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No. 26-

ORIGINAL

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IN THE  
**Supreme Court of the United States**

Supreme Court, U.S.  
FILED  
JAN 22 2026  
OFFICE OF THE CLERK

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SONNY RAMDEO,

*Petitioner,*

v.

D. TYLER-RRM ORLANDO,

*Respondent.*

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On Petition for Writ of Certiorari to the  
United States Court of Appeals for the Eleventh Circuit

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**PETITION FOR A WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

Under 28 U.S.C. § 1915 and this Court's decisions in *Coppedge v. United States*, 369 U.S. 438 (1962), and *Gaca v. United States*, 411 U.S. 618 (1973), an indigent appellant may be denied leave to proceed in forma pauperis only if the appeal is "*frivolous*," meaning it lacks any arguable basis in law or fact. In this case, the court of appeals denied petitioner in forma pauperis status as "*frivolous*" while expressly stating that it "*has not considered*" the underlying statutory question, namely, whether the Bureau of Prisons must apply earned-time credits under 18 U.S.C. § 3624(a) to a sentence commuted "*to expire(s) on [a certain date]*" in a presidential clemency order that preserves the Bureau's authority over confinement. The court then dismissed the appeal for failure to pay the filing and docketing fees and, through clerk-issued deficiency notices invoking a local "*successive reconsideration*" rule, refused to allow any judge or panel to consider petitioner's timely petitions for panel rehearing under Federal Rule of Appellate Procedure 40.

The questions presented are:

Whether a court of appeals may deny leave to proceed in forma pauperis as "*frivolous*" when the appeal turns on a federal statutory question the court expressly acknowledges it has not previously decided.

Whether a court of appeals (or its clerk's office) may treat a timely petition for rehearing under Federal Rule of Appellate Procedure 40 as an impermissible successive "*motion for reconsideration*" under a local rule governing motions for reconsideration, thereby declining to process

the rehearing petition and foreclosing rehearing review of the order being challenged.

## **PARTIES TO THE PROCEEDING**

Petitioner is Sonny Ramdeo. Respondent is D. Tyler.

## **STATEMENT OF RELATED PROCEEDINGS**

This case arises from the following proceedings:

- *Ramdeo v. Tyler*, No. 25-11091-G (11<sup>th</sup> Cir.) (opinion issued December 11, 2025) (clerk refused to transmit Rehearing to panel).
- *Ramdeo v. Tyler*, 5:25-cv-00111-SPC-PRL (M.D. Fla.)

There are no additional proceedings in any court that are directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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## PETITION FOR A WRIT OF CERTIORARI

Petitioner Sonny Austin Ramdeo respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in *Ramdeo v. Tyler*, No. 25-11091-G.

This case arises from the Eleventh Circuit's refusal to allow an indigent habeas appellant to proceed in forma pauperis on an appeal that turns on a concededly undecided question of federal law, and from the court's use of clerk-issued deficiency notices, invoking a local "*successive reconsideration*" rule, to prevent any judge from considering petitioner's timely petitions for panel rehearing under Federal Rule of Appellate Procedure 40.

Petitioner is a federal prisoner whose sentence of confinement was commuted by presidential clemency "*to expire(s) on April 11, 2025,*" in an order that expressly preserved the Bureau of Prisons' authority to oversee his confinement and to apply ordinary disciplinary rules. In a § 2241-type proceeding, petitioner argued that 18 U.S.C. § 3624(a) and related provisions require the Bureau to apply earned-time credits to that commuted sentence in the same way they apply to an uncommuted term of imprisonment, so that the "*expires on*" language marks the outer limit of confinement, subject to statutory credits, rather than an immutable, credit-proof release date.

The district court rejected that interpretation, and petitioner appealed. The Eleventh Circuit denied leave to proceed in forma pauperis, labeled the appeal "*frivolous,*" and relied on a generic dictionary meaning of "expire[s]" and the Bureau's view of the commutation, even while

acknowledging that “[t]his court has not considered whether the BOP must apply a defendant’s earned time credit, jail credit, or other credit after the president issues a commutation order that specifies the exact date of release.” After petitioner, who is indigent, was unable to pay the filing and docketing fees, the court dismissed the appeal “for want of prosecution” and issued that dismissal as its mandate.

Petitioner then filed timely petitions for panel rehearing under Federal Rules of Appellate Procedure 35 and 40, challenging the frivolousness determination and the court’s reliance on dictionary definitions and agency interpretation rather than the statute’s term-of-art usage and the clemency order’s preservation of Bureau authority. Those petitions were never submitted to any judge or panel. Instead, the Clerk of Court, acting alone, issued a series of “No Action / Deficiency Notice[s]” stating that “no action will be taken” because “successive motions for reconsideration are not permitted. See 11th Cir. R. 27-3,” and concluding that petitioner’s filings “will not be considered.” A subsequent motion to recall the mandate met the same fate.

The questions presented go to the heart of indigent litigants’ access to appellate review.

Under 28 U.S.C. § 1915 and this Court’s decisions in *Coppedge v. United States*, 369 U.S. 438 (1962), and *Gaca v. United States*, 411 U.S. 618 (1973), an appeal by an indigent may be denied in forma pauperis status only if it is truly “frivolous,” meaning it lacks any arguable basis in law or fact. Yet here the court of appeals deemed frivolous

an appeal that turns on an interpretive question it has never decided, and it treated the Bureau's view as controlling despite this Court's recent clarification that courts must exercise independent judgment on all questions of law and may not defer to agency interpretations simply because a statute is ambiguous. The court then coupled that IFP denial with dismissal for nonpayment of fees and used clerk-level application of a local reconsideration rule to foreclose any judicial review of its threshold determination or petitioner's rehearing petitions.

This Court's review is warranted to clarify (1) the limits on denying in forma pauperis status on "*frivolousness*" grounds where a court acknowledges that an appeal raises a novel question of statutory interpretation, and (2) the extent to which a court of appeals may, through clerk-issued deficiency notices and local "*successive reconsideration*" rules, block timely petitions for panel rehearing under FRAP 40 and thereby insulate threshold IFP determinations from any judicial review.

### OPINIONS BELOW

The order of the United States Court of Appeals for the Eleventh Circuit denying petitioner leave to proceed in forma pauperis on the ground that his appeal was "frivolous," entered July 30, 2025, is an unpublished order in *Ramdeo v. Tyler*, No. 25-11091-G, and is reproduced in *Appendix A (Docs. 14-1, 14-2)*.

The Eleventh Circuit's unpublished order entered December 11, 2025, denying petitioner's motion for reconsideration of the July 30, 2025, order, again denying in forma pauperis status, and reaffirming that the appeal was "frivolous" while acknowledging that the court "has not considered" the underlying statutory question, is reproduced in *Appendix B (Docs. 21-1, 21-2)*.

The Eleventh Circuit Clerk's "*No Action / Deficiency Notice*" dated December 16, 2025, recharacterizing petitioner's Petition for Rehearing under Federal Rules of Appellate Procedure 35 and 40 as a prohibited "successive" motion for reconsideration under Eleventh Circuit Rule 27-3 and stating that the filing "will not be considered," is an unpublished order reproduced in *Appendix C (Doc. 23)*.

The Eleventh Circuit Clerk's "*No Action / Deficiency Notice*" dated January 7, 2026, similarly, declining to take action on petitioner's Appellant's Corrected Petition for Panel Rehearing and again invoking Eleventh Circuit Rule 27-3, is an unpublished order reproduced in *Appendix D (Doc. 26)*.

The judgment for which review is sought, the Clerk's Order of Dismissal "*for want of prosecution*" under Eleventh Circuit Rule 42-1(b), entered January 7, 2026, and issued as the mandate of the court pursuant to Eleventh Circuit Rule 41-4, is an unpublished order reproduced in *Appendix E (Doc. 27)*.

The Eleventh Circuit Clerk's "*No Action / Deficiency Notice*" dated January 14, 2026, declining to consider petitioner's motion to recall the mandate and again

invoking Eleventh Circuit Rule 27-3, is an unpublished order reproduced in *Appendix F* (Doc. 29).

### JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1254(1) to review final decisions of the United States courts of appeals.

The judgment for which review is sought is the Clerk's Order of Dismissal "*for want of prosecution*," entered January 7, 2026, in *Ramdeo v. Tyler*, No. 25-11091-G, and issued the same day as the mandate of the court pursuant to Eleventh Circuit Rule 41-4. *See Appendix E* (Clerk's DIS-2 letter and Order of Dismissal for want of prosecution, Doc. 27). That order dismissed petitioner's appeal based on nonpayment of the appellate filing and docketing fees following the Eleventh Circuit's denial of leave to proceed in forma pauperis on the ground that the appeal was "frivolous." *See Appendix A* (July 30, 2025 order denying IFP as "frivolous," Docs. 14-1, 14-2); *Appendix B* (December 11, 2025 order denying reconsideration and again denying IFP as "frivolous," Docs. 21-1, 21-2).

After the panel's December 11, 2025 order denying reconsideration of the initial IFP ruling and again labeling the appeal "*frivolous*," petitioner filed a Petition for Rehearing under Federal Rules of Appellate Procedure 35 and 40, and later an Appellant's Corrected Petition for Panel Rehearing; the Clerk responded on December 16, 2025, and January 7, 2026 with "*No Action / Deficiency Notice[s]*" recharacterizing those rehearing petitions as prohibited "*successive*" motions for reconsideration under

Eleventh Circuit Rule 27-3 and stating that they “will not be considered.” See *Appendix C (December 16, 2025 “No Action / Deficiency Notice,” Doc. 23)*; *Appendix D (January 7, 2026 “No Action / Deficiency Notice,” Doc. 26)*. Petitioner subsequently filed a motion to recall the mandate, which the Clerk likewise refused to consider in a January 14, 2026 “No Action / Deficiency Notice” invoking Rule 27-3. See *Appendix F (January 14, 2026 “No Action / Deficiency Notice” on motion to recall mandate, Doc. 29)*.

This petition is timely under Supreme Court Rule 13.1 because it is filed within 90 days of the January 7, 2026, dismissal order and mandate. To the extent Supreme Court Rule 13.3 applies in light of petitioner’s rehearing petitions and the Clerk’s December 16, 2025, and January 7, 2026 “No Action / Deficiency” notices, petitioner relies on that rule in the alternative.

#### **STATUTORY PROVISION INVOLVED**

The primary statutory and rule provisions involved are:

U.S. Constitution, Art. II, Section 2, Clause 1  
(Executive Clemency)

28 U.S.C. § 1915 (proceedings in forma pauperis):  
governing when indigent litigants may proceed without prepaying fees and the standard for dismissing appeals as “*frivolous*.”

18 U.S.C. § 3624(a) (release of a prisoner):  
which provides that a prisoner “*shall be released ... on the date the sentence expires, less any time credited,*” and thus uses “*expires*” as a term of art in defining the relationship between sentence expiration and earned-time credits.

Federal Rule of Appellate Procedure 24, governing in forma pauperis status on appeal and the role of the courts of appeals in granting or denying such status.

Federal Rule of Appellate Procedure 40, which authorizes any party to file a petition for panel rehearing and sets the framework for judicial reconsideration of a panel's decision.

Eleventh Circuit Rule 27-3 (Successive Motions for Reconsideration Not Permitted) states, “[a] party may file only one motion for reconsideration with respect to the same order. Likewise, a party may not request reconsideration of an order disposing of a motion for reconsideration previously filed by that party.”

## INTRODUCTION

Under 28 U.S.C. § 1915 and this Court's decisions in *Coppedge* and *Gaca*, an appeal by an indigent may be denied in forma pauperis only if it is truly "*frivolous*," meaning it lacks any arguable basis in law or fact. Yet here, the court of appeals deemed an appeal frivolous that turns on an interpretive question it has never decided, and it treated the Bureau's view as controlling despite this Court's recent clarification that courts must exercise independent judgment on questions of law. The court then combined that IFP denial with dismissal for nonpayment of fees and clerk-level use of a local "*successive reconsideration*" rule that prevented any judge from reviewing the threshold frivolousness determination or the petitioner's rehearing petitions.

## STATEMENT OF CASE

### A. Factual Background

On December 11, 2024, the President issued a grant of executive clemency commuting petitioner Sonny Austin Ramdeo's federal sentence of confinement "*to expire(s) on April 11, 2025*," while leaving intact his term of supervised release "*with all of its conditions and all other components of each respective sentence*." The commutation order further provided that "*[n]othing in this grant of clemency should be presumed to interfere with, or supersede, the Bureau of Prisons' authority to oversee each person's confinement*" and that each person "*shall remain subject to all ordinary disciplinary rules*," thereby expressly

preserving the Bureau of Prisons' (BOP) ongoing authority over confinement administration.

Petitioner had earned time credits under 18 U.S.C. § 3624 and related provisions. He contended that, under § 3624(a), the “*date the sentence expires*” functions as the statutory anchor for calculating the release date “*less any time credited,*” and that the commutation’s “*expire(s) on April 11, 2025*” language therefore marks the outer limit of confinement, subject to reduction by earned-time credits, rather than an immutable, credit-proof release date. Petitioner also pointed to BOP’s administration of other commutations using materially similar “*expire(s) on [date]*” language, in which inmates were released on the preceding business day rather than on the nominal expiration date, as evidence that the agency itself does not treat “*expire(s) on*” as fixing an immutable release date in practice.

#### **B. Proceedings in the District Court**

Petitioner filed a habeas-type petition under 28 U.S.C. § 2241 in the United States District Court for the Middle District of Florida, Case No. 5:25-cv-00111-SPC-PRL. He sought a declaratory judgment and corresponding relief requiring the BOP to apply his earned-time credits to the commuted sentence such that his actual release date would precede April 11, 2025, consistent with § 3624(a)’s “*date the sentence expires, less any time credited*” framework and the commutation’s express preservation of BOP authority over his confinement.

The district court rejected petitioner’s interpretation and denied relief, effectively accepting the BOP’s view that

the commutation's "*expire(s) on April 11, 2025*" language fixed an exact release date not subject to further adjustment by statutory credits, relying on a generic dictionary definition of "expire" and reading that date in isolation rather than in light of § 3624(a)'s use of "*expires*" as a term of art and the commutation order's express preservation of the Bureau's statutory authority over confinement. In doing so, the court treated the meaning of "*expire(s)*" as if it arose on a blank slate, relying on a generic dictionary definition of "expire" and reading that date in isolation rather than in light of § 3624(a)'s use of "*expires*" as a term of art and the commutation order's express preservation of the Bureau's statutory authority over confinement. The commutation's language should be read against the statutory backdrop that the President explicitly preserves.

Petitioner timely filed a notice of appeal to the United States Court of Appeals for the Eleventh Circuit and sought to proceed in forma pauperis on appeal.

### **C. Proceeding in the Eleventh Circuit**

#### **1. IFP denial and "frivolousness" determination**

On appeal, petitioner moved to proceed in forma pauperis, establishing his indigency. On April 7, 2025, petitioner moved to proceed in forma pauperis on appeal, establishing his indigency. Nearly four months later, on July 30, 2025, a single judge of the Eleventh Circuit denied leave to proceed in forma pauperis, stating that "*the appeal is frivolous*" and citing *Bilal v. Driver*, 251 F.3d 1346 (11th Cir. 2001); a contemporaneous clerk's notice warned that,

pursuant to Eleventh Circuit Rule 42-1(b), the appeal would be dismissed within fourteen days unless petitioner paid the filing and docketing fees. *See Appendix A (Docs. 14-1, 14-2).*

That same day, petitioner filed a motion for reconsideration of Judge Brasher's July 30, 2025, order under Eleventh Circuit Rule 27-3, arguing that his appeal could not be deemed frivolous under *Bilal* because it turned on an undecided question of statutory interpretation and had an arguable basis in the text and structure of 18 U.S.C. § 3624 and the commutation order. *Doc. 21-2 at 2.* That was the only motion for reconsideration petitioner ever filed.

That motion remained pending for more than four months; no judge ruled on it during the fourteen-day period in which the petitioner was threatened with dismissal under Rule 42-1(b). On December 11, 2025, the panel denied reconsideration and again refused to allow petitioner to proceed in forma pauperis. The order stated that, “[a]lthough this court has not considered whether the BOP must apply a defendant’s earned time credit, jail credit, or other credit after the president issues a commutation order that specifies the exact date of release, there is no non-frivolous issue because the BOP’s interpretation of the commutation order in this case is consistent with the plain text of that order,” and thus reaffirmed that the appeal was “frivolous.” *See Appendix B (Docs. 21-1, 21-2).* In reaching that conclusion, the court treated the phrase “to expire(s) on April 11, 2025” as dispositive and aligned itself with the BOP’s interpretation at the IFP stage, without addressing § 3624(a)’s term-of-art

usage, the clemency order's preservation language which is being treated as surplusage, or the BOP's contrary practice in other commutation cases.

## **2. Dismissal for failure to pay fees**

After denying in forma pauperis status, the Eleventh Circuit repeatedly advised petitioner that his appeal would be dismissed if he did not pay the filing and docketing fees. Petitioner, who remained indigent and had been denied IFP, could not pay the required fees. On January 7, 2026, the Clerk entered an "*Order: Pursuant to 11th Cir. R. 42-1(b), this appeal is DISMISSED for want of prosecution because the appellant ... has failed to pay the filing and docketing fees ... within the time fixed by the rules,*" and issued that dismissal as the mandate of the court pursuant to Eleventh Circuit Rule 41-4. *See Appendix E (Doc. 27).*

## **3. Petitions for rehearing and clerk "No Action" notices**

After the panel's December 11, 2025 order, petitioner filed a timely Petition for Rehearing under Federal Rules of Appellate Procedure 35 and 40, challenging the frivolousness determination and the court's reliance on a dictionary definition and agency interpretation rather than § 3624(a)'s statutory framework and the commutation's preservation language. On December 16, 2025, the Clerk issued a "*No Action / Deficiency Notice*" stating that "*no action will be taken*" on petitioner's filing because "*successive motions for reconsideration are not permitted. See 11th Cir. R. 27-3,*" and further advising that, "*for motions for reconsideration*

*or petitions for rehearing that are not permitted, no corrective action is required or permitted. Your filing will not be considered.” See Appendix C (Doc. 23).* The clerk thus recharacterized petitioner’s Petition for Rehearing as a prohibited “successive” motion for reconsideration under Rule 27-3 and, on that basis, refused to transmit it to any judge.

Petitioner then filed an Appellant’s Corrected Petition for Panel Rehearing, again invoking FRAP 35 and 40 and seeking judicial reconsideration of the panel’s frivolousness determination. On January 7, 2026, the Clerk issued another “*No Action / Deficiency Notice,*” describing the filing as a “*Motion for reconsideration of single judge’s order*” and again invoking Eleventh Circuit Rule 27-3’s bar on successive reconsideration motions, and reiterating that “*for motions for reconsideration or petitions for rehearing that are not permitted, no corrective action is required or permitted. Your filing will not be considered.*” See Appendix D (Doc. 26).

#### **4. Motion to recall the mandate**

After the January 7, 2026 dismissal and issuance of the mandate, petitioner filed a motion to recall the mandate and reinstate the appeal, again seeking appellate review of the IFP/frivolousness determination and the underlying statutory issue. On January 14, 2026, the Clerk issued yet another “*No Action / Deficiency Notice,*” stating that “no action will be taken” on the motion because “[t]he deficiencies that caused this case to be dismissed have not been remedied” and “[a]dditionally, [s]uccessive motions for reconsideration are not permitted. See 11th Cir. R. 27-3,”

and reiterating that petitioner's filing "will not be considered." *See Appendix F (Doc. 29)*.

As a result of these clerk-level actions, no Article III judge ever reviewed, petitioner's original or corrected Petitions for Rehearing or his motion to recall the mandate. The denial of in forma pauperis status on the ground that the appeal was "*frivolous*," the dismissal for failure to pay fees, and the refusal to allow any judicial consideration of rehearing requests together foreclosed appellate review of petitioner's challenge to a concededly novel question of statutory interpretation under 18 U.S.C. § 3624(a) and the presidential commutation order.

## **REASONS FOR GRANTING THE PETITION**

### **I. The Eleventh Circuit's frivolousness / IFP ruling conflicts with this Court's precedents and its own standard**

This Court has long held that an indigent appellant may be denied in forma pauperis status only when the appeal is truly "*frivolous*," meaning it lacks any arguable basis in law or fact. *Coppedge*, 369 U.S. at 441–42; *Gaca*, 411 U.S. at 621–22. *Coppedge* and *Gaca* prohibit using IFP screening to decide novel statutory questions that would otherwise be resolved on a paid appeal. Modern discussions of *Coppedge* confirm that the standard remains whether the issues are so frivolous that a paid appeal would be dismissed, and that in forma pauperis screening cannot be converted into a truncated substitute for merits review. The Eleventh Circuit uses the same standard: an appeal is frivolous only if it "*lacks an arguable basis in law or fact*,"

In its December 11 order, the panel denied reconsideration and again denied IFP, expressly acknowledging that it had never addressed the underlying statutory issue. The court stated that it “*has not considered whether the BOP must apply a defendant’s earned time credit, jail credit, or other credit after the president issues a commutation order that specifies the exact date of release,*” but nonetheless concluded there is “*no non-frivolous issue*” because the Bureau’s interpretation of the commutation is “*consistent with the plain text of that order.*” In reaching that conclusion, the court treated the phrase “*to expire(s) on April 11, 2025*” as dispositive and aligned itself with the Bureau’s view of the commutation, while disregarding the clauses preserving the Bureau’s authority over confinement and ordinary disciplinary rules and the statutory framework making “*expires*” a term of art.

That reasoning inverts the governing standard. An appeal that turns on an undecided question of statutory interpretation and challenges a court’s choice of interpretive frame, generic dictionary definition plus agency view versus statutory term-of-art and whole-text analysis, cannot be deemed frivolous merely because the court finds the government’s reading more persuasive. Where this Court has not considered the issue, and the appeal rests on the interaction between a federal statute and a presidential commutation that expressly preserves agency authority, the existence of a reasonable interpretive dispute is itself an “arguable basis in law,” and denying IFP on frivolousness grounds conflicts with *Coppedge*, *Gaca*, and *Bilal*.

Other courts treat similar commutation–credit questions as serious and litigable, not frivolous. In *Schanck*, the court carefully analyzed an Obama commutation, stating that the sentence would "expire on" a particular date, and addressed whether § 3624 earned-time credits applied—resolving the issue on the merits rather than dismissing it as obviously meritless.

More recently, in *Rashid* and *Burks*, the federal courts have entertained challenges to the application of First Step Act credits in the context of commuted sentences, treating such claims as worthy of full merits adjudication. If those courts have found the question litigable enough to warrant briefing and decision on the merits, the Eleventh Circuit could not reasonably hold that an appeal presenting the identical statutory question is "frivolous" and lacks any arguable basis in law. This alone confirms that the petitioner's appeal had at least an arguable basis in law and thus should not have been denied in forma pauperis status under *Coppedge*, *Gaca*, and *Bilal*.

The court's timing underscores that it did not treat this as a facially frivolous appeal at the outset. The April 7, 2025, IFP motion remained pending until July 30, 2025, when the court first denied IFP as "frivolous," and the July 30 reconsideration motion remained pending until December 11, 2025. Those months-long delays are inconsistent with the notion that the appeal was obviously without arguable merit when filed, yet the panel ultimately used the "frivolous" label—combined with fee dismissal—to dispose of a concededly novel statutory question without

full merits review or the protections of the ordinary appellate process.

This approach mirrors the concern addressed in *Gaca*, where the combination of an erroneous IFP denial and dismissal for nonpayment of fees extinguished an indigent appellant's only avenue of review. Once IFP was denied here, petitioner could not pay the filing and docketing fees; the clerk then dismissed the appeal "for want of prosecution" on the ground of nonpayment and issued that dismissal as the mandate. As in *Gaca*, the erroneous threshold determination on frivolousness, coupled with a fee-based dismissal, effectively barred appellate review for an indigent litigant whose appeal raised a non-frivolous question of federal law.

**II. The clerk's use of a local "*successive reconsideration*" rule to block FRAP 40 rehearing petitions presents a recurring access-to-appeal problem.**

Independent of the IFP issue, this case raises an important question about the allocation of authority between judges and the clerk's office in the courts of appeals. The question is whether a court of appeals may, by local rule and clerk practice, effectively nullify FRAP 40's right to seek panel rehearing of a dispositive threshold determination. Federal Rule of Appellate Procedure 40 provides that "*any party may file a petition for panel rehearing,*" within specified time limits, asking the court to reconsider its decision on the merits; it does not condition that right on local restrictions on "*motions for*

*reconsideration,*” nor does it authorize a clerk to refuse to file or transmit a timely rehearing petition.

That practice raises a serious question whether a local ‘successive reconsideration’ rule may be used, at the clerk’s desk, to nullify the right to seek panel rehearing that Federal Rule of Appellate Procedure 40 confers on ‘*any party.*”

As the Statement of the Case explains, petitioner filed timely petitions for panel rehearing and a motion to recall the mandate under FRAP 35 and 40, but no Article III judge ever saw them. Instead, the Clerk issued “*No Action / Deficiency Notice[s]*” invoking Eleventh Circuit Rule 27-3’s bar on “*successive motions for reconsideration*” and stating that “*no action will be taken*” and that the filings “*will not be considered.*” By reclassifying FRAP 35/40 petitions and a recall-mandate motion as prohibited reconsideration motions, the clerk effectively foreclosed any judicial review of the threshold IFP/frivolousness determination.

Those clerk-level notices did far more than enforce formatting or ministerial requirements. By reclassifying the petitioner’s FRAP 35/40 rehearing petitions as barred “*successive motions for reconsideration*” under Eleventh Circuit Rule 27.3, the clerk effectively decided that no Article III judge would ever review the threshold IFP/frivolousness determination or the petitioner’s request to reopen the appeal. That is a legal determination about the interaction between a Federal Rule of Appellate Procedure and a local rule, a determination that should be made by a judge, not by the clerk’s office. Using a local

reconsideration rule to nullify, at the filing stage, a party's ability to invoke FRAP 40 raises serious concerns about the hierarchy of federal procedural law and about separation of powers within the appellate courts.

The Eleventh Circuit's own motion rules underscore that decisions about access to appellate review are entrusted to judges, not to the clerk's office. Rule 27-1(c) authorizes the clerk, subject to review by the court, to act only on specified procedural motions, while Rule 27-1(d) and (e) assign more consequential motions to a single judge or a two-judge motions panel and expressly forbid a single judge from "*dismiss[ing] or otherwise determin[ing] an appeal or other proceeding.*" Rule 27-1(g), in turn, makes clear that even those judicial motion rulings do not bind the merits panel, which may "*alter, amend, or vacate*" them. Against that backdrop, the clerk's decision here to recharacterize petitioner's FRAP 40 petitions as prohibited "*successive motions for reconsideration*" under Rule 27-3, to declare they "*will not be considered,*" and to prevent any judge from seeing them is not a ministerial act authorized by Rule 27-1(c); it is a dispositive legal determination about the availability of rehearing that, under the rules, belongs to judges and remains subject to panel review.

The pattern has systemic implications. If courts of appeals may authorize their clerks to treat timely FRAP 40 petitions as prohibited "*successive motions for reconsideration*" under local rules, then any indigent appellant whose IFP application is summarily denied as "*frivolous*" can be deprived of panel rehearing without any judicial screening. Threshold decisions that determine

whether an indigent litigant may appeal at all can be insulated from reconsideration simply by clerical reclassification of rehearing petitions, leaving no judge ever to engage with the merits of the frivolousness determination. This is particularly troubling where, as here, the court itself acknowledges that the underlying question of statutory interpretation is one it has never decided.

This Court's precedents protect not only the right to file an appeal, but also the right to a meaningful opportunity to seek reconsideration of critical threshold determinations in the appellate process. *Coppedge* and *Gaca* reflect a consistent concern that procedural devices not be used to cut off indigent appeals at the threshold. Clarification is needed that local rules, such as Eleventh Circuit Rule 27.3, cannot be invoked, via clerk-issued deficiency notices, to override FRAP 40 and to preclude judicial consideration of timely petitions for panel rehearing challenging the denial of *in forma pauperis* status and the characterization of an appeal as frivolous.

By combining an aggressive frivolousness finding on a concededly novel issue with clerk-enforced foreclosure of FRAP 40 rehearing, the Eleventh Circuit's handling of the petitioner's case presents an ideal vehicle for this Court to reaffirm that indigent litigants must have a genuine, judicially supervised path to appellate review of non-frivolous claims.

**III. The case also highlights the need for guidance on how courts interpret**

**commutations in relation to statutory  
sentencing frameworks.**

This case illustrates broader uncertainty regarding how presidential commutations interact with statutes that govern sentence administration and credit calculation, such as 18 U.S.C. § 3624(a). Petitioner's core argument is that a commutation directing that a sentence "expire(s) on" a particular date should be read against the backdrop of § 3624(a), which uses "expires" as a term of art in defining the relationship between sentence expiration and earned time credits, and against the clemency instrument's express preservation of the Bureau of Prisons' authority to oversee confinement and apply ordinary disciplinary rules. This Court's decisions in *Biddle v. Perovich*, 274 U.S. 480 (1927), and *Schick v. Reed*, 419 U.S. 256 (1974), establish that commutations are legal instruments that may impose conditions and alter the character of a sentence; they operate as part of the sentencing system, not outside it.

In *Hoffa v. Saxbe*, 378 F. Supp. 1221 (D.D.C. 1974), the court held that a commutation "*does not exist in a vacuum but rather as part of our total constitutional system,*" and that any condition must be "*authorized by law*" and directly related to the public interest. These decisions underscore that courts retain the duty to interpret clemency instruments textually and contextually, integrating them with the existing statutory framework rather than treating them as self-interpreting executive decrees.

Other courts, when confronted with clemency instruments that modify terms of imprisonment or

otherwise alter sentences, have engaged in detailed textual and structural analysis to determine how the executive grant operates within the statutory sentencing framework, including in *United States v. Kelly*, No. 3:22-CR-118 (E.D. Tenn. Mar. 10, 2025), *Velez v. Flowers*, No. 3:25-cv-208 (D. Conn. 2025), and *Schanck v. United States*, No. 2:18-cv-0175 (E.D. Cal. Nov. 9, 2018). For example, in *Schanck v. United States*, No. 2:18-cv-0175 (E.D. Cal. Nov. 9, 2018), the court analyzed an Obama commutation using "expire on" language but concluded that earned-time credits did not apply, recognizing that the question was one of statutory interpretation, not obvious or frivolous. More recently, in *Rashid v. Entzel*, No. 0:2024-cv-00117 (E.D. Ky. 2025), and *Burks v. Director of Bureau of Prisons*, No. 1:2025-cv-01075 (D. Md. 2025), courts have treated the interaction between commuted sentences and First Step Act earned-time credits as a serious, litigable question warranting full merits adjudication, rather than dismissing such claims as frivolous. These cases demonstrate that the commutation-plus-credits question is, at minimum, reasonably debatable and not obviously meritless.

Petitioner's commutation states that his total sentence of confinement is "to expire(s) on April 11, 2025," while leaving intact the term of supervised release and "all other components" of the sentence, and further provides that "[n]othing in this grant of clemency should be presumed to interfere with, or supersede, the Bureau of Prisons' authority to oversee each person's confinement," subjecting him to "all ordinary disciplinary rules." Section

3624(a), in turn, provides that a prisoner "shall be released ... on the date the sentence expires, less any time credited," using "expires" as a statutory term of art to describe the endpoint from which statutory credits are subtracted to determine the actual release date. Petitioner argued that, read together, as *Hoffa* requires, the statute and the commutation order mean that the "expire(s) on April 11, 2025" language marks the outer limit of confinement, subject to reduction by earned time credits, rather than fixing an immutable, credit-proof release date absent express language to that effect.

The Bureau's own practice underscores that the interaction between "*expire(s) on*" commutation language and statutory credit provisions is, at a minimum, reasonably debatable. In administering other commutations using materially similar "*expire(s) on*" phrasing, the Bureau has not treated the stated date as a fixed, immutable release date. For example, individuals whose sentences were commuted to "*expire(s) on February 17, 2025*" were released on February 14, 2025, the preceding business day, consistent with § 3624(a) and 28 C.F.R. § 571.30, as reflected in the Department of Justice's published commutation lists and the Bureau's inmate-locator records. That practice confirms that "*expire(s) on*" dates are implemented within the statutory sentence-administration framework rather than operating as freestanding commands that displace it.

Eleventh Circuit precedent likewise reflects that commuted sentences ordinarily remain subject to statutory credit rules unless the executive grant clearly provides

otherwise. In *Andrews v. Warden*, No. 19-12443 (11th Cir. 2020), the court approved the application of statutory time credits to a commuted sentence expressed as a term of months, without suggesting that the form of the commutation displaced the statutory sentence credit framework or carved the commuted term out of § 3624(a)'s reach. District courts faced with similar questions have undertaken independent textual analysis of the clemency document and considered agency views as potentially persuasive, but not dispositive, in determining how the grant fits within the existing statutory scheme, precisely the approach *Hoffa* requires, or as Judge Varlan in *Kelly* illustrates.

The Eleventh Circuit's handling of petitioner's commutation stands in tension with these approaches. The panel treated the phrase "*to expire(s) on April 11, 2025*" as fixing an exact release date that foreclosed application of earned-time credits, relied on a generic dictionary definition of "expire(s)" rather than § 3624(a)'s term-of-art usage, and gave controlling effect to the Bureau's interpretation at the IFP stage, all while acknowledging that the court "has not considered whether the BOP must apply a defendant's earned time credit, jail credit, or other credit after the president issues a commutation order that specifies the exact date of release." After *Loper Bright Enterprises v. Raimondo*, courts may not defer to an agency's interpretation of law simply because a statute is ambiguous; they must exercise independent judgment, and any weight given to agency views arises, if at all, under *Skidmore*'s "power to persuade" framework. See

*Loper Bright*, 603 U.S. at 369; *Skidmore*, 323 U.S. at 139–40.

Here, the panel effectively accorded dispositive deference to the Bureau’s litigation position without identifying a governing standard or explaining why that position is persuasive under *Skidmore*, despite inconsistent administrative practice and the statutory and clemency-text context petitioner identified. At a minimum, the contrast between the Eleventh Circuit’s approach and the approaches taken in *Hoffa*, *Schanck*, *Rashid*, *Burks*, and other district court commutation cases, combined with the Eleventh Circuit’s own acknowledgment that the underlying question is unresolved, confirms that petitioner’s statutory argument has an arguable basis in law and that the case presents an appropriate vehicle for this Court to clarify (1) the proper role of judicial interpretation in construing clemency instruments within the statutory sentencing framework, and (2) the permissible scope of agency deference post–*Loper Bright* in cases involving commutations and § 3624(a) credits.

### CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

The Eleventh Circuit denied an indigent habeas appellant access to appellate review by declaring his appeal “frivolous” while acknowledging that it presented a statutory question the court had never decided, and by relying on a generic dictionary definition and the Bureau of Prisons’ interpretation of the commutation order, an agency view that, after *Loper Bright*, is entitled at most to

*Skidmore* “weight,” not binding deference. It then dismissed the appeal for nonpayment of fees and, through clerk-issued notices invoking a local “*successive reconsideration*” rule, prevented any judge from considering the petitioner’s timely petitions for panel rehearing and his motion to recall the mandate. This sequence conflicts with this Court’s decisions in *Coppedge* and *Gaca*, which hold that indigent appeals may be denied in forma pauperis status only when they truly lack any arguable basis in law or fact and may not be cut off by fee-based dismissals that follow erroneous IFP determinations.

It also raises an important and recurring question: whether clerk-level application of local rules may be used to nullify the right conferred by the Federal Rules of Appellate Procedure to seek panel rehearing of threshold determinations that decide whether an indigent litigant is permitted to appeal at all.

Petitioner respectfully asks this Court to grant the writ, vacate the judgment below, and remand with instructions that the court of appeals (1) apply the proper “*arguable basis in law or fact*” standard to petitioner’s request to proceed in forma pauperis, and (2) permit judicial consideration of petitioner’s timely petitions for rehearing under Federal Rule of Appellate Procedure 40.

Respectfully submitted,

  
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Sonny Ramdeo

Date: January 22, 2026