

NO. 25#6278

IN THE  
SUPREME COURT OF THE UNITED STATES

DAVID A. DIEHL PETITIONER

VS.

UNITED STATES OF AMERICA RESPONDENTS

MOTION FOR RECONSIDERATION  
of RULE 39.8 dismissal on Jan 20, 2026

PROCEEDING PRO SE AND INFORMA PAUPERIS

David Andrew Diehl  
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David A. Diehl  
David A. Diehl - Pro Se

3-19-2026

1.

PETITION FOR REHEARING

Petitioner submits this rehearing petition per Supreme Court Rule 39.8 in response to the court's order dated January 20, 2026. See Exhibit CO.

2.

JURISDICTION

The date on which the United States Court of Appeals decided my case No. 24-50855 was May 21, 2025. Appendix A.

The date on which that court denied my Petition for Rehearing and separate Rehearing en banc was July 31, 2025. Appendix B.

LIST OF PARTIES

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:

United States Court of Appeals Fifth Circuit  
F. Edward Hebert Building  
600 S. Maestri Place  
New Orleans, Louisiana 70130-3408

Solicitor General Of the United States  
Room 5614 Dept. Of Justice  
950 Pennsylvania Ave., N.W.  
Washington, D.C. 20530-0001

FACTS RELEVANT TO REHEARINGFACT #1

Petitioner's right to file in forma pauperis has not been suspended in either the district court or the Fifth Circuit,<sup>1</sup> and the district court, which is most familiar with the case facts refused the government's suggestion to do so. See Government Response to Petitioner's fraud on the court claim in the WDT, Case 1:10-CR-00297-DAE, Doc 332, 414124.<sup>2</sup>

FACT #2

Petitioner received new case evidence in the year 2025 and brought two independent actions based on that new evidence. The first action was a motion for authorization to file a second 28 U.S.C.S. 2255 (S.C. 24-50855). The second action was a fraud on the court claim per Fed.R.Civ.P. Rule 60(d)(3) which also included Rule 60(b)(6) claims. The first action was filed directly to the Fifth Circuit, and the second was filed in the Western District Of Texas. This was the correct procedure, and the two claims could not have been brought together. Filing in this manner was not frivolous or malicious.

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1. The Fifth Circuit threatened sanctions but did not sanction.
  2. On Page 4 of the government's response they say that Petitioner raises the same substantive claims of fraud that were raised on direct appeal, on 2255, in a previous Rule 60(b) ect. This is provably false by the record.

5.  
FACTS #3

It is not an abuse of process to challenge the sufficiency of evidence in a second or successive §2255 where new evidence exists and the 28 U.S.C.S. §2255(h)(1) standard is met. Petitioner in his request for authorization went a step further, and shows that in the original trial no one would convict because third party reproductions traveling in interstate commerce is not sufficient evidence per 18 U.S.C. § 2251(a). All Circuit courts to consider the issue agree. The specific finding of the trial court was that reproductions were sufficient and the government was perfectly aware that was the courts finding of fact and law?

FACT #4

Congress placed no limit on the number of times a second or successive petition can be raised. Nor has Congress placed a limit on the number of times a Fed.R.Civ.P. Rule 60(d)(3) can be filed, and there is no statute of limitations. For the court to impose such a restriction by banning Petitioner's in forma pauperis ability is a separation of power violation. Congress intentionally made these two tools flexible to stop manifest unjust which is what has happened in Petitioner's case.

FACT #5

Petitioner's fraud on the court and second and successive claims could not be raised prior to 2025 because the evidence was not available to Petitioner. In fact the government got the evidence destroyed in one case as described in Petitioner's fraud claim.

FACT #6

Although Petitioner has in prior actions argued his sentence violates the Constitution's Ex Post Facto clause, he has never argued that the Fifth Circuit did not have subject matter jurisdiction to consider the argument on appeal before. Subject matter jurisdiction challenges can be raised at any time. Separately this constitutional, jurisdictional challenge is not a Civil matter so the in forma pauperis ban at a minimum should not apply.

REHEARING GROUND 1

The Supreme Court failed to provide petitioner with adequate notice that his in forma pauperis right may be suspended.

Petitioner was first warned that his ability to file in forma pauperis may be suspended by the court's sole reference to S.C. Rule 39.8 in its June 6, 2026 letter concerning a separate matter. See Exhibit A. The filing was a petition for extraordinary writ. It was not clear to Petitioner at that time how his filing was either frivolous or malicious, and Rule 39.8 lists multiple ways that the rule can be violated. On July 1, 2025 Petitioner filed a motion for rehearing seeking an explanation from the court. See Exhibit B. <sup>1</sup> On July 21, 2025 the clerk responded and instructed: "amend the filing to specify reconsideration of the denial of the motion in forma pauperis." See Exhibit C. Petitioner took this as a problem with the in forma pauperis motion itself and took it as a financial matter. Petitioner responded to the court. See Exhibit D, and the clerk on August 13, 2025 said that the court could no provide any further information. See Exhibit E. Petitioner made several calls to the clerks office, but couldn't figure out what the problem was.

Petitioner had also sought information from the Fifth Circuit following that court's threat to sanction for "repetitive filings." See 24-51024, order saying the successive authorization petition was denied. See Exhibit F. To get to the bottom of the matter Petitioner filed a motion for rehearing on a "procedural matter apart

from the denial of the authorization ...." See Exhibit G. The matter apart was the threat of sanctions. The Fifth Circuit Clerk however dismissed the petition for rehearing per §2244(b)(3)(E) and refused to submit the petition to the court<sup>1</sup>. Petitioner also filed a motion to stay the mandate which was rejected by the clerk. Petitioner never did learn on what grounds the threat was made. In Petitioner's subsequent fraud on the court / ex post facto sentence action, the court did not sanction petitioner, but instead denied the motion.

Taking petitioner's in forma pauperis status is equivalent to banning Petitioner from seeking Certiorari altogether and the court did not provide Petitioner with adequate notice for such an extreme measure. Petitioner has not abused the court and is not malicious. His petitions are not frivolous. A single reference to Rule 39.8 by this court in a separate matter, that had to be raised in a very unusual way because Bowe v. United States, 24-5438 (2026) had not been resolved, did not provide Petitioner with the necessary notice.

#### REHEARING GROUND 2

Bowe is an intervening circumstance that effects the analysis of Petitioner's second or successive petition which generated the courts sanction warning. The fact that Bowe had not been resolved also prevented Petitioner from a rehearing motion at the Fifth Circuit per §2244(b)(3)(E) which might have prevented the need to file a petition for original writ in the first place.

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1. Exhibit H

Supreme Court Rule 20.1 says an extraordinary writ is not a matter of right, but of descretion sparingly excercized. If the Bowe decision had been in existence petitioner would not have been forced to file an "extraordinary" writ which no doubt is judged with greater scrutiny. The Fifth Circuit also refused to stay Petitioner's successive 2255 filing pending the resolution of Bowe.

REHEARING GROUND #3

The court in its order cited case Martin v. District of Columbia Court Of Appeals as precident for its in forma pauperis judgment. Martin however is factually very different from Petitioner's situation. Petitioner has filed petitions in this court for 1) Following direct appeal, 2) During the pendancy of a 2255 motion when a magistrate ordered Petitioner's attorney to destroy his clients file, 3) Following the denial of Petitioner's 2255, 4) Following the denial on appeal of a Rule 60(b)(6) motion where several 2255 grounds were entirely ignored, 5) Following the Fifth Circuit's denial of Petitioner's request for authorization to file a second 2255 based on new evidence, and 6) Following the denial of of Petitioner's Fed.R.Civ.P. 60(d)(3) and Ex Post Facto/Subject matter jurisdiction by the fifth Circuit. In Martin the Court said his claims were entirely frivolous, and that he was a notorious abuser of the court's certiorary process. Opinion Page 1. Martin filed 45 petitions in 10 years. Petitioner filed 6 in 14 years.

Petitioner has consistently raised questions of national importance including 1) Does 18 U.S.C. §3283 cover sex related offenses like 18 U.S.C. §2251(a), or is it for offenses that directly involve sexual abuse. This is an extremely important question, and the Fifth Circuit's finding is demonstrably in error and violates Supreme Court precedent. 2) Does the term "such visual depiction" in §2251(a)'s third nexus clause (2008) include third party reproductions traveling in interstate commerce. This is also a very important question, and all courts to review it say no. Petitioner's entire bench trial concerned this question, but counsel was ineffective for not raising it. 3) Is it an Ex Post Facto violation of the constitution to utilize a giant upward variance on pre-Booker charges. 4) Can the court order an attorney to destroy his copy of his clients released discovery. This is what led to Petitioner not being able to determine the government's fraud that is being addressed at this point. 5) Does a circuit court have subject matter jurisdiction to consider an argument that was not raised. Petitioner on appeal did not raise a constitutional argument which challenged the Booker decision.

These question are not malicious or frivolous. The 2025 year claims have not been raised before, because the evidence was not available to Petitioner. Some of that evidence is the result of a decade long fight to get information through Freedom of Information requests, and in fact Petitioner has an active case in the D.C. district court now to obtain other extremely important evidence.

11.

RELIEF

Petitioner prays this court will reinstate his in forma pauperis status. Petitioner prays that the court will entertain Petitioner's second and successive filing, or order the Fifth Circuit to allow the rehearing motion submitted to them which asks how Petitioner has abused process. This motion followed that court's denial of Petitioner's request for authorization to file a second 2255.

Petitioner also requests that this court will consider the Fraud on the Court claims and subject matter jurisdiction claim that resulted in Petitioner's loss of in forma pauperis status.

David A. Diehl  
David A. Diehl  
Proceeding Pro-Se

2-10-2020

CERTIFICATE OF GOOD FAITH

I David A. Diehl proceeding pro-se in cas No. 25-6278 declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that the Rehearing is in good faith and not for delay.

Executed on 2-5-2025

David A. Diehl  
David A. Diehl  
Proceeding Pro-Se

2-10-2026

Certificate of Compliance

I David A. Diehl swear under the penalty of perjury that this  
Petition for rehearing is limited to intervening circumstances of  
a substantial or controlling effect, or to other substantial grounds  
not previously presented.

*David A. Diehl*

David A. Diehl

Petitioner Pro-Se

2-10-2026

CERTIFICATE OF SERVICE

I David A. Diehl herby swear under the penalty of perjury that I have mailed a copy of the enclosed Petition for Rehearing to the Solicitor General at the following address.

Solicitor General  
Room 5614  
Department of Justice  
950 Pennsylvania Ave, N.W.  
Washington, DC 20530-0001.

David A. Diehl  
David A. Diehl  
Petitioner Pro-Se

2-10-2026

CERTIFICATE OF MAILING

I David A. Diehl declare under penalty of perjury under the laws of the United States of America that I handed mailroom staff the enclosed Petition for Rehearing with postage attached on 2-10-2026. I hereby invoke the mailbox rule.

David A. Diehl

David A. Diehl

2/10/2026

**Additional material  
from this filing is  
available in the  
Clerk's Office.**