



264363

IN THE SUPREME COURT OF THE UNITED STATES

Stephen A. Downs, Sr.,

Applicant,

v.

Douglas A. Collins,

Respondent.

On Emergency Application for a Stay of the Mandate of the United States Court of Appeals for the Sixth Circuit case number 25-5115

EMERGENCY APPLICATION TO CIRCUIT JUSTICE BRETT M. KAVANAUGH FOR
A STAY OF THE SIXTH CIRCUIT COURT OF APPEALS MANDATE PENDING
CERTIORARI, OR IN THE ALTERNATIVE, TO RECALL THE MANDATE UNDER
SUPREME COURT RULE 23

To the Honorable Brett M. Kavanaugh, Associate Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Sixth Circuit:

I. INTRODUCTION: THE KEYS TO COURT ACCESS, CIVIL RIGHTS
ENFORCEMENT, AND THE PRINCIPLE OF STEWARDSHIP

Applicant Mr. Stephen A. Downs, Sr. respectfully submits this emergency application to the Honorable Brett M. Kavanaugh, Associate Justice of the Supreme Court of the United

States and Circuit Justice for the United States Court of Appeals for the Sixth Circuit. This application arises from a Title VII civil rights action and seeks an emergency stay of the mandate because keys are foundational to stewardship, responsibility, and the uniform administration of federal law.

Historically, keys were not symbols of arbitrary power, but sacred tools entrusted to a faithful steward to unlock pathways, guard truth, and ensure absolute faith in the administration of justice. In our constitutional republic, the right of an unrepresented *pro se* citizen to hold the keys to court access—and to build a complete record to test substantive workplace discrimination and retaliation claims on the merits—is a bedrock pillar upon which our legal order was founded.

Stewardship fails when lower courts utilize mechanical, administrative shortcuts to lock the gates of Article III appellate review against a citizen. Here, Applicant followed every operational rule with meticulous care, only to find the pathways of federal protection locked by a multi-layered procedural shutdown:

- **The Outright Denial of Pleading Access:** The lower court flatly refused to address a motion to file a Supplemental Complaint under Federal Rule of Civil Procedure 15(d) to capture ongoing workplace infractions, openly defying the liberal amendment standards established in *Foman v. Davis*, 371 U.S. 178 (1962).
- **An Asymmetrical, Frozen Discovery Track:** The tribunal stayed and order-frozen Applicant's basic evidence-gathering vehicles while allowing the federal agency to

build a one-sided record, repeating the exact summary judgment errors previously censured in Wyatt v. Nissan North America, Inc., 999 F.3d 400 (6th Cir. 2021).

- **The Evasion of Binding Precedent:** The appellate panel utilized an unpublished, non-precedential summary designation to characterize active Title VII retaliation and constructive discharge claims as "moot," effectively resurrecting the heightened injury barriers outlawed by this Court in Muldrow v. City of St. Louis, 601 U.S. 346 (2024).
- **The Reliance on Automated Administrative Shortcuts:** The court below abdicated its mandatory adjudicative duties by allowing automated administrative workflows to re-classify and mechanically terminate referred, substantive equitable and damages remedies without independent judicial review.
- **The Deprivation of a Seventh Amendment Jury Demand:** The lower courts unconstitutionally usurped the historic role of the jury under the Seventh Amendment by resolving a highly disputed, credibility-driven Title VII and constructive discharge record on paper in chambers [*Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986)].

Applicant Downs invokes the authority of the Circuit Justice to restore these essential keys to due process, uphold the integrity of this Court's binding precedents, and preserve the underlying record before it is permanently closed.

II. EXECUTIVE SUMMARY AND RULE 23.3 STATEMENT OF EXHAUSTION

Pursuant to Supreme Court Rule 23 and 28 U.S.C. § 2101(f), Applicant Mr. Stephen A. Downs, Sr. respectfully requests an emergency stay of the mandate of the United States Court of Appeals for the Sixth Circuit in Case No. 25-5115, pending the timely filing and disposition of a forthcoming Petition for a Writ of Certiorari on the Paid Docket.

On Friday, August 21, 2026, the Sixth Circuit denied Applicant's petition for rehearing en banc. The underlying summary judgment decision was entered by the United States District Court for the Middle District of Tennessee at Nashville in Case No. 3:20-cv-01090 (Judge Eli J. Richardson presiding).

In strict compliance with Supreme Court Rule 23.3, Applicant formally sought stay relief in the court below in the first instance. On August 24, 2026, Applicant timely filed an Emergency Motion to Stay the Mandate in the Sixth Circuit (Docket Entry 31), which automatically stayed the issuance of the mandate under Federal Rule of Appellate Procedure 41(d)(1).

Although Respondent designated lead appellate counsel on August 28, 2026 (Docket Entry 32), Respondent chose absolute silence and completely failed to file any answer or opposition within the mandatory 10-day period under FRAP 27(a)(3)(A) [17(a)(1)]. Applicant formally docketed Respondent's total procedural forfeiture and the underlying trial-level discovery stay orders on September 4, 2026 (Docket Entry 33, 34).

Despite this uncontested record and Respondent's complete procedural default, the Sixth Circuit summarily denied Applicant's emergency stay motion on September 8, 2026, triggering an imminent mandate issuance under Federal Rule of Appellate Procedure 41(b)

[1.2.3, 17(a)(1)]. Absent immediate intervention by the Circuit Justice, the mandate will drop to the District Court upon the expiration of the 7-day period on September 15, 2026, divesting the appellate courts of jurisdiction, terminating the litigation, and permanently dismantling an active record infected by structural due process breakdowns and unconstitutional discovery locks. Immediate relief from the Circuit Justice is the sole remaining operational mechanism available to preserve the status quo and prevent irreparable harm.

III. QUESTIONS PRESENTED FOR REVIEW

1. The Question of Pleading Access and Supplemental Practice Under Rule 15(d):

Whether an unrepresented citizen's Fifth Amendment Due Process right to meaningful court access is violated when a lower court denies a pleading-embedded motion to file a Supplemental Complaint under Federal Rule of Civil Procedure 15(d) in direct defiance of the mandatory, liberal amendment standards established by this Court in *Foman v. Davis*, 371 U.S. 178 (1962)*, which strictly forbids the outright denial of leave to amend or supplement without an articulated, justifying reason.

2. The Question of Seventh Amendment Deprivation on an Asymmetrical, Frozen Discovery Track:

Whether a federal court unconstitutionally usurps the historic role of an Article III jury under the Seventh Amendment by entering summary judgment on a disputed,

credibility-driven record under a purported "completed discovery" rationale, where the public docket conclusively proves discovery was stayed and order-frozen as to the citizen plaintiff; and whether a lower court may replicate an established, previously censured pattern of judicial fact-finding that directly defies this Court's foundational mandate in *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986) and replicates identical, recurring errors explicitly reversed by a unanimous panel in *Wyatt v. Nissan North America, Inc.*, 999 F.3d 400 (6th Cir. 2021)*.

3. **The Question of Compliance with the *Muldrow* Mandate:**

Whether a lower court evades this Court's binding statutory mandate in *Muldrow v. City of St. Louis*, 601 U.S. 346 (2024)* by utilizing an unpublished summary order to characterize active, ongoing Title VII workplace retaliation and constructive discharge claims as "moot," thereby re-instituting a heightened injury barrier to bar jury review with impunity.

4. **The Question of Article III Jurisdiction and Mechanical Dismissals:**

Whether a federal court of appeals abdicates its mandatory Article III appellate jurisdiction by utilizing automated administrative workflows to re-classify and summarily terminate referred, substantive equitable and damages remedies as unreviewed procedural motions.

5. **The Question of Insulating Structural Errors via Non-Precedential Designations:**

Whether an appellate court's use of non-precedential, unpublished designations to insulate unauthorized judicial fact-finding and explicit departures from binding circuit mandates from this Court's review creates an unconstitutional gap in Article III judicial review, depriving citizens of the uniform protection of federal civil rights laws.

IV. ARGUMENT IN SUPPORT OF THE EMERGENCY STAY

Pursuant to 28 U.S.C. § 2101(f) and Supreme Court Rule 23, an applicant seeking an emergency stay must demonstrate (1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari, (2) a fair prospect that a majority of the Court will conclude that the decision below was erroneous, and (3) a likelihood that irreparable harm will result if the stay is denied. Applicant Downs comfortably satisfies each threshold.

A. The Lower Court Impermissibly Circumvented the Unanimous *Muldrow* Mandate

In a unanimous 9–0 decision authored by Justice Elena Kagan and joined by the Circuit Justice, this Court definitively dismantled the heightened, judge-made injury thresholds previously erected across the circuits. [*Muldrow v. City of St. Louis*, 601 U.S. 346, 355 (2024)]. Under the plain text of Title VII, an employee challenging an adverse employment action or retaliatory transfer need only establish "some harm" respecting an identifiable term, condition, or privilege of employment. This Court expressly repudiated requirements that a worker show "significant," "material," or "serious" disadvantages.

Despite this unequivocal instruction, the court below executed an administrative lockout. By utilizing an unpublished summary disposition to categorize active, ongoing retaliatory workplace actions, punitive tool-stripping, and constructive discharge claims as "moot" or non-actionable, the lower court effectively resurrected the exact heightened injury barriers outlawed by *Muldrow*.

When an unrepresented worker presents contemporaneous proof that agency supervisors stripped his computational tools (CONCUR, SharePoint, and minutes utilities) while female counterparts retained full operational access, he has shown tangible, actionable harm respecting the terms and conditions of employment. The lower court's refusal to apply the *Muldrow* threshold to these active claims represents a direct evasion of this Court's unanimous decree and warrants immediate intervention to preserve this Court's supervisory authority.

B. The Lower Court Usurped the Historic Role of the Jury Guarantee and Replicated Censured Fact-Finding

Under this Court's core Seventh Amendment jurisprudence, authored by Justice Byron White, the jury—not judges reviewing cold paper in chambers—is the exclusive constitutional arbiter of witness credibility, conflicting timelines, and employer pretext. [*Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)]. Summary judgment is strictly precluded where genuine disputes of material fact require a weighing of evidence.

Here, the lower courts improperly assumed the constitutional role of a pre-trial jury by acting on a record where they were completely misled by the government. The underlying record preserves an undeniable factual and temporal contradiction: supervisor Emma

Phillips asserted alleged "subpar performance," while contemporaneous agency records establish that senior regional leadership evaluated Applicant's objective qualifications and selected him for a competitive, second-round executive interview for the top facility director suite post. Deciding whether the supervisor's sudden negative review was legitimate or a retaliatory pretext belongs exclusively to an Article III jury.

This invasive fact-finding reflects an established pattern of reversible error by the underlying forum. In a unanimous decision authored by Circuit Judge Karen Nelson Moore, the Sixth Circuit explicitly reversed summary judgment entered by the exact same district judge, establishing that disputed employer pretext, conflicting evaluations, and retaliatory transfers belong exclusively to an Article III jury. [*Wyatt v. Nissan North America, Inc.*, 999 F.3d 400, 419–21 (6th Cir. 2021)]. By resolving core credibility disputes in chambers on an order-frozen record, the lower courts completely ignored Judge Moore's controlling framework and breached this Court's foundational Seventh Amendment mandate.

C. The Prejudicial Truncation of the Record, Frozen Discovery Track, and Asymmetrical Adjudication

The structural core of Applicant's upcoming Petition for a Writ of Certiorari exposes a profound constitutional breakdown in the architecture of summary adjudication under Rule 56, where the appellate court was affirmatively misled into presuming discovery had concluded.

The lower court's unpublished disposition is anchored to a demonstrably false premise: namely, that summary judgment was properly entered after a standard, completed

discovery phase. The underlying public docket sheet disproves this narrative. Reciprocal discovery was stayed and held captive by a series of judicial orders throughout the litigation (SEE: M.D. Tenn. Docket Entries 73 and 86).

By freezing Applicant's evidence-gathering vehicles at the threshold stage, the lower court engineered an untenable procedural trap: demanding that Applicant satisfy the *Muldrow* evidentiary burden while simultaneously stripping him of the statutory tools—including Interrogatories, Requests for Production, and corporate email subpoenas—required to extract that evidence from agency databases (SEE: M.D. Tenn. Docket Entry 68).

Furthermore, the lower courts committed an independent structural error by completely ignoring the mandatory framework governing supplemental pleadings. When Applicant formally requested leave to file a Supplemental Complaint under Federal Rule of Civil Procedure 15(d) to append ongoing post-filing retaliation metrics, the court bypassed the pleading entirely. The lower courts' outright refusal to address Applicant's request defies this Court's unanimous ruling authored by Justice Arthur Goldberg, which established that an outright denial of leave to amend or supplement without an articulated justifying reason is an abuse of discretion that violates basic due process. [*Foman v. Davis*, 371 U.S. 178, 182 (1962)].

When an administrative conveyor belt summarily re-classifies substantive, referred claims as dead procedural motions without independent merits review, the foundational boundaries of Article III appellate jurisdiction are compromised.

D. Structural Article III Review and the Use of Administrative Shortcuts

This Court maintains a vital institutional responsibility to enforce the structural boundaries of Article III and prevent lower courts from abdicating adjudicative duties through administrative shortcuts. In foundational separation-of-powers jurisprudence, such as *Free Enterprise Fund v. PCAOB*, 561 U.S. 477, 496–97 (2010), this Court reaffirmed that statutory and administrative frameworks cannot be deployed to erode constitutional guarantees or insulate systemic departures from judicial review.

The lower courts' administrative processing of this action directly implicates those core structural boundaries. By deploying unpublished dispositions to affirm summary judgment on a truncated, order-frozen record—while concurrently treating substantive, referred equitable claims and jury demands as unreviewed procedural surplusage—the lower courts have engineered an unreviewable tier of summary adjudication. This practice effectively denies unrepresented citizens the fundamental protections guaranteed by the Fifth Amendment Due Process Clause and the Seventh Amendment.

Using non-precedential labels to shield aggressive judicial fact-finding and clear departures from binding precedent from Supreme Court scrutiny creates an ad hoc track of justice that closes the gates of review to unrepresented citizens.

E. Applicant Explicitly Satisfies the Multi-Prong Standard for Emergency Stay Relief

In strict compliance with 28 U.S.C. § 2101(f), Supreme Court Rule 23, and the controlling standard articulated by this Court in *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010), an applicant seeking an emergency stay of a lower court's mandate must satisfy a rigorous multi-prong test. Applicant Downs comfortably clears each threshold on an entirely uncontested record:

1. Reasonable Probability of Certiorari on Substantial Constitutional Issues:

There is a reasonable probability that four Justices of this Court will grant certiorari in Applicant's forthcoming petition. This case presents structural questions of first impression regarding Article III judicial overreach and systemic due process breakdowns in summary adjudication frameworks. As an unrepresented citizen, Applicant's Fifth Amendment Due Process right to a meaningful appeal was structurally compromised when the appellate panel utilized an automated administrative workflow—formally referring substantive, record-backed equitable claims and damages remedies to a merits panel via Clerk Entry 20, only to have that panel summarily re-classify and terminate those identical claims as unreviewed procedural motions under Entry 26.

The direct conflict between the decision below and this Court's binding mandate in *Muldrow*—coupled with the trial court's unauthorized substitution of a hypothetical standard under Rule 30(e)(1) (SEE: M.D. Tenn. Docket Entry 118)—presents substantial federal questions demanding this Court's supervisory intervention. If this Court does not immediately stay the mandate, these structural actions will result in the permanent closure and dismantling of the record below, effectively stripping Applicant of his statutory right to seek meaningful certiorari review on a complete file.

2. Fair Prospect of Reversal Under Authoritative Mandates:

There is a fair prospect that a majority of this Court will reverse the judgment below. The decision below directly conflicts with this Court's binding, text-based mandate in *Muldrow*, which protects Title VII plaintiffs from heightened, extra-statutory injury thresholds. Furthermore, the panel's decision rests on an objective fiction—that summary judgment was entered "after discovery"—flatly disproven by the underlying public docket sheet

confirming discovery remained frozen under judicial stay orders (SEE: M.D. Tenn. Docket Entries 73; 86; 118.

Applicant satisfies the 'fair prospect of reversal' requirement because the district court's ruling openly violates the mandate rule and fractures the clear chain of judicial command. In *Wyatt v. Nissan*, the Sixth Circuit established the governing law-of-the-case for this record. Yet, as documented in district court docket entries 63 through 127, the court below exceeded the scope of its remand by resurrecting the exact legal conclusions previously rejected by the court of appeals. Furthermore, by actively bypassing this Court's recent binding precedent in *Muldrow v. City of St. Louis*, the district court has insulated an employer's unlawful actions from appellate enforcement. This clear departure from accepted and usual judicial proceedings warrants this Court's intervention to preserve the integrity of the mandate rule

By imposing an artificial discovery cutoff while stripping Applicant of basic statutory vehicles to compile evidence, take depositions, or file a Supplemental Complaint under Rule 15(d), the lower courts committed an incurable due process violation. Under this Court's Seventh Amendment jurisprudence in *Anderson* and the Sixth Circuit's published mandate in *Wyatt*, resolving this temporal and credibility paradox in chambers on a cold, frozen paper record unconstitutionally usurped the jury's historic role. Applicant's record contains a genuine dispute of material fact that belongs exclusively to an Article III jury: an agency supervisor asserting alleged subpar performance at the exact moment senior regional leadership evaluated Applicant's qualifications and selected him for a competitive, second-round executive interview for the facility director suite.

3. Imminent Irreparable Harm and the Balancing of Equities:

Absent an immediate stay from the Circuit Justice, the Sixth Circuit's mandate will issue to the District Court within 7 days under Federal Rule of Appellate Procedure 41(b), inflicting severe, irreversible injury. If the mandate issues, the District Court will execute a final judgment of dismissal on a truncated record, causing the permanent termination of statutory claims and the spoliation of electronic evidence regarding Applicant's concurrent executive interview track. This ensures that Applicant's forthcoming Petition for a Writ of Certiorari would be evaluated on a fundamentally compromised record. Because an appellate court cannot meaningfully review evidence selectively excluded or frozen below, the mandate's issuance will permanently cement an incurable Due Process violation.

The balance of equities tilts decisively in Applicant's favor. A protective stay merely preserves the status quo pending certiorari review on the Paid Docket and imposes zero structural or operational hardship on the Respondent federal agency. Most importantly, Respondent's designated appellate counsel, Mercedes C. Maynor-Faulcon, allowed her mandatory statutory response window under Federal Rule of Appellate Procedure 27(a)(3)(A) to expire in total silence, suffering a procedural default that Applicant formally docketed (SEE: Sixth Circuit Docket Entry 33, 34). By failing to file a single word of opposition below, the government has legally forfeited any right to oppose a stay, and halting the mandate is the sole operational mechanism available to protect the integrity of the record and preserve this Court's certiorari jurisdiction.

V. CONCLUSION AND RELIEF SOUGHT

For the foregoing reasons, Applicant Mr. Stephen A. Downs, Sr. respectfully requests that the Circuit Justice grant an emergency stay of the United States Court of Appeals for the Sixth Circuit's mandate in Case No. 25-5115 for a period of ninety (90) days.

When an unrepresented citizen meticulously follows every procedural rule, the integrity of federal civil rights enforcement depends entirely on the principle of stewardship. The lower courts' reliance on administrative shortcuts has effectively locked the gates of appellate review, leaving Applicant without the statutory keys to test his substantive claims on a complete and honest record.

To prevent an uneven playing field and stop an engineered record from being permanently closed below, the supervisory authority of the Circuit Justice is required. Immediate intervention is the sole remaining mechanism available to protect the keys to court access, enforce the unanimous mandates of this Court, and preserve the status quo until this Court can evaluate these substantial federal questions upon a formal Petition for a Writ of Certiorari on the Paid Docket.

Respectfully submitted,


Dated: September 10, 2026

Mr. Stephen A. Downs, Sr.

Pro Se Applicant

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CERTIFICATE OF SERVICE

I, Stephen A. Downs, Sr., hereby certify that on this 10th day of September, 2026, as required by Supreme Court Rule 29, I have served the enclosed Emergency Application to Circuit Justice Brett M. Kavanaugh for a Stay of the Mandate, or in the Alternative, to Recall the Mandate, along with all accompanying Appendix Exhibits, upon the parties required to be served by depositing the required packages into the custody of the United States Postal Service for delivery as follows:

1. FILING WITH THE COURT (Via USPS Priority Mail Express, Overnight):

Clerk of the Court

Supreme Court of the United States

Attn: Emergency Applications Clerk / Circuit Justice Brett M. Kavanaugh

1 First Street, N.E.

Washington, DC 20543

(Consisting of the signed physical Original plus two identical paper copies)

2. SERVICE ON THE ADVERSE PARTY (Via USPS Priority Mail Express, Overnight):

Mercedes C. Maynor-Faulcon

Assistant United States Attorney

U.S. Attorney's Office for the Middle District of Tennessee

719 Church Street, Suite 3300

Nashville, TN 37203

Email: mercedes.maynor-falcon@usdoj.gov

(Consisting of one complete physical paper copy, matching the filing method of the Court pursuant to Supreme Court Rule 29.3)

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

A handwritten signature in blue ink, appearing to read "Stephen A. Downs, Sr.", written over a horizontal line.

Executed on September 10, 2026.

Mr. Stephen A. Downs, Sr.

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INDEX OF APPENDIX EXHIBITS

- **APPENDIX EXHIBIT A:**

Order of the United States Court of Appeals for the Sixth Circuit Denying Appellant's Emergency Motion to Stay the Mandate in Case No. 25-5115 (Entered September 8, 2026).

- **APPENDIX EXHIBIT B:**

Opinion and Judgment of the United States Court of Appeals for the Sixth Circuit Denying Appellant's Merits Appeal, and Subsequent Order Denying Petition for Rehearing En Banc in Case No. 25-5115 (Entered August 21, 2026).

- **APPENDIX EXHIBIT C:**

Certified Public Docket Sheet of the United States Court of Appeals for the Sixth Circuit in Case No. 25-5115, Documenting Applicant's Notice of No Opposition and Procedural Forfeiture.

- **APPENDIX EXHIBIT D:**

Omnibus Memorandum Order of the United States District Court for the Middle District of Tennessee in Case No. 3:20-cv-01090, Substituting Rule 30(e)(1) Textual Verification with a Simulated "As If" Standard, Docket Entry No. 118 (Entered November 14, 2023).

- **APPENDIX EXHIBIT E:**

**Order of the United States District Court for the Middle District of Tennessee
Staying and Taking Reciprocal Discovery Vehicles Under Advisement, Docket
Entry No. 73 (Entered August 2, 2022).**

- **APPENDIX EXHIBIT F:**

**Contemporaneous Written Electronic Mail Correspondence Between Applicant and
Civil Division Chief Counsel Detailing Deposition Paywall Barriers and Data
Suppression (Dated February 6, 2023, and April 14, 2023).**

- **APPENDIX EXHIBIT G:**

**Applicant's Master Objections to the Magistrate Judge's Report and
Recommendation in the United States District Court for the Middle District of
Tennessee, Exhausting Notice of Multi-Agency Profile Spoofing and Audio
Spoliation, Docket Entry No. 121 (Entered February 14, 2024).**

**Additional material
from this filing is
available in the
Clerk's Office.**