No. 24-718

IN THE

Supreme Court of the United States

BLAKE ANDREW WARNER,

Petitioner,

v.

HILLSBOROUGH COUNTY SCHOOL BOARD,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Generally, all federal Circuits that have addressed the issue, including the court below, prohibit non-lawyers, even parents, from representing children in federal court proceedings, subject to certain, limited exceptions that may be determined at the discretion of a district court. And with respect to civil rights claims, Congress has fashioned fee-shifting statutes to ensure that they can be enforced even by those without the ability to afford a lawyer. The question presented is: whether this Court should expand the statutory remedies and rights by excusing parents from the general prohibition against a non-lawyer representing others.

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INTRODUCTION

What has been presented by Petitioner and *amici* as a cause célèbre is in fact nothing more than a straightforward application by the Eleventh Circuit of a long-standing statute, and accompanying court rules, that provide a non-attorney in a federal case cannot represent anyone other than himself. While Petitioner claims this issue is subject to a split of authority, he is wrong. As explained below, while there is some difference among the Circuits in the manner in which this rule is applied and if and when exceptions can be made, none of those nuances matter in this case. And those Circuits that have addressed the issue agree on its central premise: a non-lawyer cannot represent anyone else, not even his children. Moreover, this case presents a poor vehicle to consider this issue; because (as the District Court has since ruled) Petitioner's claims are actually precluded by a prior release, as well as a broad promise not to sue Respondent. Thus, a win by Petitioner in this Court would ultimately afford him no relief, as the underlying case has since been dismissed on those grounds. For all these reasons the Petition should be denied.

STATEMENT OF THE CASE

Although barred from doing so by a prior settlement agreement, Petitioner Blake Warner sued Respondent the School Board of Hillsborough County, Florida (the "School Board") in an effort, primarily, to change the school boundary assignment for his new home. (The home was "new" to Petitioner in that he had purchased it after he settled a prior lawsuit with the School Board through which he had secured admission for his son to schools other

than those for which his prior home was zoned.) While Respondent vehemently denies Petitioner's allegations of racially discriminatory districting practices, all of the claims in the case – whether asserted by Petitioner or by his minor child – were barred by a prior settlement agreement. The District Court in fact recently dismissed the underlying action on this basis.

On March 15, 2022, Petitioner settled a Florida state administrative case against Respondent involving his minor child, J.W. (The settlement agreement is part of the record in District Court case 8:23-cv-181 (M.D. Fla.) ("Case 181"), at ECF Doc. 82-1 (the "Settlement Agreement").[1] The Settlement Agreement contains a broad release for "any and all claims, demands, causes of action, complaints or charges, known or unknown specifically related [to] J.W.'s education, services, and educational program in the District through the date of execution of this Agreement." *Id.*, ¶ 5. The release in the Settlement Agreement explicitly provides that it covers any claim that "may belong independently to J.W. related to his educational services and program." *Id.* The Settlement Agreement also contains an agreement not to sue Respondent. *Id.*, ¶ 6.

In exchange for the releases and covenant not to sue, Petitioner and J.W., secured, in the settlement of the administrative cases, the right to attend specific schools in south Tampa, Florida. *Id.*, ¶ 4(b). Thereafter, Petitioner purchased a new home in north Tampa, and apparently was unhappy with the commute to the schools he had chosen for J.W. in south Tampa. ECF Doc. 1, ¶ 58.

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1. All "ECF Doc." References are to the underlying case, Case 181, unless otherwise noted.

In the case underlying this Petition, Case 181, Petitioner then sued Respondent in federal court on behalf of himself and J.W. In his first *pro se* complaint in Case 181 Petitioner attempted to plead the following claims: Count I, 20 U.S.C. § 1703(a): Deliberate Segregation; Count II, 20 U.S.C. § 1703(c): Closest School; Count III, 42 U.S.C. § 1983: Equal Protection – Race; Count IV, 42 U.S.C. § 3604(b): Intentional Discrimination School Services; Count V, 42 U.S.C. § 3604(b): Disparate Impact School Services. ECF Doc. 1. Petitioner identified Counts I and II as being filed by his minor child (J.W.) only, with Counts III-V being filed by both Petitioner and his child. Although Petitioner purported to challenge the district boundaries, it was clear he was concerned with the school assignment for the new home he had purchased. *See* ECF Doc. 1, ¶ 58 ("Due to HCSB's manipulation of property values, Mr. Warner and J.W. were priced out *South Tampa* and had to relocate to more diverse *North Tampa*, further increasing segregation in *South Tampa* and resulting in a loss of community for both Mr. Warner and J.W.") (emphasis original).

In Case 181, Petitioner also filed a motion for a preliminary injunction, seeking to stop a boundary review process, which had the potential to change the boundaries he purported to challenge. ECF Doc. 2. Recognizing that Petitioner failed to file proof of service of the complaint and motion for injunction, the District Court set a deadline and included a caution to Petitioner that litigation "in federal court is difficult and requires timely compliance with applicable rules", and informed him of resources available to assist him. *See* ECF Doc. 6, p.2 ("A judge cannot assist a party, even a *pro se* party, in conducting an action.").

Respondent moved to dismiss Case 181 and for a more definite statement. ECF Doc. 14. After a hearing on April 28, 2023, the District Court denied Respondent's motion, but cautioned Petitioner about the difficulty of proceeding *pro se*. *See* ECF Doc. 25 ("Warner's attention is again directed to the cautionary statement in an earlier order (Doc. 6), which briefly details Warner's need for advice from, and preferably representation by, a member of The Florida Bar or some other lawyer eligible to appear in the Middle District of Florida and represent or, at least, to properly counsel Warner in pursuing his claims.")

Petitioner then withdrew his motion for a preliminary injunction. ECF Doc. 20. The District Court struck Petitioner's motion for a preliminary injunction, recognizing that he had conceded "that irreparable harm is unlikely." ECF Doc. 22.

Shortly thereafter, Petitioner filed an amended complaint containing substantially the same allegations, but removing any mention of his minor child, J.W. ECF Doc. 29. At the same time Petitioner filed a separate action, No. 8:23-cv-1029 (M.D. Fla) ("Case 1029") on behalf of J.W., which he then sought to consolidate with Case 181 from which Petitioner's son had been removed as a party. In other words, Petitioner split his lawsuit in two, and then immediately asked the District Court to consolidate the two cases. Case 1029 ECF Doc. 28; Case 181 ECF Doc. 37.

After some briefing, Case 1029 was quickly dismissed; as the District Court explained, Petitioner could not split his claims and he could not file a suit on behalf of J.W. Case 1029 ECF Doc. 28; Case 181 ECF Doc. 37. That order dismissed Case 1029 and directed Petitioner to

plead any claims in the earlier-filed (Case 181) action, and directed the clerk to file a copy of the July 5, 2023 order in that case's docket. *Id.* The District Court was clear: if Petitioner wanted to pursue claims on behalf of J.W., and seek a preliminary injunction, he needed counsel. Case 1029 ECF Doc. 28; Case 181 ECF Doc. 37, p.4 ("Warner may amend the motion for a preliminary injunction after a lawyer appears").

No attorney appeared in the District Court. Petitioner never sought leave to have counsel appointed or to proceed in forma pauperis. Although, as the Petition recognizes, Petitioner "secured *pro bono* counsel to help him prepare appellate briefs," Pet. p.3, there is no explanation as to why such counsel was not available to help him in the District Court.

Petitioner next filed a second amended complaint in Case 181, then the only case still pending, this time removing counts he had purported to assert on behalf of J.W. but including allegations about J.W.'s school assignment. Case 181 ECF Doc. 38. Petitioner then filed another motion for preliminary injunction, seeking to have the District Court order that J.W. attend sixth grade for the 2023-2024 school year at a specific school. ECF Doc. 40, p.1.

Separately, in both Case 181 and Case 1029, Petitioner appealed the July 5, 2023 order dismissing Case 1029 to the extent it rejected his ability to sue *pro se* on behalf of J.W., which appeals were consolidated and ultimately led to the instant Petition. Case 181 ECF Doc. 42; Case 1029 ECF Doc. 29; Case 1029 ECF Doc. 32. Neither party moved to stay Case 181 pending appeal. Initially,

the appeal was dismissed for want of prosecution because Petitioner failed to pay the filing and docketing fees. Case 181 ECF Doc. 51 and Appellate ECF Doc. 6. Petitioner's motion to reinstate the appeal was granted shortly thereafter. (Case 181 ECF Doc. 53 and Appellate ECF Doc. 11). After considering the briefs on its non-argument calendar, the Eleventh Circuit entered its order, *per curiam*, affirming the district court's ruling with a written opinion. Pet. App. 1a-9a.

Meanwhile, back in the District Court (and in Case 181), Respondent responded in opposition to Petitioner's motion for a preliminary injunction and moved to dismiss Petitioner's second amended complaint. Case 181 ECF Docs. 41 and 45. In doing so Respondent cited the District Court's order (ECF Doc. 37) and explained Petitioner was improperly seeking injunctive relief *pro se* on behalf of another person. *See* ECF Doc. 41, pp. 3-4. Respondent also explained Petitioner's prior settlement agreement was fatal to the claim. *See Id.* pp. 13-14. The motions were referred to a Magistrate Judge, who recommended dismissing all but one of Petitioner's claims and denying his motion for preliminary injunction. ECF Doc. 72.

The District Court then dismissed all but one of Petitioner's claims, some with prejudice, and some with leave to amend, and also denied his motion for preliminary injunction without prejudice. ECF Doc. 78. Petitioner then filed a third amended complaint, containing only two counts, both brought under 42 U.S.C. § 1983. ECF Doc. 79.

Respondent moved for judgment on the pleadings. ECF Doc. 86. After substantial briefing and additional filings, and with the benefit of a report and recommendation

from a Magistrate Judge (ECF Doc. 112), the District Court accepted the Magistrate Judge's recommendation, converted Respondent's motion into one for summary judgment and granted it, ECF Doc. 120, and entered final judgment, ECF Doc. 121.

The District Court dismissed Petitioner's claims based on the administrative case settlement agreement, in which Petitioner had released all "claims 'specifically related to J.W.'s education' and otherwise agreed not the sue the School Board for claims predicated on conduct occurring before March 15, 2022." ECF Doc. 112, p.26 (recommendation). As a result, the District Court case underlying the Eleventh Circuit's ruling and the instant Petition has since ended based on Petitioner's release of all the claims in it.

Following entry of judgment against Petitioner on all claims, Respondent moved for an order granting it attorney's fees and costs. It has also filed a bill of costs. ECF Docs 123 and 124.

REASONS FOR DENYING THE PETITION

The Court should deny the Petition because there is no actual split of authority on the issue of whether a non-lawyer can, as a general matter, represent another person in federal court and because this case is a poor vehicle for considering that question.

As an initial matter this case does not well present the Question Presented because, as the District Court ruled less than a month ago (and after Petitioner had filed his Petition), Petitioner released all his claims in the parties'

administrative case settlement agreement and also agreed generally not to sue Respondent on any related matters. Accordingly sending this case back to allow Petitioner to represent J.W. will afford Petitioner (and J.W.) nothing in the way of relief (because the underlying claims are gone as a matter of contract) and could conceivably expose J.W. to liability for further fees and costs Respondent is seeking from Petitioner.

In addition, there is no actual split of authority on the Question Presented. Rather, there is uniformity below in the recognition that counsel is required in federal court to represent others, even if the circuits differ on certain details.

Accordingly, as detailed below, the Court should deny the Petition.

A. This Case Is Not An Appropriate Vehicle To Decide The Question Presented Because Petitioner's Claims Have Been Held To Be Contractually Barred

This case poorly presents the Question Presented because the claims Petitioner wants to assert are barred by his prior administrative case settlement agreement. Indeed, the District Court held as much just weeks ago when it dismissed the underlying case on contractual grounds, leaving no case in which Petitioner could litigate for J.W. if he won his argument in this Court. Indeed, because those claims have been released and because further claims are barred by his promise not to sue Respondent, litigating them further would result in Petitioner's pursuit of groundless claims, and could even

subject J.W. to an adverse award of fees and costs in favor of Respondent.

In light of the judgment entered below after this Petition was filed, this case is not an appropriate vehicle to decide the question presented because all of the claims – whether brought by Petitioner or his minor child, and whether brought *pro se* or through counsel – are barred by the parties' administrative settlement agreement, as the District Court ruled in its recent order and judgment ending the underlying case (ECF Docs 112 (recommendation), 120 and 121). Those actions were predicated on an essentially uncontestable finding that Petitioner's "claims are covered by the language of the release in the agreement." ECF Doc. 120, p.4. Both Petitioner and J.W. were parties to the settlement agreement, and that ruling would therefore also bar any claims J.W. might make, whether *pro se* or through counsel. Unlike the federal courts, Florida administrative agencies do allow parents to litigate on behalf of their minor children, *See A.C. v. Agency for Health Care Admin.*, 322 So. 3d 1182 (Fla. 3d DCA 2019); accordingly when Petitioner settled that case, on his own and his child's behalf, he was able to bind both of them.

Contrary to the assertions in the Petition, then, this particular case is actually a terrible vehicle to address the Question Presented. Taking this case to resolve whether Petitioner could act as counsel for his child would be a pointless exercise. There is, indeed, no case to remand to, as it has since been dismissed on other, and rather unremarkable, grounds. In fact, all that is left in the District Court is Respondent's request for fees and costs, making this a particularly unsuitable time to allow J.W. back into the case.

Thus, even if this Court were to grant the Petition and reverse – which it should not do – the end result would still stand. The only change would be to incur additional fees and costs, which could be assessed against both Petitioner and J.W. if the Petition succeeds. Because this case is a uniquely unsuitable vehicle to present the Petition's question, the Petition should be denied.

B. Although Approaches Differ, There Is No Conflict Among The Circuits

The Petition is premised on an asserted conflict among the Circuits on the issue of whether a non-lawyer parent can represent his child, but there is, in fact, no such difference of opinion. Rather, those Circuits that have addressed the issue have generally agreed with the court below. *See Cheung v. Youth Orchestra Found. of Buffalo, Inc.*, 906 F.2d 59 (2d Cir. 1990) ("[W]e agree with *Meeker v. Kercher,* 782 F.2d 153, 154 (10th Cir. 1986) (*per curiam*), that a non-attorney parent must be represented by counsel in bringing an action on behalf of his or her child"); *Osei–Afriyie v. Med. Coll. of Penna.*, 937 F.2d 876, 822 (3d Cir. 1991) ("we hold that Osei–Afriyie, a non-lawyer appearing *pro se,* was not entitled to play the role of attorney for his children in federal court. This holding puts us in accord with the only other two courts of appeals that have considered this issue."); *Myers v. Loudoun Cnty. Pub. Sch.*, 418 F.3d 395, 401 (4th Cir. 2005) ("We therefore join the vast majority of our sister circuits in holding that non-attorney parents generally may not litigate the claims of their minor children in federal court."); *Raskin on behalf of JD v. Dallas Indep. Sch. Dist.*, 69 F.4th 280, 283 (5th Cir. 2023) (party "cannot be represented by a nonlawyer" because 28 U.S.C. § 1654

"does not include the phrase "or by a nonlawyer," but remanding for determination of whether claim at issue actually belonged to the parent under federal or state law); *Shepherd v. Wellman*, 313 F.3d 963, 970 (6th Cir. 2002) ("Although 28 U.S.C. § 1654 provides that '[i]n all courts of the United States the parties may plead and conduct their own cases personally or by counsel,' that statute does not permit plaintiffs to appear *pro se* where interests other than their own are at stake."); *Navin v. Park Ridge Sch. Dist.*, 270 F.3d 1147, 1149 (7th Cir. 2001) ("Patrick was free to represent himself, but as a non-lawyer he has no authority to appear as J.P.'s legal representative."); *Crozier for A.C. v. Westside Cmty. Sch. Dist.*, 973 F.3d 882, 887 (8th Cir. 2020) ("Non-attorney parents cannot litigate *pro se* on behalf of their minor children, even if the minors cannot then bring the claim themselves."); *Grizzell v. San Elijo Elementary Sch.*, 110 F.4th 1177, 1181 (9th Cir. 2024)[2] ("a parent may not proceed pro se on her children's behalf"); *Meeker v. Kercher*, 782 F.2d 153, 154 (10th Cir. 1986) ("We hold that under Fed.R.Civ.P. 17(c) and 28 U.S.C. § 1654, a minor child cannot bring suit through a parent acting as next friend if the parent is not represented by an attorney."). The ruling below is in accord with that universal view, as well as established Eleventh Circuit law. Pet. App. 5a ("our binding precedent forecloses [the Petition's] argument, as we explain below", *citing Devine v. Indian River Cnty. Sch. Bd.*, 121 F.3d 576, 577 (11th Cir. 1997)).

While this general principle–one that entirely disposes of Petitioner's arguments–has been adopted across

2. In *Grizzell*, there is also a petition pending before this Court as Case No. 24-812.

the board, some Circuits have "taken a more flexible approach" in limited circumstances inapplicable here, such as "appeals from the denial of social security (SSI) benefits." *See Grizzell*, 110 F.4th at 1179-80 (citing cases from the Second, Fifth, and Tenth Circuits). However, as the discussion in *Grizzell* of these other cases reflects, the common reasoning behind those exceptional cases is a determination the claim at issue truly belongs to the parent or that the parent "has a sufficient interest in the case" such that the "child's case is the parent's 'own.'" *Id.* (quoting *Machadio v. Apfel*, 276 F.3d 103, 106-07 (2d Cir. 2002)); *see also Raskin*, 69 F.4th at 282, 286. This does not demonstrate an actual conflict among Circuits as to the counsel mandate flowing from § 1654. Instead, it at best demonstrates that courts are developing their understanding of when a parent can represent a child in asserting a claim—that is, when the parent has a direct interest in the claim or it belongs to the parent—and when he cannot. But that inquiry is of no help to Petitioner, who is plainly trying to assert a claim that belonged to his child.

Unable to cite an actual conflict among the Circuits, Petitioner argues that the Circuits "differ on the source of the counsel mandate" because, in his view, some courts prohibit parents from representing children *pro se* pursuant to § 1654, while other courts apply the rule as a matter of federal common law. Pet. p.20. But this contrived dispute over origins does not establish that the Circuits disagree about *what the rule is*, wherever it comes from. Indeed, by attacking both theories of origin as purported "judicial over-reach", the Petition actually demonstrates that there is no actual split to be resolved by this Court about what the rule is. Absent actual disagreement on

what the rule is, whatever its source, and especially given that the Petition rejects both views, there is no conflict for this Court to resolve.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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