

Supreme Court, U.S.  
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**No. 25-657**  
**IN THE SUPREME COURT OF THE**  
**UNITED STATES**

**BENZO ELIAS RUDNIKAS,**

Petitioner,

v.

**STATE OF FLORIDA,**

Respondent.

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

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**EXPEDITED MOTION TO HOLD PETITION FOR WRIT OF**  
**CERTIORARI IN ABEYANCE**

*/S/ BENZO ELIAS RUDNIKAS*  
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## ARGUMENT

Pursuant to Supreme Court Rule 21, Petitioner moves the Court to hold in abeyance his Petition for Writ of Certiorari pending the filing of a timely certiorari petition for his related appeal in the matter of *Benzo Elias Rudnikas v. Fidelity Brokerage Services, LLC., et. al.*; 11<sup>th</sup> Cir. No. 25-10671. That case involves an appeal of the denial of a preliminary injunction against the State of Florida and the probate judge under the ADA retaliation statute in an original jurisdiction lawsuit Petitioner filed in the Southern District of Florida on similar facts and claims being asserted in this removal proceeding. Petitioner sought to enjoin the state parties from moving forward with the indirect criminal contempt proceeding that Petitioner alleges was not only retaliatory but a vindictive prosecution as it seeks to punish Defendant for what the law clearly entitles him to do: 1) record *lis pendens* to protect his real property and 2) file federal discrimination lawsuits against the State. This Court has deemed vindictive prosecution to be a violation of the due process clause. *Bordenkircher v. Hayes*, 434 U.S. 357, 363 (1978) (“To punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort, see *North Carolina v. Pearce*, supra, 395 U.S., at 738, 89 S.Ct., at 2082 (opinion of Black, J.), and for an agent of the State to pursue a course of action whose objective is to penalize a person's reliance on his legal rights is “patently unconstitutional.”)

In its amended answer brief in that related appeal, the State of Florida and the State of Florida’s probate judge all but admitted that that they did not provide a legitimate non-retaliatory explanation to rebut Plaintiff’s prima face of retaliation in opposing the injunction at the District Court. Specifically, the probate judge argued that it would be

inappropriate to require him to comply with this Court's precedent of rebutting the prima facie case of retaliation because he is a State Court Judge:

"The Appellant suggests that Judge Cueto should have to explain any difference in the orders issued in the probate case. (IB 25) The United States Supreme Court has highlighted the importance of preventing judges from testifying regarding their thought processes in entering an order because such an examination "would be destructive of judicial responsibility." See *United States v. Morgan*, 313 U.S. 409, 422 (1941) (a judge's thought process relevant to judicial decisions is not within the purview of an examination)."

The State of Florida and the probate judge made this argument despite this Court's holding in *Tennessee v. Lane*, 541 U.S. 509 (2004), that the State's eleventh amendment immunity is abrogated. In light of the admission in the answer brief, petitioner was entitled to have the Eleventh Circuit reverse the District Court with instructions to grant Petitioner the injunction. *Tex. Dept. of Cmty. Affairs v. Burdine*, 450 U.S. 248, 254 (1981) ("Establishment of the prima facie case in effect creates a presumption that the employer unlawfully discriminated against the employee. If the trier of fact believes the plaintiff's evidence, and if the employer is silent in the face of the presumption, the court must enter judgment for the plaintiff because no issue of fact remains in the case")

Instead of giving him the injunction as required, on December 18, 2025, the Eleventh Circuit, similar to the instant case, dismissed his entire appeal including as to the State of Florida and the state court judge, under the fugitive disentitlement doctrine, even though the State of Florida never sought to invoke same. Counsel for the State of Florida and the State Court judge never filed any fugitive disentitlement doctrine motion despite having the opportunity to do so and instead filed an answer brief, consenting to having the appeal heard on the merits. Petitioner was never given the opportunity to be heard in opposition to disentitlement as to the State Defendants. Nonetheless, the

Eleventh Circuit dismissed the appeal in violation of the principle of party presentation. *Clark v. Sweeney*, No. 25–52, 2025 WL 3260170, at \*1 (U.S. Nov. 24, 2025) (“In our adversarial system of adjudication, we follow the principle of party presentation.” *United States v. Sineneng-Smith*, 590 U.S. 371, 375, 140 S.Ct. 1575, 206 L.Ed.2d 866 (2020). The parties “‘frame the issues for decision,’” while the court serves as “‘neutral arbiter of matters the parties present.’” *Ibid.* (quoting *Greenlaw v. United States*, 554 U.S. 237, 243, 128 S.Ct. 2559, 171 L.Ed.2d 399 (2008)). To put it plainly, courts “call balls and strikes”; they don't get a turn at bat. *Lomax v. Ortiz-Marquez*, 590 U. S. —, —, 140 S.Ct. 1721, 207 L.Ed.2d 132 (2020). The Fourth Circuit transgressed the party-presentation principle by granting relief on a claim that Sweeney never asserted and that the State never had the chance to address.”). Given the similar facts and legal issues, Petitioner contends that this case should be stayed pending the timely filing of a writ of certiorari for the related appeal so that the cases can be consolidated.

More specifically, the two (2) haphazard one sentence orders of dismissal that have been entered in both this appeal and the related appeal, notwithstanding that the State of Florida never raised the fugitive disentitlement issue, is not only a violation of the principle of party presentation, but raises the inference that the Eleventh Circuit is engaging in the practice of too free a recourse to rules foreclosing consideration of petitioner's appeals from being heard on the merits, which this Court has held as disserving the very purpose for which the fugitive disentitlement doctrine is invoked. *Degen v. U.S.*, 517 U.S. 820, 828–29 (1996)(“ It remains the case, however, that the sanction of disentitlement is most severe and so could disserve the dignitary purposes for which it is invoked. The dignity of a court derives from the respect accorded its judgments.

That respect is eroded, not enhanced, by too free a recourse to rules foreclosing consideration of claims on the merits.”)

In light of same, Petitioner’s believes that he has a higher chance of being granted certiorari by this Court, when the two one sentence orders of dismissal are considered by the Court collectively in a consolidated posture as opposed to being considered months apart. Additionally, considering both petitions together in a consolidated posture would be in the interest of judicial economy. Accordingly, Petitioner requests that the instant petition for writ of certiorari in this case be held in abeyance pending the timely filing of a petition for writ of certiorari in the related appeal of *Benzo Elias Rudnikas v. Fidelity Brokerage Services, LLC, et. al.*; 11<sup>th</sup> Cir. No. 25-10671. Petitioner has conferred with Counsel for Respondent regarding his position on the foregoing motion via email but has yet to receive a response.

### CONCLUSION

WHEREFORE, Petitioner prays that the Court grant this motion.

Dated this 9th day of February 2026,

*/S/ BENZO ELIAS RUDNIKAS*  
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No. 25- 657

IN THE SUPREME COURT OF THE UNITED STATES

BENZO ELIAS RUDNIKAS

Petitioner,

v.

STATE OF FLORIDA.

Respondent.

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PROOF OF SERVICE

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Petitioner, Benzo Elias Rudnikas, *pro se*, hereby certifies that on this 9<sup>th</sup> day of February 2026, all parties required to be served have been served with one copy of Petitioner's Expedited Motion To Hold Petition For Writ Of Certiorari In Abeyance. Specifically, a copy was served via U.S Certified Mail and via electronic email service, as required by Supreme Court Rule 29 and Rule 33.2, on the following: Jeffrey DeSousa, Counsel for Respondent State of Florida, Solicitor General, Florida Office of the Attorney General, 107 W. Gaines Street, Tallahassee, FL 32399, [jeffrey.desousa@myfloridalegal.com](mailto:jeffrey.desousa@myfloridalegal.com); Ph: 5088018425.

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VERIFICATION

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

A handwritten signature in black ink, consisting of a series of loops and a long, sweeping tail that extends towards the upper right.

Benzo Elias Rudnikas

Executed on February 9, 2026