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IN THE UNITED STATES SUPREME COURT

In re LIONEL DAVIS

ON PETITION FOR A WRIT OF MANDAMUS TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR LIONEL DAVIS IN SUPPORT OF PETITIONER PRO SE

Submitted by:

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QUESTION PRESENTED FOR REVIEW

Whether the Fifth Circuit Court of Appeals failed to apply the proper standard of review in denying his motion for authorization to file a successive 28 U.S.C. § 2254 application ? Sup. Ct. Rule 14.1

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INTRODUCTION AND STATEMENTS OF THE PROCEEDINGS BELOW

Lionel J. Davis, formerly Louisiana prisoner #118554, moved for authorization to file a successive 28 U.S.C. §2254 application. He intended to challenge his 1987 convictions for first degree robbery and simple robbery.

As relevant here, a movant seeking to file a successive § 2254 application must obtain prior authorization from the Court of Appeals (C.O.A.). 28 U.S.C. §2244(b)(3)(A). To obtain authorization, a prisoner must make a prima facie showing that either (1) his claims rely on a new, previously unavailable rule of constitutional law that this Court " made retroactive to cases on collateral review, " or (2) the factual predicate for his claims " could not have been discovered

previously through the exercise of due diligence, " and the underlying facts, " if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable " trier of fact would have found him guilty of the underlying offense. § 2244(b)(2), (b)(3)(C). He submits this brief as a pro se Petitioner to explain why, if this Court lacks jurisdiction to issue a statutory writ of certiorari under 28 U.S.C. § 2244(b) (3)(A) or 28 U.S.C. § 2244(b)(2), (b)(3)(C) no obstacles prevent this Court from granting a common-law writ of mandamus under 28 U.S.C. § 1651(a).

SUMMARY OF ARGUMENT

The petition in this case raises important Fourteenth Amendment questions that the courts below have improperly evaded. But the petition also presents significant issues regarding this Court's own jurisdiction to review cases from the United States District Court ("USDC") and the Fifth Circuit Court of Appeals ("COA"). Pet. 27–32. Whether the Court's statutory certiorari jurisdiction covering this case is an open question—but fortunately, not one that the Court needs to decide to grant the petition and address the merits of the case. That is because, especially if statutory certiorari is not available here, this is a paradigmatic case for common-law mandamus. The common-law writ of mandamus originated in the supervisory power of the court of King's Bench, which could review and correct the proceedings of any inferior court. The writ was a discretionary writ, never available as of right to litigants, but suitable to ensure the consistent administration of the King's justice by lower courts. At the American founding, the States'

highest courts inherited the jurisdiction of King's Bench within their respective territories, as did this Court for the United States—subject only to the limitations of Article III.

This Court retains power to issue a common-law writ of mandamus under the All Writs Act. 28 U.S.C. § 1651(a); Sup. Ct. R. 20.6. Traditionally, this Court has used the extraordinary writs available under the Act "to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so." Roche v. Evaporated Milk Ass'n, 319 U.S. 21, 26 (1943). Indeed, jurisdictional review is at the core of mandamus's common-law role. Harris v. Barber, 129 U.S. 366, 371–372 (1889) (citing People v. Betts, 55 N.Y. 600 (1874) and Gaither v. Watkins, 66 Md. 576 (1887)). And the All Writs Act retains this gap-filling role today.

The common-law writ of certiorari has seldom been used in recent years, but that is not because of abrogation or desuetude. The gaps common-law certiorari exists to fill have merely gotten smaller as this Court's interpretations of the various certiorari statutes have grown more and more expansive. See Hohn v. United States, 524 U.S. 236, 248 (1998). But where a gap exists, common-law mandamus is there as needed to fill it.

Assuming that statutory certiorari jurisdiction is not available here, this is exactly such a case. The USDC and COA are inferior Article III courts from which no appeal is expressly authorized, except in special circumstances not implicated here. It would be inconsistent with the basic structure of the federal judicial hierarchy for these inferior courts' jurisdictional rulings—which bar Petitioner here from any consideration of his constitutional claims by the USDC and COA, and perhaps by any court—to be final but yet not subject to supervisory review by this Court. Fortunately, that is not the situation. The common-law writ is in aid of this Court's extraordinary

jurisdiction, exceptional circumstances exist, and no other court can compel the USDC or COA to grant the authorization that the petition seeks.

ARGUMENT

28 U.S.C. § 1651 empowers this Court to issue writs of mandamus to the "courts of appeals." Although this Court has not previously decided whether the COA is a "court of appeals" under Section 1651, it need not decide that issue, nor whether certiorari is available under 28 U.S.C. § 2244(b)(2). Even if this Court cannot issue a statutory writ of certiorari to review the COA's decision here, it retains the power to issue the common-law writ of mandamus to review the decision below.

Petitioner takes no position on the statutory jurisdictional question raised by the Unpublished Order. Of course, if statutory certiorari is available, then "adequate relief [could] be obtained in [an]other form," and common-law mandamus would not be required. Pa. Bureau of Corr. v. U.S. Marshals Serv., 474 U.S. 34, 43 (1985); Roche, 319 U.S. at 27–28. But, assuming that neither Section 2254 nor Section 2244(b) allow this Court to review the USDC's or COA 's dispositions of serious Fourteenth Amendment and jurisdictional questions that Petitioner has raised, then this is a classic case for common-law mandamus review. Richard Wolfson, Extraordinary Writs in the Supreme Court Since Ex Parte Peru, 51 Colum. L. Rev. 977, 986 (1961).

The determinations that the USDC and COA have made in this case about the limits of their own jurisdiction should be, and indeed are, reviewable by this Court even when the government is not the requesting party.

I. The common-law writ of mandamus is appropriate here assuming that statutory certiorari is not available.

The All Writs Act codifies this Court's power to "issue all writs necessary or appropriate in aid of [its] . . .jurisdiction[] and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). "The All Writs Act is a residual source of authority to issue writs that are not otherwise covered by statute," which "empowers federal courts to fashion extraordinary remedies when the need arises." Pa. Bureau, 474 U.S. at 43. "The traditional use of such writs both at common law and in the federal courts has been, in appropriate cases, to confine inferior courts to the exercise of their prescribed jurisdiction or to compel them to exercise their authority when it is their duty to do so." U.S. Alkali Exp. Ass'n v. United States, 325 U.S. 196, 202 (1945) (emphasis added). One of the extraordinary writs available to this Court under the All Writs Act is the "common-law writ of mandamus." Sup. Ct. R. 20.1. History shows that the common-law petition for an extraordinary writ is uniquely appropriate for situations like this case, in which a lower federal court has erroneously concluded that it lacks jurisdiction to consider a petition seeking to vindicate constitutional rights.

A. The common-law petition for an extraordinary writ pre-dates the Founding and can still be employed today

1. The writ of certiorari originated at the court of King's Bench alongside the other prerogative writs of mandamus, prohibition, and quo warranto. Frank J. Goodnow, The Writ of Certiorari, 6:3 Pol. Sci. Q. 493, 497 (1891). To administer this prerogative, the King's Bench held "supervisory authority over inferior tribunals" and exercised this authority via the "prerogative or discretionary writs." Hartranft v. Mullowny, 247 U.S. 295, 299 (1918); see also 4 William Blackstone,Commentaries *314–317 (describing certiorari as a prerogative writ of the King's Bench).

Certiorari practice at King's Bench formalized three ways for the King's prerogative to be exercised.

First, certiorari could "bring up an indictment or presentment before trial in order to pass upon its validity, to take cognizance of special matters bearing upon it, or to assure an impartial trial." Hartranft, 247 U.S. at 299. Second, certiorari could serve as an "auxiliary writ in aid of a writ of error" to bring up any parts of a record omitted when a case was transferred for appeal. Id. at 300. Third, and most relevant here, certiorari served "as a quasi writ of error to review judgments of inferior courts of civil or of criminal jurisdiction, especially those proceeding otherwise than according to the course of the common law and therefore not subject to review by the ordinary writ of error." Id.(second emphasis added).

2. As this Court has recognized, the first Congress ratified the common-law writ of mandamus in the Judiciary Act of 1789: By section 14 of the Judiciary Act of September 24, 1789 (1 Stat. 81, c. 20), carried forward as section 716 of the Revised Statutes, this court and the Circuit and District Courts of the United States were empowered by Congress "to issue all writs, not specifically provided for by statute, which may be agreeable to the usages and principles of law"; and, under this provision, this Court can undoubtedly issue a petition for an extraordinary writ in all proper cases.

In re Chetwood, 165 U.S. 443, 461–462 (1897); see also James E. Pfander, Jurisdiction-Stripping and the Supreme Court's Power to Supervise Inferior Tribunals, 78 Tex. L. Rev. 1433, 1456 (2000) (explaining that the Framers believed the Supreme Court could use discretionary writs to supervise lower courts). This Court has acknowledged that "[t]he purposes for which the writ is issued [in America and by the King's Bench] are alike." Ex parte Vallandigham, 68 U.S. (1 Wall.) 243, 249–250 (1864). Although we lack a "King as fountain of justice" (Goodnow, 6:3 Pol. Sci. Q. at 495), this Court has a Supreme Court and a Vesting Clause.

As under the English common law, common-law certiorari was, by "general and well-established doctrine," the means by which "the review and correction of the proceedings" "and determinations of inferior boards or tribunals of special jurisdiction" "must be obtained." Ewing v. City of St. Louis, 72 U.S. (5 Wall.) 413, 418–419 (1867). Those tribunals were not subject to review by the ordinary writ of error (Hartranft, 247 U.S. at 300) and certiorari review of them was " in the nature of a writ of error " (Harris, 129 U.S. at 369). For ordinary tribunals whose merits decisions were reviewable by writ of error, certiorari was available only to review jurisdictional determinations. Id. at 371–372 ("Certiorari goes only to the jurisdiction.").

3. This common-law version of the writ still exists today. The Court's Rules expressly provide for it: "Issuance by the Court of an extraordinary writ authorized by 28 U.S.C. §1651(a) is not a matter of right, but of discretion sparingly exercised ." Sup. Ct. R. 20.1.

Though the Court's power to issue the writ persists, it has done so infrequently as the scope of statutory certiorari has expanded. For instance, in House v.Mayo, the district court and the court of appeals denied a certificate of probable cause to a habeas petitioner. The petitioner then sought a writ of certiorari.

This Court concluded that no writ could issue under the certiorari statute because "the case was never 'in' the court of appeals, for want of a certificate of probable cause." 324 U.S. 42, 44 (1945). Nevertheless, the Court "grant[ed] a writ of certiorari to review the action of the court of appeals in declining to allow an appeal to it" under the All Writs Act. Id. at 44–45.

After House, review of "courts of appeals' denials of leave to appeal in forma pauperis and refusals to issue certificates of probable cause" was "the most recent expansion in the scope of the common-law writ." Dallin H. Oaks, The Original Writ of Habeas Corpus in the Supreme Court, 1962 Sup. Ct. Rev. 153, 186.

But that development was short-lived. In subsequent cases, the Court often granted certiorari without indicating the basis for its issuance of certiorari. See, e.g., In re Shuttlesworth, 369 U.S. 35 (1962) (granting certiorari without any statutory basis but not noting that fact). Eventually, in 1998, the Court overruled the statutory holding of House, holding that denials of certificates of appealability (which had replaced certificates of probable cause) were cases "in the courts of appeals for the purpose of" the statutory jurisdiction statute. Hohn v. United States, 524 U.S. 236, 248 (1998). 3 In dissent, four Justices argued that the Court should adhere to House and

therefore determine whether it could "issue a common-law writ of certiorari under the All Writs Act" under the circumstances. Id. at 263 (Scalia, J., dissenting).

While Hohn obviated the need for common-law certiorari in such cases, it remains available where needed. As historically, the writ is still a safety valve in such cases that meet the discretionary criteria for certiorari but do not technically meet the criteria of the certiorari statue: "The wholesome function of this particular writ is to permit the Supreme Court to review cases of which it could not otherwise accept jurisdiction." Wolfson, 51 Colum. L. Rev. at 984. As this Court has explained, the All Writs Act "contemplates the employment of [common-law certiorari] in instances not covered by" the certiorari statute "as a means 'of giving full force and effect to existing appellate authority and of furthering justice in other kindred ways.'" In re 620 Church Street Bldg. Corp., 299 U.S. 24, 26 (1936). This is precisely such a case.

II. The petition here meets the three-part test set forth in Rule 20.1.

As discussed, the Court's power to issue the common-law writ of certiorari comes from the All Writs Act, 28 U.S.C. § 1651(a). The Court has distilled its discretion to issue extraordinary writs under the All Writs Act to a three-part test in its Rule 20.1:

To justify the granting of any such writ, the petition must show that :

[1] the writ will be in aid of the Court's appellate jurisdiction,

[2] that exceptional circumstances warrant the exercise of the Court's discretionary powers, and

[3] that adequate relief cannot be obtained in any other form or from any other court.

This case meets all three prongs. See Schacht v. United States, 398 U.S. 58, 6 (1970).

A. The writ is in aid of the Court's appellate jurisdiction because Petitioner seeks review of federal questions decided by an inferior federal court decided.

1. The Court has "appellate Jurisdiction, both as to Law and Fact," in all cases "arising under the Constitution" or "the Laws of the United States." U.S. Const. Art. III, § 2, Cl. 1.

This Court has extraordinary jurisdiction to review this case because it is an Unpublished Order from an Article III court's ruling on questions arising under the Constitution and federal law.

The USDC and COA review only questions of federal law. See, e.g., 28 U.S.C. § 2254. (USDC has "jurisdiction to hear applications for second or successive petitions under 28 U.S.C. § 2244 And the COA reviews only transfer orders made by the USDC to the COA (28 U.S.C. §

2244(b)(3)(A) as well as certain other decisions of the USDC applying COA (28 U.S.C. §§ 2244(b)(2), (b)(3)(C), § 2244(b)(1), § 2244(b)(2)(A), and § 2244(b)(2)(B)(ii). The USDC's and COA 's decisions therefore fall within Article III's "arising under" head of federal jurisdiction. See U.S. Const. Art. III, § 2, Cl. 1 ("The judicial power shall extend to all cases, in law and equity, arising under this Constitution [and] the laws of the United States . . .").

The USDC and COA are Article III courts. See,e.g., In re Lionel Davis, No. 24-30001,(USDC No. 2:23-CV-6700)(Clerk 2024) ("The district court transfers second or successive 28 U.S.C. §2254 motions to the Court Of Appeals to determine whether to allow a successive action."); see also the transfer order for United States at 3-4, In re Lionel J. Davis aka Lionel Bailey ., No. 24-30001 (Feb12, 2024).

("[T]he USDC is an inferior court established by Congress under Article III."). But even if they were not Article III courts, this Court would still have extraordinary jurisdiction to review their decisions. This Court frequently reviews decisions of state courts and "special tribunals," showing that "the Court has constitutional extraordinary jurisdiction to review an exercise of judicial power other than that conferred by Article III." Oaks, 1962 Sup. Ct. Rev. at 162; Ortiz v. United States, 138 S. Ct. 2165, 2176 (2018) ("[T]his Court's appellate jurisdiction, as Justice Story made clear ages ago, covers more than the decisions of Article III courts.").

Accordingly, this Court has constitutional extraordinary jurisdiction over every decision by the USDC and COA. See U.S. Const. Art. III, § 2, Cl. 2 ("In all the other Cases before mentioned, the supreme Court shall have extraordinary Jurisdiction . . . .").

That is underscored by the fact that Congress has not enacted no different statutory provisions that expressly allow this Court to review decisions of USDC and COA via mandamus. See 28

U.S.C. §§ 1651. But, because that statutes do not expressly define the COA as a "court of appeals" in petitioner's case , this is exactly the kind of gap that the common-law writ of mandamus is meant to fill. . See Utah v. Evans, 536 U.S. 452, 463 (2002); Ex parte Yerger, 75 U.S. (8 Wall.) 85, 103 (1869).

2. "[F]ederal jurisdiction is not optional . . . ." BP . . ." P.L.C. v. Mayor of Baltimore, No. 19-1189, 2021 U.S. LEXIS 2586, at *11 (May 17, 2021). When a lower federal court fails to exercise its "virtually unflagging" "obligation to hear and decide cases," this Court always has extraordinary jurisdiction to correct that error. Lexmark Int'l, Inc. v. Static Control Components, Inc., 572 U.S. 118, 126 (2014) (quoting Sprint Commc'ns, Inc. v. Jacobs, 571 U.S. 69, 77 (2013)) (cleaned up), and 28 USC § 1651.

Certainly, this Court always has extraordinary jurisdiction to reverse a federal court's decision that exceeded its jurisdiction. See, e.g., Int'l Ladies' Garment Workers' Union v. Donnelly Garment Co., 304 U.S. 243, 251 (1938) (per curiam) (Supreme Court "necessarily has jurisdiction" to determine whether a lower court "acted without jurisdiction").

The same is true when lower federal courts fail to exercise vested discretion. Indeed, just as they may not exceed their jurisdiction, "federal courts lack the authority to abstain from the exercise of jurisdiction that has been conferred." New Orleans Pub. Serv., Inc. v. Council of New Orleans, 491 U.S. 350, 358 (1989).

"The one or the other would be treason to the Constitution." Id. (quoting Cohens v. Virginia, 19 U.S. (6 Wheat.) 264, 404 (1821) (quotation marks omitted)); cf. In re Sealed Case, 310 F.3d 717, 731–732 (FISCR 2002) (assuming that the FISC is bound by the "constitutional bounds that restrict an Article III court").

It is for precisely this reason—the need to address abuses of jurisdiction in either direction in cases that do not qualify for statutory certiorari (or earlier, writs of error)—that these supervisory writs exist:

> Under the [All Writs Act], the jurisdiction of this Court to issue common-law writs in aid of its extraordinary jurisdiction has been consistently sustained. . . . The writs thus afford an expeditious and effective means of confining the inferior court to a lawful exercise of its prescribed jurisdiction, or of compelling it to exercise its authority when it is its duty to do so. Ex parte Republic of Peru, 318 U.S. 578, 582–583 (1943); see also Ex parte United States, 287 U.S. 241, 245–246 (1932); McClellan v. Carland, 217 U.S. 268, 279–280 (1910); Ex parte Crane, 30 U.S. (5 Pet.) 190, 193–194 (1831). See, e.g., U.S. Const. Art. III, § 2, Cl. 1; 28 U.S.C. § 1331.

B. This case involves exceptional circumstances that warrant application of the common-law writ

1. "[W]here an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress." Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council, 485 U.S. 568, 575 (1988). There are at least two such "serious

constitutional problems" here. First, by the government's lights, the USDC and COA lack original jurisdiction to hear Petitioner's claim, possibly making Petitioner's claim unreviewable. That would raise a constitutional question of the highest order. See Webster v. Doe, 486 U.S. 592, 603 (1988) ("We require this heightened showing in part to avoid the 'serious constitutional question' that would arise if a federal statute were construed to deny any judicial forum for a colorable constitutional claim." (citation omitted)). If the USDC and COA were unreviewable and got the jurisdictional question wrong—limiting individuals' access to the USDC—no judicial forum could assess the merits of Petitioner's Fourteentht Amendment claim.

A rule that USDC and COA decisions are unreviewable would also allow the USDC to hide its wide-reaching Fourteenth Amendment jurisprudence, preventing Americans from being able to protect their rights. See, e.g., Amicus Br. for Stephen I. Vladeck at 24–26, Wikimedia Found. v. NSA, No. 20-1191 (4th Cir. July 8, 2020)

For instance, Judge, Sara S. Vance of the USDC, Ordered that " petitioner's Section 2254 petition be construed in part as a motion for authorization for the USDC to consider the second or successive claims raised therein. It was further ordered that the petition be and thereby was transferred to the COA under the authority of 28 U.S.C. § 1631 for that court to determine whether Petitioner was authorized under 28 U.S.C. § 2244(b) to file the instant habeas corpus petition in USDC." Office of the CLERK, LYLE W. CAYCE, said that the USDC transferred petitioner's second or successive 28 U.S.C. § 2254 motion to the COA to determine whether to allow Petitioner to successive action. Subsequently, other Article III courts concluded that they had to advise everyone of the following matters, See In re Tony Epps, 127 F. 3d 364 (5th Cir. 1997). That advice should not have been necessary to ensure that the USDC ruled within the boundaries of the Constitution and of COA. To ensure public confidence, this Court should show that it can and will oversee the body of secret constitutional law created by the USDC and COA.

Second, the government may contend that this Court lacks either appellate jurisdiction or statutory power to review Petitioner's serious constitutional claim. But it is doubtful whether Congress could deprive the Supreme Court of appellate jurisdiction over constitutional cases. The Court—and not the Congress or the "inferior" courts—"has remained the ultimate expositor of the constitutional text." United States v. Morrison, 529 U.S. 598, 616 n.7 (2000); see also Webster, 486 U.S. at 611–612 (Scalia, J., dissenting) ("[I]f there is any truth to the proposition that judicial cognizance of constitutional claims cannot be eliminated, it is, at most, that they cannot be eliminated . . . from this Court's appellate jurisdiction over cases . . . from federal courts, should there be any[] involving such claims."); cf. Felker v. Turpin, 518 U.S. 651, 667 (1996) (Souter, J., concurring) (if statute limited Supreme Court review, "the question whether the statute exceeded Congress's Exceptions Clause power would be open").

The Court has never addressed whether Romas applies retroactive to cases on collateral review, so it does provide a basis for authorization. See § 2244(b)(2)(A); Ramos v. Louisiana, 140 S.Ct. 1390 (2020). And it is an area of immense public interest. When the USDC order was transferred on December 26, 2023, USDC 's order became the authority of 28 U.S.C. § 1631 for that court to determine whether Petitioner was authorized under 28 U.S.C. § 2244 to file a habeas corpus petition in the USDC.

The possibility that USDC order authorized conduct that violates Americans' rights has become significantly more substantial because the numerous post-Romas orders denied by the COA increased USDC's domain:

The Romas Court concluded that the Sixth Amendment right to a jury trial—as incorporated against the States by way of the Fourteenth Amendment—requires a unanimous verdict to

convict a defendant of a serious offense. Pp. 3–9, 11–15, 20–23. The Constitution's text and structure clearly indicate that the Sixth Amendment term "trial by an impartial jury" carries with it some meaning about the content and requirements of a jury trial. One such requirement is that a jury must reach a unanimous verdict in order to convict.

Juror unanimity emerged as a vital common law right in 14th-century England, appeared in the early American state constitutions, and provided the backdrop against which the Sixth Amendment was drafted and ratified. Postadoption treatises and 19th-century Amerialso explained that the Sixth Amendment right to a jury trial is incorporated against the States under the Fourteenth Amendment, Duncan v. Louisiana, 391 U. S. 145, 148–150. Thus, if the jury trial right requires a unanimous verdict in federal court, it requires no less in state court. Pp. 3–7 This Court has commented on the Sixth Amendment's unanimity requirement no fewer than 13 times over more than 120 years, see, e.g., Thompson v. Utah, 170 U. S. 343, 351; Patton v. United States, 281 U. S. 276, 288, and has also explained that the Sixth Amendment right to a jury trial is incorporated against the States under the Fourteenth Amendment, Duncan v. Louisiana, 391 U. S. 145, 148–150. Thus, if the jury trial right requires a unanimous verdict in federal court, it requires no less in state court. Pp. 3–7.

While some prominent scholars have argued that "Article III requires . . . that the Supreme Court must have the final judicial word in all cases . .. that raise federal issues," Steven G. Calabresi & Gary Lawson, Essay: The Unitary Executive, Jurisdiction Stripping, and the Hamdan Opinions: A Textualist Response to Justice Scalia, 107 Colum. L. Rev. 1002, 1005 (2007), this Court need not resolve that issue here. Instead, this Court should do what it has so often done when confronted with this same question: use constitutional avoidance to read the relevant statutes to allow this Court to exercise its jurisdiction. Hamdan v. Rumsfeld, 548 U.S. 557, 575 (2006) (declining to adopt a statutory position that "raises grave questions about

Congress' authority to impinge upon this Court's appellate jurisdiction"); see also Tara Leigh Grove, The Structural Safeguards of Federal Jurisdiction, 124 Harv. L. Rev. 869, 925 (2011) ("As in McCardle and Yerger, the Supreme Court read this restriction narrowly."); Stephen I. Vladeck, The Increasingly "Unflagging Obligation": Federal Jurisdiction After Saudi
Basic and Anna Nicole, 42 Tulsa L. Rev. 553, 557–558 (2007) (similar).

The constitutional concerns that would arise if this Court truly lacked a means to review the USDC and COA 's rulings are even more serious because the underlying Fourteenth Amendment claim raised in this case is more than "colorable." See LA. C.Cr.P. Art. 930.8; State v. Thomas, 711 So.2d 808 (1998).(The trial judge failed to inform Thomas that the prescriptive period for post-conviction relief begins to run from the finality of conviction. See La. C.Cr.P. art. 930.8.).

This Court has never addressed whether the public's qualified Fourteenth Amendment right to be informed of the prescriptive period applies in USDC cases, an issue of serious dispute. See Pet. 18 (making merits argument); Pet., Lionel J. Davis, No. 23-6700. And it is an area of immense public interest. When the the Supreme Court declined to apply the new rule announced in Ramos retroactively to final convictions on federal habeas review, USDC's secrecy became a front-page news story.https://www.lasc.org/opinions/2022/21-1893.KP.OPN.pdf
(e.g., Louisiana Supreme Court declines to grant new trials for people still in prison on non-unanimous jury convictions by Nick Chrastil October 21, 2022)

(e.g., Nonunanimous jury ban isn't retroactive, Louisiana Supreme Court rules)(Decision could keep 1,500 Louisiana inmates from getting new trials) BY JOHN SIMERMAN | Staff writer Updated Oct 21, 2022.)

(Court:Louisiana unanimous jury requirement not retroactive) BY KEVIN MCGILL

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(Supreme Court Won't Make Ban on Non-Unanimous Jury Convictions Retroactive) **SCOTT SHACKFORD** | 5.17.2021 1:25 PM https://reason.com/tag/supreme-court/

The possibility that USDC order authorize conconduct that violates Americans' rights has become significantly more substantial because the numerous post-Romas decision COA increased USDC's domain:

The USDC's role has expanded greatly since its creation in 1845. As COA has evolved and Congress has loosened its individual suspicion requirements, the USDC has been tasked with delineating the limits of the Government's constitutional power, issuing secret orders without the benefit of the adversarial process. ACLU v. Clapper, 959 F. Supp. 2d 724, 756 (S.D.N.Y. 2013), aff'd in part and rev'd in part, 785 F.3d 787 (2d Cir. 2015); see also Stephen I. Vladeck, The FISA Court and Article III, 72 Wash. & Lee. L. Rev. 1161, 1168–1176 (2015) (describing radical changes in the type of cases heard by the FISC). Petitioner's case is a mine-run qualified due process-right-of-access case where a motion seeks authorization ; it is an especially challenging case because the secret orders could implicate the public's constitutional rights.

2. In addition, the effects of USDC orders on Americans' primary conduct and the Fourteenth Amendment rights to due process constitute exceptional circumstances warranting the exercise of the Court's discretionary powers.

First, the Court historically favored granting certiorari when the case raised a question that affected the general public.

The Court's standard was to issue the writ of certiorari "only in cases of peculiar gravity and general importance, or in order to secure uniformity of decision." Hamilton-Brown Shoe Co. v. Wolf Bros. & Co., 240 U.S. 251, 258 (1916);8 see also Forsyth v. Hammond, 166 U.S. 506, 514 (1897) (certiorari granted in The Three Friends, 166 U.S. 1 (1897), because the case would "disclose to each citizen the limits beyond which he might not go"). This is such a case. As the Petition explains, USDC's orders can have "far-reaching implications for U.S. citizens and residents who are not the ostensible targets of the government's denial of petitioner's Sixth Amendment right to a jury trial." Pet. 6. Only through disclosure of the USDC's orders (or through authorization) can Americans gain a rough sense as to what communication might or might not be challenged through post conviction relief.

Second, this Court often granted discretionary writs when the cases touched upon foreign affairs. For instance, "the construction of acts of Congress in the light of treaties with a foreign government" was sufficiently weighty to justify common-law certiorari. In re Woods, 143 U.S. 202, 206 (1892) (describing In re Lau Ow Bew, 141 U.S. 583 (1891)); Forsyth, 166 U.S. at 514 (certiorari granted in The Three Friends, 166 U.S. 1 (1897), because "the question involved was one affecting the relations of this country to foreign nations"); Fields v. United States, 205 U.S. 292, 296 (1907) (denying certiorari because, among other things, the case did not "affect[] the relations of this nation to foreign nations"); Balintulo v. Daimler AG, 727 F.3d 174, 187–188 (2d Cir. 2013) (collecting cases).

Here, an order by the Fifth Circuit Court of Appeals implementing the holding that Ramos did not apply retroactively to cases on collateral review directly affected a basis for authorization.

See 28 U.S.C. § 2244(b)(2)(A); Edwards v. Vannoy, 141 S.Ct. 1547, 1551-52 (2021) (a movant seeking to file a successive § 2254 application must obtain prior authorization from COA."); 28 U.S.C. §§ 2244(b)(3)(A) (To obtain authorization, a prisoner must make a prima facie showing that either (1) his claims rely on new, previously unavailable rule of constitutional law that the Supreme Court " made retroactive to cases on collateral review," or (2) the factual predicate for his claims " could not have been discovered previously through the exercise of due diligence, " and the underlying facts, " if proven and viewed in the light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence, but for constitutional error, no reasonable " trier of fact would have found him guilty of the underlying offense. § 2244 (b)(3)(C).Indeed, the COA itself has held that, petitioner had made a conclusional assertion that his motion relied on a newly discovered factual predicate. See § 2244(b)(B)(ii).

Finally, exceptional circumstances also exist here because "unless it can be reviewed under [the All Writs Act, the order below] can never be corrected if beyond the power of the court below." De Beers Consol. Mines, Ltd. v. United States, 325 U.S. 212, 217 (1945) (describing U.S. Alkali Exp. Ass'n, 325 U.S. 196). "If [the Court] lacked authority to" review decisions like this, then "orders [by USDC or COA] to dismiss for want of jurisdiction would be insulated entirely from review by this Court." Nixon v. Fitzgerald, 457 U.S. 731, 743 n.23 (1982), See Davis, No.08-4175, R. Docs. 39, 40 & 41.

C. Because of the USDC's unique power over its records, adequate relief cannot be obtained in any other form or from any other court.

The final factor is that "adequate relief cannot be obtained in any other form or from any other court."

This usually refers to a failure of a litigant to seek relief in an intermediate court. In re Blodgett, 502 U.S. 236, 240 (1992) ("The State should have lodged its objection with the Court of Appeals, citing the cases it now cites to us."); Hohn, 524 U.S. at 264 (Scalia, J., dissenting) ("Because petitioner may obtain the relief he seeks from a circuit justice, relief under the All Writs Act is not 'necessary.'"); cf. Wolfson, 51 Colum. L. Rev. at 977 ("[T]he Supreme Court has frequently said, in cases reviewable by the courts of appeals, that application for such writs should be made in the first instance to the intermediate courts.").Here, however, that obstacle has been removed. Petitioner has already sought relief in the COA, the intermediate court that reviews USDC orders. See Transfer order for United States District Court at 3, In re Lionel Davis aka Lionel Bailey ., No. 24-30001 (Feb.12, 2024) (arguing that petitioner had not identified any newly discovered factual predicate or shown that any new facts, if proven and viewed in light of the evidence that, but for constitutional error, no reasonable trier of fact would have found him guilty.) See § 2244(b)(2)(B)(ii).The government may argue here that a movant seeking to file a successive § 2254 application must obtain prior authorization from the United States Court of Appeals.

The United States Fifth Circuit Court of Appeals under the authority of 28 U.S.C. § 1631 had to determine whether Petitioner was authorized under 28 U.S.C.§ 2244(b) to file his habeas corpus petition in the District Court. Transfer in Order for United States District Court at 4, In re Lionel Davis , No. 24-30001 (Jan. 02, 2024).

The government may argue here that Petitioner's motion for authorization could be brought in a federal district court. Transfer Order. for United States at 3-4, In re Lionel Davis, No. 24-30001 (Feb. 12, 2024) ("[T]he proper way for petitioner to challenge the Romas retroactivity on collateral review is to file an action in federal district court to enjoin the authorization."). But this is not an appropriate substitute. Petitioner's case concerns authorization of a particular Article III court—the USDC. Asking a separate Article III court to order the USDC to authorize the filing of the motion would be awkward, at best.

Unlike this Court, district courts have no clear supervisory power over the USDC or COA , under Article III or the Clerk. See Lyle W. Cayce, Clerk, letter dated Jan. 2, 2024 (" Petitioner had 30 days from the date of the letter to file with the COA a motion for authorization to proceed in the district court, and send the documentation mentioned therein.)

Indeed, the district court often transfers petition for second or successive 28 U.S.C. § 2254 motion to the Court of Appeals to determine whether to allow a successive action. See In re Tony Epps, 127 F.3d 364 (5th Cir. 1997). Two circuit courts have addressed the procedure to be used when a district court transfers to the court of appeals a successive petition for habeas corpus relief from a state prisoner or a successive § 2255 motion from a federal prisoner. Those

circuit courts have directed their clerk's offices to notify the petitioner that a motion for authorization must be filed with the court of appeals pursuant 28 U.S.C. § 2244(b) (3). The clerk's notice explains the substantive requirements of such a motion and advises the prospective movant that (1) a motion pursuant to § 2244(b) (3) must be filed with the court of appeals within a specified time from the date of the clerk's notice and (2) failure to do so timely will result in the entry of an order denying authorization. See Coleman v. United States, 106 F.3d 339, 341 (10th Cir. 1997); Liriano v. United States, 95 F.3d 119, 123 (2d Cir. 1996).

And even if a coordinated Article III court could and would rule on whether the USDC transfer order at issue should be granted, that would answer only Petitioner's second question. The first question is "[w]hether the USDC , like other Article III courts, has jurisdiction to consider a motion asserting that the Fourteenth Amendment provides a qualified due process right of access to the court's significant transfer order, and whether the COA has jurisdiction to consider a motion from the district court." Pet. at i. That question is very significant, given the increasing role that the USDC and COA have assumed in light of the recent changes to COA discussed above and the failure to file a motion for authorization within the 30 day period, or properly request an extension of time, the clerk will enter an order dismissing a case without further notice.

And even if a coordinated Article III court could and would rule on whether the USDC transfer order at issue should be granted, that would answer only Petitioner's second question. The first question is "[w]hether the USDC , like other Article III courts, has jurisdiction to consider a motion asserting that the Fourteenth Amendment provides a qualified due process right of access to the court's significant transfer order, and whether the COA has jurisdiction to consider an motion from the transfer of such a motion." Pet. at i. That question is very significant, given

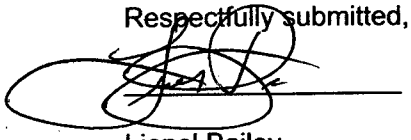
the increasing role that the USDC and COA have assumed in light of the recent changes to COA discussed above and the greater due process debate around motion for authorization. No court other than this Court can address that jurisdictional issue and decide, once and for all, whether the USDC and COA lack any authority to entertain the Fourteenth Amendment claims that Petitioner has raised.

In short, this Court's supervisory power is the only judicial power that can check USDC's supervisory power over its own transfer order and motion. Coupled with the other circumstances discussed above, that warrants the use of common-law mandamus.

CONCLUSION

For the foregoing reasons, the petition should be granted.

Respectfully submitted,



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