

No. 26A____
IN THE SUPREME COURT OF THE UNITED STATES

JAMES L. KOUTOULAS,
Applicant,

v.

ERIC DE FORD, SANDRA BADER, and SHAWN R. KEY,
individually and on behalf of all others similarly situated,
Respondents.

**ON APPLICATION FOR A STAY PENDING APPEAL TO THE
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT**

SUPPLEMENTAL BRIEF FOR APPLICANT

**TO THE HONORABLE CLARENCE THOMAS, ASSOCIATE JUSTICE OF
THE
SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE
FOR THE ELEVENTH CIRCUIT**

James L. Koutoulas
Applicant pro se
10 N. Dearborn Street, Suite 400
Chicago, Illinois 60602
(312) 836-1180
james@koutoulaslaw.com
August 6, 2026

**PERFORMANCE OF THE COMPELLED-STATEMENT PROVISION IS NOW
DUE AUGUST 7, 2026, AT 5:00 P.M. EST, ON PAIN OF CRIMINAL
CONTEMPT PROCEEDINGS.**

TABLE OF CONTENTS

Supplemental Brief.....	4
I. The compelled statement is now enforced by the threat of criminal contempt	4
II. The district court has struck the filing by which Applicant sought to preserve his objection	6
III. The August 4 sanctions order confirms that the object of the sanction is Applicant's speech	6
IV. The August 4 order adjudicated conduct already before the Eleventh Circuit	7
V. The presiding judge's response to criticism of himself bears on the neutral-adjudicator question	9
VI. The Eleventh Circuit has completed its disposition of the stay request	10
Conclusion	11

TABLE OF CITED AUTHORITIES

Cases

<i>Griggs v. Provident Consumer Discount Co.</i> , 459 U.S. 56 (1982)	8
<i>Mayberry v. Pennsylvania</i> , 400 U.S. 455 (1971)	5
<i>Offutt v. United States</i> , 348 U.S. 11 (1954)	5
<i>Taylor v. Hayes</i> , 418 U.S. 488 (1974)	5

Rules

Fed. R. Crim. P. 42(a)(3)	5
---------------------------------	---

SUPPLEMENTAL BRIEF

Applicant respectfully submits this supplemental brief to bring to the Court's attention intervening matter that was not available when the application was filed on August 4, 2026. Three orders and a Clerk-entered judgment have since issued in the district court. Each bears on a question already presented, and none enlarges the relief sought. Applicant continues to seek a stay of the compelled-statement provision of the July 22, 2026 contempt order and of no other provision.

The intervening orders are these. On August 4, the district court entered a twenty-two-page order granting terminating sanctions against Applicant. (Supp. App. A.) On August 5, the district court set a new compliance deadline of "5:00pm EST on August 7, 2026" and stated that non-compliance "will result in the initiation of criminal contempt proceedings." (Supp. App. B.) That same day, the district court struck the notice by which Applicant had preserved his objection while declining to speak, holding that no rule permits such a filing and that "[t]he proper remedy is filing an appeal with the Eleventh Circuit Court of Appeals." (Supp. App. C.) Also on August 5, the Clerk entered default judgment against Applicant. (Supp. App. D.)

I. The compelled statement is now enforced by the threat of criminal contempt, which sharpens rather than answers the questions presented.

The application argued that a court-scripted recantation, apology, and declaration of respect is compelled speech, and that it was imposed without the notice and the neutral adjudicator that due process requires. (Application 11-13, 22-24.) The district court's August 5 order supplies a fact that was not available when that argument was made: the compelled statement is now backed by an express

warning that failure to publish "will result in the initiation of criminal contempt proceedings." (Supp. App. B.)

That development matters in three respects.

First, it removes any question that the provision operates coercively against speech. Applicant is now required to publish words written by the government or face a criminal proceeding for declining to publish them.

Second, it makes the identity of the adjudicator concrete rather than hypothetical. Federal Rule of Criminal Procedure 42(a)(3) provides that "[i]f the criminal contempt involves disrespect toward or criticism of a judge, that judge is disqualified from presiding at the contempt trial or hearing unless the defendant consents." A charge would formally concern the refusal to publish. The conduct underlying the contempt adjudication, however, consists of Applicant's published commentary concerning the presiding judge and his orders. If the threatened charge is predicated on, or framed as, disrespect toward or criticism of the presiding judge, Rule 42(a)(3) requires reassignment; at a minimum, the order makes the neutral-adjudicator question immediate. Section II of the application argued that the neutral adjudicator required by *Mayberry v. Pennsylvania*, 400 U.S. 455 (1971), *Offutt v. United States*, 348 U.S. 11 (1954), and *Taylor v. Hayes*, 418 U.S. 488 (1974), was absent. The prospect of criminal proceedings before the same judge presents that question in its most direct form.

Third, the schedule confirms the irreparability argument in Section III. Applicant must choose, by 5:00 p.m. on Friday August 7, 2026, between publishing a

statement he does not believe and exposure to criminal contempt. Neither branch of that choice can be undone by a later judgment on appeal.

II. The district court has struck the filing by which Applicant sought to preserve his objection without speaking.

On August 4, Applicant filed a notice stating that he objected to the compelled-statement provision on First Amendment grounds, that the provision was pending before the Eleventh Circuit, and that he did not intend disrespect to the district court. On August 5, the district court struck that filing in its entirety, holding that "[t]here is no Local Rule or Federal Rule of Civil Procedure that permits the filing of the aforementioned Notice," and that "[t]he proper remedy is filing an appeal with the Eleventh Circuit Court of Appeals." (Supp. App. C.)

Applicant does not ask this Court, at this time, to review that order. It is relevant here for a narrower reason. The application represented that no adequate alternative to a stay existed. (Application 24-27.) The district court has now stated that "[t]he proper remedy is filing an appeal with the Eleventh Circuit Court of Appeals," and it has done so while the compliance deadline runs and while criminal exposure attaches. The intermediate course — objecting on the record and awaiting appellate review before speaking — is no longer available to him in that court.

III. The August 4 sanctions order confirms that the object of the sanction is Applicant's speech.

Section I.C of the application argued that the record identifies Applicant's speech, rather than any failure of compliance, as the object of the contempt

sanction. (Application 18-20.) The August 4 order is new evidence of that proposition, and it is the district court's own.

That order addresses Applicant's class-notice commentary first, before any other ground. (Supp. App. A at 5-9.) It relies on the contempt adjudication as a predicate, finding that Applicant "remained undeterred by the contempt citation." (*Id.* at 7.) It describes the harm to be remedied as harm "to public confidence in the judiciary." (*Id.* at 9.) And it grounds the choice of the most severe available sanction in a comparison of the severity of Applicant's criticism, stating that "Defendant Koutoulas accuses the district court of worse" than the defendant in the case on which the court relied. (*Id.*)

The order states that this conduct is "sufficiently malicious to warrant entry of default judgment, even setting aside the litany of vexatious pleadings and discovery violations committed before and after the contempt citation." (*Id.* at 8.) The class-notice commentary was therefore treated as independently sufficient for the terminal sanction. Applicant respectfully submits that when a court identifies the injury to be remedied as injury to confidence in the judiciary, calibrates the sanction to the severity of the criticism directed at it, and holds that criticism independently sufficient, the speech-directed character of the sanction is established by the order itself.

IV. The August 4 order adjudicated conduct that was already before the Eleventh Circuit, and imposed a second sanction for it.

Applicant does not ask this Court, at this time, to review the August 4 order or the judgment entered upon it. Neither is presently before the Court, and this

application seeks a stay of the compelled-statement provision and of nothing else. The order is relevant here for a narrower reason, and it is a reason that did not exist when the application was filed.

On July 23, 2026, the day after the contempt order issued, Applicant filed a notice of appeal from it. The notice designates "the Court's Order entered July 22, 2026 (Doc. 658), holding Defendant in civil contempt and ordering, among other things, that Defendant publish a Court-authored statement within five days and permitting Plaintiffs to seek costs and attorney's fees," and states that "[t]he appeal is taken from the Order in its entirety and specifically from its compelled-statement and sanction provisions." (Supp. App. F.) "The filing of a notice of appeal is an event of jurisdictional significance -- it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982) (per curiam). On August 3, 2026, the Eleventh Circuit granted in part Respondents' motion to dismiss that appeal, dismissing the challenge to costs and fees while retaining the contempt adjudication and the retraction requirement. (App. A; Supp. App. E.)

Twelve days after the notice of appeal, and one day after the Eleventh Circuit confirmed that the contempt adjudication and the retraction requirement remained before it, the district court entered the August 4 order. The first substantive ground of that order is the commentary accompanying the class notice, which is the same conduct on which the contempt adjudication rests. (Supp. App. A at 5-9.) The order

does not treat the contempt as a matter pending elsewhere. It treats the adjudication now under review as a completed predicate, finding that Applicant "remained undeterred by the contempt citation." (*Id.* at 7.) The application explains why each of the three findings on which that adjudication rests is contradicted by the orders and by the record. (Application 13-18.) An adjudication so contested, and pending before the court of appeals, now supplies the leading ground of a default judgment against Applicant. The same speech thus supported two sanctions, the second justified in part by the first, imposed while the first was pending on appeal.

Applicant recognizes that the reach of divestiture is a question for the Eleventh Circuit in the first instance, and he does not ask this Court to resolve it here. He identifies the sequence because it bears on the equities addressed in the application. The stay sought was a short one, intended to preserve the position of the parties while an appellate court reviewed the compelled statement. What has happened since is that the same conduct has been sanctioned a second time, and the compelled statement has been placed on a two-day clock enforced by the prospect of criminal proceedings.

V. The presiding judge's response to criticism of himself bears directly on the neutral-adjudicator question presented in Section II.

The application argued that the judge who wrote the compelled statement is the judge whose authority that statement vindicates. (Application 22-24.) The August 4 order contains material that was not available when that argument was made.

In a footnote responding to Applicant's public description of him as an "Obama-appointed" judge, the presiding judge sets out his own biography: service in the Army under two Presidents, service as an Assistant United States Attorney, consideration for appointment as United States Attorney, the prosecution of war crimes, and subsequent Department of Justice service. The footnote states, in the first person, that "the undersigned was unanimously confirmed by the U.S. Senate." It then attributes to Applicant an intent "to play to the biases he believes class members have against Obama appointees and the Judiciary more generally." (Supp. App. A at 7 n.5.) The order elsewhere states that Applicant "doxes the presiding judge by identifying him by name." (*Id.* at 7.) The presiding judge's name appears on the face of every order in this case.

Applicant does not, in this application, advance a claim of actual bias, and he asks this Court to draw no inference about the presiding judge's state of mind. He submits only that this material is responsive to the question already presented in Section II, and that it was not in existence when the application was filed.

VI. The Eleventh Circuit has completed its disposition of the stay request.

The Eleventh Circuit's order granting in part Respondents' motion to dismiss and denying a stay was docketed in the district court on August 5, 2026. (Supp. App. E.) The court dismissed Applicant's challenge to the award of costs and fees and denied the stay. The time-sensitive motion for a limited extension described in the application, and in the Statement of Prior Applications, has been resolved against Applicant. Both lower courts have denied a stay, the extension motion has

been resolved, and no request for substantially the same relief remains pending below.

CONCLUSION

The intervening orders do not alter the relief Applicant seeks. When the application was filed, performance was compelled that same day, and there was almost no interval in which a stay could operate. The district court has since set a new deadline of "5:00pm EST on August 7, 2026." A stay entered before that hour would be fully effective, and Applicant respectfully submits that the Court accordingly has a defined and workable window in which to act. What has changed alongside the deadline is the consequence of denial. Non-compliance now carries the district court's express warning that criminal contempt proceedings will follow, which was not so when the application was filed.

Applicant respectfully renews his request for an immediate administrative stay of the compelled-statement provision of the contempt order pending consideration of the application, and for a stay pending resolution of his appeal in the Eleventh Circuit and any ensuing petition for a writ of certiorari.

Respectfully submitted,

/s/ James L. Koutoulas

James L. Koutoulas

Applicant pro se

10 N. Dearborn Street, Suite 400

Chicago, Illinois 60602

(312) 836-1180

james@koutoulaslaw.com

August 5, 2026

The Supplemental Appendix (Supp. App. A-F, Supp. App. 1-36) is filed herewith and contains its own table of contents.