No. 24-751

IN THE

Supreme Court of the United States

GIORGI RTSKHILADZE,

Petitioner,

v.

DEPARTMENT OF JUSTICE, *et al.*,

Respondents.

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

PETITION FOR REHEARING

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PETITION FOR REHEARING

Introduction

In accordance with this Court's Rule 44.2, petitioner respectfully seeks rehearing of the Court's order denying certiorari based upon the intervening decision in *Williams v. Reed*, 145 S. Ct. 465 (2025) on February 21, 2025. In *Williams v. Reed*, the majority was unpersuaded by the contention of the dissent that petitioners had forfeited a central issue, even though the issue was mentioned only in a few sentences in a state-court reply brief. The decision illustrates the correct application of the highly prejudicial forfeiture doctrine. The forfeiture decision of the D.C. Circuit in this case is so at odds with the Court's conclusion in *Williams v. Reed* in this case that justice demands the petition be summarily granted, the decision vacated, and the case remanded (G.V.R.) to the D.C. Circuit.[1]

Unlike *Williams v. Reed*, where there was a colorable forfeiture argument, the forfeiture holding in this case is spectacularly unsupportable. In both the district court and the circuit court, petitioner cogently and unambiguously synthesized Privacy Act caselaw on what constitutes "intentional or willful" misconduct sufficient to support a claim for damages in a defamation by implication context with the analysis appellate courts use when deciding a motion to dismiss in a common-law defamation by implication case.

Petitioner also provided evidence of a manifest conflict of interest of the Mueller team's senior prosecutor, Ms. Jeannie Rhee, who failed to disclose to Special Counsel Robert S. Mueller, III, at the time she was brought on

1. G.V.R. was the alternative relief sought in the conclusion of the petition for certiorari.

board that she had significant links to former democratic candidate for president, Hillary Clinton. Ms. Rhee directly participated in questioning petitioner before the grand jury. Importantly, the plausibility of "intentional or willful" misconduct is significantly tied to the evident disconnect between that testimony and the defamatory implications of Footnote 112, Vol. II, of the Mueller Report.

The circuit court addressed neither of these arguments. Instead, rather than deciding the merits of the arguments, the panel plainly used the forfeiture doctrine to avoid deciding a politically sensitive case. This case, therefore, is a compelling candidate for summary G.V.R.

The Nature of the Case

In early October 2016, unflattering audio recordings of Mr. Trump—made years earlier while he was visiting the *Access Hollywood* set—were released to the public.[2] Unbeknownst to him, his conversation had been caught on a hot mic. In late October, just days before the presidential election, petitioner, who lives in Connecticut with his wife and three young children, received a telephone call from an acquaintance who lives in Moscow.[3] The acquaintance told him that while he was out dining he overheard someone he did not know at an adjacent table bragging about compromising videos of Trump.[4] The acquaintance was aware that petitioner was consulting on behalf

2. *Rtskhiladze v. Mueller*, et al., 20-cv-1591 (D.D.C) (First Amended Complaint (FAC), Docket Entry 19-1 at ¶ 38).

3. *Id.* at 21.

4. *Id.*

of the government of Georgia to persuade the Trump Organization to build a Trump Tower in Georgia.[5] After the call, petitioner gave a heads-up via text message to Michael Cohen in a short series of text messages.[6] Mr. Cohen was an attorney for the Trump Organization and Mr. Trump.

Several months later, in January 2017, the quickly-infamous Steele Dossier was leaked by the media to the public—just before president-elect Trump was sworn in.[7] A few months later, in May 2017, Mr. Mueller was appointed as a special counsel by the Department of Justice to investigate the nature and extent of Russian interference in the 2016 election.[8] The worldwide media and the public in general was keenly interested in what the much-anticipated Mueller Report would say, if anything, about the allegations in the Steele Dossier about compromising videos purportedly held by Russia.[9]

Accordingly, on April 18, 2019, when the redacted Mueller Report was made public, the media seized upon Footnote 112, Vol. II, of the Mueller Report.[10] The implications of Footnote 112 were sensational and the media immediately disseminated the defamatory implications, factually incorrect statements, and material

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5. *Id.*

6. *Id.* at ¶¶ 31, 35.

7. Steele dossier—Wikipedia

8. FAC at ¶ 24.

9. *Id.* at ¶ 43.

10. *Id.*

omissions worldwide.[11] The footnote mischaracterized petitioner's nationality as a "Russian businessman," misquoted a text exchange between Michael Cohen and petitioner, omitted important context of the text exchanges that would have made plain petitioner had no firsthand information about the purported videos, and gave the impression that petitioner actively took steps to suppress them, and later learned the videos were fakes but did not tell Cohen—neither implication was true. Petitioner's career as a Georgian-American businessman working tirelessly to strengthen cultural and commercial ties with Georgia and the United States ended abruptly.[12]

Mr. Rtskhiladze sued Special Counsel Mueller and the Department of Justice under the Privacy Act seeking his "actual damages."

This Is a Compelling Case for G.V.R.

1. *Williams v. Reed*

The present case cries out for G.V.R. treatment. Such action is supported by *Williams v. Reed*, which was decided shortly after the petition for certiorari was filed. The claimants, who were seeking unemployment compensation benefits in Alabama, filed a 42 U.S.C. § 1983 action against the Alabama Secretary of Labor. They argued that the state-imposed administrative claims process—on its face—violated the Due Process

11. *Id.* at ¶¶ 43—47.

12. *Id.* at ¶ 43.

Clause of the Fourteenth Amendment, *i.e.*, they argued that they need not exhaust the administrative claims process before proceeding to the merits of their claim because it was de facto unconstitutional. The majority opinion in this Court decided that the Alabama administrative process was unconstitutional "as applied," not that it was de facto unconstitutional.

The dissent argued that the "as applied" argument had been forfeited based on claimant's failure to raise the issue in the Alabama courts: "Because petitioners raised only a facial challenge below, they cannot press an as applied challenge here. '[F]acial' and 'as applied' claims are distinct and must be individually preserved." *Id.* at 477-78. The dissent observed that the "[Alabama Supreme] court had no reason to opine on the alternative pathways available to petitioners, [*i.e.*, mandamus relief], given that petitioners failed to raise an as applied challenge. We should not reward plaintiffs for their own mistake." *Id.* at 478.

But the majority declined to conclude the "as applied" argument was forfeited, seizing on a few sentences in petitioners' reply brief in the Alabama Supreme Court:

> In . . . [the Alabama Supreme] Court, however, the claimants clearly raised the argument that under § 1983 the State could not apply an administrative-exhaustion requirement to their claims challenging delays in the administrative process. Reply Brief of Appellant, No. SC-2022-0897 (Ala. Sup. Ct., pp. 16-17).

2. The D.C. Circuit Forfeiture Holding

Like the district court, the D.C. Circuit held the petitioner "ha[s] standing to seek damages for injuries that DOJ allegedly inflicted *before* the Senate Report's release. Unlike the district court, we hold that petitioner also has standing to seek damages for injuries inflicted *after* that point."[13] However, the court of appeals then held that petitioner "has forfeited any argument that he plausibly alleged 'intentional or willful' conduct by DOJ. The court side-stepped petitioner's arguments synthesizing Privacy Act caselaw on what constitutes "intentional or willful" misconduct and the standards used to decide motions to dismiss in the common-law defamation by implication case context. The court dodged the argument by stating a non sequitur: "But this is not a defamation suit, and the Privacy Act's explicit text requires Rtskhiladze to allege 'intentional or willful' conduct. So here, common law cases are not on point."[14]

Of course, that statement ignored petitioner's argument.

Not only that, but the circuit court itself earlier recognized the kinship between a Privacy Act case based upon defamation by implication and the rules applicable to a motion to dismiss a common law defamation by implication case, when the court noted that "*though this is not a defamation suit, the same logic applies*."[15]

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13. App. 9a (Emphasis original.).

14. *Id.* 10a-11a.

15. App. 9a (Emphasis added).

The court then summarily concluded that "[b]ecause Rtskhiladze has not even attempted to meet the Privacy Act's requirements, we will affirm the district court's dismissal of his damages claim."[16] The court also ignored petitioner's arguments based upon the fact that the senior prosecutor, Jeannie Rhee, had a blatant conflict of interest about which she did not inform Special Counsel Mueller before she joined the team.

3. The Forfeiture Holding Is a Miscarriage of Justice.

The arguments made in the district court and on appeal speak for themselves and are fully quoted here.

(a) Petitioner's District Court Brief in Opposition to the Motions to Dismiss.

In the district court, petitioner argued in opposition to the defendants' motions to dismiss, as follows:

> The D.C. Circuit and other circuits have interpreted "intentional or willful" to be met 'by committing the act without grounds for believing it to be lawful, or by flagrantly disregarding others' rights under the Act," citing *Albright v. United States*, 732 F.2d 181, 189 (D.C. Cir. 1984); *Moskiewicz v. U.S. Dept. of Agriculture*, 791 F.2d 561 (7th Cir. 1986) (holding that acts meeting a greater than gross negligence standard require evidence of "reckless behavior and or knowing violations of the Act"); *Parks v. Internal Revenue Service*,

16. *Id.* 11a.

618 F.2d 677 (10th Cir. 1980) (holding that premeditated malice is not required to establish a willful or intentional violation of the Privacy Act).

In *Moskiewicz*, the Seventh Circuit cited to the Act's legislative history:

> In a suit for damages, the [compromise] amendment reflects a belief that a finding of willful, arbitrary or capricious action is too harsh a standard of proof for an individual to exercise the rights granted by the legislation. Thus, the standard for recovery of damages was reduced to "willful or intentional" action by an agency. On a continuum between negligence and the very high standard of willful, arbitrary, or capricious conduct, this standard is viewed only somewhat greater than gross negligence.

Id. at 563 (quoting *The Analysis of House and Senate Compromise Amendments to the Federal Privacy Act*, 120 Cong. Rec. 40405 (1974)). Therefore, Congress must have intended that "intentional or willful" was an easier standard for recovery than "willful, arbitrary or capricious action," as the bill read before it was amended. This statement is consistent with the majority view that "consider[s] that 'gross negligence' falls short

of a reckless disregard of the consequences and differs from ordinary negligence only in degree, not in kind." *Brathwaite v. Xavier*, S. Ct. Civ. No. 2017-0037, 2019 WL 3287069, at *7 (S. Ct. V.I. July 16, 2019) (quoting W. Page Keeton, *et al.*, *Prosser & Keeton on Torts* § 34, at 212 (5th ed. 1984). Reckless conduct, therefore, is misconduct greater than gross negligence and falls within the meaning of "intentional or willful" as used in 552a(g)(4).

Plaintiff sufficiently has pled conduct that is at least reckless. Based on the information in possession of the Mueller team, the way Footnote 112 is drafted demonstrates the intentional or at the very least reckless disregard for plaintiff's rights under 552a(g)(1)(C). The Mueller team knew that the Attorney General almost certainly would release the Report to the public. They knew that because Footnote 112 mentions the unverified golden-rain tapes noted in the unverified Steele Dossier that there was a high likelihood that Footnote 112 would receive worldwide media attention. Yet, the Mueller team intentionally or at the very least recklessly failed to advise the Attorney General that Footnote 112 should be redacted. Alternatively, the Mueller team *did* recommend to the Attorney General that the footnote be redacted but the Attorney General intentionally or recklessly decided not to make the recommended redactions. Either way, the publication of Footnote 112 was released "intentionally or willful[ly]." And the fact that

the allegations are circumstantial in nature is not a weakness in the Amended Complaint. As the Supreme Court has observed on several occasions, circumstantial evidence is often the best evidence—a statement any seasoned trial lawyer knows is correct. *See Desert Palace, Inc. v. Costa*, 539 U.S. 901 (2005) (quoting *Rogers v. Missouri Pacific R. Co.*, 352 U.S. 500, 508, n.17 (1957) ("Circumstantial evidence is not only sufficient, but may also be more certain, satisfying and persuasive that direct evidence.").[17]

(b) Petitioner's Opening Brief in the D.C. Circuit

In petitioner's opening appellate brief, he argued that:

Dismissal is particularly improper here because this Court long ago held that the standard for proving "intentional or willful" within the meaning of the Privacy Act requires conduct that is only slightly more culpable than "gross negligence." *Freeman v. Fed. Bureau of Prisons*, ___ F. Supp. 3d ___, 2022 WL 4673412 at *5 (D.D.C. Aug. 12, 2020) (citing *Tijerina v. Walters*, 821 F.2d 789, 799 (D.C. Cir. 1987); *Laningham v. United States*, 813 F.2d 1236, 1242 (D.C. Cir. 1987). ***Actual intent or willful conduct is not a required element.*** All that a pleading is required to demonstrate is that the language, as a matter of law, be

17. Plaintiff's Resp. in Opp. MTD, Oct. 6, 2020.

> reasonably capable of defamatory meaning. Here the [district] court concluded that it met that minimal burden. Indeed, the district court held that it was not only "inaccurate" and "incomplete" but GR "plausibly alleged that the harms to his business and reputation are fairly traceable to the presence of these implications in the footnote.
>
> What is more, as described in the Rule 60(b) Motion papers, discovery would reveal that the Mueller team's chief prosecutor had personal, professional, and political ties to the Democratic Party's 2026 presidential candidate, Hillary Clinton. As the chief prosecutor, Jeannie Rhee had both motive and opportunity to draft footnote 112 in such a way as to imply that Trump had political operatives in Russia who took steps to suppress the purported salacious tapes prior to the 2016 election.[18]

(c) Petitioner's Reply Brief in the D.C. Circuit

In petitioner's reply, he argued that:

> The Government supports the district court's conclusion that the Amended Complaint failed to plausibly plead that the inaccuracies and transcript omissions in Footnote 112 were intentional or willful and, therefore, GR's [Mr. Rtskhiladze] Privacy Act claim for damages

18. Plaintiff-Appellant's Opening. Br. at 28-29 (Emphasis original.).

was properly dismissed. But that conclusion is only possible if one is standing too close to the proverbial trees. Stepping back and looking at the forest, GR's claim is not only based upon those inaccuracies and omissions. Rather, as the district court correctly observed, GR's claim is based upon the defamatory implications of Footnote 112 read as a whole.

Under the law of defamation in the District of Columbia, so long as the district court concludes that the language at issue could be read by a reasonable person to be defamatory, intent is presumed for purposes of dismissal on the pleadings. *White v. Fraternal Order of Police*, 909 F.2d 512, 518 (D.C. Cir. 1990) (stating that "[i]t is only when the court can say that the publication is not reasonably capable of any defamatory meaning and cannot be reasonably understood in any defamatory sense that it can rule as a matter of law, that it is not libelous") (quoting *Levy v. American Mutual Ins. Co.*, 196 A.2d 475, 476 (D.C. 1964). Because the district court concluded that GR sufficiently pled the defamatory implications of Footnote 112, dismissal on a motion to dismiss was improper.

That the drafter of Footnote 112 defamed GR "intentionally or willfully" is no longer supported only by the Amended Complaint and GR's Declaration. Based upon evidence submitted in connection with the Rule 60 Motion further development of the record

> through discovery may reveal that the footnote was intentionally and willfully written to defame GR.
>
> The transcript itself and the evidence submitted in support of the Rule 60 Motion, show that Mueller's lead prosecutor, Jeannie Rhee, pointedly cross-examined GR and that she had close ties to former Democratic presidential candidate Hillary Clinton—a connection she did not disclose to Special Counsel Mueller at the time she was appointed. She had both motive and opportunity, as the lead prosecutor, to defame GR to hinder the reelection prospects of President Trump. Given the law of defamation by implication and these facts, the dismissal of GR's Privacy Act damages claim was improper at the pleading stage.[19]

The misstatements and inuendo in Footnote 112 cannot be squared with petitioner's testimony and demonstrates the impact of the senior prosecutor's conflict of interest.

(d) The Forfeiture Decision Is an Obvious Subterfuge.

A conclusion a party has forfeited a central issue should be made only after addressing the arguments that the party made in the district court and the court of appeals. The court failed to engage the with pertinent Privacy Act caselaw and the argument that analysis in

19. Plaintiff-Appellant's Reply Br. at 7-8.

common-law defamation cases are relevant given the nature of a Privacy Act claim. The court also failed to come to grips with the fact that the senior prosecutor had both motive and opportunity to defame petitioner to support a political narrative that Candidate Trump was able through surrogates to suppress salacious videos; with the obvious goal to harm him politically. A cursory review of petitioner's grand jury testimony coupled with the senior prosecutor's conflict of interest alone demonstrated the plausibility of the damages claim.

CONCLUSION

Especially considering the lenity demonstrated by the Court in *Williams v. Reed*, the holding that petitioner forfeited his Privacy Act damages claim is a gross miscarriage of justice. There is simply no way that petitioner's synthesis of Privacy Act and common-law defamation caselaw—coupled with the conflict of interest of the senior prosecutor and the gross distortion of petitioner's grand jury testimony in which she participated—can be squared with the panel's conclusion that petitioner "has not even attempted to meet the Privacy Act's requirements. . . ." That the panel may have found the analysis inconvenient because of its highly political nature cannot support the forfeiture holding.

This petition should be granted, the D.C. Circuit opinion vacated, and the case remanded with instructions to address the merits of petitioner's arguments.

Respectfully submitted,

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RULE 44.2 CERTIFICATE

As required by Supreme Court Rule 44.2, I certify that the Petition for Rehearing is limited to "intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented," and that the Petition is presented in good faith and not for delay.

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

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