

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

STATE OF GEORGIA,

v.

JEFFREY B. CLARK, ET AL.,

Defendants

Case No.

23SC188947

**APPLICATION FOR
CERTIFICATE OF IMMEDIATE REVIEW**

Defendant Jeffrey B. Clark, pursuant to O.C.G.A. §§ 5-6-34(b) and 5-7-2, respectfully requests that the Court grant him a Certificate of Immediate Review with respect to the Order of December 12, 2023 denying his Special Plea as to Lack of Personal Jurisdiction.

Whether the Court has personal jurisdiction over Mr. Clark is a threshold issue that could dispose of the entire case as to Mr. Clark and therefore has sufficient importance to the case to warrant granting the Certificate. *See Collins v. Athens Orthopedic Clinic, P.A.*, 307 Ga. 555, 560 (2019) (“Of course, a court cannot skip past a jurisdictional issue to resolve simpler merits questions, but has the duty to ‘raise the question of jurisdiction on its own motion whenever there may be any doubt as to its existence.’”); *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 578 (1999) (threshold personal and subject matter jurisdictional questions must be resolved before the merits); *Steel Co. v. Citizens for Better Env’t*, 523 U. S. 83, 94-95 (1998) (requirement to establish subject matter and

personal jurisdiction at the threshold is “inflexible and without exception” because “jurisdiction is the power to declare law,” and, “[w]ithout jurisdiction the court cannot proceed at all in any cause”).

We respectfully submit that the personal jurisdiction defense warrants interlocutory appellate review to clarify the meaning of O.C.G.A. § 17-2-1(a), which expressly confines the State’s criminal long arm jurisdiction to the limit permitted by the Fourteenth Amendment’s Due Process Clause. This inherently means that Georgia criminal jurisdiction cannot be exercised beyond the limits of the Due Process Clause—both as a matter of statute and of the Fourteenth Amendment itself. Indeed, Section 17-2-1(a) not only authorizes the assertion of a personal jurisdiction defense in criminal cases, we respectfully submit that both the statute and the Due Process Clause require a “minimum contacts” analysis where, as here, Mr. Clark questions the territorial jurisdiction of the State of Georgia over his person. *See, e.g. Ford v. United States*, 273 U.S. 593 (1927) (“The issue whether the ship was seized within the prescribed limit did not affect the question of the defendants’ guilt or innocence. It only affected the right of the court to hold their persons for trial. It was necessarily preliminary to that trial.”); *United States v. Klimavicius-Viloria*, 144 F.3d, 1249, 1257 (9th Cir. 1998) (same).

The conspiracy theory of personal jurisdiction also warrants interlocutory appellate review. Apart from the Georgia authorities cited in our Motion, there is a federal circuit split on the issue and a petition for certiorari centered on this theory of

personal jurisdiction is pending before the U.S. Supreme Court. *See BASF Metals Limited, et al., Petitioners v. KPF Investment, Inc., et al.*, U.S. Supreme Court Case No., 23-232.¹

Should the Court be inclined to grant the Certificate, a proposed form is attached hereto for the Court's convenience.

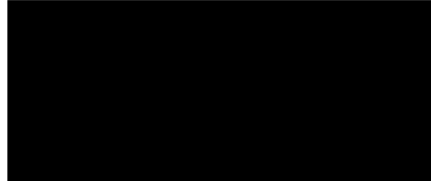
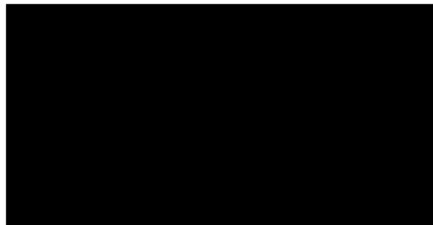
Respectfully submitted, this 14 day of December, 2023.

**CALDWELL, CARLSON, ELLIOTT &
DELOACH, LLP**

BERNARD & JOHNSON, LLC

/s/ Harry W. MacDougald
Harry W. MacDougald
Ga. Bar No. 463076

/s/ Catherine S. Bernard
Catherine S. Bernard
Ga. Bar No. 505124



¹ The docket for this case is available at <http://tinyurl.com/3t8sun7m>.

CERTIFICATE OF SERVICE

I hereby certify that on this 14 day of December, 2023, I electronically lodged the within and foregoing *Application for Certificate of Immediate Review* with the Clerk of Court using the PeachCourt eFile/GA system which will provide automatic notification to counsel of record for the State of Georgia:

Fani Willis, Esq.
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**CALDWELL, CARLSON, ELLIOTT &
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/s/ Harry W. MacDougald
Harry W. MacDougald
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CERTIFICATE OF IMMEDIATE REVIEW

Pursuant to O.C.G.A. §§ 5-6-34(b) and 5-7-2, the Court hereby certifies that that the order of December 12, 2023 denying Jeffrey B. Clark's Special Plea as to Lack of Personal Jurisdiction is of such importance to the case that immediate review should be had.

SO CERTIFIED, this ___ day of December, 2023.

Judge Scott McAfee
Superior Court of Fulton County
Atlanta Circuit

Presented by:

/s/ Harry W. MacDougald

Harry W. MacDougald

Ga. Bar No. 463076

Caldwell, Carlson, Elliott & Deloach, LLP

