Eric L Ellis*

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*2/27/2025*

#### QUESTIONS PRESENTED FOR REVIEW

1. Whether a random mailing of a check (unconditional tender) that is not linked to a rule 68 offer a judgment rob a plaintiff of his article III standing effectively mooting the case.
2. Whether a 12(b)(1) lack of jurisdiction dismissal can be with prejudice.
3. Whether the district court can consolidate two cases with different claims, facts and at least one different party.
4. Whether a court lacks subject matter jurisdiction when two unlike cases are filed in the same complaint.

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Eric Ellis asks that a writ of certiorari issue to review the opinion and judgment entered by the United States Court of Appeals for the Fifth Circuit on November 6th 2024.

**PARTIES TO THE PROCEEDING**

The caption of the case names all the parties to the proceedings in the court below.

## OPINION BELOW

The unpublished opinion of the court of appeals is attached to this petition as

### Appendix A.

## JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES

The opinion and judgment of the court of appeals were entered on January 6, 2025. This petition is filed within 90 days after entry of judgment. See SUP. CT. R. 13.1. The Court has jurisdiction to grant certiorari under 28 U.S.C. § 1254(1).

## FEDERAL RULES OF CIVIL PROCEDURE INVOLVED

Rule 68 of the Federal Civil Procedure provides in pertinent part:

- (a) Making an Offer; Judgment on an Accepted Offer. At least 14 days before the date set for trial, a party defending against a claim may serve on an opposing party an offer to allow judgment on specified terms, with the costs then accrued. If, within 14 days after being served, the opposing party serves written notice accepting the offer, either party may then file the offer and notice of acceptance, plus proof of service. The clerk must then enter judgment.
- (b) Unaccepted Offer. An unaccepted offer is considered withdrawn, but it does not preclude a later offer. Evidence of an unaccepted offer is not admissible except in a proceeding to determine costs.
- (c) Offer After Liability is Determined. When one party's liability to another has been determined but the extent of liability remains to be determined by further proceedings, the party held liable may make an offer of judgment. It must be served within a reasonable time—but at least 14 days—before the date set for a hearing to determine the extent of liability.

Federal Rule of Civil Procedure 54b provides in pertinent part:

**(b) JUDGMENT ON MULTIPLE CLAIMS OR INVOLVING MULTIPLE PARTIES.** When an action presents more than one claim for relief—whether as a claim, counterclaim, crossclaim, or third-party claim—or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

#### **STATEMENT**

Plaintiff Eric Ellis was constructively discharged by Cargill Meat Solutions after various forms of subtle retaliation in response to his complaints of discrimination at work via Cargill Ethics point online reporting site. During his tenure of employment Cargill's timekeeping system was crippled by a ransomware attack-type of data breach stemming from UKG's (Ultimate Kronos Group) failure to safeguard the personal identifying information of the employees of its clients. In September 2022, Ellis filed a complaint against Cargill and UKG in the Northern District of Texas. His claims primarily related to the cyber security incident. Then in November, Ellis filed an additional complaint against Cargill that contained his discrimination claims. The district court on its own motion consolidated the two cases *sua sponte*. Then the district court dismissed all but one claim against Cargill and dismissed all claims against UKG without prejudice. Eric Ellis then sought to appeal. The fifth circuit denied Ellis's appeal for lack of jurisdiction.

Then Ellis moved to certify the district court's order in attempt to appeal from the final order. The court ignored Ellis's motion to certify. Ellis then moved to amend his complaint and was ignored and denied. Defendant Cargill then moved to dismiss the remaining of Ellis' claims on a 12(b)(1) motion. The district granted the 12(b)(1) motion for lack of standing after Cargill randomly mailed Ellis a check without conference. The district court's ruling inferred that the random mailing of the check to the Plaintiff robbed him of his article III standing mooted the live controversy, and dismissing the case for lack of standing with prejudice.

#### **REASONS FOR GRANTING THE WRIT**

- 1. THE COURT SHOULD GRANT CERTIORARI TO DECIDE WHETHER A DEFENDANT CAN USE RANDOMLY MAILED PERSONAL CHECK AND/OR UNCONDITIONAL TENDER AS A RULE 68 OFFER OF JUDGEMENT WITHOUT A WRITTEN NOTICE FROM THE PLAINTIFF ACCEPTING THE OFFER.**
  - a. Eric Ellis made it clear that he did not accept the random check (unconditional tender) and he also disputed the amount being tendered.
  - b. Merely tendering the money, rather than using an offer of judgment, is not sufficient to provide a rule 68 offer of judgement, pursuant to *Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992)*
- 2. THE COURT SHOULD GRANT CERTIORARI TO DECIDE WHETHER, UNDER FEDERAL RULE OF CIVIL PROCEDURE 12(B)(1), A DISTRICT COURT MAY DISMISS CLAIMS WITH PREJUDICE TO THE MERITS OF ALL CLAIMS IN A CONSOLIDATED CASE.**

a. District Court Cannot Dismiss with Prejudice under Rule 12(b)(1)

Because by Definition It Lacks Jurisdiction over the Claim.

3. The Court should grant certiorari to decide if an unaccepted unconditional tender can moot claims under Fair Labor Standards Act with prejudice. The Court should also grant certiorari to decide if an unaccepted unconditional tender moot all claims in a consolidated case where separate laws govern and separate facts are alleged. The answers to these questions will help to bring consistency to appellate review of consolidated cases.
4. This Court's Opinions establishes without prejudice as the Standard for jurisdictional dismissals.

a. Fifth circuit precedents also make clear that a jurisdictional dismissal must be without prejudice to refiling in a forum of competent jurisdiction. See *Mitchell v. Bailey*, 982 F.3d 937, 944 (5th Cir. 2020) (explaining, in the context of sovereign immunity, that “[a] court’s dismissal of a case resulting from a lack of subject matter jurisdiction is not a determination of the merits and does not prevent the plaintiff from pursuing a claim in a court that does have proper jurisdiction. Accordingly, such a dismissal should be made without prejudice.” (quotation omitted)). This rule applies with equal force to sovereign-immunity dismissals. See, e.g., *Warnock v. Pecos Cnty.*, 88 F.3d 341, 343 (5th Cir. 1996)

A court applying reasonableness review would have thought a dismissal for lack of standing would be without prejudice. Under its plain-error review, the Fifth Circuit conducted only limited review, never truly engaging with the arguments

Ellis raised. The case therefore presents a good example of why the fifth circuit should have not exercised jurisdiction over a case in where the district court alleged it lacked article III standing.

#### CONCLUSION

FOR THESE REASONS, Petitioner asks that this Honorable Court grant a writ of certiorari and review the judgment of the court of appeals.

Respectfully submitted,



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1/31/2025