

No. _____

In the Supreme Court of the United States

JAMES E. MCNAIR,

Applicant,

v.

K. JOHNSON, NURSE PRACTITIONER.

**APPLICATION FOR AN EXTENSION OF TIME TO FILE
A PETITION FOR A WRIT OF CERTIORARI**

To the Honorable Clarence Thomas, Associate Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Eleventh Circuit:

1. Pursuant to Supreme Court Rule 13.5, Applicant James E. McNair respectfully requests a 60-day extension of time, to and including February 5, 2026, within which to file a petition for a writ of certiorari. The United States District Court for the Northern District of Florida dismissed the case on December 28, 2023. A copy of the order is attached as Exhibit A. The United States Court of Appeals for the Eleventh Circuit issued a published opinion on July 14, 2025. A copy of the opinion is attached as Exhibit B. The Eleventh Circuit denied a timely petition for rehearing and rehearing en banc on September 8, 2025. A copy of the order is attached as Exhibit C. This Court's jurisdiction would be invoked under 28 U.S.C. § 1254(1).

2. Absent an extension, a petition for a writ of certiorari would be due on December 7, 2025. This application is being filed more than 10 days in advance of that date, and no prior application has been made in this case.

3. This case presents a question that has sharply divided the circuits since this Court's decision in *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991): whether federal courts have the power to issue sanctions under their inherent authority without first finding "bad faith."

4. James E. McNair, a Florida prisoner, filed a lawsuit under 42 U.S.C. § 1983 alleging that respondent violated the Eighth Amendment by withholding critical medication. As required by the U.S. District Court for the Northern District of Florida's Local Rule 5.7(A), Mr. McNair used the court's standard civil-rights complaint form for pro se prisoners. The form requires prisoners to list "all prior state and federal cases," including "civil cases, habeas cases, and appeals," to assist the court in performing PLRA screening under 28 U.S.C. §§ 1915(e)(2) and 1915A.

5. The district court dismissed the case without prejudice under 28 U.S.C. § 1915(e)(2)(B)(i), which mandates that a court "shall dismiss the case at any time if [it] determines that ... the action ... is ... malicious." In the court's view, this action was "malicious" because Mr. McNair inadvertently omitted one habeas petition and an appeal of a later habeas petition from the complaint form. The court made clear that it viewed this dismissal as mandatory under the statute. It characterized the magistrate judge's recommendation as urging dismissal "as malicious under 28 U.S.C. § 1915(e)(2)(B)(i)" And the court agreed, stating: "Plaintiff's complaint is DISMISSED without prejudice as

malicious under 28 U.S.C. § 1915(e)(2)(B)(i).” The court thus directed the Clerk to “note on the docket that this cause was dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) and counts as a strike.” The district court did not mention its inherent authority or any form of discretion.

6. Mr. McNair appealed, arguing that his omissions on the form did not meet the PLRA’s “malicious” standard because they were inadvertent and immaterial. Rather than address that argument, the panel affirmed on an entirely different “alternative ground”: that the district court could have dismissed the case in its discretion under its “inherent authority” to enforce compliance with local rules. Slip op. at 2, 9. The panel repeatedly acknowledged that such dismissals are discretionary—not mandatory. Slip op. at 9-10, 13 (referring to the district court’s “considerable discretion” and noting that “[w]e review [such dismissals] for an abuse of discretion” (citation omitted)).

7. The panel explained that the district court’s Local Rule 5.7(A) requires pro se prisoners to use the form and authorizes dismissal for noncompliance. Slip op. at 11-13. It held that “dismissal without prejudice was an appropriate exercise of the district court’s inherent authority to manage its docket and enforce the local rules,” and that the court “did not abuse its considerable discretion when it dismissed McNair’s suit for failure to comply with the complaint form’s explicit instructions.” Slip op. at 13. “That is so even if we would have gone the other way had the choice been ours to make.” Slip op. at 13-14 (cleaned up). The panel concluded: “The record supports the district court’s dismissal without prejudice of McNair’s § 1983 suit under its inherent authority to manage its docket and enforce applicable local rules. Accordingly, we affirm the district court’s judgment.” Slip op. at 14.

8. The Eleventh Circuit declined to make any finding as to whether Mr. McNair's omissions were intentional or event negligent, finding it unnecessary to do so. The Eleventh Circuit expressly held that although inherent authority sanctions typically require a finding of "bad faith," a bad faith is not required where the sanction is a dismissal without prejudice. Slip op. at 14 n.4. Wrote the panel: "a dismissal without prejudice doesn't depend on a finding of bad faith, and can follow from unintentional ... conduct." Slip op. at 14 n.4.

9. The Eleventh Circuit's decision in this case deepens a multi-decade circuit conflict over the scope of courts' authority to issue non-statutory sanctions under their "inherent" authority. Several circuits have held that "bad faith" is always required before a court may issue a sanction under its inherent authority. Several other circuits have held that some categories of sanctions may issue under a court's inherent authority without a finding of bad faith. The two conflicting approaches to inherent authority sanctions are irreconcilable and significantly influence the range of sanctionable conduct in these circuits.

10. Applicant respectfully requests an extension of time to file a petition for a writ of certiorari. Because Mr. McNair is incarcerated, counsel has faced challenges in communicating with Mr. McNair since the Eleventh Circuit denied the petition for rehearing. A 60-day extension would allow counsel of record sufficient time to communicate with Mr. McNair about the case, fully examine the Eleventh Circuit's decision's consequences, research and analyze the issues presented, and prepare the petition for filing. Additionally, the undersigned counsel has a number of other pending matters that will interfere with counsel's ability to file the petition on or before December 7, 2025.

Wherefore, Applicant respectfully request that an order be entered extending the time to file a petition for a writ of certiorari to and including February 5, 2026.

Dated: November 11, 2025

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Andrew T. Tutt", written over a horizontal line.

Andrew T. Tutt

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