U.S. Supreme Court Docket No. ______________

United States Supreme Court

Washington, D.C.

KEVIN D. CHECKSFIELD,

Appellant – Plaintiff,

against

INTERNAL REVENUE SERVICE,

Respondent – Defendant.

On Petition to the United States Court of Appeals – 2nd Cir.

Motion for an Extension of Time

Kevin Checksfield, pro se
Appellant/Plaintiff
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U.S. Court of Appeal – 2nd Circuit Index No. 24-2786

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Application for Extension of Time

To: Supreme Court Justice Sotomayor

On Petition to the United
States Supreme Court

Appl.#____________

Checksfield,
Appellant/Plaintiff,

v.

Internal Revenue Service,
Respondent/Defendant.

Background

The Appellant/Plaintiff respectfully requests the Supreme Court for an extension of time in regards to a matter which arises from the United States Court of Appeals for the Second Circuit. The docket number for the case in question is 24-2786; and originates from the Northern District of New York within the Second Circuit. The nature of the matter before the Court is going to require a level of synthesis of material which compels the Appellant/Plaintiff (or Mr. Checksfield) to ask for a time extension to the original 90-day time period to file a writ of certiorari.

Notice

Accordingly, as this case has dragged on for an extended period of time, matters have also morphed and evolved into a complex situation that calls into question the handling of this matter by the courts. The Supreme Court has the right to extend the ninety-day time limit to file

a petition for a writ of certiorari for proper cause. 28 USC § 2101 (c), specifically gives this Court and the respective Justices the right to allow a time extension of up to sixty days to the original time limit. This extension of time will allow Mr. Checksfield to address the complexities in a case which has gone from a matter which was a regional issue that embraced some Constitutional points, to a wider case that involves aspects that have a larger Federal scope and relevance.

A characteristic of legal matters that play out over an extended time period, is that someone can see for themselves if claims are made and if these contentions come to pass. This Court in conjunction with the above statute can allow a time extension as stated in The Rules of the Supreme Court of the United States. With the time extension of sixty days, this will allow the Appellant/Plaintiff the opportunity to present a cogent and reasoned position. And, Supreme Court Rule 13.5 provides this right, as noted. Mr. Checksfield moves this Court, based upon Supreme Court Rule 13.5 and 28 USC § 2101 (c), to extend the time limit to file a petition for certiorari by sixty days.

Affidavit of Appellant/Plaintiff

When someone takes a case to a Federal Circuit Appeals Court there must be a fundamental reason which gave a litigant pause in the lower court. In the Second Circuit Court of Appeals, the general standard of review is de novo; but the Second Circuit history is one that does have a two-tiered approach in matters if there are factual differences. The Court's handling of this case (docket #24-2786) indicates that it was not willing to seriously consider using the two-tiered approach. There have been factual differences throughout the case at the lower court level, and with the Appellate Court refusing to use a two-tiered approach, even in a limited way, points to the fact that the Court of Appeals has erred.

As the Appellant/Plaintiff has made clear in his filings at the Federal Appeals Court there were two distinct points which were appealed from. The Government, in their representation of the Internal Revenue Service (or IRS), chose not to respond to both of those points. This is one of the points which makes for a more complex situation at the Supreme Court. Is this a reasonable position of the Appeals Court to allow this, or is it something other than stated? Matters such as these are one of the reasons which add to the complexities in this case which comes to the Supreme Court. An additional sixty days will allow Mr. Checksfield to give a greater degree of consideration to the synthesis of these issues and present as clear a picture to the Court as possible.

Also, the fact that the root matter was previously brought to the high court a few years ago, (Checksfield v. Berg, 2017) again adds a complication to a matter which has numerous layers. After the Court of Appeals of New York refused to hear a case that involved a New York State Agency (SUNY), the Appellant/Plaintiff had a right to file with the Supreme Court. With the extra time, Mr. Checksfield can make clear this is not simply a rehashing of a previous grievance, but a resurfacing of a festering issue that has serious societal implications.

The Supreme Court has a very clear and serious role in our culture, the highest level of interpretations of our laws from one of the branches of our government says it all. However, the matters the Court decides to give its attention embrace every aspect of our society. If an individual or entity petitions the Supreme Court for certiorari, any information or intentions to attempt to facilitate the process of the high court should be considered. Accordingly, the Appellant/Plaintiff is considering filing an "extraordinary writ" to help with the Court's process.

Mr. Checksfield respectfully requests Justice Sotomayor and the Court to extend the ninety-day deadline to file for certiorari by sixty days. For the reasons mentioned within this

Affidavit and any rationale that may be developed in the Memoranda, which the Justice(s) see fit to consider for this time extension, the Appellant/Plaintiff prays they do. Under the penalty of perjury, Mr. Checksfield swears all material is true and correct in this Affidavit and Motion.

Sworn to ____________

On May 19, 2026

ANTHONY A. ROTHBERG
Notary Public, State of New York
Reg. No. 01RO6112875
Qualified in Monroe County
Commission Expires: 07/12/2028

____
Kevin Checksfield

Memorandum

This Motion is addressed to Supreme Court Justice Sotomayor, in her capacity to oversee the Second Circuit Appeals Court. With the time extension applied for, the Appellant/Plaintiff (or Mr. Checksfield) will be able to develop points and material which can give a more accurate and comprehensive understanding of this matter which is again before the Supreme Court. There are a number of rationale which compel the Appellant/Plaintiff to bring this action to this Court. Complexities in regards to the matters and how they relate to each other in this case are one of the main points which require extra time. It is not only the nature of the complex issues in this case, but a reasonable amount of time is needed to have a proper synthesis of these complexities.

Mr. Checksfield is considering the use, in this matter, of an "extraordinary writ" to address specific inconsistencies of the Circuit Appellate Court. Also, the fact that Mr. Checksfield was previously at the Supreme Court adds the complication of making clear how the first filing relates to the current matter which is being presented, yet also convey to the court the difference between the issues, such as the scope of the matter in this instance. The statute which specifically addresses this matter states:

> "Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A Justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days."

And, this statute can be found at 28 USC § 2101 (c); so, the extra time could be applied to give a more reasoned and complete presentation to the Court of the issues.

I. Case Complexities which call for adequate time

Any case that goes to an Appeals Court calls for a great degree of scrutiny and attention to detail. When these are jurisdictional standards which come into play, this can also complicate matters. Unlike the case that came to the Supreme Court from a denial of the State Appeals Court, the matter being brought to the Court in this instance comes from the U.S. Court of Appeals for the 2nd Circuit.

a) Jurisdictional Issues

When the Appellant/Plaintiff was at the Supreme Court several years ago, it was based upon the right to petition the high court because the States' highest Court of Appeals refused to hear a matter involving a State Agency. Some jurisdictional causation is straightforward in regards to its application. Other situations require a degree of scrutiny that can take some time to come to a realization to whether an issue in a case is a procedural or processing matter or, more fundamentally, a jurisdictional point. In Nokia of America Corp. v. AT&T Mobility LLC, in April 2026 the respondents submitted a motion to extend the time to file a response. The time extension was granted until late May 2026.

The constitution provides the underlying authority for the Supreme Court's Appellate Court oversight. Requests for extensions of time to file at the Court are a regular occurrence, and these requests can come in the form of responses filed to opposition, or a need for time to file a petition or writ of certiorari. Regarding Bannon v.

United States, the petitioner requested an extension of time in August 2025 and received a 30-day extension to file their writ of certiorari.

b) Appellate Court error

The decision of the Second Circuit Appellate Court of January 22, 2026 affirmed the decision of the U.S. District Court (NDNY). Upon review of this decision, it became clear that the Appeals Court simply did not give certain considerations to the arguments given by the Appellant/Plaintiff. The review of this material does take some time, and the fact that Mr. Checksfield has been pro se throughout this matter at both the District Court and the Circuit Appellate Court, can be seen as a complication which calls for some degree of extra time.

Supreme Court right of review is clearly established as to Federal Appeals Courts primarily through, but not exclusive to a writ of certiorari. "Cases in courts of appeals may be reviewed by the Supreme Court. . . . By writ of certiorari granted upon the petition of any party to any civil or criminal case. . . . By certification at any time by a court of appeals of any question of law. . . . the Supreme Court may give binding instructions." The statute in question is 28 USC § 1254.[1] Upon the denial of Mr. Checksfield's Appeal, after some consideration, a Rule 40 petition of rehearing was filed.

Specific points were made in the Rule 40 filing at the Appeals Court, and these points indicated that the District Court had not been impartial. Also, Mr. Checksfield made clear in the petition there had been an extrajudicial matter which indicated bias. Again, these are issues that require a deeper understanding of how such factors relate to

[1] Statute taken from Cornell Legal Information Institute (US Law/LII).

one another, and if they rise to a level that could possibly be resolved by "extraordinary writ".

II. Use of Extraordinary Writ

As matters have developed at the U.S. District Court, and subsequently the Circuit Appeals Court, it is apparent there is a great deal going on in this case, somethings clear, others in subtext. For anyone proceeding in a case to the U.S. Supreme Court, there has to be a fundamental understanding of all parts of a case so the filer can give the Court a clear picture of the nuances. To accomplish this can take time, so the litigant can gauge the type of writ which could be the most useful to the Court.

Anyone considering filing an "extraordinary writ" has to realize it is up to the discretion of the Supreme Court to accept the writ. And, as the petition for a writ of certiorari is also being prepared, the time required to complete these Court allowed filings increase exponentially. In Younge v. Fulton Judicial Circuit Dist. Attorney's Office, the right for certiorari was granted in 2026, the respondent accordingly, then filed for three successive time extensions. By requesting adequate time in an initial request, this can avoid duplication of filings to the Court.

It must be mentioned at this point that it is the intention of the Appellant/Plaintiff to file an "extraordinary writ" a reasonable length of time before the writ of certiorari is submitted. The rationale for an "extraordinary writ" is based upon, ". . . . the granting of any such writ, the petition must show the writ will be in aid of the Court's appellate jurisdiction, that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or

from any other Court." This standard is Rule 20.1 of the Rules of the Supreme Court of the United States.

III. The Appellant/Plaintiff has been to the Supreme Court previously

Whenever a case, or matter, which was at the Supreme Court in a previous incarnation makes its way back to the Court, this point alone makes for complications. It is significant to convey to the Court the relevance of the original claim, while making clear that the current filing is something that stands on its own merits. This is something that may be easy to put forth but can be more time consuming than one might expect. In State of Louisiana v. U.S. Food and Drug Administration, this past spring the Supreme Court paused a 5th Circuit Appeals Court ruling that would have restricted access to the drug mifepristone.

In our complicated twenty-first century world, it may become a common practice for there to be a need to revisit cases on a more regular basis as technology and legislation dictate. But, that is all the more reason to understand how a later filing stands apart from an earlier relative action. The Appellant/Plaintiff has reviewed his earlier filing and is still reviewing this material to ensure in any filings to the Supreme Court there is a clear differentiation between the matters.

If there are fields when small issues can make a large difference, then the legal field is one of them. It has become clear there are causal aspects from the matter which was at the Court in 2017, the issue which was in dispute a number of years ago focused on a matter with a nexus on Central Upstate New York. And the matter which was refused by the Circuit Appellate Court has expanded to include an entire Federal Circuit and others which may have similar practices. In the matter of Bayer AG Roundup

Litigation, the Supreme Court has dealt with numerous claims regarding Roundup cancer claims.[2]

In sum, every matter that comes to the Supreme Court that had a case directly, or indirectly, at the Court before must gauge and convey how the present case stands on its own merits. To do this takes time and effort, and therefore the Appellant/Plaintiff asks the Justice and Court to give due consideration to this matter.

IV. Conclusion

Mr. Checksfield respectfully asks Justice Sotomayor and the Supreme Court for an extension of time to file a petition for a writ of certiorari of 60 days. As has been stipulated in this motion, because of inherent case complexities, the use of an extraordinary writ, and a previous related matter to the Supreme Court, the Appellant/Plaintiff asks the Court for its consideration. This would move the due date for a petition for certiorari from June 24, 2026 to August 23, 2026. If the Justice feels this is an excessive length of time to motion the Court, any reasonable length of time which the Court deems appropriate and in the name of justice will be appreciated. Under the penalty of perjury, the Appellant/Plaintiff swears all material in this filing is true and correct.

5-19-2026
Date

Kevin Checksfield

[2] The Supreme Court readdressing legal questions regarding failure-to-warn and preemption arose in this case which h as been before the Court numerous times.

V.

24-2786
Checksfield v. Internal Revenue Serv.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 22nd day of January, two thousand twenty-six.

Present:
DEBRA ANN LIVINGSTON,
Chief Judge,
WILLIAM J. NARDINI,
MYRNA PÉREZ,
Circuit Judges.

KEVIN D. CHECKSFIELD,

Plaintiff-Appellant,

v. 24-2786

INTERNAL REVENUE SERVICE,

Defendant-Appellee.

For Plaintiff-Appellant: KEVIN D. CHECKSFIELD, *pro se*, Syracuse, NY.

For Defendant-Appellee: SAMUEL P. JONES, Michael J. Haungs, Tax Division, Department of Justice, Washington, DC.

John A. Sarcone III, Acting
United States Attorney.

Appeal from a judgment and order of the United States District Court for the Northern District of New York (Suddaby, *J.*; Lovric, *M.J.*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment and September 23, 2024 order of the district court are **AFFIRMED.**

Kevin D. Checksfield, *pro se*, appeals from the district court's entry of judgment in favor of the Internal Revenue Service ("IRS") and its subsequent denial of his Federal Rule of Civil Procedure 60(b) motion. Checksfield alleged below that the IRS violated the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 *et seq.*, by denying his request for third-party tax returns. Checksfield and the IRS each moved for summary judgment. The IRS argued that it had properly denied Checksfield's request under 5 U.S.C. § 552(b)(3) and 26 U.S.C. § 6103 because he sought third-party tax returns or return information without those parties' authorization or consent. The district court denied Checksfield's summary judgment motion and granted the IRS's summary judgment motion, largely for the reasons identified by the IRS. *Checksfield v. Internal Revenue Serv.*, No. 21-cv-1180, 2024 WL 21549 (N.D.N.Y. Jan. 2, 2024). Checksfield subsequently moved for relief under Rule 60(b), which the district court also denied. We assume the parties' familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.[1]

[1] The district court dismissed Checksfield's original complaint but granted leave to amend. *Checksfield v. Internal Revenue Serv.*, No. 21-cv-1180, 2022 WL 2713499 (N.D.N.Y. Jul. 13, 2022). Checksfield does not challenge this dismissal order. On appeal, Checksfield newly asserts a 42 U.S.C. § 1983 claim against one of the IRS employees involved in the denial of his FOIA request. However, Checksfield never named

* * *

"This Court reviews a district court's grant of summary judgment in FOIA litigation *de novo*." *Spadaro v. U.S. Customs & Border Prot.*, 978 F.3d 34, 42 (2d Cir. 2020). We review discovery rulings, the denial of *in camera* review, and the denial of a Rule 60(b) motion to vacate a judgment for an abuse of discretion. *Jabar v. U.S. Dep't of Just.*, 62 F.4th 44, 48 (2d Cir. 2023) (*in camera* review); *Mandala v. NTT Data, Inc.*, 88 F.4th 353, 359 (2d Cir. 2023) (Rule 60(b)); *In re Agent Orange Prod. Liab. Litig.*, 517 F.3d 76, 102 (2d Cir. 2008) (discovery rulings).

We begin with the magistrate judge's discovery rulings. Checksfield seeks to challenge these rulings on appeal, but he waived review of them. "[A] *pro se* litigant who fails to object timely to a magistrate's order on a non-dispositive matter waives the right to appellate review of that order, even absent express notice from the magistrate judge that failure to object within [fourteen] days will preclude appellate review." *Caidor v. Onondaga County*, 517 F.3d 601, 605 (2d Cir. 2008); *see* Fed. R. Civ. P. 72(a). Here, Checksfield failed to seek review of the discovery rulings from the district court, thereby waiving the right to appellate review.

In any event, Checksfield's challenges to the magistrate judge's discovery rulings are meritless. "In resolving summary judgment motions in a FOIA case, a district court proceeds primarily by affidavits in lieu of other documentary or testimonial evidence." *Long v. Off. of Pers. Mgmt.*, 692 F.3d 185, 190 (2d Cir. 2012). "Affidavits submitted by an agency are accorded a presumption of good faith; accordingly, discovery relating to the agency's search and the exemptions it claims for withholding records generally is unnecessary if the agency's submissions are adequate on their face." *Id.* at 191 (internal quotations omitted). Here, the magistrate judge

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this employee as a defendant in the district court and cannot seek to assert a new claim on appeal. *See Green v. Dep't of Educ. of New York.*, 16 F.4th 1070, 1078 (2d Cir. 2021) ("It is a well-established general rule that an appellate court will not consider an issue raised for the first time on appeal." (internal quotations omitted)).

properly concluded that Checksfield had not yet shown that discovery would be necessary given the narrow legal argument the IRS was raising.

As for the summary judgment motions, the district court properly granted summary judgment to the IRS. "Although FOIA was enacted to promote honest and open government, access to governmental information must be orderly and not so unconstrained as to disrupt the government's daily business." *Spadaro*, 978 F.3d at 42 (citation modified). "To balance these concerns, the statute permits an agency to withhold certain information pursuant to nine exemptions." *Id.* (citing 5 U.S.C. § 552(b)). "Summary judgment is warranted when the affidavits describe the justifications for nondisclosure with reasonably specific detail, demonstrate that the information withheld logically falls within the claimed exemption, and are not controverted by either contrary evidence in the record nor by evidence of agency bad faith." *Id.* (citation modified).

In this case, the IRS invoked FOIA Exemption 3, under which an agency may withhold material that is "specifically exempted from disclosure by statute . . . if that statute . . . requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue." 5 U.S.C. § 552(b)(3). "To claim this Exemption, the government must demonstrate that: (1) the statute invoked qualifies as an Exemption 3 withholding statute, and (2) the materials withheld fall within that statute's scope." *Spadaro*, 978 F.3d at 42 (citation modified).

Here, the district court correctly concluded that 26 U.S.C. § 6103, which provides that "[r]eturns and return information shall be confidential," is an Exemption 3 withholding statute. *See Breuhaus v. Internal Revenue Serv.*, 609 F.2d 80, 82–83 (2d Cir. 1979). The district court was also correct that the IRS demonstrated that the materials withheld here, to the extent they existed, fall within § 6103's scope. The IRS submitted a sworn declaration, confirming that

Checksfield had provided no third-party authorization or consent for the release of the requested tax returns or return information. Checksfield does not dispute that he sought third-party return information without consent. Under these circumstances, federal law prohibits the IRS from disclosing the requested records, whether it acted in bad faith or not.

On appeal, Checksfield largely reiterates his arguments that various circumstances nevertheless authorize release. The district court correctly rejected these arguments. First, Checksfield continues to argue that § 6103(i)(1)(A)(i) entitles him to the requested records. That provision states that "return or return information . . . shall, pursuant to and upon the grant of an ex parte order by a Federal district court judge or magistrate judge . . . , be open . . . to inspection by, or disclosure to, officers and employees of any Federal agency who are personally and directly engaged in" certain criminal investigations. 26 U.S.C. § 6103(i)(1)(A)(i). As the district court explained, this provision has no relevance here because Checksfield is not a federal employee.

Second, Checksfield continues to assert that information in the requested records is segregable, and that the district court should have reviewed the records *in camera*. But again, the district court correctly concluded that these arguments are meritless. The specific materials that Checksfield sought to be segregated—those concerning deductions taken on tax returns—are protected "return information" under § 6103, and therefore cannot be disclosed even if isolated. *See* 26 U.S.C. § 6103(b)(2) ("The term 'return information' means . . . a taxpayer's . . . deductions . . . ."). And the district court did not abuse its significant discretion in declining to undertake *in camera* review here. *See Halpern v. Fed. Bureau of Investigation*, 181 F.3d 279, 292 (2d Cir. 1999).

Finally, the district court did not abuse its discretion in denying Checksfield's Rule 60(b) motion, which largely reiterated his previous arguments and fell far below the bar for Rule 60(b)

relief.

* * *

We have considered Checksfield's remaining arguments and find them to be without merit. Accordingly, we **AFFIRM** the judgment and September 23, 2024 order of the district court.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

UNITED STATES COURT OF APPEALS
for the
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 26th day of March, two thousand twenty-six,

Present: Debra Ann Livingston,
Chief Judge,
William J. Nardini,
Myrna Pérez,
Circuit Judges,

Kevin D. Checksfield,

Plaintiff - Appellant,

v.

Internal Revenue Service,

Defendant - Appellee.

ORDER
Docket No. 24-2786

Appellant Kevin D. Checksfield having filed a petition for panel rehearing and the panel that determined the appeal having considered the request

IT IS HEREBY ORDERED that the petition is DENIED.

For The Court:
Catherine O'Hagan Wolfe,
Clerk of Court