APPENDIX A

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 22-14054-A

In re: ANDRES FERNANDO CABEZAS,

Petitioner.

On Petition for Writ of Mandamus from the United States District Court for the Middle District of Florida

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Before JORDAN and NEWSOM, Circuit Judges.

BY THE COURT:

Andres Cabezas, a federal prisoner proceeding *pro se*, petitions us for a writ of mandamus arising out of motions that he filed in the U.S. District Court for the Middle District of Florida, seeking to recuse the judge presiding over his 28 U.S.C. § 2255 proceedings. In his mandamus petition, Cabezas appears to ask us to compel the district court judge to recuse himself from the § 2255 proceedings or to reassign the case.

Mandamus is available "only in drastic situations, when no other adequate means are available to remedy a clear usurpation of power or abuse of discretion." *Jackson v. Motel 6 Multipurpose, Inc.*, 130 F.3d 999, 1004 (11th Cir. 1997) (quotation marks omitted). Mandamus may not be used as a substitute for appeal or to control decisions of the district court in discretionary matters. *Id.* The petitioner has the burden of showing that he has no other avenue of relief, and that his right to relief is clear and indisputable. *See Mallard v. U.S. Dist. Court*, 490 U.S. 296, 309 (1989).

Under 28 U.S.C. § 455(a), a judge must "disqualify himself in any proceeding in which his impartiality might reasonably be questioned" or in any circumstances "[w]here he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding." 28 U.S.C. § 455(a), (b)(1). Similarly, under 28 U.S.C. § 144, a judge must recuse himself if a party to the proceeding makes a timely and sufficient showing by affidavit that the judge "has a personal bias or prejudice" against him. *Id.* § 144. Disqualification is only required when the alleged bias is personal in nature, that is, stemming from an extra-judicial source. *Loranger v. Stierheim,* 10 F.3d 776, 780 (11th Cir. 1994). Judicial rulings alone almost never constitute a valid basis for a bias or partiality motion. *Liteky v. United States,* 510 U.S. 540, 555 (1994). Likewise, "opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible." *Id.*

Upon issuance of a final judgment in the district court, we review on direct appeal a district court's decision regarding recusal. *Steering Comm. v. Mead Corp. (In re Corrugated Container Antitrust Litig.)*, 614 F.2d 958, 960-62 (5th Cir. 1980). A recusal decision will not be addressed on appeal until the litigation is final, but a writ of mandamus may issue to correct such a decision in "exceptional circumstances amounting to a judicial usurpation of power." *Id.* at 960-62 & n.4 (quotation marks omitted); *see id.* at 961-62 (declining to grant mandamus relief relating to district court judge's refusal to recuse himself where full review of the issue was available on appeal); *see also In re Moody*, 755 F.3d 891, 897 (11th Cir. 2014) (explaining that review of district court judge's refusal to recuse under mandamus authority was "even more stringent" than the ordinary abuse-of-discretion standard applicable to review on appeal of recusal issue, because the drastic

remedy of mandamus was available only in exceptional circumstances). Where a judge's duty to recuse himself either is debatable or non-existent, a writ of mandamus will not issue to compel recusal. *Corrugated Container*, 614 F.2d at 962.

Here, Cabezas is not entitled to mandamus relief because he has the adequate alternative remedy of attempting to raise the recusal issue in an appeal once a final judgment is entered in his § 2255 proceedings. *See Jackson*, 130 F.3d at 1004; *Corrugated Container*, 614 F.2d at 960-62. Additionally, Cabezas has not shown any "exceptional circumstances" to warrant a recusal challenge through mandamus, rather than through an appeal. *See Corrugated Container*, 614 F.2d at 960-62 & n.4; *Loranger,* 10 F.3d at 780; *Liteky,* 510 U.S. at 555.

Accordingly, Cabezas's mandamus petition is **DENIED**.

In the
United States Court of Appeals
For the Eleventh Circuit

No. 22-14054

In re: ANDRES FERNANDO CABEZAS,

Petitioner.

On Petition for Writ of Mandamus to the
United States District Court for the
Middle District of Florida
D.C. Docket No. 6:22-cv-00065-PGB-LHP

Before JORDAN, and NEWSOM, Circuit Judges.

BY THE COURT:

Andres Cabezas, a federal prisoner proceeding *pro se*, has filed a motion for reconsideration of the denial of his mandamus petition. In his mandamus petition, he asked that we to compel the

judge in his pending 28 U.S.C. § 2255 proceedings to recuse or to reassign the case.

In denying his petition, we determined that Cabezas was not entitled to mandamus relief because he had the adequate alternative remedy of attempting to raise the recusal issue in an appeal once a final judgment was entered in his § 2255 proceedings. We further concluded that he had not shown any "exceptional circumstances" to warrant a recusal challenge through mandamus, rather than through an appeal, under *Steering Comm. v. Mead Corp. (In re Corrugated Container Antitrust Litig.)*, 614 F.2d 958, 960-62 & n. 4 (5th Cir. 1980).

In his reconsideration motion, Cabezas asserts that we incorrectly stated that he had not shown any exceptional circumstances to warrant a recusal challenge through mandamus rather than through an appeal. He notes that, while a recusal decision will not be addressed on appeal until the litigation is final, a writ of mandamus may issue to correct such a decision in exceptional circumstances amounting to a judicial usurpation of power. Cabezas then argues that we overlooked his argument that the district court was required to recuse itself per his 28 U.S.C. § 455(b)(1) motion, as his mandamus petition, like his first recusal motion in the underlying proceedings, cited to direct and clear record evidence demonstrating that the district court had "personal knowledge of disputed evidentiary facts concerning the proceedings." He asserts that we erroneously determined that there was no judicial usurpation, despite this clear record evidence.

A party seeking rehearing or reconsideration must specifically allege any point of law or fact that we overlooked or misapprehended. *See* Fed. R. App. P. 40(a)(2). In the district court context, we have held that "[a] motion for reconsideration cannot be used to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment." *Wilchombe v. TeeVee Toons, Inc.*, 555 F.3d 949, 957 (11th Cir. 2009) (quotation omitted).

Mandamus is available "only in drastic situations, when no other adequate means are available to remedy a clear usurpation of power or abuse of discretion." *Jackson v. Motel 6 Multipurpose, Inc.*, 130 F.3d 999, 1004 (11th Cir. 1997) (quotation marks omitted). Mandamus may not be used as a substitute for appeal or to control decisions of the district court in discretionary matters. *Id.* The petitioner has the burden of showing that he has no other avenue of relief, and that his right to relief is clear and indisputable. *See Mallard v. U.S. Dist. Court*, 490 U.S. 296, 309 (1989).

Under 28 U.S.C. § 455(a), a judge must "disqualify himself in any proceeding in which his impartiality might reasonably be questioned" or in any circumstances "[w]here he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding." 28 U.S.C. § 455(a), (b)(1). Similarly, under 28 U.S.C. § 144, a judge must recuse himself if a party to the proceeding makes a timely and sufficient showing by affidavit that the judge "has a personal bias or prejudice" against him. *Id.* § 144. Disqualification is only required when the alleged

bias is personal in nature, that is, stemming from an extra-judicial source. *Loranger v. Stierheim*, 10 F.3d 776, 780 (11th Cir. 1994). Judicial rulings alone almost never constitute a valid basis for a bias or partiality motion. *Liteky v. United States*, 510 U.S. 540, 555 (1994). Likewise, "opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible." *Id.*

Upon issuance of a final judgment in the district court, we review on direct appeal a district court's decision regarding recusal. *Corrugated Container*, 614 F.2d at 960-62. A recusal decision will not be addressed on appeal until the litigation is final, but a writ of mandamus may issue to correct such a decision in "exceptional circumstances amounting to a judicial usurpation of power." *Id.* at 960-62 & n.4 (quotation marks omitted); *see id.* at 961-62 (declining to grant mandamus relief relating to district court judge's refusal to recuse himself where full review of the issue was available on appeal); *see also In re Moody*, 755 F.3d 891, 897 (11th Cir. 2014) (explaining that review of district court judge's refusal to recuse under mandamus authority was "even more stringent" than the ordinary abuse-of-discretion standard applicable to review on appeal of recusal issue, because the drastic remedy of mandamus was available only in exceptional circumstances). Where a judge's duty to recuse himself either is debatable or non-existent, a writ of mandamus will not issue to compel recusal. *Corrugated Container*, 614 F.2d at 962.

Here, Cabezas reiterates the same arguments, and relies on the same facts, as both his first recusal motion and his mandamus petition. We have held that "[a] motion for reconsideration cannot be used to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment." *Wilchombe*, 555 F.3d at 957. Further, Cabezas's reconsideration motion does not demonstrate any point of law or fact that we misapprehended or overlooked in denying his mandamus petition. Fed. R. App. P. 40(a)(2). Accordingly, Cabezas's reconsideration motion is hereby **DENIED.**