

No. 25-244

IN THE
Supreme Court of the United States

DEMETRIC SIMON,

Petitioner,

v.

KEITH GLADSTONE, *et al.*,

Respondents.

**On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Fourth Circuit**

PETITION FOR REHEARING

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PETITION FOR REHEARING

Petitioner Demetric Simon, sought a Writ of Certiorari out of the Fourth Circuit Court of Appeals (after oral arguments were granted, and over 15 months transpired before decision), filed with this Court originally on August 29, 2025. After a “Waiver” was filed by Respondents, including Officer Keith Gladstone and the Baltimore City Police Department, the Petition was denied by this Court on October 20, 2025.

Pursuant to this Court’s Rule 44.2, Petitioner Demetric Simon, respectfully requests Rehearing be granted, and thus the Petition for Writ of Certiorari filed with this Court originally on August 29, 2025, be placed back on the merits of the Certiorari docket with a Conference, as a proper vehicle through Grant on the Merits, and/or in the alternative, GVR (Grant/Vacate/Reversal) be issued particularly should at least one of the other pending Certiorari petitions out of the Second or Fifth Circuits be granted Certiorari, discussed *infra*. A recent filing by *Amici* in support of Petitioner in *Emigrant*, confirms the main argument being pursued is the same or similar to that of Petitioner Simon’s Question Presented One. The Respondent’s Answer to Certiorari per the CFR, to be filed by today as well, did not publicly come out in time to incorporate into this forgoing Petition for Rehearing.

I. There Are At Least Three Certiorari Petitions, Two Forming A Circuit Split Itself, Two Involving Civil Rights Abuses, Two From Published Opinions With Dissents, Presently Or Imminently Before This Court, Raising Near Identical Cert-Worthy Issues, On The Practical And Legal Application Of The Related Doctrines Of “Equitable Tolling” “Equitable Estoppel” and/or “Fraudulent Concealment” To Allow For Discovery And Trial, When Defendants Engage In Criminal And Fraudulent Misconduct, To Help Prevent Reasonable Discovery Of Both The Perpetrators Of The Injustice, Long Enough To Pass The Time For A Regular Civil Statute Of Limitations—All Including Petitioner Simon’s Should Be Heard In Due Course With A “Call For A Response” On The Merits And Possible Certiorari Grant.

“Timing is everything,” but this Court should be willing to have both flexibility and consistency, to allow three separate Certiorari petitions, from three separate Circuit Courts of Appeal, two involving outrageous misconduct by Governmental employees to conceal egregious Civil Rights violations, two that were published with Dissents, and all with variations

of the same Question Presented One done by Petitioner Simon in this Court.

Thus, for this and other reasons, Petitioner Simon's timely request for Rehearing should be granted. This could be done via multiple methods. One would be re-establishing the case onto the regular Certiorari calendar for Conference after issuing a "Call for Response" to Respondents, as this Court did recently in *Emigrant v. Saint-Jean*, No. 25-220. *Emigrant*, from the Second Circuit, notably had the Respondents similarly "waive" Response, and yet a CFR was issued.¹ If Petitioner Simon's case

¹ The Amici Brief by the Bank Policy Institute, in support of Petitioner *Emigrant*, and filed October 15, 2025, was not part of any previous discussions had before this Court, and confirms the main issue before this Court in *Emigrant*, is for all intents and purposes, the same as that of Petitioner Simon (though not a §1983 Civil Rights case, though quoting in support *Wallace*, a Civil Rights case) on the apparent Circuit Split.

"The majority also circumvented the extraordinary circumstances element of this Court's test by labeling the challenged conduct "egregious" and concluding that fairness justifies tolling claims for "egregious" conduct. See Pet. App. 28a. "Equitable tolling is a rare remedy to be applied in unusual circumstances," but the Second Circuit's analysis creates a limitless standard that could seemingly justify equitable tolling in all FHA cases. *Wallace v. Kato*, 549 U.S. 384, 396 (2007).

was filed in the Second Circuit, with their explicit consideration of “fairness” as a factor on the interrelated doctrines that do not blindly review Statutes of Limitations, especially at the Motion to Dismiss stage, and especially when the Defendants engage in criminal behaviors to obfuscate (1) their involvement, (2) their identity, and (3) the nature of there even being a conspiracy to deprive Mr. Simon of his civil rights, when they planted a weapon, after he was assaulted by a car, and already on his way to the hospital, and yet spent nearly a year in jail, on the falsified charges with planted evidence by the Baltimore City Police Department.

Although the pendency of the *Emigrant* case’s Petition, unhelpfully overlaps (such as the Respondent *Saint Jean*, in *Emigrant*’s Certiorari petition from the Second Circuit, is also due today),

After all, if even unintentional disparate impacts like those at issue in this case can be labeled “egregious,” all discriminatory lending claims could potentially qualify for equitable tolling under the majority’s reasoning. [Citation Omitted] That is not what Congress intended by establishing a two-year statute of limitations that does not vary based on the nature of the underlying conduct. The majority’s flawed “fairness-based approach to equitable tolling will reach far beyond this case” and even beyond the FHA, as it could be applied to other anti-discrimination and consumer protection statutes. Pet. App. 80a; see also id. at 62a.

the best way to remedy and ensure all Certiorari petitions raising these similar issues, be given a fair chance for both (1) success arguing the merits and/or (2) for possible hold, and later GVR, is for this Court to grant the Motion for Rehearing.

The third Circuit Split case in this Court, out of the Fifth Circuit, has recently been confirmed will have Certiorari sought in filings by Appellants representing the widow *Jenkins*. This was from a published appeal over dissent and the opinion from the Fifth Circuit issued on August 19, 2025. *See, Jenkins v. Tahmahkera*, 151 F.4th 739 (5th Cir., Dec. Aug. 19, 2025). *See also, Petitioner Simon's Supplemental Brief.* Filed October 15, 2025. (Discussing *Jenkins* and Circuit Split).

Simon's Unpublished Fourth Circuit Panel determined that “fairness” was irrelevant, (not delving into the Open Question of Law in the Circuit, including the mostly positive Maryland District Court caselaw), despite three BPD officers criminally convicted for conspiring to violating Simon's civil rights, but having the criminal indictments unsealed shortly before 5 years, and thus Respondents and their Employers, thus far having succeeded from having any civil consequences from their pattern of Civil Rights violations, because it was concealed long enough, to be past the ordinary three year civil Statute of Limitations.

Jenkins' Majority Published Fifth Circuit Panel, like *Simon*, was unconcerned with “fairness” when the Municipality, faked an autopsy to the widow, which falsely claimed “natural causes” when

it was actually being held down and pepper sprayed while in detention, that killed her husband. The truth continued to be withheld, by those in power, until *after* the regular Statute of Limitations had passed.² The Minority in *Jenkins*, described the proper application of the related Doctrines on Tolling, Estoppel, and Fraudulent Concealment, as being dramatically unfair. Compare and contrast with *Emigrant*, whose on Split decision in the 2nd Circuit, has the Dissent making the same points, as the majority from the different Circuit's case. Both cases, symbolize the present status of law, that an engrained and square Circuit Split exists.

Rehearing would allow Simon's Petition out of the Fourth Circuit to be fully and properly considered, which while it did have oral arguments, and the Fourth Circuit panel did have over 15 months to issue a well reasoned opinion, instead issued an Unpublished Opinion, which failed to tackle the Circuit Split head on, including the many "District Court" level decisions argued by the parties, by instead, denying Petitioner all appellate relief. Because the matter is a Question of First Impression

² The important role §1983 cases have, to protect against deprivations of Civil Rights, guaranteed under the United States Constitution, should be protected and not subject to "Kafkaesque procedural obstacles for ordinary Americans seeking to hold government officials accountable for violations of constitutional rights." *Jenkins v. Tahmahkera*, 151 F.4th 739, * 41 (5th Cir. 2025)(Dissent, J. Higginson)

in the Circuit, it would have been preferable for the Fourth Circuit to address that directly, instead of simply labeling the case “Unpublished” and avoiding any direct establishment of the law in the Fourth, despite the Second and Fifth Circuits, relying on their relatively well-worn but reasoned precedents, at least saying what they believed the law should be, in a Published Opinion, though both over a Dissent.³

Thus, in the alternative to reinstating the case of Petition #25-244 into the Certiorari Conference schedule with a “Call for Response” for possible Certiorari grant, would be for this Court to “hold” *Simon’s* Petition as a “Rehearing” Petition, while the two diametrically opposed Certiorari Petitions on Question Present One, out of the Second⁴ the other

³ Petitioner Simon contends that this Petition, especially the facts involved that are poignant and representative of the type of “Fraudulent concealment” doctrine, poses an ideal vehicle, for Certiorari grant, especially with three Baltimore City Police officers actively concealing their existence and complete involvement from having planted a realistic bb-gun, which led to Simon’s nearly year imprisonment, and wasn’t known by anyone publicly until the Federal indictments were issued, shortly prior to five years after the original Civil Rights violation.

⁴ “Statutes of limitations are generally subject to equitable tolling where necessary to prevent unfairness to a plaintiff who is not at fault” for lateness in filing. [...] “The taxonomy of tolling, in

out of the Fifth Circuits, are being considered by this Court over the next 3-6 months.

CONCLUSION

For the reasons presented above, the Petition for Writ of Certiorari, and the Supplemental Authorities Brief, the Petition for Rehearing Should be Granted. Rehearing should be granted, to (1) set the matter back on this Court's Conference calendar schedule, with a Call for Response (CFR) to Respondents to allow this Court to consider Simon's case as the more ideal vehicle for Certiorari grant by this Court, and/or should (2) defer consideration of this petition for rehearing, pending this Court's continuing examination and adjudication of the Second Circuit's present pending Petition in *Emigrant, supra*, which will be heard properly at a Certiorari Conference of this Court in early 2026, and the imminent Petition in the Published opinion of *Tahmahkera*, in the Fifth Circuit, which after the

the context of avoiding a statute of limitations, includes at least three phrases: equitable tolling, fraudulent concealment of a cause of action, and equitable estoppel." [...] We conclude here that the doctrine of equitable tolling applies to render [Respondents *Saint-Jean, et. al.*] claims timely in this case."

Saint-Jean v. Emigrant Mortg. Co., 129 F.4th 124, 142 (2nd Cir. 2025).

Published Opinion, over Dissent, denied appellate relief, on facts, law, and public policy argued by Petitioner Simon below at both the trial court and in the Fourth Circuit. With the denial by the Fifth Circuit of *Tahmahkera* on September 8, 2025, of the “Appellant’s motion to Stay of the mandate pending petition for certiorari [...].” *Jenkins, v. Officer Tahmahkera*, No. 24-10724 (5th Cir., Filed Sept. 8, 2025 (ECF 94-2), there is no reasonable doubt Certiorari is imminent on this case as well, confirming and re-confirming the Circuit Split. *See also*, Stephen M. Shapiro, Kenneth S. Geller, Timothy S. Bishop, Edward A. Hartnett, & Dan Himmelfarb, Supreme Court Practice, (11th ed. 2019) pg. 15-3, 15-18—15-20 (Noting various cases appropriately granted Rehearing, when other cases pending in this Court are granted Certiorari, and/or considerable for GVR relief.

Respectfully Submitted,

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CERTIFICATE OF COUNSEL

I hereby certify that this petition for rehearing is presented in good faith, and not for delay, and that it is restricted to the grounds specified in Supreme Court Rule 44.2.



Michael Wein, Esquire