

No. _____

**IN THE
UNITED STATES SUPREME COURT
OCTOBER TERM 2017**

IN RE: FERLANDO ESCO,

PETITIONER

**PETITION FOR WRIT OF MANDAMUS TO THE
UNITED STATES COUR OF APPEALS FOR THE FIFTH CIRCUIT**

**FERLANDO ESCO
#78107 E.M.C.F.
10641 HWY 80 EAST
MERIDIAN, MS 39301**

(i)

QUESTION PRESENTED

Should a writ of mandamus issue directing the Respondents, and/or Judges, of the United States Court of Appeals for the Fifth Circuit, to decide the merits of a request for certificate of appealability regarding two specifically designated issues, which were fully briefed and presented to the United States Court of Appeals for the Fifth Circuit years ago?

(ii)

LIST OF PARTIES

The parties to the Fifth Circuit proceedings are Ferlando Esco, a prisoner of the State of Mississippi, as the petitioner-appellant, and the Attorney General for the State of Mississippi, as the respondent-appellee.

For purposes of this mandamus action, Ferlando Esco is the petitioner.

For purposes of this mandamus action, the Hon. Dwen, Hon. ELROD, and Hon. COSTA of the United States Court of Appeals for the Fifth Circuit are the Respondents.

(iii)

TABLE OF CONTENTS

	<u>PAGE</u>
QUESTIONS PRESENTED.....	i
LIST OF PARTIES.....	ii
TABLE OF AUTHORITIES.....	iv
UNAVAILABLE RELIEF IN OTHER COURTS.....	1
OPINIONS BELOW.....	1
JURISDICTION.....	2
STATUTES INVOLVED.....	2
STATEMENT OF THE CASE.....	3
REASONS FOR GRANTING WRIT.....	4
I. WLL AID COURT’S JURISDICTION.....	5
II. EXTRAORDINARY CIRCUMSTANCES.....	13
III. NO OTHER RELIEF AVAILABLE.....	15
CONCLUSION.....	16
PROOF OF SERVICE.....	17

TABLE OF AUTHORITIES

<u>CASES:</u>	<u>PAGES</u>
CALDERON v. THOMPSON, 523 U.S. 538.....	16
CHESNEY v. UNITED STATES DISTRICT COURT, 542 U.S. 367.....	5, 12, 13, 16
EX PARTE UNITED STATES, 287 U.S. 241.....	6, 7, 8, 9
EX PARTE v. FAHEY, 332 U.S. 258.....	9
EX PART v. BRADSTREET, 32 U.S. 634.....	9
HOLLINGSWORTH v. PERRY, 558 U.S. 183.....	9, 10, 16
IN RE BLODGELT, 502 U.S. 236.....	14
IN RE SHARON STEEL CORP., 918 F.2d 434.....	11
JOHNSON v. ROGERS, 917 F.2d 1283.....	14
KERR v. U.S. DISTRICT COURT, 426 U.S. 394.....	5
KNICKERBOCKER INS. CO. OF CHICAGO v. COMSTOCK, 83 U.S. (16 Wall.) 258.....	6, 10
LABUY v. HOWES LEATHER CO., 352 U.S. 249.....	8, 11
LOZADO v. DEEDS, 498 U.S. 430.....	8, 9, 10, 11

PETITION FOR A WRIT OF MANDAMUS
AND STATEMENT WHY RELIEF IS UNAVAILABLE IN ANY OTHER COURT

Petitioner Ferlando Esco petition for a writ of mandamus directing the Respondents – Judges of the United States Court of Appeals for the Fifth Circuit – to render a decision on Petitioner’s request for certificate of appealability and/or appeal from the final judgment of the United States District Court for the Southern District of Mississippi regarding a conviction and sentence which causes the Petitioner to be unconstitutionally held in prison for the remainder of his life.

In accordance with **Supreme Court Rule 20.3(a)**, Petitioner state that the relief sought is not available in any other court because only this Court has jurisdiction to issue a writ of mandamus directed to a United States Court of Appeals.

OPINIONS BELOW

The opinion of the United States District Court for the Southern District of Mississippi is set forth in the Appendix at **App. 1**.

The unreported (date of order) order of the United States Court of Appeals for the Fifth Circuit denying Petitioner certificate of appealability is set forth in the Appendix at **App.2**.

The unreported (date of order) order of the United States Court of Appeals for the Fifth Circuit, denying Petitioner’s reconsideration motion is set forth in the Appendix at **App. 3**.

JURISDICTION

The jurisdiction of this Court is invoked pursuant to **28 U.S.C. § 1651(a)**.

Title 28 U.S.C. § 1651(a) describes the jurisdiction of this Court to issue extraordinary writs as necessary or appropriate to aid its appellate jurisdiction.

STATUTES INVOLVED

Title 28 U.S.C. §1651(a) provides: Writs (a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

Title 28 U.S.C. §1254 provides: Courts of appeals; certiorari; certified questions Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree; (2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

STATEMENT OF THE CASE

The Petitioner filed a **Title 28 U.S.C. 2254** Petition For Writ of Habeas Corpus in the United States District Court for the Southern District of Mississippi alleging that his conviction(s) and sentence(s) are unconstitutional.

The District Court dismissed the 2254 Petition without a hearing for opportunity to present testimony of witnesses and presentation of documentary evidence.

The Petitioner filed a timely notice of appeal to the United States Court of Appeals for the Fifth Circuit, along with request for certificate of appealability, setting forth with specificity and detail each issue warranting a certificate of appealability. See Appendix at **App. 4**.

The Fifth Circuit denied the request for certificate of appealability (without addressing and without deciding each issue and each request for certificate of appealability).¹

¹ Notably, Congress required that certificate of appealability for each issue raised. Thus, the federal court would have to look at each issue and decide whether a certificate of appealability would be granted on that issue. **28 U.S. Code § 2253** provides:

(a)

In a habeas corpus proceeding...before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held...

(c)

(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—

(A)

the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court...

(2)

A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3)

The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2)

The Petitioner sought reconsideration, showing the Fifth Circuit how the Fifth Circuit denied his request for certificate of appealability on two important issues by misrepresenting the facts, and making the false claim, that the District Court did not decide two of the issues the Petitioner sought a certificate of appealability for. See Appendix at **App.5**.

The Fifth Circuit denied the request for reconsideration, failing to correct the Fifth Circuit error and/or in continuing to fail to decide two issues which the Fifth Circuit falsely claimed were not decided by the District Court, although the record show that the two issues were decided by the District Court. See **App.3**.

No decision having been made by the Fifth Circuit regarding whether Petitioner is entitle to certificate of appealability on two issues raised, and decided by the District Court, and the Fifth Circuit having failed to correct their error to decide these two issue that the Fifth Circuit falsely said were not raised and decided in the District Court, Petitioner, having been left with no other adequate remedy, now turn to this Court under the All Writs Act, 28 U.S.C. § 1651, which extends jurisdiction to this Court to issue extraordinary writs in such cases.

REASONS FOR GRANTING THE WRIT

Petitioner's appeal to the Fifth Circuit Court of Appeals was initiated and taken under advisement by Respondents nearly 3 years ago. Despite the passage of time, and despite Petitioner's request to the Respondents that a manifest error committed by Respondents be

corrected, and/or despite Petitioner's request that the findings of the Respondents (that these two issues were not raised or decided by the District Court) be corrected and the Respondents decide whether a certificate of appealability should be granted on these two issues, where the record shows that these two issues were in fact raised and decided by the District Court, there is still no decision by the Respondents regarding whether a certificate of appealability should be granted on these two issues in the case.

This Court considers three factors when determining whether to grant such a petition: 1) the party seeking the writ must "have no other adequate means to attain the relief he desires—a condition designed to ensure that the writ will not be used as a substitute for the regular appeals process"; 2) the party seeking the writ must show a "clear and indisputable" right to the writ's issuance; and 3) this Court must decide, in its discretion, that the writ is appropriate under the case's circumstances. **Cheney**, 542 U.S. at 380–81 (quotations and citation omitted); see also **Kerr v. U.S. Dist. Ct. for the N.D of Cal.**, 426 U.S. 394, 403 (1976). This Court should grant the writ of mandamus and/or prohibition.

The prerequisites for a writ of mandamus have clearly been met in this case.

I. A WRIT WILL AID THIS COURT'S JURISDICTION BECAUSE THE FIFTH CIRCUIT'S FAILURE TO RENDER A DECISION OPERATES TO DEPRIVE THE SUPREME COURT OF ITS APPELLATE JURISDICTION.

In its seminal and historic opinion describing the contours of its judicial review powers and other jurisdictional authority, **Marbury v. Madison**, 5 U.S. (1 Cranch) 137 (1803), this Court recognized that the writ of mandamus is the appropriate tool to protect the Court's appellate

jurisdiction. *Id.* at 175 (“[t]o enable this court then to issue a mandamus, it must be shown to be an exercise of appellate jurisdiction, or to be necessary to enable [the Court] to exercise appellate jurisdiction”).

Since *Marbury*, “[r]epeated decisions of this court have established the rule that this court has power to issue a mandamus, in the exercise of its appellate jurisdiction, and that the writ will lie in a proper case to direct a subordinate Federal court to decide a pending cause.” *Knickerbocker Ins. Co. of Chicago v. Comstock*, 83 U.S. (16 Wall.) 258, 270 (1872)(citations omitted). The All Writs Act sets forth this Court’s statutory authority to issue all writs necessary or appropriate in aid of its jurisdiction. 28 U.S.C. § 1651(a). One noted treatise has recognized that under the All Writs Act, “a writ may issue on the ground that undue delay is tantamount to failure to exercise jurisdiction.” 16 Charles Alan Wright, Arthur Raphael Miller & Edward H. Cooper, *Federal Practice and Procedure: Jurisdiction* 2d § 3933.1, p. 557-58 (2d ed. 1996)(citations omitted).²

In *Ex parte United States*, 287 U.S. 241 (1932), this Court granted an application for a writ of mandamus compelling a federal judge to grant a bench warrant petition that the district *court had incorrectly claimed* it had the discretion to deny. *Id.* at 244-45, 249-51.³

² Moore’s Federal Practice similarly explains that traditionally, the role of the writ of mandamus was limited “to directing the lower court to decide a pending case or to require the lower court to reinstate a case.” 19 James William Moore & Daniel R. Coquillette, *Moore’s Federal Practice*, § 204.02[5] (3d ed. 2008).

³ The procedural posture of *Ex parte United States*, 287 U.S. 241 (1932), is unusual in that the writ was sought and obtained directly from this Court, bypassing the court of appeals. This Court explained that its exercise of authority to issue a writ of mandamus directed toward the district court was appropriate in that case because the interpretation and enforcement of equity rules were at issue, and an expeditious resolution of a district court’s interference with such rules of equity in a case of such public import was necessary. *Id.* at 248-49. The Court explained:

“this court has full power in its discretion to issue the writ of mandamus to a federal District Court, although the case be one in respect of which direct appellate jurisdiction is vested in the Circuit Court of Appeals – this court having ultimate discretionary jurisdiction by certiorari – but . . . such power will be exercised only where a question of public importance is involved, or where the question is of such a nature that it is peculiarly appropriate that such action by

This Court explained that the issuance of such a writ was necessary to aid it in exercising its appellate jurisdiction, which could otherwise be defeated by the unauthorized inaction of the lower court. **Id.** at 246. “[E]ven if the appellate jurisdiction of this court could not in any view be immediately and directly invoked,” this Court elaborated, “the issue of the writ may rest upon the ultimate power which we have to review the case itself by certiorari to the Circuit Court of Appeals in which such immediate and direct appellate jurisdiction is lodged.” **Id.**

“The traditional use of the writ in aid of appellate jurisdiction both at common law and in the federal courts has been to confine an inferior court to a lawful exercise of its prescribed jurisdiction.” **Schlagenhauf v. Holder**, 379 U.S. 104, 109–10 (1964) (quoting **Roche v. Evaporated Milk Ass’n**, 319 U.S. 21, 24–26 (1943)).

For example, a writ of mandamus is appropriate where a party seeks to enforce an appellate court judgment in a lower court or *to prevent a lower court from obstructing the appellate process*. See **Will v. United States**, 389 U.S. 90, 95–96 (1967); **United States v. U.S. Dist. Ct. for S.D. of N.Y.**, 334 U.S. 258, 263 (1948).

this court should be taken. In other words, application for the writ ordinarily must be made to the intermediate appellate court, and made to this court as the court of ultimate review only in such exceptional cases. That the present case falls within the latter description seems clear.”

Id.

The writ is likewise proper where, as here, a party seeks to forestall *a lower court's persistent disregard of procedural rules* promulgated by this Court. See **Will**, 389 U.S. at 90, 96, 100 & n.10; **Roche**, 319 U.S. at 31; **La Buy v. Howes Leather Co.**, 352 U.S. 249, 313–14 (1957) (“Where the subject concerns the enforcement of the rules which by law it is the duty of this court to formulate and put in force, mandamus should issue to prevent such action thereunder so palpably improper as to place it beyond the scope of the rule invoked.”) (quotations and alterations omitted).

Therefore, this Court’s intervention is necessary to ensure the Fifth Circuit’s compliance with its rules and precedent, where here it is abundantly clear that the Fifth Circuit is *obstructing the appellate process, and disregarding the rules of procedure promulgated by Congress in Section 2253(c), and by this Court in Slack v. McDaniel, supra and Lozado v. Deeds, supra* by making a false finding, or misrepresentation of the facts of the record, that the issues the Petitioner seeks certificate of appealability for were not raised nor decided in the District Court, when in fact that record shows that the Petitioner raised these issues and the District Court decided them.

Over the years, this Court has continued to recognize the appropriate use of the writ of mandamus in aid of such prospective jurisdiction. In **Will v. Calvert Fire Insurance Co.**, 437 U.S. 655, 661 (1978), this Court ruled that “[t]here can be no doubt that, where [an inferior] court persistently and without reason refuses to adjudicate a case properly before it, the [superior court] may issue the writ ‘in order that [it] may exercise the jurisdiction of review given by law’” (citations omitted). See also **Roche v. Evaporated Milk Ass’n**, 319 U.S. 21, 25 (1943). Such jurisdiction includes the Court’s prospective jurisdiction over cases in which it will ultimately have the authority under 28 U.S.C. § 1254 to grant review by certiorari. See, e.g., **Ex parte United States**, 287 U.S. at 245–46. Such jurisdiction also includes this Court’s prospective jurisdiction

over cases in which it will ultimately have authority to decide whether a certificate of appealability has been properly denied by the United States Court of Appeals in habeas corpus cases brought by those in state custody. See **Slack v. McDaniel**, 529 U.S. 473 (2000)(on writ certiorari the Supreme Court reviews Ninth Circuit denial of certificate of appealability and reversed the Ninth Circuit and granted the certificate of appealability); **Lozado v. Deed**, 498 U.S. 430 (1991)(same).

Thus, by granting a writ of mandamus as requested by Petitioner in this case, this Court would be acting in aid of its certiorari jurisdiction.

Concededly, mandamus, prohibition and injunction against judges are drastic and extraordinary remedies. See **Ex parte Fahey**, 332 U.S. 258, 259 (1947). This case, however, presents traditional and clear-cut circumstances in which a writ is required to protect this Court's jurisdiction. See also **Ex parte United States**, 287 U.S. 241 (1932) (writ issued to district judge instructing him to issue a bench warrant); **Ex parte Bradstreet**, 32 U.S. 634 (1833); **Virginia v. Rives**, 100 U. S. 313, 323 (1879) (extraordinary writs have —very much extended in modern times, and now it may be said to be an established remedy to oblige inferior courts and magistrates to do that justice which they are in duty, and by virtue of their office, bound to do.).

Here, as set forth above, Petitioner seeks an order requiring the Fifth Circuit to fulfill its duty to determine whether a certificate of appealability should be granted on issues which were raised in, and decided by, the District Court pursuant to the mandate under **Section 2253(c)**.

“By insisting that courts comply with the law, parties vindicate not only the rights they assert but also the law's own insistence on neutrality and fidelity to principle.” **Hollingsworth v. Perry**, 558 U.S. 183, 196–97 (2010).

The systemic violation of procedural rules can “compromise the orderly, decorous, rational traditions that courts rely upon to ensure the integrity of their own judgments. These considerations, too, are part of the reasons leading to the decision to grant extraordinary relief.” *Id.* at 197. See *Schad*, 133 S. Ct. at 2551 (“Deviation from normal mandate procedures is a power of last resort, to be held in reserve against grave, unforeseen contingencies.”) (quotations omitted).

Likewise in *Will v. Calvert Fire Ins. Co.*, 437 U.S. 655 (1978), this Court affirmed the Circuit Court’s issuance of the writ of mandamus to a district judge, who deferred the adjudication of the petitioner’s federal claims during the pendency of a state court action. This Court held that “there can be no doubt that, where a district court persistently and without reason refuses to adjudicate a case properly before it, the court of appeals may issue the writ in order that [it] may exercise the jurisdiction of review given by law.” *Id.* at 661-62 (quoting *Knickerbocker*, 16 Wall. at 270). To hold otherwise, the Court has explained, would be to give the lower court a pocket-veto over the higher court’s supervisory jurisdiction and result in an indefinite obstruction of the appellate process. See *Roche*, 319 U.S. at 25 (—Otherwise the appellate jurisdiction could be defeated and the purpose of the statute authorizing the writ thwarted by unauthorized action of the district court obstructing the appeal).

The writ should issue in this case to stop the Fifth Circuit from defeating and obstructing the appellate process and/or certiorari review process in this Court which was provided in *Slack* and *Lozada*.

Following this Court’s direction, the courts of appeal have issued writs of mandamus when the failure of a district court judge to rule on a dispositive motion prejudices the litigants ability to

seek a timely appeal. In **McClellan v. Young**, 421 F.2d 690 (6th Cir. 1970), for example, a district court had allowed four months to elapse before ruling on a prisoner's petition for habeas corpus. Citing **La Buy v. Howes Leather Co.**, 352 U.S. 249 (1957), the Sixth Circuit issued the writ and ordered the district judge to render his decision within ten days of the mandate being issued. **Id.** at 691; see also **In re Sharon Steel Corp.**, 918 F.2d 434, 437 (3d Cir. 1990) (writ issued to a district judge who declined to rule on a dispositive motion, where —the district court's inaction [was] an unexplained abdication of judicial power! because the district judge —had a duty to dispose of that motion, a duty inherent in a judicial system which guarantees a conditional right to an appeal.).

Nevertheless, this Court's issuance of the writ has become necessary to preserve its own appellate jurisdiction. In the circumstances presented here, —appeal is a clearly inadequate remedy, **Id.** at 260, insofar as it is the appeal itself that is obstructed by the Court of Appeals' failure to rule on issue properly before it under **Section 2253** for the certificate of appealability needed to obtain the appeal.

Again, the writ should issue in this case to stop the Fifth Circuit from defeating and obstructing the appellate process and/or certiorari review process in this Court which was provided in **Slack** and **Lozada**.

Petitioner submits that "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." **28 U.S.C. § 1651(a)**.

A writ of mandamus or prohibition is appropriate where a lower court's action constitutes a "judicial usurpation of power" or amounts to a "clear abuse of discretion." **Cheney v. U.S. Dist.**

Ct. for D.C., 542 U.S. 367, 380 (2004) (quotations omitted); see also, e.g., **Mallard v. U.S. Dist. Ct. for S.D. of Iowa**, 490 U.S. 296, 309 (1989).

Petitioner has a “clear and indisputable” right to the requested writ and exceptional circumstances justify its issuance. **Cheney**, 542 U.S. at 380; see also **SUP. CT. R. 20.1**.

The Petitioner has shown above that he has a “clear and indisputable right” under **Section 2253(c)** to have the Fifth Circuit to determine whether a certificate of appealability should be granted on two issues raised and decided in the District Court, particularly where the Fifth Circuit failed to grant certificate of appealability because the Fifth Circuit manifest error and wrongfully determined that these two issues were not raised nor decided in the District Court.

The Petitioner meets the “exceptional circumstances” requirement as well. Those circumstances exist here, where a lower court has disregarded rules of procedure, **Section 2253(c)**, that required it to determine whether certificate of appealability should be granted on issues raised and decided in the District Court.

This case presents the kind of extraordinary circumstances in which this Court exercises its discretionary authority to issue a writ of mandamus. The writ of mandamus should issue because the Fifth Circuit’s refusal or failure to comply with **Section 2253**, and determine whether certificate of appealability should be granted on issues raised and decided by the District Court contravenes a clearly applicable rule of procedure and effectively thwarts this Court’s opportunity to review, or opportunity to decline review, of a Petition for Writ of Certiorari properly filed in this Court after decision is made by the Fifth Circuit.

Again, this Court has reasons to grant the writ in this case.

II. THE NEARLY _____-YEAR DELAY, AMONG OTHER CIRCUMSTANCES, IN THIS CASE CONSTITUTES EXTRAORDINARY CIRCUMSTANCES WARRANTING A WRIT OF MANDAMUS.

First, worth repeating is that the Petitioner has a “clear and indisputable” right to the requested writ and exceptional circumstances justify its issuance. **Cheney**, 542 U.S. at 380; see also **SUP. CT. R. 20.1**.

The Petitioner has shown above that he has a “clear and indisputable right” under **Section 2253(c)** to have the Fifth Circuit to determine whether a certificate of appealability should be granted on two issues raised and decided in the District Court, particularly where the Fifth Circuit failed to grant certificate of appealability because the Fifth Circuit manifest error and wrongfully determined that these two issues were not raised nor decided in the District Court.

The Petitioner meets the “exceptional circumstances” requirement as well. Those circumstances exist here, where a lower court has disregarded rules of procedure, **Section 2253(c)**, that required it to determine whether certificate of appealability should be granted on issues raised and decided in the District Court.

This case presents the kind of extraordinary circumstances in which this Court exercises its discretionary authority to issue a writ of mandamus. The writ of mandamus should issue because the Fifth Circuit’s refusal or failure to comply with **Section 2253**, and determine whether certificate of appealability should be granted on issues raised and decided by the District Court contravenes a clearly applicable rule of procedure and effectively thwarts this Court’s opportunity to review, or opportunity to decline review, of a Petition for Writ of Certiorari properly filed in this Court after decision is made by the Fifth Circuit.

Again, this Court has reasons to grant the writ in this case.

Now, elaborating further on the requirement of establishing of “exceptional circumstances” that “warrant the exercise of the Court's discretionary powers,” the Petitioner focuses on the delay in this case as a result of the Fifth Circuit’s failure to comply with **Section 2253(c)**.

In **In re Blodgett**, 502 U.S. 236 (1992), this Court stated that a two-and-a-half-year delay in ruling on a habeas petition was excessive and could warrant the issuance of a writ of mandamus if the court of appeals failed to end the delay in that case. See **Id.** at 239-41.⁴ Although it denied the mandamus petition because the State had failed to lodge an objection to the most recent court of appeals decision, this Court nonetheless expressed its “concern that the State of Washington has sustained severe prejudice by the 2 ½ year stay of execution.” **Id.** at 239. In closing, this Court emphasized “the right of the State to again seek mandamus relief or to request any other extraordinary relief by motion or petition if unnecessary delays or unwarranted stays occur in the panel's disposition of the matter.” **Id.** at 240.

A fortiori, the delay of nearly _____ years since initial filing of the Notice of Appeal and Request for Certificate of Appealability in the present case warrants a writ of mandamus. Such a writ is appropriate especially in light of the procedural posture of this case: the Fifth Circuit is failing to

⁴ Circuit courts of appeals have also recognized that the writ of mandamus is the appropriate remedy for cases involving a court’s undue delay. In **Johnson v. Rogers**, 917 F.2d 1283, 1285 (10th Cir. 1990), for example, the Tenth Circuit Court of Appeals granted a writ of mandamus after a fourteen-month delay in the district court’s hearing and deciding the petitioner’s habeas corpus petition. In **U.S. v. Johnson**, 732 F.2d 379 (4th Cir. 1984), the Fourth Circuit concluded that the two-year delay in the preparation of the defendant’s trial transcript justified granting a writ of mandamus, being within “the range of magnitude of delay as a result of which courts have indicated that due process may have been denied.” **Id.** at 382 (citations omitted).

perform its 2253 function to decide the merits of the request for certificate of appealability for reason which was manifestly wrong, as shown above herein.

As such, the second requirement of **Supreme Court Rule 20.1** for the issuance of a writ of mandamus is satisfied in this case.

III. NO OTHER ADEQUATE RELIEF IS AVAILABLE TO PETITIONER

Finally, **Supreme Court Rule 20.1** requires that a writ of mandamus shall issue only when there is no other adequate relief available to the petitioners.

In this case, Petitioner has attempted to induce the Fifth Circuit to decide the certificate of appealability issues left unresolved through a formal motion requesting that a decision be rendered. See **App. 5**.

The Fifth Circuit failed to correct itself by blaming the Petitioner for not acted before he did with this motion for reconsideration, having no concern, nor making any mention, of the Fifth Circuit's manifest error which was the cause of any delay in this case. See **App. 3**.

There is no other means to bring before this Court the issues that the Fifth Circuit seeks to hid by falsely claiming that the issues were not raised nor decided in the District Court. Petitioner certainly cannot return to the District Court with the issues because the District Court will be bound by law to bar him by the successive writ provisions in **28 U.S.C. 2244(a), (b)(1)**. And, the Petitioner cannot seek review in this Court because the Fifth Circuit has, as shown repeatedly herein, thwarted that review process; the Petitioner cannot bring to this Court issues that were not

addressed and decided by the Fifth Circuit. The Fifth Circuit has buried those issues by prejudicially ruling that the issues were not raised nor decided by the District Court when, in fact, the issues were. Thus, the Petitioner lacks a clear procedural vehicle to challenge the District Court's denial of habeas corpus relief on these two issues hidden by the Fifth Circuit. Petitioner cannot obtain the relief he seeks from another court. **SUP. CT. R. 20.1**; **Cheney**, 542 U.S. at 380–81.

Under these circumstances, the grounds for issuing the writ are clear and indisputable, and the record fully supports this Court's exercise of its discretion to issue the writ.

Alternatively, this Court may construe a petition for an extraordinary writ as a petition for writ of certiorari. See, e.g., **Calderon v. Thompson**, 523 U.S. 538, 549 (1998). This Court will grant a petition for writ of certiorari only “for compelling reasons.” **Sup. Ct. R. 10**. One such reason is that a lower court “has so far departed from the accepted and usual course of judicial proceedings ... as to call for an exercise of this Court's supervisory power.” **SUP. CT. R. 10(a)**. As shown above, the Fifth Circuit has so far departed from the accepted and usual course of judicial proceedings under **2253** as to call for an exercise of this Court's supervisory power. Therefore, in the alternative, Petitioner requests that the Court issues the writ under its supervisory power over the inferior federal courts. **Hollingsworth v. Perry**, --- U.S. ---, 130 S.Ct. 705, 709-10 (2010).

CONCLUSION

Petitioners respectfully request that this Court issue a writ of mandamus directing the Respondents to render a decision in this case.

RESPECTFULLY SUBMITTED, this the 5th day of March, 2018

Ferlando Esco
Ferlando Esco

PROOF OF SERVICE

Let this certify that the undersigned has on this day caused a true copy of the foregoing to be mailed to the Attorney General of Mississippi, at P.O. Box 220, Jackson, MS., 39205, and to the Judges of the Fifth Circuit Court of Appeals, at 600 Maestri Street, New Orleans, LA., 70130-3408, this the 5th day of March, 2018.

Ferlando Esco
Ferlando Esco
#78107
EMCF 10641 Hwy 80 East
Meridian, MS 39307