

IN THE SUPREME COURT OF  
THE UNITED STATES



Kenneth J. O'Brien - Petitioner  
vs.  
State of Florida - Respondent

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ON EXTENSION OF TIME TO FILE  
PETITION FOR WRIT OF CERTIORARI

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U.S. Court of Appeals, 11th District, No. 25-10799 H

D.C. No.: 1-24-CV-00232-MCR-ZCB

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COMES NOW THE PETITIONER, Kenneth J. O'Brien, acting pro se, unlettered in law, pursuant to the Supreme Court Rules, §2101, and prays this Honorable Court extend the time that the Petitioner has to file his Petition for Writ





Certiorari, up to and including August 14, 2025; an extension request of thirty (30) days.

In support of this Request, Petitioner offers the following facts and arguments:

1. Supreme Court Rules § 2101 states, "A justice of the Supreme Court, for good cause shown, may extend the time for applying for a Writ of Certiorari for a period not to exceed sixty days."
2. Petitioner is requesting a thirty (30) day extension.
3. Petitioner avers that he is unlettered in law, and requires the assistance of certified law clerks to help him with the majority of his legal work.
4. Petitioner further avers, that because contraband was found in the institution's law library, all of the certified clerks were dismissed.
5. Petitioner further avers that the institution has been lax in finding certified law clerks, and has hired mostly law clerk trainees.
6. Petitioner further avers that the backlog of cases combined with a lack of certified clerks,

has delayed Petitioner in researching and writing a Petition that satisfies the Court Rules, and makes a clear and concise argument.

7. Petitioner contends that he needs the extra time, to assure that his Petition for Writ of Certiorari meets the high standards of the Court.
8. Petitioner avers that this Request is in no way an attempt to delay the Judicial Process.
9. Petitioner respectfully asks this Honorable Court for an extension of thirty (30) days, up to and including August 14, 2025, for Petitioner to file his Petition for Writ of Certiorari.

date: \_\_\_\_\_

Respectfully submitted

Kenneth J. O'Brien #132005  
Everglades Correctional Inst.  
1599 S.W. 187th Avenue  
Miami, Florida 33194-2801  
Pro Se



## UNNOTARIZED OATH

Under penalty of perjury, I certify that I have read and understand the content of the foregoing Petition for Writ of Certiorari, that I read and understand english, and that the facts set forth are true and correct to the best of my knowledge, information and belief, sworn pursuant to Florida Statutes 92.525, and applicable federal law.

date: June 10, 2027

Respectfully submitted  
Kenneth J. O'Brien  
Kenneth J. O'Brien  
Doc # 132005

In the  
United States Court of Appeals  
For the Eleventh Circuit

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No. 25-10799

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In re: KENNETH J. O'BRIEN,

Petitioner.

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On Petition for Writ of Mandamus to the  
United States District Court for the  
Northern District of Florida  
D.C. Docket No. 1:24-cv-00232-MCR-ZCB

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Before NEWSOM, GRANT and BRASHER, Circuit Judges.

BY THE COURT:

Kenneth J. O'Brien petitions this Court for a writ of mandamus directing the district court to certify to the Florida Attorney General that he has challenged the constitutionality of state statutes. *See* 28 U.S.C. § 2403(b); Fed. R. Civ. P. 5.1(b).

Mandamus is available “only in drastic situations, when no other adequate means are available to remedy a clear usurpation of power or abuse of discretion.” *Jackson v. Motel 6 Multipurpose, Inc.*, 130 F.3d 999, 1004 (11th Cir. 1997) (citation omitted); *see United States v. Shalhoub*, 855 F.3d 1255, 1259 (11th Cir. 2017). 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. *Mallard v. United States Dist. Court*, 490 U.S. 296, 309 (1989). And we “must be satisfied that the writ is appropriate under the circumstances.” *Shalhoub*, 855 F.3d at 1259.

Here, O'Brien has not shown a clear usurpation of power or abuse of discretion by the district court, or that he has a clear and indisputable right to the relief he requests. His arguments are hard to follow, but he appears to contend that the district court erred by treating his filing labeled “Notice of Constitutional Question of Law” as a civil rights complaint. He argues that his “notice” required the district court to certify to the state attorney general the existence of a constitutional challenge pursuant to 28 U.S.C. § 2403(b) and Rule 5.1(b) of the Federal Rules of Civil Procedure.

But § 2403 and Rule 5.1 both presuppose an existing proceeding in the district court in which one party's filing calls into question the constitutionality of a statute—neither creates a

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Order of the Court

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freestanding cause of action. *See* 28 U.S.C. § 2403 (requiring certification in an “action, suit, or proceeding in a court of the United States” in which the constitutionality of a statute is questioned); Fed. R. Civ. P. 5.1(b) (requiring certification “under 28 U.S.C. § 2403” when a party files notice of a constitutional challenge). And contrary to O’Brien’s argument, the district court did not err by failing to consider his “notice” as part of his Florida habeas corpus proceeding because that was a state court action—not a “proceeding in a court of the United States”—and it was never pending before the district court. 28 U.S.C. § 2403(b).

The mandamus petition is **DENIED**, and O’Brien’s motion for leave to proceed, construed from his consent form, is **DENIED** as moot.