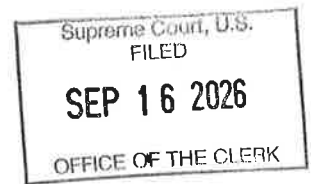


No.: 26- **A391**



IN THE SUPREME COURT OF THE UNITED STATES

DALTON D. BANKS,

Appellant,

v.

**HONORABLE TAMMY BROWN, COURT OF PROBATE
SHERIFF MATT GENTRY, IN HIS OFFICIAL CAPACITY,
CULLMAN COUNTY, ALABAMA**

Appellees.

**ON APPLICATION FOR STAY OF MANDATE PENDING THE
FILING AND DISPOSITION OF A PETITION FOR A WRIT OF
CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

**Dalton D. Banks,
Appellant- Pro Se
165 Rock Hill Road
Haleyville, Al. 35565
Cell: 239-339-7718
daltondbanks@gmail.com**

September 16, 2026

APPLICATION FOR STAY OF MANDATE

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

Pursuant to 28 U.S.C. § 2101(f), Supreme Court Rules 22 and 23, and the All Writs Act, 28 U.S.C. § 1651(a), Applicant Dalton D. Banks respectfully applies for a stay of the mandate of the United States Court of Appeals for the Eleventh Circuit in Case No. 26-10483-E. The Eleventh Circuit entered its order denying Applicant's motion for a stay on September 16, 2026. A copy of that order is attached as Appendix A.

Absent a stay from this Court, the mandate will issue on or around September 23, 2026, foreclosing Applicant's access to the "indicative ruling" procedure of Federal Rule of Appellate Procedure 12.1 and Federal Rule of Civil Procedure 62.1. This would cause irreparable harm by preventing the district court from considering and granting Applicant's pending Rule 60(b) motion, which seeks to vacate a judgment

procured through attorney fraud and judicial overreach. A stay is necessary to preserve the status quo and allow for the orderly consideration of substantial federal questions that warrant this Court's review.

QUESTIONS PRESENTED

1. Whether a probate judge who issues an emergency commitment order two days “**before**” the jurisdictional prerequisite—a sworn petition by an interested party—is filed acts in the “clear absence of all jurisdiction,” stripping the judge of absolute judicial immunity.
2. Whether “**res judicata**” bars a § 1983 claim based on a prior state small claims court judgment where the small claims court lacked subject-matter jurisdiction over federal constitutional claims for damages.
3. Whether a pro se litigant's inadvertent but good-faith misfiling of a Rule 59(e) motion with the wrong court—compounded by the receiving court's administrative failure to docket, return, or provide any notice of the error—constitutes “excusable neglect” under Federal Rule of Civil

Procedure 60(b)(1), particularly where the opposing party suffered no prejudice.

STATEMENT OF THE CASE

This case arises from an unlawful involuntary commitment and the subsequent confiscation of Applicant's firearm, orchestrated without jurisdiction by a probate judge and executed based on a petition that did not exist at the time the commitment order was issued.

On February 14, 2024, Respondent Judge Tammy Brown issued an "Emergency Order for Involuntary Commitment" against Applicant, authorizing law enforcement to seize him and transport him to a psychiatric facility. The order stated it was based on a petition filed by Applicant's father. However, the record shows that the petition was not signed or filed until February 16, 2024—two days **“after”** the commitment order was issued and Applicant was already detained. (Doc. 13-4). The commitment was therefore void **“ab initio”**, as the court lacked the statutorily required petition to establish jurisdiction.

Following this unlawful commitment, Applicant's firearm was permanently confiscated. Applicant filed a small claims action in Cullman County District Court seeking damages for the value of the firearm. The small claims court, which lacks jurisdiction to hear federal constitutional claims, ruled against him.

Applicant then filed this § 1983 action in the U.S. District Court for the Northern District of Alabama, alleging violations of his Fourth and Fourteenth Amendment rights. The district court dismissed the case on two grounds: (1) judicial immunity for Judge Brown, and (2) res judicata based on the prior small claims' judgment.

On February 4, 2026, one day after the judgment, Applicant, proceeding pro se, inadvertently misfiled his Rule 59(e) motion to alter or amend the judgment with the Eleventh Circuit Court of Appeals instead of the district court. The Eleventh Circuit never docketed the motion, never returned it, and never notified Applicant of the error. Unaware of his mistake, Applicant's deadline to file a proper Rule 59(e) motion expired.

The Eleventh Circuit ultimately affirmed the district court's dismissal, holding that the judicial immunity and “res judicata” issues were not properly preserved for appeal because the untimely Rule 59(e) motion did not toll the notice of appeal deadline.

Applicant has since filed a Rule 60(b) motion in the district court, arguing his misfiling constituted excusable neglect. To allow the district court to consider that motion, he filed a motion in the Eleventh Circuit to stay the mandate under the FRAP 12.1 / FRCP 62.1 indicative ruling procedure. On September 16, 2026, the Eleventh Circuit denied the stay.

REASONS FOR GRANTING THE STAY

A stay is warranted under the factors set forth in *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010): (1) a reasonable probability that four Justices will vote to grant certiorari; (2) a fair prospect that a majority of the Court will reverse the judgment below; and (3) a likelihood of irreparable harm to the applicant if the stay is denied.

I. The Certiorari Petition Will Present Substantial Questions of Federal Law.

The petition for a writ of certiorari will raise three questions of recurring importance that have divided lower courts.

First, this Court has held that judicial immunity is absolute unless a judge acts in the "clear absence of all jurisdiction." *Stump v. Sparkman*, 435 U.S. 349, 357 (1978). The Eleventh Circuit's decision immunizing a judge who issued an order "two days before" the jurisdictional prerequisite (a petition) existed creates a circuit split and effectively nullifies the jurisdictional limit on immunity. This case presents a clean vehicle to clarify that a court acting before a case-initiating document is filed is acting in the clear absence of all jurisdiction.

Second, under *Marrese v. American Academy of Orthopaedic Surgeons*, 470 U.S. 373 (1985), federal courts must apply state preclusion law. Alabama law holds that "**res judicata**" does not apply if the first court lacked subject-matter jurisdiction. The Eleventh Circuit's application of res judicata based on a small claims judgment from a court that could not hear § 1983 claims contradicts *Marrese* and deepens a split on the preclusive effect of judgments from courts of limited jurisdiction.

Third, the question of what constitutes "excusable neglect" for a pro se litigant under *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380 (1993), is a recurring issue. Here, a pro se litigant's good-faith mistake was compounded by the court's own administrative failure. The Eleventh Circuit's rigid approach conflicts with the equitable, flexible standard articulated in *Pioneer*.

II. Applicant Will Suffer Irreparable Harm Absent a Stay.

The denial of a stay will cause immediate and irreparable harm.

First, the issuance of the mandate will terminate the "indicative ruling" procedure under FRAP 12.1. This will prevent the district court from granting the pending Rule 60(b) motion, which is the only mechanism available to correct the underlying judgment. Applicant will permanently lose the opportunity to have the merits of his constitutional claims heard, a harm that cannot be remedied later.

Second, the judgment, if it becomes final, will legitimize the permanent confiscation of Applicant's firearm based on a void judicial order. The loss

of a constitutional right—here, the Second Amendment right to keep and bear arms—is a classic form of irreparable injury.

This is not a case of "mere litigation expense." It is a case where the issuance of the mandate will extinguish the only available procedural path to correct a manifest injustice and vindicate a constitutional right.

III. There Is a Fair Prospect of Success on the Merits.

For the reasons stated above, there is a fair prospect that this Court would reverse the Eleventh Circuit's judgment. The probate court's lack of jurisdiction is plain from the record, the *res judicata* holding is contrary to this Court's precedent, and the finding of inexcusable neglect is inconsistent with the equitable principles of Rule 60(b).

IV. The Balance of Equities Favors a Stay.

The harm to Applicant from denying a stay—the permanent loss of his procedural rights and the constitutional injury from the firearm confiscation—is severe and irreparable. In contrast, the harm to

Respondents from a brief stay is minimal. A stay will merely preserve the status quo while the district court considers the Rule 60(b) motion. If the motion is denied, the mandate will issue, and Respondents will have lost nothing but a short amount of time. The balance of equities tips decidedly in Applicant's favor.

CONCLUSION

For the foregoing reasons, Applicant respectfully requests that the Court enter a stay of the mandate of the United States Court of Appeals for the Eleventh Circuit pending the timely filing and disposition of a petition for a writ of certiorari.

Respectfully submitted on this 16th day of September 2026.

s/ Dalton D. Banks

Dalton D. Banks, Pro Se

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Haleyville, AL 35565

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Email: daltondbanks@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of September 2026, I served a true and correct copy of the foregoing Application for Stay of Mandate via First-Class Mail, postage prepaid, on the following counsel for Respondents:

Clerk of the Supreme Court of the United States
Supreme Court of the United States
1 First Street, NE
Washington, DC 20543

Jamie Helen Kidd Frawley
Attorney for Appellees
Webb McNeill Frawley, P.C.
One Commerce Street, Suite 700
Montgomery, AL 36104

s/ Dalton D. Banks
Dalton D. Banks

EXHIBIT

“A”

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

September 16, 2026

Dalton D. Banks
165 ROCK HILL RD
HALEYVILLE, AL 35565

Appeal Number: 26-10483-EE
Case Style: Dalton Banks v. Tammy Brown, et al
District Court Docket No: 6:25-cv-00132-ACA

The enclosed order has been ENTERED.

Electronic Filing

All counsel must file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Although not required, non-incarcerated pro se parties are permitted to use the ECF system by registering for an account at www.pacer.gov. Information and training materials related to electronic filing are available on the Court's website.

Clerk's Office Phone Numbers

General Information:	404-335-6100	Attorney Admissions:	404-335-6122
Case Administration:	404-335-6135	Capital Cases:	404-335-6200
CM/ECF Help Desk:	404-335-6125	Cases Set for Oral Argument:	404-335-6141

MOT-2 Notice of Court Action

In the
United States Court of Appeals
For the Eleventh Circuit

No. 26-10483

DALTON D. BANKS,

Plaintiff-Appellant,

versus

DONNA K. LAMONS, et al.,

Defendants,

TAMMY BROWN,

Honorable, Judge,
SHERIFF'S DEPARTMENT OF CULLMAN COUNTY,
ALABAMA,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Alabama
D.C. Docket No. 6:25-cv-00132-ACA

ORDER:

2

Order of the Court

26-10483

The motion of Appellant Dalton D. Banks to stay the issuance of the mandate pending a petition for writ of certiorari is DENIED.

DAVID J. SMITH
Clerk of the United States Court of
Appeals for the Eleventh Circuit

ENTERED FOR THE COURT - BY DIRECTION