

No. ~~24-7270~~

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SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

In Re Michael Jarrow - PETITIONER

ON PETITION FOR A WRIT OF MANDAMUS

PETITION FOR WRIT OF MANDAMUS

Michael Jarrow

(Your Name)

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(Address)

Amarillo, Texas 79107

(City, State, Zip Code)

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QUESTION(S) PRESENTED

1. Is the denial of the petitioner's application to proceed in forma pauperis on appeal in aid of the Court's appellate jurisdiction?
2. Is the withdrawal of the grant of the petitioner's application to proceed in forma pauperis on appeal warranting the Court's discretionary powers?
3. Did the United States District Court abuse its discretion?
4. Did the United States Court of Appeals err in denying the petitioner in forma pauperis status?

LIST OF PARTIES

☐ All parties appear in the caption of the case on the cover page.

☒ All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows: Michael Jarrow - Petitioner and Tera N. Devers - Respondent.

RELATED CASES

Jarrow v. Devers, 2:21-cv-00227-Z-BR, U.S. District Court for the Northern District of Texas Amarillo Division. Order granting petitioner's application to proceed in forma pauperis on appeal, entered on May 8, 2024.

Jarrow v. Devers, 2:21-cv-00227-Z-BR, U.S. District Court for the Northern District of Texas Amarillo Division. Order withdrawing the grant of petitioner's application to proceed in forma pauperis on appeal, entered on May 15, 2024.

Jarrow v. Devers, 2:21-cv-00227-Z-BR, U.S. District Court for the Northern District of Texas Amarillo Division. Order denying petitioner's application to proceed in forma pauperis on appeal, entered on May 16, 2024.

Jarrow v. Devers, 24-10302, U.S. Court of Appeals for the Fifth Circuit. Order denying petitioner in forma pauperis status, entered on June 3, 2024.

Jarrow v. Devers, 24-10302, U.S. Court of Appeals for the Fifth Circuit. Dismissing appeal for want of prosecution, entered on August 1, 2024.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF MANDAMUS

Petitioner respectfully prays that a writ of mandamus issue.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix E to the petition and is

☒ reported at 2024 U.S. App. LEXIS 19214; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix C to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was August 1, 2024.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article III. Sections 1 and 2 of the United States Constitution:

The judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the Supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; - to all Cases affecting Ambassadors, other public Ministers and Consuls; - to all Cases of admiralty and maritime Jurisdiction; - to Controversies to which the United States shall be a Party; - to Controversies between two or more States; -

between a State and Citizens of another State; — between Citizens of different States; — between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the Supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

First Amendment of the United States Constitution:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Fourteenth Amendment of the United States Constitution Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are Citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of Citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. § 1651(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.

28 U.S.C. § 1915(a)(3):

An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

28 U.S.C. § 1915(g):

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

STATEMENT OF THE CASE

On the date of May 8, 2024 the United States District Court for Northern District of Texas Amarillo Division entered an order granting the petitioner's application to proceed in forma pauperis on appeal. However, on the date of May 15, 2024 the United States District Court for the Northern District of Texas Amarillo Division entered an order withdrawing the grant of the petitioner's application to proceed in forma pauperis on appeal. Thereafter, on the date of May 16, 2024 the United States District Court for the Northern District of Texas Amarillo Division entered an order denying the petitioner's application to proceed in forma pauperis on appeal. Under 28 U.S.C. § 1915(g). After that, on the date of June 3, 2024 the United States Court of Appeals for the Fifth Circuit denied the petitioner in forma pauperis status pursuant to 28 U.S.C. § 1915(a)(3) and Federal Rule of Appellate Procedure 24(a). Finally, on August 1, 2024 the United States Court of Appeals for the Fifth Circuit dismissed the petitioner's appeal under 5th Cir.R. 42.3, for want of prosecution for failing to timely pay the fee.

REASONS FOR GRANTING THE PETITION

1. The orders of the United States Magistrate Judge Lee Ann Reno and United States District Judge Matthew J. Kacsmarik, withdrawing the grant of the petitioner's application to proceed in forma pauperis on appeal and thereafter denying the petitioner's application to proceed in forma pauperis on appeal is a clear error as a matter of law and there is no other available appellate remedy in any other Court inasmuch as the petitioner has exhausted all other appellate remedies in any other Court. See *In re Optum Rx, Inc.*, 2024 U.S. App. LEXIS 26695, at *1 (2024). Mandamus "is a 'drastic and extraordinary' remedy (reserved for really extraordinary causes)." *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 380, 124 S.Ct. 2576, 159 L.Ed.2d 459 (2004) (quoting *Ex parte Fahey*, 332 U.S. 258, 259-60, 67 S.Ct. 1558, 91 L.Ed. 2041 (1947)). *Id.* "As the writ is one of the most potent weapons in the judicial arsenal, three conditions must be satisfied before it may issue": (1) the petitioner must "have no other adequate means to attain the relief [it] desires," such as direct appeal; (2) the petitioner must show that its right to the writ is "clear and indisputable;" and (3) "the issuing Court in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances." *Id.* at 380-81 (clean UP). *Id.* See *United States v. Tillman*, 756 F.3d 1144, 1150, 2014 U.S. App. LEXIS 12261 (2014). Under 28 U.S.C. § 1651, this Court has "the power to issue a writ of mandamus in aid of its appellate jurisdiction." *Id.* *California v. Mesa*, 813 F.2d 960, 962 (9th Cir. 1987) (citing *Roche v. Evaporated Milk Ass'n*, 319 U.S. 21, 25, 63 S.Ct. 938, 87 L.Ed. 1185 (1943)); see 28 U.S.C. § 1651(a) (providing that federal Courts "may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."). *Id.* Mandamus is a "drastic and extraordinary remedy reserved for really extraordinary causes." *Id.* In *re Van Dusen*, 654 F.3d 838, 840 (9th Cir. 2011) (internal quotation marks omitted). *Id.* Our Court consider five factors (the "Bauman factors") to evaluate whether to exercise mandamus jurisdiction: (1) [w]hether the petitioner has other adequate means, such as a direct appeal, to attain the relief he or she desires; (2) whether the petitioner will be damaged or prejudiced in a way not correctable on appeal; (3) whether the district court's order is clearly erroneous as a matter of law; (4) whether the district court's order makes an oft-repeated error, or manifest a persistent disregard of the federal rules; and (5) whether the district court's order raises new and important problems, or legal issues of first impression. *Id.* In *re Van Dusen*, 654 F.3d at 841 (quoting *Bauman v. U.S. Dist. Court*, 557 F.2d 650, 654-55 (9th Cir. 1977)) (internal quotation marks omitted). *Id.* See *In re Anderson*, 476 Fed. Appx. 496, 498, 2012 U.S. App. LEXIS 2214 (2012). Our jurisdiction derives from 28 U.S.C. § 1651, which grants us the power to "issue all writs necessary or appropriate in aid of (our)... jurisdiction and agreeable to the usages and principles of law." *Id.* A writ of mandamus is an extreme remedy that is invoked only in extraordinary situations. *Id.* See *Kerr v. United States Dist.*

Court, 426 U.S. 394, 402, 96 S.Ct. 2119, 48 L.Ed.2d 725 (1976). Id. To justify the use of this extraordinary remedy, a petitioner must show both a clear and indisputable right to the writ and that he has no other adequate means to obtain the relief desired. Id. See *Haines v. Liggett Group Inc.*, 975 F.2d 81, 89 (3d Cir. 1992). Id. See *In re Raghbir*, 2021 U.S. App. LEXIS 35732, at *3 (2021). Writs of prohibition and mandamus, both authorized under 28 U.S.C. § 1651, are "two sides of the same coin with interchangeable standards." Id. *United States v. Pleau*, 680 F.3d 1, 4 (1st Cir. 2012) (en banc) (persuasive authority). Id. They are available only in drastic situations, when no other adequate means are available to remedy a clear usurpation of power or abuse of discretion. Id. *United States v. Shalhoub*, 855 F.3d 1255, 1259, 1263 (11th Cir. 2017); *Jackson v. Motel 6 Multipurpose, Inc.*, 130 F.3d 999, 1004 (11th Cir. 1997). Id. Mandamus may not be used as a substitute for appeal or to control decisions of the district court in discretionary matters. Id. *Jackson*, 130 F.3d at 1004. 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. Id. *Mallard v. United States Dist. Court*, 490 U.S. 296, 309, 109 S.Ct. 1814, 104 L.Ed.2d 318 (1989); see also *In re Wainwright*, 678 F.2d 951, 953 (11th Cir. 1982) (applying the same standard to writs of prohibition). Id. Where an alternative remedy exists, even if it is unlikely to provide relief, mandamus relief is not proper. Id. See *Lifestar Ambulance Svc., Inc. v. United States*, 365 F.3d 1293, 1298 (11th Cir. 2004). Id. A writ of mandamus may issue only "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." Id. *Shalhoub*, 855 F.3d at 1263 (quotation marks omitted); *Pleau*, 680 F.3d at 4. Id. See *In re Fraser*, 75 F.Supp.2d 572, 578, 1999 U.S. Dist. LEXIS 20823 (1999). The All Writs Act provides 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." Id. The Supreme Court has made clear "the power of a federal court to issue such commands under the All Writs Act as may be necessary or appropriate to effectuate and prevent the frustration of orders it has previously issued in its exercise of jurisdiction otherwise obtained." Id. *New York Telephone Co.*, 434 U.S. 159, 172, 98 S.Ct. 364, 372, 54 L.Ed.2d 376 (1977). Id. See *In re Syncora Guar, Inc.*, 757 F.3d 511, 515, 2014 U.S. App. LEXIS 12557 (2014). The All Writs Act, 28 U.S.C. § 1651, authorizes the federal courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." Id. That authority allows this Court to "issue writs of mandamus in aid of its existing

jurisdiction or in aid of its future appellate jurisdiction." *Blay v. Young*, 509 F.2d 650, 651 (6th Cir. 1974). *Id.* But mandamus relief is an "extraordinary remedy, only infrequently utilized by this Court." *In re Perrigo Co.*, 128 F.3d 430, 435 (6th Cir. 1997). *Id.* When deciding whether to grant such extraordinary relief, we consider a number of factors, including (1) whether the party seeking the writ has adequate other means to obtain the desired relief, (2) whether the petitioner will be irreparably damaged or prejudiced if the writ is not granted, (3) whether the district court's order is clearly erroneous as a matter of law, (4) whether the district court's order incorporates an oft-repeated error or manifests a persistent disregard of the federal rules, and (5) whether the district court's order raises new and important problems, or issues of law of first impression. *Id.* (citing *In re Bendectin Prods. Liab. Litig.*, 749 F.2d 300, 304 (6th Cir. 1984)). *Id.* Ours is a flexible approach, and "[w]e have never required that every element be met in order for mandamus to issue." *In re Lott*, 424 F.3d 446, 449 (6th Cir. 2005). *Id.* Cf. *United States v. Tillman*, 756 F.3d 1144, 1150-51 (2014).

2. The Court has jurisdiction to issue the requested writ of mandamus, empowered and facilitated under 28 U.S.C. §1651(a). See *FTC v. Dean Foods Co.*, 384 U.S. 597, 603-604, 86 S.Ct. 1738, 16 L.Ed.2d 802 (1966). The All Writs Act, 28 U.S.C. §1651(a), empowers the federal courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." *Id.*, at 603. The exercise of this power "is in the nature of appellate jurisdiction" where directed to an inferior court, *Ex parte Crane*, 5 Pet. 190, 193 (1832) (Marshall, C.J.), and extends to the potential jurisdiction of the appellate court where an appeal is not then pending but may be later perfected. Cf. *Ex parte Bradstreet*, 7 Pet. 634 (1833) (Marshall, C.J.). *Id.* These holdings by Chief Justice Marshall are elaborated in a long line of cases, including *McClellan v. Carland*, 217 U.S. 268 (1910), where Mr. Justice Day held: "we think it the true rule, that where a case is within the appellate jurisdiction of the

higher Court a writ... may issue in aid of the appellate jurisdiction which might otherwise be defeated...." At 280. Id. And in *Roche v. Evaporated Milk Ass'n*, 319 U.S. 21 (1943), Chief Justice Stone stated that the authority of the appellate Court "is not confined to the issuance of writs in aid of a jurisdiction already acquired by appeal but extends to those cases which are within its appellate jurisdiction although no appeal has been perfected." At 25. Id. Likewise, decisions of this Court "have recognized a limited judicial power to preserve the Court's jurisdiction or maintain the status quo by injunction pending review of an agency's action through the prescribed statutory channels.... Such power has been deemed merely incidental to the Courts' jurisdiction to review final agency action...." *Arrow Transp. Co. v. Southern R. Co.*, 372 U.S. 658, 671, n. 22 (1963). Id. There the Court cited such authority as *Scripps-Howard Radio, Inc. v. Federal Communications Comm'n*, 316 U.S. 4 (1942); *West India Fruit & S.S. Co. v. Seatrain Lines, Inc.*, 170 F.2d 775 (C.A. 2d Cir. 1948); and *Board of Governors v. Transamerica Corp.*, 184 F.2d 311 (C.A. 9th Cir.), cert. denied, 340 U.S. 883 (1950). Id. See *In re Stingray IP Sols., LLC*, 56 F.4th 1379, 1382-1383, 2023 U.S. App. LEXIS 389 (2023). "[A]ll 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). Id., at 1382. Despite the seeming breadth of that provision, it is well settled that the remedy of mandamus must be limited to extraordinary circumstances, "to ensure that the writ will not be used as a substitute for the regular appeals process." *Cheney v. U.S. Dist. Court for D.C.*, 542 U.S. 367, 380-81, 124 S.Ct. 2576, 159 L.Ed. 2d 459 (2004). Id. In deciding whether a party has proven its entitlement to the extraordinary relief of mandamus, we usually proceed by directly applying the Supreme Court's statement of three requirements: (1) there are "no other adequate means to attain the relief [it] desires," (2) the "right to issuance of the writ is clear and indisputable," and (3) "the writ is

appropriate under the circumstances." Cheney, 542 U.S. at 380-81 (internal quotation marks omitted). Id. Reflecting several Supreme Court decisions, we have also held that "[m]andamus may be used in narrow circumstances where doing so is important to 'proper judicial administration,'" such as when an appellate court "correct[s] a district court's answers to 'basic, undecided' legal questions" concerning judicial administration matters. *In re Micron Tech., Inc.*, 875 F.3d 1091, 1095 (Fed. Cir. 2017) (quoting *La Buy v. Howes Leather Co.*, 352 U.S. 249, 259-60, 77 S.Ct. 309, 1 L.Ed. 2d 290 (1957) and *Schlagenhauf v. Holder*, 379 U.S. 104, 110, 85 S.Ct. 234, 13 L.Ed. 2d 152 (1964)). Id. This narrow basis for mandamus is solidly grounded in Supreme Court precedent, although it is only applicable in unusual and exceptional circumstances. *Schlagenhauf*, 379 U.S. at 110 ("The Court of Appeals recognized that it had the power to review on a petition for mandamus the basic, undecided question of whether a district court could order the mental or physical examination of a defendant. Id. We agree that, under these unusual circumstances and in light of the authorities, the Court of Appeals had such power."); *La Buy*, 352 U.S. at 257-58 ("We believe that supervisory control of the District Courts by the Courts of Appeals is necessary to proper judicial administration in the federal system. Id. The All Writs Act confers on the Courts of Appeals the discretionary power to issue writs of mandamus in the exceptional circumstances existing here."). Id. Where we have provided mandamus relief under the narrow "administration of justice" standard, we have not separately required petitioners to show satisfaction of Cheney's three requirements. See, e.g., *In re Micron Tech., Inc.*, 875 F.3d at 1095 ("We find this case to present special circumstances justifying mandamus review of certain basic, unsettled, recurring legal issues over which there is considerable litigation producing disparate results."); *In re Google LLC*, 949 F.3d 1338, 1343 (Fed. Cir. 2020) (concluding that "mandamus is an available remedy" where "district courts' decisions on these issues are in conflict" and "[t]his Court

has not addressed this fundamental and recurring issue of patent law"); *In re Cray Inc.*, 871 F.3d 1355, 1360 (Fed. Cir. 2017) ("We conclude that mandamus here will further Supervisory or instructional goals on an unsettled and important issue, on an appropriate basis upon which to grant the mandamus petition.") (internal quotation marks omitted); *In re ZTE (USA) Inc.*, 890 F.3d 1008, 1011 (Fed. Cir. 2018) ("This case presents two such 'basic' and 'undecided' issues relating to proper judicial administration.... These issues are likely to be repeated and present sufficiently exceptional circumstances as to be amenable to resolution via mandamus."). *Id.* Indeed, on rare occasion, we have granted mandamus relief without even citing the three requirements set out in *Cheney*. See, e.g., *In re Dath Holdings Inc.*, 908 F.3d 1301, 1304 (Fed. Cir. 2018); *In re BP Lubricants USA Inc.*, 637 F.3d 1307, 1310, 1313 (Fed. Cir. 2011). *Id.*, at 1383. See *Cheney v. United States Dist. Court*, 542 U.S. 367, 380-381, 124 S.Ct. 2576, 159 L.Ed. 2d 459, 477-478 (2004). The common-law writ of mandamus against a lower court is codified at 28 U.S.C. § 1651(a) [28 U.S.C. § 1651(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." *Id.*, at 380. This is a "drastic and extraordinary" remedy "reserved for really extraordinary causes." *Ex parte Fahey*, 332 U.S. 258, 259-260, 91 L.Ed. 2041, 67 S.Ct. 1558 (1947). *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 [the court against which mandamus is sought] to a lawful exercise of its prescribed jurisdiction." *Roche v. Evaporated Milk Ass'n*, 319 U.S. 21, 26, 87 L.Ed. 1185, 63 S.Ct. 938 (1943). *Id.* Although courts have not "confined themselves to an arbitrary and technical definition of 'jurisdiction,'" *Will v. United States*, 389 U.S. 90, 95, 19 L.Ed. 2d 305, 88 S.Ct. 269 (1967), "only exceptional circumstances amounting to a judicial 'usurpation of power,'" *ibid.*, or a "clear abuse of discretion," *Bankers Life & Casualty Co. v. Holland*, 346 U.S. 379, 383, 98 L.Ed. 106, 74 S.Ct. 145 (1953), "will justify the invocation of this extraordinary remedy," *Will*, 389 U.S. at 95, 19 L.Ed. 2d 305, 88 S.Ct. 269. *Id.* As the writ is one of

"the most potent weapons in the judicial arsenal," *Id.*, at 107, 19 L. Ed. 2d 305, 88 S.Ct. 269, three conditions must be satisfied before it may issue. *Id.* *Kerr v. United States Dist. Court for Northern Dist. of Cal.*, 426 U.S. 394, 403, 48 L. Ed. 2d 725, 96 S.Ct. 2119 (1976). *Id.* First, "the party seeking issuance of the writ [must] have no other adequate means to attain the relief he desires," *ibid.* - a condition designed to ensure that the writ will not be used as a substitute for the regular appeals process; *Fahey*, *Supra* at 260, 91 L. Ed. 2041, 67 S.Ct. 1558. *Id.*, at 380-381. Second, the petitioner must satisfy "the burden of showing that [his] right to issuance of the writ is 'clear and indisputable.'" *Kerr*, *Supra*, at 403, 48 L. Ed. 2d 725, 96 S.Ct. 2119 (quoting *Banker's Life & Casualty Co.*, *Supra*, at 384, 98 L. Ed. 106, 74 S.Ct. 145). *Id.*, at 381. Third, even if the first two prerequisites have been met, the issuing Court, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances. *Id.* *Kerr*, *Supra*, at 403, 48 L. Ed. 2d 725, 96 S.Ct. 2119 (citing *Schlagenhauf v. Holder*, 379 U.S. 104, 112, n. 8, 13 L. Ed. 2d 152, 85 S.Ct. 234 (1964)). *Id.* These hurdles, however demanding, are not insuperable. *Id.* This Court has issued the writ to restrain a lower Court when its actions would threaten the separation of powers by "embarrassing the executive arm of the Government," *Ex parte Peru*, 318 U.S. 578, 588, 87 L. Ed. 1014, 63 S.Ct. 793 (1943), or result in the "intrusion by the federal judiciary on a delicate area of federal-state relations," *Will*, *Supra*, at 95, 19 L. Ed. 2d 305, 88 S.Ct. 269, citing *Maryland v. Soper* (No. 1), 270 U.S. 9, 70 L. Ed. 449, 46 S.Ct. 185 (1926). *Id.*

3. The United States District Court for the Northern District of Texas Amarillo Division's orders on May 15, 2024 and thereafter on May 16, 2024 - withdrawing the grant on the petitioner's application to proceed in forma pauperis on appeal and thereafter denying the petitioner's application to proceed in forma pauperis on appeal is a judicial usurpation of power justifying the invocation of the extraordinary remedy under Title 28 of the United States Code, Section 1651(a). See *Bauman v. United States Dist. Court*, 557 F.2d 650, 653-655, 1977 U.S. App. LEXIS 12609 (1977). One of the most significant challenges presently facing the federal appellate courts centers on the use of their power to issue extraordinary writs under the venerable All Writs statute, 28 U.S.C. § 1651. *Id.* Since the advent of the

Concept of "Supervisory mandamus" in *La Bay v. Howes Leather Co.*, 352 U.S. 249, 77 S.Ct. 309, 1 L.Ed.2d 290 (1957), the challenge to the Federal appellate Courts has been to formulate objective principles to guide the exercise of their Section 1651 power. *Id.* Unprincipled use of that power could also operate to undermine the mutual respect that generally and necessarily marks the relationship between Federal trial and appellate Courts. *Id.* Further, without articulable and practically applicable guidelines to govern the issuance of extra-ordinary writs, appellate judges would continually be subject to the temptation to grant such relief merely because they are sympathetic with the purposes of the petitioners' underlying actions, or because they question the trial Court's ability to direct the litigation efficiently or impartially. *Id.*, at 653-654. As with many other facets of judicial power, the continuing effectiveness of an appellate Court's Section 1651 power depends on its seasoned and principled exercise. *Id.*, at 654. A review of Supreme Court and recent Ninth Circuit cases pertaining to the appellate use of peremptory writs discloses some general admonitory language and five guiding principles. *Id.* The admonitory language has been partially collected in the Supreme Court's most recent case on the subject, *Kerr v. United States District Court*, 426 U.S. 394, 96 S.Ct. 2119, 48 L.Ed.2d 725 (1976), *aff'd*, 511 F.2d 192 (9th Cir. 1975):

The remedy of mandamus is a drastic one, to be involved only in extraordinary situations. *Will v. United States*, 389 U.S. 90, 95 S.Ct. 269, 273, 19 L.Ed.2d 305 (1967); *Bankers Life & Cas. Co. v. Holland*, 346 U.S. 379, 382-385 [74 S.Ct. 145, 147-149, 98 L.Ed. 106] (1953); *Ex parte Fahey*, 332 U.S. 258, 259 [67 S.Ct. 1558, 1559, 91 L.Ed. 2041] (1947). *Id.* As we have observed, the writ "has traditionally been used in Federal Courts only (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.)" *Will v. United States*, 389 U.S. at 95, [88 S.Ct. 269], at 273] quoting *Roche v. Evaporated Milk Assn.*, 319 U.S. 21, 26 [63 S.Ct. 938, 941, 87 L.Ed. 1185] (1943). *Id.* And, while we have not limited the use of mandamus by an unduly narrow and technical understanding of what constitutes a matter of "jurisdiction," *Will v. United States*, 389

U.S., at 95 [88 S.Ct. [269], at 273] the fact still remains that "only exceptional circumstances amounting to a judicial 'usurpation of power' will justify the invocation of this extraordinary remedy." Ibid. Id. at 402, 96 S.Ct. at 2124. Other cases and authorities bristle with language likewise suggesting that mandamus will issue only in "drastic," "exceptional" and "extraordinary" circumstances. E.g., *Will v. United States*, 389 U.S. 90, 95-96, 107, 108, 88 S.Ct. 269, 19 L. Ed. 2d 305 (1967); *Arthur Young & Co. v. United States District Court*, 549 F.2d 686, 691-692 (9th Cir. 1977); *Kerr v. United States District Court*, 511 F.2d 192, 196 (9th Cir. 1975), aff'd, 426 U.S. 394, 96 S.Ct. 2119, 48 L. Ed. 2d 725 (1976); *Hartley Pen Co. v. United States District Court*, 287 F.2d 324, 328 (9th Cir. 1961); 9 J. Moore, *Federal Practice* Para. 110.28, at 302. Id. In addition, as the Supreme Court twice stated in *Will*, review by mandamus does not "run the gauntlet of reversible errors." *Will v. United States*, *supra*, 389 U.S. at 98 n.6, 104, 88 S.Ct. at 275. Id. Although this admonitory language is helpful in framing the boundaries of Section 1651 power, it serves at most only as a starting point in the effort to develop a specific framework which can assist when practical application of the generalities is required. Id. Even more helpful in that task are the judicial directions discernible from an analysis of the cases dealing with mandamus. Id. From those cases we have identified five specific guidelines: (1) The party seeking the writ has no other adequate means, such as a direct appeal, to obtain the relief he or she desires. *Kerr v. United States District Court*, *supra*, 426 U.S. at 403, 96 S.Ct. 2119; *Roche v. Evaporated Milk Ass'n*, 319 U.S. 21, 26, 27-29, 63 S.Ct. 938, 87 L. Ed. 1185 (1943); *Arthur Young & Co. v. United States District Court*, *supra*, 549 F.2d at 691-692; *American Fid. Fire Ins. Co. v. United States District Court*, 538 F.2d 1371, 1374 (9th Cir. 1976); *Pan American World Airways, Inc. v. United States District Court*, 523 F.2d 1073, 1076 (9th Cir. 1975); *Kerr v. United States District Court*, *supra*, 511 F.2d at 196; *Belfer v. Pence*, 435 F.2d 121, 123 (9th Cir. 1970). Id. (2) The petitioner will be damaged or prejudiced in a way not correctable on appeal. (This guideline is closely related to the first.) *Arthur Young & Co. v. United States District Court*, *supra*, 549 F.2d at 691-692; *Pan American World Airways, Inc. v. United States District Court*, *supra*, 523 F.2d at 1076; *Kerr v. United States District Court*, *supra*, 511 F.2d at 196; *Belfer v. Pence*, *supra*, 435 F.2d at 123. Id. (3)

The district Court's order is clearly erroneous as a matter of law. *Arthur Young & Co. v. United States District Court*, supra, 549 F.2d at 691-692, 692-697; *Hartland v. Alaska Airlines*, 544 F.2d 992 (9th Cir. 1976); *Green v. Occidental Petroleum Corp.*, 541 F.2d 1335 (9th Cir. 1976); *Commercial Lighting Products, Inc. v. United States District Court*, 537 F.2d 1078, 1079 (9th Cir. 1976); *Pan American World Airways, Inc. v. United States District Court*, supra, 523 F.2d at 1076, 1077-81; *McDonnell Douglas Corp. v. United States District Court*, 523 F.2d 1083 (9th Cir. 1975), cert. denied, 425 U.S. 911, 96 S.Ct. 1506, 47 L.Ed.2d 761 (1976); *Kerr v. United States District Court*, supra, 511 F.2d at 196. (4) The district Court's order is an oft-repeated error, or manifests a persistent disregard of the federal rules. *LaBuy v. Howes Leather Co.*, supra, 352 U.S. at 255-60, 77 S.Ct. 309; *McDonnell Douglas Corp. v. United States District Court*, supra, 523 F.2d at 1087. (5) The district Court's order raises new and important problems, or issues of law of first impression. *Schlagenhauf v. Holder*, 379 U.S. 104, 111, 85 S.Ct. 234, 13 L.Ed.2d 152 (1964); *Pan American World Airways, Inc. v. United States District Court*, supra, 523 F.2d at 1076. Id.

4. The doctrine of stare decisis is consistent under the rule of law under 28 U.S.C. § 1651(a) hereunder. See *Payne v. Tennessee*, 501 U.S. 808, 827-828, 111 S.Ct. 2597, 115 L.Ed.2d 720, 1991 U.S. LEXIS 3821 (1991). Stare decisis is the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process. See *Vasquez v. Hillery*, 474 U.S. 254, 265-266, 88 L.Ed.2d 598, 106 S.Ct. 617 (1986). Id., at 827. Adhering to precedent "is usually the wise policy, because in most matters it is more important that the applicable rule of law be settled than it be settled right." *Burnet v. Coronado Oil & Gas Co.*, 285 U.S. 393, 406, 76 L.Ed. 815, 52 S.Ct. 443 (1932) (Brandeis, J., dissenting). Id. Nevertheless, when governing decisions are unworkable or are badly reasoned, "this Court has never felt constrained to follow precedent." *Smith v. Allwright*, 321 U.S. 649, 665, 88 L.Ed. 987, 64 S.Ct. 757 (1944). Id. Stare decisis is not an inexorable command; rather, it "is a principle of policy and not a mechanical formula of adherence to the latest decision." *Helvering v. Hallock*, 309 U.S. 106, 119, 84 L.Ed. 604, 60 S.Ct. 444 (1940). Id., at 828. This is particularly true

in Constitutional cases, because in such cases "correction through legislative action is practically impossible." *Burnet v. Coronado Oil & Gas Co.*, *supra*, at 407 (Brandeis, J., dissenting). *Id.* Considerations in favor of *stare decisis* are at their acme in cases involving property and contract rights, where reliance interests are involved, see *Swift & Co. v. Wickham*, 382 U.S. 111, 116, 15 L.Ed.2d 194, 86 S.Ct. 258 (1965); *Oregon ex rel. State Land Bd. v. Corvallis Sand & Gravel Co.*, 429 U.S. 363, 50 L.Ed.2d 550, 97 S.Ct. 582 (1977); *Burnet v. Coronado Oil & Gas Co.*, *supra*, at 405-411 (Brandeis, J., dissenting); *United States v. Title Ins. & Trust Co.*, 265 U.S. 472, 68 L.Ed. 1110, 44 S.Ct. 621 (1924); *The Genesee Chief v. Fitzhugh*, 53 U.S. 443, 12 How. 443, 458, 13 L.Ed. 1058 (1852); the opposite is true in cases such as the present one involving procedural and evidentiary rules. *Id.* See *Kimble v. Marvel Entm't, LLC*, 576 U.S. 446, 455-456, 135 S.Ct. 2401, 192 L.Ed.2d 463 (2015). Overruling precedent is never a small matter. *Id.*, at 455. *Stare decisis* - in English, the idea that today's Court should stand by yesterday's decisions - is "a foundation stone of the rule of law." *Michigan v. Bay Mills Indian Community*, 572 U.S. 782, 798, 134 S.Ct. 2024, 188 L.Ed.2d 1071, 1089 (2014). *Id.* Application of that doctrine, although "not an inexorable command," is the "preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Payne v. Tennessee*, 501 U.S. 808, 827-828, 115 S.Ct. 2597, 115 L.Ed.2d 720 (1991). *Id.* It also reduces incentives for challenging settled precedents, saving parties and courts the expense of endless relitigation. *Id.* Respecting *stare decisis* means sticking to some wrong decisions. *Id.* The doctrine rests on the idea, as Justice Brandeis famously wrote, that it is usually "more important that the applicable rule of law be settled than that it be settled right." *Burnet v. Coronado Oil & Gas Co.*, 285 U.S. 393, 406, 52 S.Ct. 443, 76 L.Ed. 815, 1932 C.B. 265, 1932-1 C.B. 265 (1932) (dissenting opinion). *Id.* Indeed, *stare decisis* has consequence only to the extent it sustains incorrect decisions; correct judgments have no need for that principle to prop them up. *Id.* Accordingly, an argument that we got something wrong - even a good argument to that effect - cannot by itself justify scrapping settled precedent. *Id.* Or otherwise said, it is not

alone sufficient that we would decide a case differently now than we did then. *Id.* To reverse course, we require as well what we have termed a "special justification" — over and above the belief that the precedent was wrongly decided." *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 266, 134 S.Ct. 2398, 189 L.Ed.2d 339, 349 (2014). *Id.*, at 455-456. See *Janus v. AFSCME*, Council 31, 585 U.S. 878, 916-917, 138 S.Ct. 2448, 201 L.Ed.2d 924 (2018). "Stare decisis is the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Payne v. Tennessee*, 501 U.S. 808, 827, 111 S.Ct. 2597, 115 L.Ed.2d 720 (1991). *Id.*, at 916. We will not overturn a past decision unless there are strong grounds for doing so. *United States v. International Business Machines Corp.*, 517 U.S. 843, 855-856, 116 S.Ct. 1793, 135 L.Ed.2d 124 (1996); *Citizens United*, 558 U.S., at 377, 130 S.Ct. 876, 175 L.Ed.2d 753 (Roberts, C.J., concurring). *Id.*, at 917. But as we have often recognized, stare decisis is "not an inexorable command." *Pearson v. Callahan*, 555 U.S. 223, 233, 129 S.Ct. 808, 172 L.Ed.2d 565 (2009); see also *Lawrence v. Texas*, 539 U.S. 558, 577, 123 S.Ct. 2472, 156 L.Ed.2d 508 (2003); *State Oil Co. v. Khan*, 522 U.S. 3, 20, 118 S.Ct. 275, 139 L.Ed.2d 199 (1997); *Agostini v. Felton*, 521 U.S. 203, 235, 117 S.Ct. 1997, 138 L.Ed.2d 391 (1997); *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 63, 116 S.Ct. 1114, 134 L.Ed.2d 252 (1996); *Payne*, *supra*, at 828, 111 S.Ct. 2597, 115 L.Ed.2d 720. *Id.*

5. The order entered on May 16, 2024 by the United States District Court for the Northern District of Texas Amarillo Division, denying the petitioner's application to proceed in forma pauperis on appeal is erroneous, inasmuch as the district court denied the petitioner's application to proceed in forma pauperis on appeal under 28 U.S.C. § 1915(g) — although the petitioner pleaded imminent danger of serious physical injury in his motion to proceed in forma pauperis on appeal to overcome the three-strikes bar of 28 U.S.C. § 1915(g). See *Ciarpaglini v. Saini*, 352 F.3d 328, 330-331, 2003 U.S. App. LEXIS 24884 (2003). We review de novo the district court's

interpretation of the Prison Litigation Reform Act's three strikes provision, §1915(g). *Evans v. Illinois Dep't. of Corrections*, 150 F.3d 810, 811 (7th Cir. 1998); see also *Dupree v. Palmer*, 284 F.3d 1234, 1235 (11th Cir. 2002). *Id.* at 330. In order to meet the imminent danger requirement of 28 U.S.C. §1915(g), the "threat or prison condition [must be] real and proximate." *Lewis v. Sullivan*, 279 F.3d 526, 529 (7th Cir. 2002). *Id.* Allegations of past harm do not suffice; the harm must be imminent or occurring at the time the complaint is filed. *Heimermann v. Litscher*, 337 F.3d 781 (7th Cir. 2003). *Id.* Before denying leave to proceed IFP, courts must review a frequent filer's wellpled allegations to ensure that the prisoner is not in imminent danger. *Rivera v. Allin*, 144 F.3d 719, 726 (11th Cir. 1998). *Id.* It is well-established that pro se complaints must be liberally construed. *Donald v. Cook County Sheriff's Dep't.*, 95 F.3d 548, 555 (7th Cir. 1996). *Id.* Ciarpaglini is alleging (we must accept these claims as true now; they may in fact be bogus) continuing harm as a direct result of being denied his medication. *Id.* While he was taking his medication, he says, his symptoms were alleviated. *Id.* Now, they are back. He says his panic attacks cause him to suffer heart palpitations, chest pains, labored breathing, choking sensations, and paralysis in his legs and back. *Id.* The question is whether these allegations are sufficient to find that Ciarpaglini, when he filed his complaint, satisfied the "imminent danger of serious physical injury" requirement of 28 U.S.C. §1915(g). *Id.* Frequent filers sometimes allege that they are in imminent danger so they can avoid paying a filing fee. *Id.* But when they allege only a past injury that has not recurred, courts deny them leave to proceed IFP. See, e.g., *Abdul-Akbar v. McKelvie*, 239 F.3d 307 (3rd Cir. 2001) (being sprayed with pepper spray once not imminent danger); *Abdul-Wadood v. Nathan*, 91 F.3d 1023 (7th Cir. 1996) (being given Ibuprofen instead of something stronger for injury, now healed is not imminent danger). *Id.* Courts also deny leave to proceed IFP when a prisoner's claims of imminent danger are conclusory or ridiculous. See, e.g., *Heimermann v. Litscher*, 337 F.3d at 782 (contesting one's conviction and complaining of inadequate protection 2 years previously is not imminent danger); *Martin v. Shelton*, 319 F.3d 1048, 1050 (8th Cir. 2003) (working in inclement weather twice is not imminent danger); *White v. Colorado*, 157 F.3d 1226, 1231 (10th Cir. 1998) ("vague and conclusory")

assertions of withheld medical treatment when prisoner was seen over 100 times by physician is not imminent danger). Id., at 331. Other Circuits have considered the imminent danger requirement. Id. Being placed near inmates on one's enemies list, despite pleas for transfer to a different location after being beaten by those enemies, meets this amorphous standard. Ashley v. Dilworth, 147 F.3d 715 (8th Cir. 1998). Id. Continuing headaches and other symptoms as a result of exposure to dust, lint, and shower odor also meets this standard. Gibbs v. Cross, 160 F.3d 962, 965-66 (3rd Cir. 1998). Id. So does needing dental care because of a mouth infection. McAlphin v. Toney, 281 F.3d 709, 710 (8th Cir. 2002). Id. The State says Ciarpaglini's allegations are not serious enough. Id. However, §1915(c) is not a vehicle for determining the merits of a claim. Id. To follow the State's logic, a district court would not just need to determine whether a prisoner is alleging some type of ongoing or imminent harm. Id. It would also need to fine-tune what is "serious enough" to qualify for the exception. Id. Is being denied heart medication? Id. What about a cholesterol-lowering drug? Id. How frequently do beatings need to occur before they are serious? Id. This would result in a complicated set of rules about what conditions are serious enough, all for a simple statutory provision governing when a prisoner must pay the filing fee for his claim. Id. This is not required, and so we find that the district court erred in concluding that Ciarpaglini's complaint didn't meet the imminent danger exception. Id. Cf. Medberry v. Butler, 185 F.3d 1189, 1192 (1999). See Chavis v. Chappius, 618 F.3d 162, 169-170, 2010 U.S. App. LEXIS 17124 (2010). Under §1915(c), a prisoner can proceed IFP even after incurring three strikes if his complaint alleges an "imminent danger of serious physical injury." Id., at 169. An imminent danger is not one "that has dissipated by the time a complaint is filed," Pettus, 554 F.3d at 296; rather it must be one "existing at the time the complaint is filed," Malik v. McGinnis, 293 F.3d 559, 563 (2d Cir. 2002). Id. But, although the feared physical injury must be "serious," "we should not make an overly detailed inquiry into whether the allegations qualify for the exception," because §1915(c) "concerns only a threshold procedural

question," while "[S]eparate PLRA provisions are directed at screening out meritless suits early on." *Andrews v. Cervantes*, 493 F.3d 1047, 1055 (9th Cir. 2007); see also *Ciarpaglini v. Saini*, 352 F.3d 328, 331 (7th Cir. 2003) ("[Section] 1915(c) is not a vehicle for determining the merits of a claim.... [T]o fine-tune what is 'serious enough' to qualify for the exception... would result in a complicated set of rules about what conditions are serious enough, all for a simple statutory provision governing when a prisoner must pay the filing fee for his claim. *Id.* at 170. This is not required...."). *Id.* at 170. See *Smith v. Dewberry*, 741 Fed. Appx. 683, 686, 2018 U.S. App. LEXIS 18647 (2018). We review *de novo* a district court's dismissal of a complaint under the PLRA's three strikes provision. *Mitchell v. Nobles*, 873 F.3d 869, 873 (11th Cir. 2017). *Id.* at 686. Ordinarily, "a federal litigant who is too poor to pay court fees may proceed [IFP]," meaning that "the litigant may commence a civil action without prepaying fees or paying certain expenses." *Coleman v. Tollefson*, 135 S.Ct. 1759, 1761, 191 L.Ed.2d 803 (2015); see also 28 U.S.C. § 1915(a)(1). *Id.* Under the three strikes provision of the PLRA, however, a federal prisoner may not: bring a civil action or appeal a judgment in a civil action or proceeding [IFP under § 1915] if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury. *Id.* 28 U.S.C. § 1915(c). *Id.* In other words, a prisoner who has three strikes is barred from proceeding IFP under the PLRA, and must pay the full filing fee at the time he files suit, unless his allegations show an imminent danger of serious physical injury. *Mitchell*, 873 F.3d at 874; *Coleman*, 135 S.Ct. at 1761-62. *Id.* To avail himself of the imminent danger exception, a three-strike prisoner must show that he was in imminent danger of serious physical injury or was in jeopardy of ongoing danger at the time he filed his complaint. *Medberry v. Butler*, 185 F.3d 1189, 1193 (11th Cir. 1999). *Id.* In other words, the complaint "must allege a present imminent danger, as opposed to a past danger." *Brown v. Johnson*, 387 F.3d 1344, 1349 (11th Cir. 2004); see also *Medberry*, 185

F.3d at 1193 ("[A] prisoner's allegation that he faced imminent danger sometime in the past is an insufficient basis to allow him to proceed [IFP] pursuant to the imminent danger exception to the statute."). Id. In determining whether a prisoner has made a sufficient showing of present imminent danger, we accept the allegations in the Complaint as true and, if the Complaint was filed pro se, construe them liberally. See Brown, 387 F.3d at 1350. Id. See *McFadden v. Noeth*, 827 Fed. Appx. 20, 24, 2020 U.S. App. LEXIS 28877 (2020). "We review a district court's denial of IFP status pursuant to 28 U.S.C. § 1915 de novo." *Shepherd v. Annucci*, 921 F.3d 89, 93 (2019). Id. "[B]ecause § 1915(g) concerns only a threshold procedural question" - Specifically the question of whether "imminent danger" exists - we need not "make an overly detailed inquiry." *Chavis v. Chappius*, 618 F.3d 162, 169 (2d Cir. 2010) (internal quotation marks omitted from first quotation). Id. Indeed, we have warned against challenges to IFP status "metastasiz[ing] into a full-scale merits review." *Shepherd*, 921 F.3d at 96 (internal quotation marks omitted); see also *Vandiver v. Prison Health Servs., Inc.*, 727 F.3d 580, 585 (6th Cir. 2013) ("[T]he imminent danger exception is essentially a pleading requirement subject to the ordinary principles of notice pleading."). Id. Instead, we must determine merely whether the allegations of imminent danger are "conclusory or ridiculous," in which case IFP status is properly denied, or whether they permit a plausible inference that such danger was real, in which case IFP status may be granted. *Chavis*, 618 F.3d at 170. Id. We conduct such an inquiry mindful that when a prisoner proceeds pro se in the District Court, as *McFadden* did here, we must "construe his Complaint liberally and interpret it to raise the strongest arguments that it suggests," id. at 171 (internal quotation marks and alterations omitted), "particularly when [the Complaint] allege[s] civil rights violations." *McEachin v. McGuinnis*, 357 F.3d 197, 200 (2d Cir. 2004). Id. In order to demonstrate that some "danger" is "imminent" and thereby succeed in a motion to proceed IFP, a prisoner must plausibly allege the following: (1) that there is a danger to his physical well-being; (2) that the danger "exist[ed]" at the time the Complaint [wa]s filed; *Malik v. McGuinnis*, 293 F.3d 559, 563 (2d Cir. 2002); and (3) that the danger is "fairly traceable to Unlawful Conduct asserted in the Complaint." *Pettus v. Morgenthau*,

554 F.3d 293, 299 (2d Cir. 2009) (emphasis omitted). *Id.*

b. The district court's order entered on May 16, 2024 denying the petitioner's application to proceed in forma pauperis on appeal was a clear disregard of the federal rules inasmuch as the petitioner satisfied the notice pleading requirement set out in Rule 8(a)(2) of the Federal Rules of Civil Procedure, in his motion to proceed in forma pauperis on appeal, thereby, the petitioner pleaded imminent danger of serious physical injury to overcome the three-strikes bar of 28 U.S.C. § 1915(g) therein. See *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-556, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief," in order to "give the defendant fair notice of what the... claim is and the grounds upon which it rests," *Conley v. Gibson*, 355 U.S. 41, 47, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957). *Id.*, at 555. While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, *ibid.*; *Sanjuan v. American Bd. of Psychiatry and Neurology, Inc.*, 40 F.3d 247, 251 (CA7 1994), a plaintiff's obligation to provide the "grounds" of his "entitlement to relief" requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do, see *Papasan v. Allain*, 478 U.S. 265, 286, 106 S.Ct. 2932, 92 L.Ed.2d 209 (1986) (on a motion to dismiss, courts "are not bound to accept as true a legal conclusion couched as a factual allegation"). *Id.* Factual allegations must be enough to raise a right to relief above the speculative level, see 5 C. Wright & A. Miller, *Federal Practice and Procedure* § 1216, pp. 235-236 (3d ed. 2004) (hereinafter *Wright & Miller*) ("[T]he pleading must contain something more... than... a statement of facts that merely creates a suspicion [of] a legally cognizable right of action"), on the assumption that all the allegations in the complaint are true (even if doubtful in fact), see, e.g., *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 508, n.1, 122 S.Ct. 992, 152 L.Ed.2d 1 (2002); *Neitzke v. Williams*, 490 U.S. 319, 327, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989) ("Rule 12(b)(6) does not countenance... dismissals based on a judge's disbelief

Of a Complaint's factual allegations"); *Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S.Ct. 1683, 40 L.Ed. 2d 90 (1974) (a well-pleaded Complaint may proceed even if it appears "that a recovery is very remote and unlikely"). *Id.*, at 555-556. See *Erickson v. Pardus*, 551 U.S. 89, 93-94, 127 S.Ct. 2197, 167 L.Ed. 2d 1081 (2007). Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." *Id.*, at 93. Specific facts are not necessary; the statement need only "give the defendant fair notice of what the claim is and the grounds upon which it rests." *Id.* Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed. 2d 929, 940, 2007 U.S. LEXIS 5901, *21 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47, 78 S.Ct. 99, 2 L.Ed. 2d 80 (1957)). *Id.* In addition, when ruling on a defendant's motion to dismiss, a judge must accept as true all of the factual allegations contained in the Complaint. *Id.* Bell Atlantic Corp. *Supra*, at 555-556, 127 S.Ct. 1955, 167 L.Ed. 2d 929, 940, 2007 U.S. LEXIS 5901, *22 (citing *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 508, n.1, 122 S.Ct. 992, 152 L.Ed. 2d 1 (2002); *Neitzke v. Williams*, 490 U.S. 319, 327, 109 S.Ct. 1827, 104 L.Ed. 2d 338 (1989); *Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S.Ct. 1683, 40 L.Ed. 2d 90 (1974)). *Id.*, at 93-94. See *Ashcroft v. Iqbal*, 556 U.S. 662, 677-679, 129 S.Ct. 1937, 173 L.Ed. 2d 868 (2009). Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." *Id.*, at 677-678. As the Court held in *Twombly*, 550 U.S. 544, 127 S.Ct. 1955, 167 L.Ed. 2d 929, the pleading standard Rule 8 announces does not require "detailed factual allegations," but it demands more than an unadorned, the - defendant - unlawfully - harmed - me accusation. *Id.*, at 555, 127 S.Ct. 1955, 167 L.Ed. 2d 929 (citing *Papasan v. Allain*, 478 U.S. 265, 286, 106 S.Ct. 2932, 92 L.Ed. 2d 209 (1986)). *Id.*, at 678. A pleading that offers "labels and conclusions" or "a formulaic recitation of the elements of a cause of action" will not do." 550 U.S., at 555, 127 S.Ct. 1955, 167 L.Ed. 2d 929. *Id.* Nor does a complaint suffice if it tends "naked assertion[s]" devoid of "further factual enhancement." *Id.*, at 557, 127 S.Ct. 1955, 167 L.Ed. 2d 929. *Id.* To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." *Id.*, at 570, 127 S.Ct. 1955, 167 L.Ed. 2d 929.

Id. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. Id., at 556, 127 S.Ct. 1955, 167 L.Ed. 2d 929. Id. The plausibility standard is not akin to a "probability requirement," but it asks for more than a sheer possibility that a defendant has acted unlawfully. Ibid. Where a complaint pleads facts that are "merely consistent with" a defendant's liability, it "stops short of the line between possibility and plausibility of 'entitlement to relief.'" Id., at 557, 127 S.Ct. 1955, 167 L.Ed. 2d 929 (brackets omitted). Id. Two working principles underlie our decision in Twombly. Id. First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Id. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice. Id., at 555, 127 S.Ct. 1955, 167 L.Ed. 2d 929 (Although for the purposes of a motion to dismiss we must take all of the "factual allegations in the complaint as true, we "are not bound to accept as true a legal conclusion couched as a factual allegation" (internal quotation marks omitted)). Id. Rule 8 marks a notable and generous departure from the hypertechnical, code-pleading regime of a prior era, but it does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions. Id., at 678-679. Second, only a complaint that states a plausible claim for relief survives a motion to dismiss. Id., at 556, 127 S.Ct. 1955, 167 L.Ed. 2d 929. Id., at 679. Determining whether a complaint states a plausible claim for relief will, as the Court of Appeals observed, be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. 490 F.3d, at 157-158. Id. But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged - but it has not "shown" - "that the pleader is entitled to relief." Fed. Rule Civ. Proc. 8(a)(2). Id. In keeping with these principles a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth. Id. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. Id. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief. Id. See *Estelle v. Gamble*, 429 U.S. 97, 106, 97 S.Ct. 285, 50 L.Ed. 2d 251 (1976). The handwritten pro se document is

to be liberally construed. *Id.* As the Court unanimously held in *Haines v. Kerner*, 404 U.S. 519 (1972) a pro se Complaint, "however inartfully pleaded," must be held to "less stringent standards than formal pleadings drafted by lawyers" and can only be dismissed for failure to state a claim if it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Id.*, at 520-521, quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). *Id.* See *Erickson*, *Supra*, at 94, 127 S.Ct. 2197, 2200, 167 L.Ed.2d 1081, 1085-1086. The Court of Appeals' departure from the liberal pleading standards set forth by Rule 8(a) is even more pronounced in this particular case because petitioner has been proceeding, from the litigation's outset, without counsel. *Id.* A document filed pro se is "to be liberally construed," *Estelle*, 429 U.S., at 106, 97 S.Ct. 285, 50 L.Ed.2d 251, and "a pro se Complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers," *ibid.* (internal quotation marks omitted). Cf. Fed. Rule Civ. Proc. 8(f) ("All pleadings shall be so construed as to do substantial justice"). *Id.* See *Bell Atl. Corp.*, *Supra*, 550 U.S., at 560-561, 127 S.Ct. 1955, 167 L.Ed.2d 929. Plaintiffs do not, of course, dispute the requirement of plausibility and the need for something more than merely parallel behavior explained in *Theatre Enterprises*, *Mansanto*, and *Matsushita*, and their main argument against the plausibility standard at the pleading stage is its ostensible conflict with an early statement of ours construing Rule 8. *Id.*, at 560-561. Justice Black's opinion for the Court in *Conley v. Gibson* spoke not only of the need for fair notice of the grounds for entitlement to relief but of "the accepted rule that a Complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." 355 U.S., at 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80. *Id.*, at 561. This "no set of facts" language can be read in isolation as saying that any statement revealing the theory of the claim will suffice unless its factual impossibility may be shown from the face of the pleadings, and the Court of Appeals appears to have read *Conley* in some such way when formulating its understanding of the proper pleading standard. See 425 F.3d at 106, 114 (invoking *Conley*'s "no set of facts" language in describing the standard for dismissal). *Id.* See *Conley v. Gibson*, 355 U.S. 41, 45-48, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957). Turning to respondent's final ground, we hold that under the general principles laid down in *the Steele*, *Graham*,

and Howard cases the Complaint adequately set forth a claim upon which relief could be granted. *Id.* at 45. In appraising the sufficiency of the Complaint we follow, of course, the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Id.* at 45-46. The respondents also argue that the Complaint failed to set forth specific facts to support its general allegations of discrimination and that its dismissal is therefore proper. *Id.* at 47. The decisive answer to this is that the Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. *Id.* To the contrary, all the Rules require is "a short and plain statement of the claim" that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests. *Id.* The illustrative forms appended to the Rules plainly demonstrate this. *Id.* Such simplified "notice pleading" is made possible by the liberal opportunity for discovery and the other pretrial procedures established by the Rules to disclose more precisely the basis of both claim and defense and to define more narrowly the disputed facts and issues. *Id.* at 47-48. Following the simple guide of Rule 8(f) that "all pleadings shall be so construed as to do substantial justice," we have no doubt that petitioners' complaint adequately set forth a claim and gave the respondents fair notice of its basis. *Id.* at 48. The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits. Cf. *Maty v. Grasselli Chemical Co.*, 303 U.S. 197. *Id.* See *Aktieselskabet AF 1 November 2001 v. Fame Jeans Inc.*, 525 F.3d 8, 15-16, 381 U.S. App. D.C. 76, 2008 U.S. App. LEXIS 9627 (2008). Ordinarily a sufficient complaint "contain[s] a short and plain statement of the claim showing that the pleader is entitled to relief," enough to give a defendant "fair notice of the claims against him." *Ciralsky v. CIA*, 359 U.S. App. D.C. 366, 355 F.3d 661, 668-70 (D.C. Cir. 2004) (quoting FED. R. CIV. P. 8(a)). *Id.* at 15. In deciding a 12(b)(6) motion, a court "constru[es] the Complaint liberally in the plaintiff's favor," "accept[ing] as true all of the factual allegations contained in the complaint," *Kassem v. Wash. Hosp. Ctr.*, No. 06-7161, 379 U.S. App. D.C. 307, 513 F.3d 251, 2008 U.S. App. LEXIS 1174, at *2 (D.C. Cir. Jan. 22, 2008), "with the benefit of all reasonable inferences derived from the facts alleged," *Stewart*, 471 F.3d at 173. *Id.* However, the district court interpreted *Twombly* as establishing a new threshold

For Complaints: enough facts to "Clarify the grounds" on which each Claim rests and "nudge" their Claims across the line from conceivable to plausible." *Aktieselskabet AF al. November 2001 v. Fame Jeans, Inc.*, 511 F. Supp.2d 1, 18-19 (D.D.C. 2007). *Id.* Many Courts have disagreed about the import of *Twombly*. *Id.* We conclude that *Twombly* leaves the long-standing fundamentals of notice pleading intact. *Id.* "Rule 8 is the keystone of the system of pleading" in federal procedure, and "the functioning of all the procedures in the federal rules... are intertwined inextricably with the pleading philosophy embodied in Rule 8." 5 CHARLES A WRIGHT & ARTHUR R. MILLER, *FEDERAL PRACTICE AND PROCEDURE* § 1802, at 87-88 (3d ed. 2004). *Id.*, at 15-16. The pleadings serve specific functions of giving notice of "the general nature of the case and the circumstances or events upon which it is based," so the parties can prepare and the court can dispose of the case properly. Charles E. Clark, *Simplified Pleading*, 2 F.R.D. 456, 457, 460 (1943). *Id.*, at 16. Accordingly, Rule 8 requires, not a specific quantity of facts, but simply "a short and plain statement of the claim showing that the pleader is entitled to relief." FED.R.CIV.P. 8(a)(2); see also Richard L. Marcus, *The Revival of Fact Pleading Under the Federal Rules of Civil Procedure*, 86 COLUM. L. REV. 433, 439 (1986). *Id.*

7. The district court's order entered on May 15, 2024 withdrawing the grant of the petitioner's application to proceed in forma pauperis on appeal raises a new and important problem, which the petitioner deems an abuse of discretion. See *In re Stone*, 986 F.2d 898, 901-902, 1993 U.S. App. LEXIS 4512 (1993). Although it is historically reserved for "extraordinary" cases, we have used the writ of mandamus as a "one-time-only device to 'settle new and important problems' that might have otherwise evaded expeditious review." *In re Equal Employment Opportunity Comm'n*, 709 F.2d 392, 394 (5th Cir. 1983) (quoting *Schlagenhauf v. Holder*, 379 U.S. 104 (1964)). *Id.*, at 901. As district courts continue to become more heavily involved in the pretrial process, appellate courts may be asked more often to issue writs of mandamus to protect the asserted rights of litigants. *Id.* Pretrial orders such as the ones before us raise important issues but are ill-suited for review after final judgment. *Id.* Because these cases present an important, undecided issue involving the efficient administration of justice, we may appropriately invoke mandamus review. See *id.* In fact, the district judge who issued the instant directives has acknowledged, in his responses to the petitions, that the issue is appropriate for review on petitions

for writs of mandamus. *Id.* We will grant the writ only "when there is 'usurpation of judicial power' or a clear abuse of discretion." *Id.* at 395 (quoting *Schlagenhauf*, 379 U.S. at 110). *Id.* The government has the burden of establishing its right to issuance of the writ. *Id.* The district court claims inherent power to issue the order. *Id.* As explained helpfully in *Eash v. Riggins Trucking*, 757 F.2d 557, 562-64 (3d Cir. 1985) (en banc), there are three general categories of inherent powers. *Id.* The first category delineates powers that are "so fundamental to the essence of a court as a constitutional tribunal that to divest the court of absolute command within this sphere is really to render practically meaningless the terms 'court' and 'judicial power.'" *Id.* at 562. *Id.* In other words, once Congress has created the court, article III of the Constitution vests the courts with certain implied powers. See *Anderson v. Dunn*, 19 U.S. (6 Wheat.) 204, 227 (1821). *Id.* Within the scope of these powers, the other branches of government may not interfere; any legislation purporting to regulate these inherent powers would be invalid as an unconstitutional violation of the doctrine of separation of powers. *Id.* Fortunately, history provides few examples of legislative attempts to interfere with the core inherent powers of the judicial branch. *Id.* But as a result, prior jurisprudence has not identified exactly which inherent powers fall into this category, and we will not attempt to do so here. *Id.* At least one decision of the Supreme Court appears to have identified one such power. See *United States v. Klein*, 80 U.S. (13 Wall.) 128, 146-47 (1872). *Id.* Although the meaning of the opinion has been subject to some debate, *Klein* seems to hold that Congress may not interfere with a court's inherent power to decide cases by dictating the result in a particular case. 80 U.S. at 146-47. *Id.* The second category of inherent powers encompasses those "necessary to the exercise of all others." *Roadway Express v. Piper*, 447 U.S. 752, 764 (1980) (quoting *United States v. Hudson*, 11 U.S. (7 Cranch) 32, 34 (1812)). *Id.* For the most part, these powers are those deemed necessary to protect the efficient and orderly administration of justice and those necessary to command respect for the court's orders, judgments, procedures, and authority. *Id.* Like the first category of inherent powers, this category also stems from article III, once Congress creates the court. *Michaelson*, 266 U.S. at 65-66. *Id.* Congress may interfere with this category of inherent power within "limits not precisely defined," so long as it does not abrogate or render the specific power inoperative. *Id.* Courts have recognized several examples of this type of inherent power. *Id.* The contempt sanction long has been recognized as among the most important of these powers. *Id.* at 65; *Hudson*,

11 U.S. at 34. Id. In addition, the Supreme Court has recognized the power to levy sanctions in response to abusive litigation practices. *Roadway Express*, 447 U.S. at 766 (Court may assess attorneys' fees against counsel who abuses judicial processes); *Link v. Wabash R.R.*, 370 U.S. 626, 630-31 (1962) (Court may sua sponte dismiss case for failure to prosecute). Id. The third category of inherent powers includes those reasonably useful to achieve justice. *Eash*, 757 F.2d at 563. Id. This category of powers recognizes that the legislature cannot foresee every tool the courts might need to employ to reach a just result in all cases. Id. Where it appears that a court cannot adequately and efficiently carry out its duties without employing some special device, the court has inherent power to do so. *Ex parte Peterson*, 253 U.S. 300, 312 (1920). Id. This category of inherent power arises from mere necessity and, consequently, can be completely regulated by Congress. See id. As an example of this type of power, the Supreme Court has upheld the power of a district court to appoint an auditor to aid in litigation involving a complex commercial matter. Id.; see also *Ruiz v. Estelle*, 679 F.2d 1115, 1161 (5th Cir. 1982), cert. denied, 460 U.S. 1042 (1983). Id. By employing the above three categories, we may now establish a method for reviewing purported exercises of inherent powers. Id. Initially, we must determine in which category the invoked power belongs. Id. If the power belongs in the first category, any statute that seems to interfere with the power is unconstitutional under the doctrine of separation of powers. Id. If the power belongs in the second category, we must ascertain whether a valid statute or rule attempts to regulate the court's use of the power. Id. If such a law exists, we then must determine whether the law abrogates or renders the power practically inoperative. *Michaelson*, 266 U.S. at 66. Id. Where the law sufficiently weakens the court's inherent powers, we will strike it down as an unconstitutional violation of the doctrine of separation of powers and will review the court's actions for abuse of discretion. Id. When, however, the law can be characterized as an appropriate regulation of inherent powers, we will prevent the district court's exercise of power if that exercise either violates the law or constitutes an abuse of discretion. Id. See *Montero v. United States*, 2024 U.S. App. LEXIS 22852, at *2-*3 (2024). We review a decision to dismiss a complaint for failure to comply with a court order for abuse of discretion. *Foudy v. Indian River Cnty. Sheriff's Off.*, 845 F.3d 1117, 1122 (11th Cir. 2017). Id. "Discretion means the district court has a range of choice, and ... its decision will not be disturbed as long as it stays within that range and is not influenced by any mistake

of law." *Zocor v. Castro*, 465 F.3d 479, 483 (11th Cir. 2006) (quotations omitted). *Id.* We can affirm "on any ground supported by the record, regardless of whether that ground was relied upon or even considered by the district court." *Kernel Records Oy v. Mosley*, 694 F.3d 1294, 1309 (11th Cir. 2012). *Id.* We construe pro se filings liberally and hold them to a less stringent standard than those filed by attorneys. *Campbell v. Air Jamaica Ltd.*, 760 F.3d 1165, 1168 (11th Cir. 2014). *Id.* However, "this leniency does not give a court license to serve as de facto counsel for a party, or to rewrite an otherwise deficient pleading in order to sustain an action." *Id.* at 1168-69 (quotations omitted). *Id.* Moreover, pro se litigants are still subject to the relevant law and rules of court, including the Federal Rules of Civil Procedure. *Moon v. Newsome*, 863 F.2d 835, 837-39 (11th Cir. 1989) (affirming a dismissal when a plaintiff did not comply with the court's discovery orders). *Id.* See *Stough v. Mayville Community Sch.*, 138 F.3d 612, 614, 1998 U.S. App. LEXIS 4175 (1998). An abuse of discretion exists when the reviewing court is firmly convinced that a mistake has been made. *Romstadt v. Allstate Ins. Co.*, 59 F.3d 608, 615 (6th Cir. 1995). *Id.* A district court abuses its discretion when it relies on clearly erroneous findings of fact, when it improperly applies the law, or uses an erroneous legal standard. *Id.* at 615. In other words, the reviewing court must determine that the lower court's action leaves it with "a definite and firm conviction that the trial court committed a clear error of judgment." *Bowling v. Pfizer, Inc.*, 102 F.3d 777, 780 (6th Cir. 1996) (citation omitted), cert. denied, 118 S.Ct. 263, 139 L.Ed.2d 190 (1997). *Id.*

8. The district court's order entered on May 16, 2024 denying the petitioner's application to proceed in forma pauperis on appeal was clearly erroneous as a matter of law inasmuch as the district court did not certify in writing that the appeal was not taken in good faith, in view of the fact that the court of appeals for the Fifth Circuit denied the petitioner in forma pauperis status on appeal on June 3, 2024 under 28 U.S.C. § 1915(a)(3). See *Fridman v. City of New York*, 195 F.Supp.2d 534, 536-537, 2002 U.S. Dist. LEXIS 5992 (2002). The decision of whether to grant a request to proceed in forma pauperis is left to the district court's discretion under § 1915. See *Williams v. Estelle*, 681 F.2d 946, 947 (5th Cir. 1982); *Patrick v. Eastern State Hospital*, 701 F.2d 243 (2d Cir. 1983); *Schwarz v. U.S. Postal Service*, 1994 U.S. App. LEXIS 25941, *2 (10th Cir. Sept. 19, 1994). *Id.* at 536. The court's discretion is limited in that:

"An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3). *Id.*, at 537. Furthermore, the Supreme Court explained that: The public would not be profited if relieved of paying costs of a particular litigation only to have imposed on it the expense of supporting the person thereby made an object of public support. *Id.* Nor does the result seem more desirable if the effect of this statutory interpretation is to force a litigant to abandon what may be a meritorious claim in order to spare himself complete destitution. *Id.* See *Aijahmon v. Amerilife of N.C., LLC*, 2024 U.S. Dist. LEXIS 88919, at *2-*3 (2024). "[A]ny court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such [person] possesses that the person is unable to pay such fees or give security therefor. *Id.*, at 2. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress." 28 U.S.C. § 1915(a)(1). *Id.* However, a party's ability to file an appeal without paying court fees is limited by the statutory provision that "[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." *Id.* § 1915(a)(3). *Id.*, at 2-3. "Good faith is demonstrated where an appeal 'seeks appellate review of any issue not frivolous.'" *Schmitt v. U.S. Office of Pers. Mgmt.*, No. 8:09-cv-943-T-27EAS, 2009 U.S. Dist. LEXIS 97391, 2009 WL 3417866, at *2 (M.D. Fla. Oct. 19, 2009) (quoting *Coppedge v. United States*, 369 U.S. 438, 445, 82 S.Ct. 917, 8 L.Ed. 2d 21 (1962)). *Id.*, at 3. A frivolous case is one "without arguable merit." *Sun v. Forrester*, 939 F.2d 924, 925 (11th Cir. 1991) (citation omitted). *Id.* "In deciding whether an IFP appeal is frivolous, a district court determines whether there is a factual and legal basis, of constitutional dimension, for the asserted wrong, however inartfully pleaded." *Id.* (internal quotations and citations omitted); see also *Bell v. HCR Manor Care Facility of Winter Park*, No. 6:10-cv-523-Dri-dakRS, 2010 U.S. Dist. LEXIS 110600, 2010 WL 4096849, at *2 (M.D. Fla. Aug. 24, 2010). *Id.* In other words, "[a] lawsuit is frivolous if the plaintiff's realistic chances of ultimate success are slight." *Cooley v. Owen Loan Svc., LLC*, 729 F. App'x 677, 680-81 (11th Cir. 2018) (quoting *Clark v. Ga. Pardons & Paroles Bd.*, 915 F.2d 636, 639 (11th Cir. 1990)). *Id.* See *Cruz v. Hauck*, 404 U.S. 59, 61-63, 92 S.Ct. 313, 30 L.Ed. 2d 217 (1971). In 1892, Congress authorized the federal courts to provide the disadvantaged with a wide range of in forma pauperis relief. *Id.*, at 61. Act of July 20, 1892, 27 Stat. 252. *Id.* The benefits of this generous provision, now codified at 28 U.S.C. § 1915, have been limited, however, by the important proviso added in 1910 (36 Stat. 866) which, as now amended, reads: "An appeal may not be taken in forma pauperis if

the trial court certifies in writing that it is not taken in good faith." Id. at 61-62. "Good faith" has been defined as a requirement that an appeal present a nonfrivolous question for review. Id. at 62. If the district court certifies that an appeal would not present such a question, then an indigent may ask the court of appeals for permission to proceed in forma pauperis. Id. That court must grant the renewed motion if after a de novo determination it disagrees with the district court's application of the good-faith test. Id. If both lower courts refuse permission, then, unless this court vacates the court of appeals' finding, the pauper's appeal is ended without a hearing on the merits. See Fed. Rule App. Proc. 24(a). Id. It is important that in all of these proceedings the only cognizable issue is whether a summary survey (as opposed to plenary deliberation) suggests that a substantial argument could be presented. Id. For a discussion of the procedures employed see *Coppedge v. United States*, 369 U.S. 438 (1962); *Hardy v. United States*, 375 U.S. 277 (1964). Id. Our holdings have steadily chipped away at the proposition that appeals of the poor can be disposed of solely on summary and abbreviated inquiries into frivolity rather than upon the plenary consideration granted paying appellants. Id. In *Eskridge v. Washington Prison Board*, 357 U.S. 214 (1958), we held that a state may not withhold a transcript and thereby deny an appeal to a poor man merely because a trial judge believed his own conduct had avoided the production of nonfrivolous questions for review. See also *Ross v. Schneekloth*, 357 U.S. 575 (1958). Id. at 62-63. In *Lane v. Brown*, 372 U.S. 477 (1963), we decided that an impoverished prisoner's appeal from a state coram nobis hearing could not be thwarted simply because a public defender officer believed his case lacked merit. Id. at 63. In *Ellis v. United States*, 356 U.S. 674 (1958), we emphasized that a criminal appellant seeking to establish nonfrivolity under 28 U.S.C. § 1915 is entitled to more than an appointed counsel's private view that his appeal would be worthless and that if counsel withdrew for that reason the court of appeals was duty bound to replace him. Id. We have also held that a court of appeals may not overrule the permission granted by a district court to proceed in forma pauperis, *McGann v. United States*, 362 U.S. 309 (1960), but that a court of appeals must review de novo a trial judge's certification that an appeal would not be in good faith, *Johnson v. United States*, 352 U.S. 565 (1957). Id. Cf. *Coppedge v. United States*, 369 U.S. 438, 441-446, 82 S.Ct. 917, 8 L.Ed. 2d 21 (1962).

9. The erroneous order entered on May 16, 2024 by the district Court denying the petitioner's application to proceed in forma pauperis on appeal under 28 U.S.C. § 1915(g), contrary to the Court of Appeals for the Fifth Circuit's order entered on June 3, 2024 denying the petitioner in forma pauperis status under 28 U.S.C. § 1915(a)(3) is a deprivation of the petitioner's First Amendment rights of the United States Constitution under the Freedom of Speech and Press Clause and the Petition Clause, to prosecute an appeal in forma pauperis. See *Richmond Newspapers, Inc. v. Commonwealth of Virginia*, 448 U.S. 555, 575-578, 65 L.Ed. 2d 973, 100 S.Ct. 2814 (1980). The First Amendment, in conjunction with the Fourteenth, prohibits governments from "abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." *Id.* at 575. These expressly guaranteed freedoms share a common core purpose of assuring freedom of communication on matters relating to the functioning of government. *Id.* Plainly it would be difficult to single out any aspect of government of higher concern and importance to the people than the manner in which criminal trials are conducted; as we have shown, recognition of this pervades the centuries - old history of open trials and the opinions of this Court. *Id.* *Supra*, at 564-575, and *n. 9*, 65 L.Ed. 2d, at 982-988. *Id.* The Bill of Rights was enacted against the backdrop of the long history of trials being presumptively open. *Id.* Public access to trials was then regarded as an important aspect of the process itself; the conduct of trials "before as many of the people as chuse to attend" was regarded as one of "the inestimable advantages of a free English constitution of government." *Id.* 1 *Journals* 106, 107. *Id.* In guaranteeing freedoms such as those of speech and press, the First Amendment can be read as protecting the right of everyone to attend trials so as to give meaning to those explicit guarantees. *Id.* "[T]he First Amendment goes beyond protection of the press and the self-expression of individuals to prohibit government from limiting the stock of information from which members of the public may draw." *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 783, 55 L.Ed. 2d 707, 98 S.Ct. 1407 (1978). *Id.* at 575-576. Free speech carries with it some freedom to listen. *Id.* at 576. "In a variety of contexts this Court has referred to a First Amendment right to 'receive information and ideas.'" *Kleindienst v. Mandel*, 408 U.S. 753, 762, 33 L.Ed. 2d 683, 92 S.Ct. 2576 (1972). *Id.* What this means in the context of trials is that the First Amendment guarantees of speech and press, standing alone, prohibit government from summarily closing courtroom doors which had long

been open to the public at the time that Amendment was adopted. Id. "For the First Amendment does not speak equivocally. ... It must be taken as a command of the broadest scope that explicit language read in the context of a liberty-loving society will allow." *Bridges v. California*, 314 U.S. 252, 263, 86 L. Ed. 192, 62 S. Ct. 190, 159 ALR 1346 (1941) (footnote omitted). Id. It is not crucial whether we describe this right to attend criminal trials to hear, see, and communicate observations concerning them as a "right of access," cf. *Gannett*, supra, at 397, 61 L. Ed. 2d 608, 99 S. Ct. 2898 (Powell, J., Concurring); *Saxbe v. Washington Post Co.*, 417 U.S. 843, 41 L. Ed. 2d 514, 94 S. Ct. 2811 (1974); *Pell v. Procunier*, 417 U.S. 817, 41 L. Ed. 2d 495, 94 S. Ct. 2800, 71 Ohio Ops 2d 195 (1974), or a "right to gather information," for we have recognized that "without some protection for seeking out the news, freedom of the press could be eviscerated." *Branzburg v. Hayes*, 408 U.S. 665, 681, 33 L. Ed. 2d 626, 92 S. Ct. 2646 (1972). Id. The explicit, guaranteed rights to speak and to publish concerning what takes place at a trial would lose much meaning if access to observe the trial could, as it was here, be foreclosed arbitrarily. Id., at 576-577. The right of access to places traditionally open to the public, as criminal trials have long been, may be seen as assured by the amalgam of the First Amendment guarantees of speech and press; and their affinity to the right of assembly is not without relevance. Id., at 577. From the outset, the right of assembly was regarded not only as an independent right but also as a catalyst to augment the free exercise of the other First Amendment rights with which it was deliberately linked by the draftsmen. Id. "The right of peaceable assembly is a right cognate to those of free speech and free press and is equally fundamental." *De Jonge v. Oregon*, 299 U.S. 353, 364, 81 L. Ed. 278, 57 S. Ct. 255 (1937). Id., at 578. People assemble in public places not only to speak or to take action, but also to listen, observe, and learn; indeed, they may "assemble [E] for any lawful purpose," *Hague v. CIO*, 307 U.S. 496, 519, 83 L. Ed. 1423, 59 S. Ct. 954 (1939) (opinion of Stone, J.). Id. Subject to the traditional time, place, and manner restrictions, see, e.g., *Cox v. New Hampshire*, 312 U.S. 569, 85 L. Ed. 1049, 61 S. Ct. 762, 133 ALR 1396 (1941); see also *Cox v. Louisiana*, 379 U.S. 559, 560-564, 13 L. Ed. 2d 487, 85 S. Ct. 476 (1965), streets, sidewalks, and parks are places traditionally open, where First Amendment rights may be exercised, see *Hague v. CIO*, supra, at 515, 83 L. Ed. 1423, 59 S. Ct. 954 (opinion of Roberts, J.); a trial courtroom also is a public place where the people generally - and representatives of the media - have a right to be present, and where their presence historically has been thought to enhance the integrity and quality of what takes place. Id.

10. The order entered on May 16, 2004 by the district Court denying the petitioner's application to proceed in forma pauperis on appeal is arbitrary on the part of the district Court and a deprivation of the petitioner's substantive due process right under the Due Process Clause of the Fourteenth Amendment of the United States Constitution inasmuch as the district Court did not certify in writing that the appeal was not taken in good faith within the meaning of Title 28 of the United States Code, Section 1915(a)(3) in view of the fact that the Court of Appeals for the Fifth Circuit denied the petitioner's in forma pauperis status under 28 U.S.C. § 1915(a)(3). See *Washington v. Glucksberg*, 521 U.S. 702, 719-722, 117 S.Ct. 2258, 138 L.Ed. 2d 772 (1997). The Due Process Clause guarantees more than fair process, and the "liberty" it protects includes more than the absence of physical restraint. *Id.* at 719. *Collins v. Harker Heights*, 503 U.S. 115, 125, 112 S.Ct. 1061, 1068-1069, 117 L.Ed. 2d 261 (1992) (Due Process Clause "protects individual liberty against certain government actions regardless of the fairness of the procedures used to implement them") (quoting *Daniels v. Williams*, 474 U.S. 327, 331, 106 S.Ct. 662, 665, 88 L.Ed. 2d 662 (1986)). *Id.* at 719-720. The Clause also provides heightened protection against government interference with certain fundamental rights and liberty interests. *Id.* at 720. *Reno v. Flores*, 507 U.S. 292, 301-302, 113 S.Ct. 1439, 1446-1447, 123 L.Ed. 2d 1 (1993); *Casey*, 505 U.S. at 851, 112 S.Ct. at 2806-2807. *Id.* In a long line of cases, we have held that, in addition to the specific freedoms protected by the Bill of Rights, the "liberty" specially protected by the Due Process Clause includes the rights to marry, *Loving v. Virginia*, 388 U.S. 1, 87 S.Ct. 1817, 18 L.Ed. 2d 1010 (1967); to have children, *Skinner v. Oklahoma ex rel Williamson*, 316 U.S. 535, 62 S.Ct. 1110, 86 L.Ed. 1655 (1942); to direct the education and upbringing of one's children, *Meyer v. Nebraska*, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1012 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070 (1925); to marital privacy, *Griswold v. Connecticut*, 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed. 2d 510 (1965); to use contraception, *ibid.*; *Eisenstadt v. Baird*, 405 U.S. 438, 92 S.Ct. 1029, 31 L.Ed. 2d 349 (1972); to bodily integrity, *Rochin v. California*, 342 U.S. 165, 72 S.Ct. 205, 96 L.Ed. 183 (1952), and to abortion, *Casey*, *supra*. *Id.* We have also assumed, and strongly suggested, that the Due Process Clause protects the traditional right to refuse unwanted lifesaving medical treatment, *Id.* *Cruzan*, 497 U.S. at 278-279, 110 S.Ct. at 2851-2852. *Id.* But we "have always been reluctant to expand the concept of substantive due process because guideposts for responsible decisionmaking in this uncharted area are scarce and open-ended." *Id.* *Collins*, 503 U.S. at 125, 112 S.

Ct., at 1068. Id. By extending constitutional protection to an asserted right or liberty interest, we, to a great extent, place the matter outside the arena of public debate and legislative action. Id. We must therefore "exercise the utmost care whenever we are asked to break new ground in this field," *ibid.*, lest the liberty protected by the Due Process Clause be subtly transformed into the policy preferences of the Members of this Court, *Moore*, 431 U.S., at 502, 97 S.Ct., at 1937 (plurality opinion). Id. Our established method of substantive-due-process analysis has two primary features: First, we have regularly observed that the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, "deeply rooted in this Nation's history and tradition," *id.*, at 503, 97 S.Ct., at 1938 (plurality opinion); *Snyder v. Massachusetts*, 291 U.S. 97, 105, 54 S.Ct. 330, 332, 78 L.Ed. 674 (1934) ("so rooted in the traditions and conscience of our people as to be ranked as fundamental"), and "implicit in the concept of ordered liberty," such that "neither liberty nor justice would exist if they were sacrificed," *Palko v. Connecticut*, 302 U.S. 319, 325, 326, 58 S.Ct. 149, 152, 82 L.Ed. 288 (1937). Id., at 720-721. Second, we have required in substantive-due-process cases a "careful description" of the asserted fundamental liberty interest. Id., at 721. *Flores*, *supra*, at 302, 113 S.Ct., at 1447; *Collins*, *supra*, at 125, 112 S.Ct., at 1068; *Cruzan*, *supra*, at 277-278, 110 S.Ct., at 2850-2851. Id. Our Nation's history, legal traditions, and practices thus provide the crucial "guideposts for responsible decisionmaking," *Collins*, *supra*, at 125, 112 S.Ct., at 1068, that direct and restrain our exposition of the Due Process Clause. Id. As we stated recently in *Flores*, the Fourteenth Amendment "forbids the government to infringe ... 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest." 507 U.S., at 302, 113 S.Ct., at 1447. Id. Justice SOUTER, relying on Justice Harlan's dissenting opinion in *Roe v. Ullman*, would largely abandon this restrained methodology, and instead ask "whether [Washington's] statute sets up one of those arbitrary impositions or purposeless restraints at odds with the Due Process Clause of the Fourteenth Amendment," *post*, at 2275 (quoting *Roe*, 367 U.S. 497, 543, 81 S.Ct. 1752, 1776-1777, 6 L.Ed. 2d 989 (1961) (Harlan, J., dissenting)). Id., at 721. In our view, however, the development of this Court's substantive-due-process jurisprudence, described briefly *supra*, at 2267, has been a process whereby the outlines of the "liberty" specially protected by the Fourteenth Amendment - never fully clarified, to be sure, and perhaps not capable of being fully clarified - have at least been carefully refined by concrete examples involving fundamental rights found to be deeply rooted in our legal tradition. Id., at 722.

11. The petitioner has standing under Article III of the United States Constitution to bring this suit, because the petitioner has suffered injury in fact in this challenged action, that is fairly traceable to the illegal conduct, on the part of the district court, thereby, the district court depriving the petitioner of prosecuting an appeal in forma pauperis on account of an erroneous finding of fact entered on May 16, 2024, therein - alleged hereinbefore. See *Allen v. Wright*, 468 U.S. 737, 750-75, 104 S.Ct. 3315, 82 L.Ed.2d 556 (1984). Article III of the Constitution confines the federal courts to adjudicating actual "cases" and "controversies." *Id.*, at 750. As the Court explained in *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 471-476, 102 S.Ct. 752, 757-761, 70 L.Ed.2d 700 (1982), the "case or controversy" requirement defines with respect to the judicial branch the idea of separation of powers on which the federal government is founded. *Id.* The several doctrines that have grown up to elaborate that requirement are "founded in concern about the proper - and properly limited - role of the courts in a democratic society." *Id.* *Warth v. Seldin*, 422 U.S. 490, 498, 95 S.Ct. 2197, 2205, 45 L.Ed.2d 343 (1975). *Id.* "All of the doctrines that cluster about Article III - not only standing but mootness, ripeness, political question, and the like - relate in part, and in different though overlapping ways, to an idea, which is more than an intuition but less than a rigorous and explicit theory, about the constitutional and prudential limits to the powers of an unelected, unrepresentative judiciary in our kind of government." *Id.* *Vander Jagt v. O'Neill*, 226 U.S. App. D.C. 14, 26-27, 699 F.2d 1166, 1178-1179 (1983) (Bork, J., concurring). *Id.* The case-or-controversy doctrines state fundamental limits on federal judicial power in our system of government. *Id.* The Art. III doctrine that requires a litigant to have "standing" to invoke the power of a federal court is perhaps the most important of these doctrines. *Id.* "In essence the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues." *Id.*, at 750-751. *Warth v. Seldin*, *supra*, 422 U.S., at 498, 95 S.Ct., at 2205. *Id.*, at 751. Standing doctrine embraces several judicially self-imposed limits on the exercise of federal jurisdiction, such as the general prohibition on a litigant's raising another person's legal rights, the rule barring adjudication of generalized grievances more appropriately addressed in the representative branches, and the requirement that a plaintiff's complaint fall within the zone of interests protected by the law invoked. *Id.* See *Valley Forge*, *supra*, 454 U.S., at 474-475, 102 S.Ct., at 759-760. *Id.* The requirement of standing, however, has a core component derived directly from the Constitution. *Id.* A plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief. *Id.* 454 U.S., at 472, 102 S.Ct., at 758.

Id. Like the prudential component, the constitutional component of standing doctrine incorporates concepts concededly not susceptible of precise definition. Id. The injury alleged must be, for example, "distinct and palpable," *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 100, 99 S.Ct. 1601, 1608, 60 L.Ed. 2d 66 (1979) (quoting *Worth v. Seldin*, *Supra*, 422 U.S., at 501, 95 S.Ct., at 2206), and not "abstract" or "conjectural" or "hypothetical," *Los Angeles v. Lyons*, 461 U.S. 95, 101-102, 103 S.Ct. 1660, 1665, 75 L.Ed. 2d 675 (1983); *O'Shea v. Littleton*, 414 U.S. 488, 494, 94 S.Ct. 669, 675, 38 L.Ed. 2d 674 (1974). Id. The injury must be "fairly" traceable to the challenged action, and relief from the injury must be "likely" to follow from a favorable decision. Id. See *Simon v. Eastern Kentucky Welfare Rights Org.*, 426 U.S., at 38, 41, 96 S.Ct., at 1924, 1925. Id. These terms cannot be defined so as to make application of the constitutional standing requirement a mechanical exercise. Id. The absence of precise definitions, however, as this Court's extensive body of case law on standing illustrates, see generally *Valley Forge*, *Supra*, 454 U.S., at 471-476, 102 S.Ct., at 757-761, hardly leaves courts at sea in applying the law of standing. Id. Like most legal notions, the standing concepts have gained considerable definition from developing case law. Id. In many cases the standing question can be answered chiefly by comparing the allegations of the particular complaint to those made in prior standing cases. Id., at 751-752. See, e.g., *Los Angeles v. Lyons*, *Supra*, 461 U.S., at 102-105, 103 S.Ct., at 1665-1667. Id., at 752. More important, the law of Art. III standing is built on a single basic idea—the idea of separation of powers. Id. It is this fact which makes possible the gradual clarification of the law through judicial application. Id. Of course, both federal and state courts have long experience in applying and elaborating in numerous contexts the pervasive and fundamental notion of separation of powers. Id. Determining standing in a particular case may be facilitated by clarifying principles or even clear rules developed in prior cases. Id. Typically, however, the standing inquiry requires careful judicial examination of a complaint's allegations to ascertain whether the particular plaintiff is entitled to an adjudication of the particular claims asserted. Id. Is the injury too abstract, or otherwise not appropriate, to be considered judicially cognizable? Id. Is the line of causation between the illegal conduct and injury too attenuated? Id. Is the prospect of obtaining relief from the injury as a result of a favorable ruling too speculative? Id. These questions and any others relevant to the standing inquiry must be answered by reference to the Art. III notion that federal courts may exercise power only "in the last resort, and as a necessity," *Chicago & Grand Trunk R. Co. v. Wellman*, 143 U.S. 339, 345, 12 S.Ct. 400, 402, 36 L.Ed. 176 (1892), and only when adjudication is "consistent with a system of separated powers and [the dispute is one] traditionally thought to be capable of resolution through the judicial process," *Flast v. Cohen*, 392 U.S. 83, 97, 88 S.Ct. 1942, 1951, 20 L.Ed. 2d 947 (1968). Id.

CONCLUSION

The petition for a writ of mandamus should be granted.

Respectfully Submitted,

Michael Jarrow

Date: March 19, 2025