

25-6337

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Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

REGINALD SANDERS, an individual,
Plaintiff,

v.

FITNESS INTERNATIONAL, LLC dba
ESPORTA FITNESS, MIMI OGANESIAN,
(GENERAL MANAGER), JANALEE
THIES (OPERATIONS MANAGER).

Defendant(s)

No. _____

**ON PETITION FOR WRIT OF
CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT**

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether Federal Rule of Appellate Procedure 40(a)(1)'s mandatory 14-day rehearing deadline may be nullified through administrative filing systems that categorically reject timely petitions based solely on boilerplate dismissal language—without a case-specific judicial order or properly promulgated local rule as Rule 40(a)(1) requires.

PARTIES TO THE PROCEEDING

Petitioner: Reginald Sanders, an individual proceeding pro se

Respondents:

- Fitness International, LLC, Mesa, Arizona facility and Irvine, CA facility, doing business as Esporta Fitness
- Mimi Oganessian, General Manager
- Jena Thies, Operations Manager

CORPORATE DISCLOSURE STATEMENT

No corporate disclosure statement is required because Petitioner is an individual.

STATEMENT OF RELATED PROCEEDINGS

U.S. District Court for the District of Arizona:

Sanders v. Fitness International, LLC, et al., No. 2:23-cv-00481-MTL (D. Ariz.), judgment entered December 20, 2023

U.S. Court of Appeals for the Ninth Circuit:

Sanders v. Fitness International, LLC, et al., No. 24-440 (9th Cir.), judgment entered July 15, 2025

U.S. Bankruptcy Court for the District of Arizona:

In re Sanders, Case No. 2:25-bk-00196-PS, fee waiver granted May 13, 2025

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OPINIONS BELOW

The judgment of the United States Court of Appeals for the Ninth Circuit (App. 1a) is unreported. The order of the United States District Court for the District of Arizona (App. 2a) is unreported.

JURISDICTION

The Ninth Circuit entered judgment on July 15, 2025. App. 1a. This Court has jurisdiction under 28 U.S.C. § 1254(1). This petition is timely filed within 90 days of that judgment.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Federal Rule of Appellate Procedure 40(a)(1) provides:

"Unless the time is shortened or extended by order or local rule, a petition for panel rehearing may be filed within 14 days after entry of judgment."

28 U.S.C. § 2072(a) (Rules Enabling Act) provides:

"The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrate judges thereof) and courts of appeals."

28 U.S.C. § 2072(c) provides:

"Such rules may define when a ruling of a district court is final for the purposes of appeal under section 1291 of this title."

The complete text of Rule 40 is reproduced at App. 4a.

STATEMENT

PRELIMINARY STATEMENT REGARDING TIMELINESS

This petition is timely under multiple Supreme Court rules. First, under Supreme Court Rule 30.1, the filing deadline extended from October 13, 2025 (Columbus Day, a federal holiday) to October 14, 2025. Rule 30.1 provides that when "the last day for filing any document falls on a Saturday, Sunday, federal legal holiday in the District of Columbia, or other day on which the Clerk's office is closed, the document will be deemed timely if filed on the next day that is not a Saturday, Sunday, federal legal holiday, or other day on which the Clerk's office is closed." October 13, 2025 is Columbus Day, a federal holiday. Therefore, this petition filed or postmarked by October 14, 2025 is timely.

Second, this petition is timely under Supreme Court Rule 13.3's tolling provision. Although the Ninth Circuit entered judgment on July 15, 2025, Petitioner timely filed a petition for panel rehearing on July 28, 2025—one day before the Rule 40(a)(1) deadline. Supreme Court Rule 13.3 provides: "if a petition for rehearing is timely filed in the lower court by any party... the time to file the petition for a writ of certiorari runs from the date of the denial of rehearing."

The Ninth Circuit never docketed Petitioner's rehearing petition and never formally denied rehearing. Instead, as documented herein, the court categorically rejected the timely petition through an administrative filing system, making a docket entry stating only "Document received in this closed case after court order stating that no further filings will be entertained." App. 3a, Entry 15.

Under Rule 13.3's plain language, the cert deadline should either:

- (1) Remain tolled until the court formally denies the rehearing petition (which it has never done);
- or
- (2) Run from August 1, 2025, when the court made its "document received" entry effectively refusing to consider the rehearing petition, establishing an October 30, 2025 deadline (90 days from August 1); or

(3) Be subject to equitable tolling given that the court's Rule 40 violation—the central issue in this petition—created the deadline uncertainty.

Petitioner files by October 14, 2025 out of an abundance of caution, but respectfully submits that under Rule 13.3, the deadline may extend to October 30, 2025 or remain tolled indefinitely pending formal denial of the rehearing petition.

Alternatively, if this Court determines that the October 14 deadline applies without tolling, Petitioner requests equitable tolling. The Ninth Circuit's categorical refusal to docket a timely rehearing petition prevented Petitioner from knowing when the cert deadline would run. Petitioner reasonably believed the deadline might run from the August 6 mandate date, consistent with typical appellate practice where mandate issues after the rehearing period expires. It would be fundamentally unjust to penalize Petitioner for deadline confusion caused by the very Rule 40 violation he seeks to challenge.

This case presents a pure question of federal procedural law: whether a court of appeals may nullify Federal Rule of Appellate Procedure 40's mandatory 14-day rehearing window through administrative filing systems that categorically reject timely petitions based solely on boilerplate dismissal language—without any case-specific judicial determination and without following the Rules Enabling Act's prescribed procedures for rule modification.

The Ninth Circuit's systematic practice, documented through official docket entries and a recorded conversation with court personnel, operates as a de facto amendment to Rule 40 implemented through administrative convenience rather than formal rulemaking. The practice eliminates Rule 40's filing deadline for an entire category of cases while circumventing the procedural safeguards Congress mandated in the Rules Enabling Act.

A. Underlying Proceedings

Petitioner filed a civil rights action in the District of Arizona alleging sex discrimination, negligence, and retaliation by a fitness facility. App. 2a. The district court granted in forma

pauperis status on April 5, 2023, and dismissed the action on December 20, 2023. *Id.* Petitioner timely appealed.

On July 15, 2025, a three-judge panel of the Ninth Circuit denied Petitioner's motion to proceed in forma pauperis and dismissed the appeal as frivolous under 28 U.S.C. § 1915(e)(2). App. 1a. The order concluded with standard closure language: "No further filings will be entertained in this closed case." *Id.*

The IFP denial contradicted a determination made two months earlier by another federal court. On May 13, 2025, the Bankruptcy Court for the District of Arizona granted Petitioner complete fee waiver based on identical financial circumstances—zero income, homelessness, disabling injuries, and zero assets. Case No. 2:25-bk-00196-PS, Adv. No. 2:25-ap-00098-PS. The Ninth Circuit's July 15 order provided no explanation for reaching the opposite conclusion on identical facts.

B. The Overlooked Supplemental Authority

On March 18, 2025—four months before the panel's decision—Petitioner filed a Citation of Supplemental Authorities under Federal Rule of Appellate Procedure 28(j). App. 6a. The citation identified controlling state law precedent decided six days earlier by the Arizona Supreme Court: *Perez v. Circle K Convenience Stores, Inc.*, No. CV-24-0104-PR (Ariz. Mar. 12, 2025).

The *Perez* decision held that business owners owe invitees a duty to maintain reasonably safe premises based solely on the invitee relationship, and that whether an alleged hazard constitutes an unreasonably dangerous condition is a question of breach, not duty. *Id.* at 7–10; App. 6a. This was controlling state law precedent directly addressing Petitioner's negligence claim—the precise duty analysis that formed the basis for dismissal.

The citation was docketed on March 19, 2025. App. 3a, Entry [X]. The Ninth Circuit's July 15 opinion made no mention of the citation or the *Perez* decision. App. 1a. Whether the panel considered this controlling authority is unknowable, but its failure to acknowledge supplemental

authority cited four months before decision raises serious questions about the reliability of the frivolousness determination.

C. The Timely Rule 40 Petition

Federal Rule of Appellate Procedure 40(a)(1) establishes a mandatory filing deadline: "Unless the time is shortened or extended by order or local rule, a petition for panel rehearing may be filed within 14 days after entry of judgment." The Ninth Circuit entered judgment on July 15, 2025, establishing a deadline of July 29, 2025.

Petitioner mailed his petition for panel rehearing on July 28, 2025—one day before the deadline. The petition was delivered to the Clerk's Office on August 1, 2025—six days before expiration of the filing period under the mailbox rule. App. 3a, Entry 17.

The petition raised three grounds cognizable under Rule 40(a)(2): (1) the panel overlooked the Rule 28(j) citation of controlling state law precedent; (2) the panel overlooked material facts regarding Petitioner's financial circumstances; and (3) the IFP denial arbitrarily contradicted the Bankruptcy Court's recent indigency determination based on identical facts. Each ground identified specific oversights or errors susceptible to correction on rehearing.

D. The Categorical Refusal to Docket

The Clerk's Office did not docket the petition as a petition for panel rehearing. Instead, on August 1, 2025, it made this docket entry:

"Document received in this closed case after court order stating that no further filings will be entertained. Order and docket sheet sent to filer." App. 3a, Entry 15.

This entry made no determination that the petition was untimely, frivolous, or procedurally defective. It stated only that a "document" was "received" after an order containing "no further

filings" language. The petition exists in the official record solely as "Document received"—not as a petition for panel rehearing. App. 3a, Entry 15.

On August 6, 2025—notwithstanding Petitioner's timely petition—the court issued its mandate. App. 3a, Entry 16. Federal Rule of Appellate Procedure 41(b) provides: "The mandate is stayed... if a timely petition for panel rehearing... is filed." The court issued mandate in direct violation of Rule 41(b)'s automatic stay provision.

When Petitioner submitted additional filings on August 25, 2025, seeking to bring the Rule 40 violation to the court's attention, the Clerk's Office made an identical entry: "Document received in this closed case after court order stating that no further filings will be entertained." App. 3a, Entry 19. Every subsequent attempt to raise the violation received the same automated rejection.

E. The Systematic Administrative Practice

On August 19, 2025, Petitioner contacted the Clerk's Office to inquire about the petition's status. App. 5a. Deputy Clerk Nixon explained the practice in a recorded telephone conversation. *Id.*

When asked whether "no further filings" language overrides Rule 40, Deputy Clerk Nixon stated: "When the court issues a no further filing will be entertained, that overwrites this rule. The court has the right to decide that." App. 5a at 2:55.

When asked about the specialized filing system, Deputy Clerk Nixon explained: "We included a new filing type that just reads as document received in disclosed case after a court stating that no further filings will be entertained... It's just a new filing type that we have it specifically for when this happens." App. 5a at 3:30.

When asked about systematic application, Deputy Clerk Nixon confirmed: "We're going to continue filing as this new filing type that says document received in this closed case after court stated and no further filing." App. 5a at 6:55.

When asked about institutional permanence, Deputy Clerk Nixon stated: "I have never seen it personally through the years that I've been here. The court tends to be very strict. Once they assign that, no further filing, the court tends to be very strict about that." App. 5a at 7:12.

These statements establish four critical facts:

First, the practice is intentional, not inadvertent. The court "included a new filing type" designed "specifically for when this happens." App. 5a at 3:30.

Second, the practice is systematic, operating through a specialized "filing type" that applies categorically based on boilerplate language. App. 5a at 3:30, 6:55.

Third, the practice is automatic, applying without case-by-case judicial review. The system operates based on whether dismissal orders contain standard closure language, not on judicial evaluation of individual petitions.

Fourth, the practice is longstanding, having persisted "through the years" without correction or oversight. App. 5a at 7:12.

The practice operates as a circuit-wide policy implemented through administrative systems rather than formal rulemaking.

F. The Absence of Judicial Determination

The critical fact is what did not happen: the court never evaluated and denied Petitioner's petition on the merits. The docket reflects no petition for panel rehearing—only a "document received." App. 3a, Entry 15.

The court did not determine the petition was untimely—it was filed six days before expiration of the filing period.

The court did not determine the petition was frivolous—it raised the panel's failure to acknowledge controlling state law precedent cited four months earlier.

The court did not determine the petition was procedurally defective—it complied with all Rule 40 requirements.

The administrative refusal to docket prevented any judicial review from occurring. It is administrative refusal to permit judicial review to occur.

REASONS FOR GRANTING THE PETITION

This case presents a pure question of federal procedural law with implications extending far beyond this litigation: whether courts may nullify mandatory Federal Rules of Appellate Procedure through administrative filing systems. Three considerations warrant this Court's immediate review.

First, the practice violates Rule 40's plain text and circumvents the Rules Enabling Act's constitutionally prescribed rulemaking process. Second, the violation produced complete foreclosure of appellate review through compounding procedural violations. Third, the practice operates in the nation's largest circuit, affecting numerous litigants annually while remaining largely invisible to oversight.

I. THE DECISION BELOW VIOLATES RULE 40'S PLAIN TEXT AND THE RULES ENABLING ACT'S SEPARATION OF POWERS FRAMEWORK

The Ninth Circuit's systematic practice directly contravenes Federal Rule of Appellate Procedure 40(a)(1) and violates the separation of powers principles embodied in the Rules Enabling Act. The practice effectively amends Rule 40 through administrative convenience, eliminating the mandatory 14-day filing period for an entire category of cases without following any prescribed procedure for rule modification.

This violation implicates fundamental questions about who possesses authority to modify procedural rules and through what processes modifications must occur. The Rules Enabling Act established a constitutionally grounded framework to prevent precisely this type of informal rule alteration. When courts circumvent that framework through administrative systems, they undermine the careful balance Congress struck in delegating rulemaking authority to this Court.

A. Rule 40's Text Permits Modification Only "By Order or Local Rule"

Federal Rule of Appellate Procedure 40(a)(1) establishes an unqualified entitlement: "a petition for panel rehearing may be filed within 14 days after entry of judgment." This Court has repeatedly held that Federal Rules of Appellate Procedure create mandatory, not discretionary, obligations. See *Bowles v. Russell*, 551 U.S. 205, 213 (2007) (appellate filing deadlines are "mandatory and jurisdictional"); *Houston v. Lack*, 487 U.S. 266, 272 (1988) (federal rules must be applied with "certainty and predictability").

Rule 40 permits deviation from the 14-day period through only two mechanisms: "by order or by local rule." Fed. R. App. P. 40(a)(1). These terms have well-established meanings in federal practice, and the conjunction "or" is disjunctive—courts may modify Rule 40 deadlines either by issuing a case-specific order or by promulgating a local rule. Both mechanisms require deliberate judicial action with notice to litigants and opportunity for review. Neither permits circumvention through administrative convenience.

An "order" means a case-specific judicial determination addressing the particular circumstances of an individual case. It requires deliberate action by a judicial officer evaluating whether the specific facts warrant departure from the default rule. Generic language appearing in thousands of dismissal orders does not constitute a case-specific "order" modifying Rule 40 rights. If boilerplate language sufficed, the careful procedures Rule 40 contemplates would become illusory—courts could eliminate rehearing periods simply by including standard language in dismissal orders, converting what the rule treats as deliberate, case-specific determinations into automatic practice applied categorically across all cases.

A "local rule" requires formal circuit rulemaking with public notice and comment. 28 U.S.C. § 2072(c). Local rules must be "consistent with" Acts of Congress and rules prescribed by this Court. Id. § 2071(a). They cannot be promulgated through administrative filing systems unknown to the public and unavailable for comment. The requirement of formal rulemaking ensures transparency, permits public input, and provides notice to litigants and the bar.

The conjunction "or" is disjunctive: courts may modify Rule 40 deadlines either by issuing a case-specific order or by promulgating a local rule. Both mechanisms require deliberate judicial action with notice to litigants. Both provide notice to litigants and opportunity for review. Neither permits circumvention through administrative convenience.

B. The Ninth Circuit Has Promulgated No Qualifying Order or Local Rule

The July 15 dismissal order does not state "the time to file a petition for rehearing is shortened to zero days" or invoke Rule 40(a)(1)'s modification authority. App. 1a. The phrase "no further filings will be entertained" appears in thousands of dismissal orders throughout the federal system as standard closure language, not as a case-specific determination eliminating Rule 40 rights.

If generic boilerplate sufficed to eliminate rehearing periods, Rule 40's safeguards would become illusory. Courts could circumvent the rule simply by including standard language in dismissal orders—converting what the rule contemplates as deliberate, case-specific determinations into automatic practice applied categorically across all cases without individualized consideration.

The Ninth Circuit has promulgated no local rule eliminating or shortening rehearing periods in cases dismissed with "no further filings" language. Circuit Rule 40-1 addresses only formatting, page limits, and filing mechanics. See 9th Cir. R. 40-1. It contains no provision authorizing rejection of timely petitions based on dismissal order language. The absence of any local rule is fatal to the practice.

If the Ninth Circuit believes Rule 40 periods should be eliminated in certain categories of cases, the Rules Enabling Act provides the mechanism: propose a local rule, subject it to public comment, submit it to this Court for approval, obtain congressional acquiescence, and provide public notice. 28 U.S.C. § 2072. The court cannot achieve the same result through administrative systems operating invisibly.

The distinction is fundamental. A filing system that tracks petitions, assigns them to panels, and facilitates judicial review serves Rule 40. A filing system that prevents petitions from being docketed, considered, or acknowledged violates Rule 40. The Ninth Circuit's system does the latter.

C. Administrative Filing Systems Cannot Override Federal Rules

The Clerk's Office candidly described creating "a new filing type" to reject Rule 40 petitions. App. 5a at 3:30. This filing type operates automatically: "We're going to continue filing as this new filing type" whenever dismissal orders contain "no further filings" language. App. 5a at 6:55. The system applies categorically, "specifically for when this happens," without case-by-case judicial review. App. 5a at 3:30.

Courts possess inherent authority to manage their dockets. But that authority does not extend to nullifying procedural rules through administrative convenience. Filing systems must accommodate Federal Rules, not override them. *Kontrick v. Ryan*, 540 U.S. 443, 454 (2004) (even non-jurisdictional deadlines "create important procedural rights that must be respected").

The distinction between jurisdictional and non-jurisdictional rules matters for waiver and forfeiture—not for whether courts must follow the rules at all. Even if Rule 40's deadline were merely claim-processing rather than jurisdictional, systematic refusal to docket timely petitions violates the rule. The court's view that an appeal lacks merit does not authorize circumvention of Rule 40's procedures for seeking reconsideration.

The Clerk's Office cannot create filing categories that achieve substantive results forbidden to judges. Just as clerks cannot create systems extending statutes of limitations, eliminating word limits, or modifying jurisdictional requirements, they cannot create systems preventing compliance with Rule 40. When a clerk's filing system produces results incompatible with Federal Rules, the system—not the rule—must yield.

Moreover, the court did not evaluate and deny Petitioner's petition on the merits. It refused to acknowledge a petition was filed at all. The docket reflects no petition for panel rehearing—only a "document received." App. 3a, Entry 15. This is not judicial review yielding an unfavorable outcome. It is administrative refusal to permit judicial review to occur.

D. The Practice Circumvents the Rules Enabling Act's Constitutional Requirements

The Rules Enabling Act established a constitutionally prescribed rulemaking process: this Court proposes rules through an advisory committee system, Congress reviews them during a statutory waiting period, and if not rejected, they "have the force and effect of law." 28 U.S.C. § 2072(a); *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 218 (1995).

This framework embodies separation of powers principles recognized since the Republic's founding. In *Wayman v. Southard*, 23 U.S. (10 Wheat.) 1, 21 (1825), this Court explained that while individual courts possess inherent authority to manage operations, they lack authority to "nullify" rules "prescribed by higher authority." The distinction is critical: courts may manage their dockets, but they cannot override procedural rules Congress has authorized this Court to prescribe.

The Rules Enabling Act "revolutionized the federal judicial rulemaking process" to prevent the chaos that prevailed when "different courts had their own set of standards." *Shady Grove Orthopedic Assocs. v. Allstate Ins. Co.*, 559 U.S. 393, 407 (2010). Before 1934, federal courts operated under varying local practices, creating uncertainty and inconsistent application of procedural rights. The Act centralized rulemaking in this Court, subject to congressional oversight, ensuring nationwide uniformity. *Hanna v. Plumer*, 380 U.S. 460, 471-72 (1965).

The Ninth Circuit's practice effectively amends Rule 40 without following any prescribed procedure. The court has not proposed rule amendment to this Court's Advisory Committee. It has not published notice of a proposed local rule or submitted a proposed local rule to this Court for approval. It has not obtained congressional acquiescence. It has not provided public notice that Rule 40 periods would be eliminated in cases with "no further filings" language. Instead, the Clerk's Office "included a new filing type" to reject Rule 40 petitions. App. 5a at 3:30.

This administrative action achieves the same practical result as formally amending Rule 40—elimination of the 14-day filing period in a category of cases—but without any procedural safeguards. If the practice stands, the careful balance the Rules Enabling Act struck would unravel, replaced by ad hoc local variations implemented through filing systems and remaining immune from oversight.

Deputy Clerk Nixon's statements confirm this is institutional policy rather than isolated error. The practice has operated "through the years," applies systematically through specialized filing categories, and has "never" been "overturned" despite its longstanding application. App. 5a at 7:12. This systematic, permanent nature distinguishes the practice from individual judicial error correctable through ordinary appellate review.

The Ninth Circuit handles more appeals than any other circuit—approximately 15,000 cases annually. If its practice stands, nothing prevents adoption elsewhere or application to other rules courts find burdensome. The result would be Balkanization of federal procedure—precisely what the Rules Enabling Act prevented. Permitting circuits to vary rules through administrative systems would resurrect the pre-1934 chaos, with variations operating invisibly and remaining immune from oversight.

II. THE VIOLATION PRODUCED COMPLETE FORECLOSURE OF APPELLATE REVIEW

The compounding procedural violations produced complete foreclosure of appellate review. Petitioner could not challenge the dismissal substantively because the court denied IFP status. He

could not challenge the IFP denial through a Rule 40 petition raising the overlooked Rule 28(j) citation because the court categorically refused to docket the petition. He could not challenge the panel's disregard of controlling precedent because subsequent filings received identical rejection. He could not challenge the Rule 40 violation itself because finality foreclosed further circuit review. Every procedural avenue was systematically foreclosed through administrative action.

A. The Compounding Procedural Violations

The violation did not occur in isolation but produced cascading procedural breakdowns:

First, the Ninth Circuit denied IFP status based on financial circumstances that, two months earlier, prompted the Bankruptcy Court to grant complete fee waiver. The denial lacked explanation despite the explicit contradiction, preventing Petitioner from pursuing his appeal.

App. 1a.

Second, the panel apparently disregarded Petitioner's Rule 28(j) citation of controlling state law precedent decided four months before the panel's decision, making no mention of the citation or the Perez decision despite its direct bearing on the duty analysis that formed the basis for dismissal. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405 (1990) (courts have duty to consider properly cited controlling precedent).

Third, when Petitioner sought to raise these errors in a timely Rule 40 petition, the court categorically refused to docket it, violating Rule 40(a)(1)'s mandatory 14-day window.

Fourth, the court issued mandate in violation of Rule 41(b)'s automatic stay, which provides that mandates "is stayed... if a timely petition for panel rehearing... is filed." The premature mandate eliminated any possibility of internal correction. Fed. R. App. P. 41(b); App. 3a, Entry 16.

Fifth, subsequent filings seeking to bring the Rule 40 violation to the court's attention received identical rejection, foreclosing even the possibility of alerting judges to the procedural breakdown.

The combined effect denied Petitioner every avenue for review. He could not challenge the dismissal substantively (IFP denied). He could not challenge the IFP denial (Rule 40 petition rejected). He could not challenge the panel's disregard of controlling precedent (Rule 28(j) citation overlooked). He could not challenge the Rule 40 violation itself (subsequent filings rejected). Every procedural avenue was systematically foreclosed through administrative action.

B. Due Process Requires Meaningful Access to Appellate Review

This complete foreclosure implicates fundamental due process concerns. In *Boddie v. Connecticut*, 401 U.S. 371, 377 (1971), this Court held that due process requires meaningful access to courts, particularly for indigent litigants. In *M.L.B. v. S.L.J.*, 519 U.S. 102, 124 (1996), the Court reaffirmed that procedural barriers cannot operate to deny access altogether.

Here, arbitrary IFP denial combined with categorical rejection of a timely Rule 40 petition raising that denial completely foreclosed Petitioner's appellate participation. The Ninth Circuit's view that the appeal lacks merit does not authorize circumvention of Rule 40's procedures.

Even appeals ultimately affirmed as meritless receive rehearing petitions that courts docket, review, and deny on the merits. The court's assessment of frivolousness occurs after it considers petitions—not as justification for refusing to consider them.

C. The Frivolousness Determination Cannot Validate the Rule 40 Violation

The Ninth Circuit may argue that its dismissal as frivolous justifies the practice. But frivolousness determinations do not eliminate Rule 40 rights. Even appeals ultimately affirmed as meritless receive rehearing petitions that courts docket, consider, and deny on the merits. The court's view that an appeal lacks merit does not authorize circumvention of Rule 40's procedures for seeking reconsideration.

Moreover, the Ninth Circuit's frivolousness determination itself is suspect given the panel's failure to acknowledge the Perez citation. An appeal raising controlling state law precedent decided weeks before the panel's decision—precedent directly addressing the duty analysis that formed the basis for dismissal—is not frivolous on its face. Whether Perez would have changed the result is unknowable because the panel never mentioned it.

The IFP denial is equally questionable. Two federal judges evaluated identical evidence—zero income, homelessness, disabling injuries, zero assets. The Bankruptcy Court granted complete fee waiver. The Ninth Circuit panel denied IFP status without explanation. One determination must be wrong, but which remains unclear because the panel provided no reasoning.

Even if the frivolousness determination were unassailable, it does not authorize the categorical rejection of timely Rule 40 petitions. Courts determine frivolousness by reviewing petitions on the merits—not by preventing petitions from being filed through administrative systems.

III. THE ISSUE WARRANTS IMMEDIATE REVIEW

Three factors establish that this case presents an ideal vehicle for resolving an important question of federal procedure affecting numerous litigants in the nation's largest circuit.

A. The Practice Affects the Nation's Largest Circuit

The Ninth Circuit encompasses nine states and two territories, hearing more appeals than any other circuit. The systematic practice affects all litigants who file timely Rule 40 petitions in cases dismissed with "no further filings" language—language appearing routinely in frivolousness dismissals under 28 U.S.C. § 1915(e)(2).

Deputy Clerk Nixon confirmed the practice has operated "through the years." App. 5a at 7:12. The court files numerous IFP dismissals annually. If even a small fraction result in attempted rehearing petitions, the number of improperly rejected petitions could be substantial. Most pro se

litigants proceeding in forma pauperis—those most vulnerable to procedural barriers and least able to navigate complex systems or seek Supreme Court review—are affected.

The scale is difficult to quantify precisely because rejected petitions do not appear in published decisions. They exist only as "documents received" in docket entries, invisible to researchers and oversight bodies. App. 3a, Entry 15. But if even a small fraction of the Ninth Circuit's thousands of annual IFP dismissals result in attempted rehearing petitions, the number of improperly rejected petitions could be substantial.

This case provides an ideal vehicle for addressing the issue. The facts are undisputed, established by official docket entries and a recorded conversation with court personnel. The legal question is pure federal procedural law requiring no circuit-specific context or deference to factfinding. The issue is fully preserved through Petitioner's timely petition and subsequent efforts to raise the violation. And the broader implications extend beyond this Circuit and this rule to the fundamental question of how federal procedural rules may be modified.

B. No Alternative Remedy Exists

The systematic nature of the practice prevents internal correction. When courts refuse to docket rehearing petitions, litigants cannot challenge that refusal through the very petitions being rejected. When courts issue mandates in violation of Rule 41(b)'s automatic stay, finality forecloses further circuit review. When subsequent filings receive identical rejection, no mechanism exists for bringing violations to judicial attention.

Deputy Clerk Nixon's statement that the practice has "never" been "overturned" despite operating "through the years" suggests institutional commitment rather than inadvertent error subject to correction. App. 5a at 7:12. The practice operates through specialized filing systems designed specifically for this purpose. It is not a mistake waiting to be discovered—it is policy deliberately implemented and maintained.

Mandamus is unavailable because the Ninth Circuit has issued final judgment. Raising the issue in a new case would require experiencing the same violation again—an unsatisfactory remedy for a systematic practice affecting numerous litigants. This case reached this Court only because Petitioner possessed unusual determination and sufficient legal knowledge despite lacking formal training and facing extraordinary personal hardships (homelessness, disabling injuries, indigency).

Most affected litigants—pro se appellants proceeding in forma pauperis—lack the resources, knowledge, or capacity to navigate the complex path to Supreme Court review. They receive "document received" entries and assume their petitions were properly rejected. The practice operates invisibly to most affected litigants and remains immune from ordinary corrective mechanisms.

C. The Issue Presents Pure Federal Law

This case involves no disputed facts. The relevant facts are established by official records: the July 15 dismissal order (App. 1a), the docket entries reflecting treatment of filings (App. 3a), the Rule 28(j) citation (App. 6a), and the recorded conversation explaining the practice (App. 5a).

The legal question is straightforward: may courts refuse to docket timely Rule 40 petitions through administrative systems that categorically reject such petitions based on boilerplate dismissal language? This requires no circuit-specific context, no deference to factfinding, no interpretation of ambiguous language, and no balancing of competing interests. It presents pure federal procedural law—whether the Ninth Circuit's practice complies with Rule 40(a)(1)'s requirement that modifications occur "by order or by local rule."

Because the question is pure law, this Court's review would provide definitive guidance applicable throughout the federal system. The decision would establish a clear standard: courts must follow Rule 40's prescribed procedures, and administrative systems cannot substitute for those procedures. The holding would govern all circuits, preventing adoption of similar practices elsewhere and ensuring nationwide uniformity in the application of Rule 40.

The question also implicates no circuit split requiring percolation. The issue is whether a specific practice violates Rule 40's plain text and the Rules Enabling Act's procedural requirements. Those are questions this Court is uniquely positioned to resolve, requiring no input from other circuits. The Federal Rules apply uniformly nationwide; their interpretation should be uniform as well.

D. The Question Is of Exceptional Importance

This case implicates fundamental questions about federal court governance: who possesses authority to modify procedural rules, through what processes modifications must occur, and what constraints limit courts' ability to create local variations.

If courts may nullify Rule 40 through administrative systems, they may do the same with other rules. If "no further filings" language can override Rule 40 without constituting a formal "order," similar language could override other rules' requirements. If the Ninth Circuit may create circuit-specific exceptions to Rule 40, other circuits may create their own exceptions to other rules.

The cumulative effect would be the return to pre-1934 procedural fragmentation—precisely what the Rules Enabling Act prevented. Federal procedure would cease to be uniform, instead varying by circuit based on administrative practices unknown to litigants and invisible to oversight. The careful balance the Rules Enabling Act struck—centralized rulemaking subject to public input and congressional review—would unravel, replaced by ad hoc local variations implemented through filing systems.

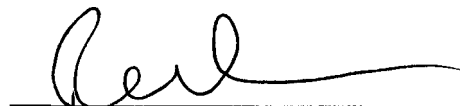
The issue also affects access to justice for vulnerable populations. Pro se and indigent litigants are disproportionately affected by procedural barriers because they lack resources to navigate complex systems or identify hidden pitfalls. When procedural rights disappear through invisible administrative action, the most vulnerable litigants suffer most. They receive "document received" entries and assume their petitions were properly considered and rejected, never knowing their filings were categorically refused without judicial review.

Finally, the issue affects this Court's institutional role. This Court promulgates Federal Rules of Appellate Procedure pursuant to statutory authority delegated by Congress. When circuits modify those rules through administrative systems, they effectively assume rulemaking functions this Court is supposed to perform, bypassing the congressional oversight built into the Rules Enabling Act framework. The practice thus implicates not merely the specific Rule 40 violation but the broader question of how federal procedural rules may be altered and who possesses authority to alter them.

CONCLUSION

The Ninth Circuit's systematic practice of categorically rejecting timely Rule 40 petitions through administrative filing systems violates Rule 40's plain text, circumvents the Rules Enabling Act's constitutionally prescribed rulemaking process, and creates arbitrary denials of due process. The practice has operated for years without correction, affects the nation's largest federal circuit, and threatens the uniformity and integrity of the federal rulemaking system. The petition for a writ of certiorari should be granted.

Respectfully submitted this 13th day of October, 2025.

A handwritten signature in black ink, appearing to read 'Reginald Sanders', written over a horizontal line.

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