No. 25-7608

In the Supreme Court of the United States

ORIGINAL

FILED
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SUPREME COURT, U.S.

CHARITY MAINVILLE,
Petitioner,

v.

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA,
Respondent.

On Petition for a Writ of Certiorari to the U.S. Court of Appeals for the Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Mandamus is a "drastic and extraordinary" remedy available only when there is no other adequate means of relief, the right to the writ is clear and indisputable, and issuance is appropriate to confine a lower court to its lawful authority or compel it to act. *Cheney v. U.S. District Court*, 542 U.S. 367 (2004).

The Fourth Circuit denied relief on "undue delay" and "substitute for appeal" grounds, denied rehearing, and then refused to correct when petitioner moved to correct the opinion under 28 U.S.C. § 2106, invoking a local rule instead.

This Court's mandamus standard says nothing about 'delay', yet the Fourth Circuit treats delay as a stand-alone requirement. The Fourth Circuit's denials are nearly all unpublished boilerplate opinions with no analysis of whether any adequate alternative remedy exists or what constitutes undue delay. These categorical rules have been applied in more than 1,100 Fourth Circuit cases compared to approximately 111 in all other circuits since 2000.

The questions presented are:

1. Whether the Fourth Circuit may impose "undue delay" as a standalone prerequisite to mandamus relief when this Court's three-part test includes no such requirement.
2. Whether the Fourth Circuit may categorically deny mandamus as a "substitute for appeal" without analyzing whether any appeal is available.

RELATED PROCEEDINGS

Federal Proceedings:

- *In re: Charity Mainville,* No. 25-1995 (4th Cir.) – order denying motion to correct under 28 U.S.C. § 2106 (Nov. 18, 2025).
- *Mainville v. De Santis,* Fair Housing Act, No. 1:25-cv-00302 (M.D.N.C.) – ongoing; no action taken by the court since Aug. 21, 2025 (order denying motion to amend).
- *Mainville v. Soar, et al,* 42 U.S.C. § 1983, No. 1:25-cv-00417 (M.D.N.C.) – ongoing; no action taken by the court since Aug. 20, 2025 (order denying alternative service).

State Proceedings:

- *Mainville v. Anna De Santis,* No. 24CV022933-910 (Wake Cty. Dist. Ct.) – complaint filed July 22, 2024; ongoing; requested temporary restraining order pending in 1:25-cv-00417.
- *Mainville v. De Santis,* No. P25-113 (N.C. Ct. App.) – order dismissing motion seeking identification of judicial panels (May 14, 2025).
- *Mainville v. De Santis,* No. 25-521 (N.C. Ct. App.) – order dismissing interlocutory appeal before briefing (July 10, 2025).
- *Mainville v. North Carolina Human Rights Commission,* No. 25HRC00824 (N.C. Office of Administrative Hearings) – order denying Rule 60 relief (July 8, 2025).

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The order of the Fourth Circuit denying petitioner's mandamus petition (App. 1a-2a) is unreported.

The Fourth Circuit's order denying petitioner's motion to correct or amend the opinion under 28 U.S.C. § 2106 (App. 3a) is unreported.

The district court's order denying alternative service in Fair Housing case (App. 4a-10a) is unreported. A substantively identical order denying alternative service in § 1983 case (App. 11a-16a) is unreported. The district court's order denying petitioner's motion to alter or amend (App. 17a-21a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on September 17, 2025. (App. 1a.) On October 21, 2025, the court denied petitioner's timely petition for rehearing and rehearing en banc. On November 18, 2025, the court denied petitioner's motion to correct under 28 U.S.C. § 2106. (App. 3a.) This petition is timely filed within 90 days of the order denying rehearing. See Sup. Ct. R. 13.3. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. I:

"Congress shall make no law ... prohibiting the free exercise thereof; or abridging the freedom ... of the press; ... and to petition the Government for a redress of grievances."

U.S. Const. amend. XIV, § 1:

"...No State shall... deprive any person of ... liberty..., without due process of law; nor deny to any person... equal protection of the laws.

28 U.S.C. § 2106:

"The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause... as may be just under the circumstances."

INTRODUCTION

Petitioner seeks review of an unpublished Fourth Circuit mandamus decision that narrows this Court's precedent and leaves a constitutional access-to-courts issue unresolved. The panel denied relief, holding that "the present record does not reveal undue delay."

The Third Circuit applies a similar "undue delay" standard, though only occasionally. Other circuits rarely address delay, and when they do, it relates only to ongoing harm or as a basis for granting mandamus—not as a standalone barrier. This divergence produces different outcomes for identically situated litigants based solely on geography. By relying on unpublished orders, these circuits evade scrutiny and abdicate their supervisory role. Litigants in the Fourth Circuit face an extra hurdle absent elsewhere, with no clear guidance on what constitutes "undue" delay or how to meet this vague standard.

Here, the Fourth Circuit found no delay with a district court refusing for four months to rule on a motion to amend an emergency TRO seeking protection from ongoing harm in state proceedings and requesting an order compelling the appellate state court to release the names of appellate judges who issued eight improper orders. Without those names, Petitioner cannot fully identify the parties in her case or complete her complaint. She has been forced to amend once, file three supplements to her motion, and seek a renewed TRO and protective

order, all while the underlying motion sits unresolved.

The panel also dismissed Petitioner's request to vacate district court orders issued through an abuse of discretion as an impermissible "substitute for appeal." Yet no appealable order exists, leaving the case stalled. Petitioner has been unable to serve a key defendant for seven months despite evidence of evasion. The district court denied alternative service the day Petitioner served her mandamus petition, then rejected a motion to amend, insisting it should follow Fed. R. Civ. P. 54(b) rather than Fed. R. Civ. P. 59(e), despite three prior dismissal threats.

These categorical rules are applied almost exclusively to pro se litigants. The Fourth Circuit has invoked "undue delay" in at least 460 cases since 2000[1] and "substitute for appeal" in at least 673 cases.[2] Nearly all are unpublished, creating no precedent and evading review. Pro se petitioners rarely reach this Court, and even fewer navigate its filing requirements—explaining why this issue has gone unnoticed.

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[1] Search conducted on CourtListener.com under case law using: caseName:(in re) AND ("mandamus" AND "undue delay") NOT ("moot" OR "substitute for appeal"), limited to cases since January 1, 2000. Fourth Circuit: 460 results. Third Circuit: 67 results. All other circuits combined: 3 results.

[2] Search conducted on CourtListener.com under case law using: caseName:(in re) AND ("mandamus" AND "substitute for appeal ") NOT ("moot" OR "undue delay"), limited to cases since January 1, 2000. Fourth Circuit: 673 results. All other circuits combined: 42 results.

These figures are drawn from publicly available opinion databases and capture only those mandamus matters with indexed written dispositions. The actual volume of mandamus filings in the Fourth Circuit is higher, and the circuit leads the nation in pro se mandamus petitions.[3] When large numbers of those petitions are resolved in unpublished opinions meaningful appellate supervision over pro se cases in the district courts is reduced to little more than a formality. In practice, district judges handling pro se matters can proceed in the shadow of an appellate system that almost never supplies corrective mandamus, even where serious ongoing harm is alleged.

Petitioner did not choose to proceed without counsel. America ranks among the worst nations in the world for affordable access to civil justice[4], with roughly 85 percent of serious legal problems faced by

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[3] According to the Federal Judicial Center's Integrated Database (Appellate, FY 2008–present), there are 2,515 Fourth Circuit appeals coded as original proceedings (OGPROC = 2). Of those, 2,363 (94 percent) involve at least one pro se appellant. No other circuit has both a higher number and a higher share of pro se original proceedings. For example, the Ninth Circuit has 2,717 original proceedings, of which 1,828 (67 percent) are pro se, and the Sixth Circuit has 2,124, of which 1,913 (90 percent) are pro se.

[4] World Justice Project, Rule of Law Index, Civil Justice Factor 7.1 "People can access and afford civil justice" (2025), https://worldjusticeproject.org/rule-of-law-index/country/2025/United%20States/Civil%20Justice (reporting a U.S. score of 0.47 and a global rank of 112 out of 143 countries, last in its regional and income groups).

ordinary Americans going without adequate help.[5] In that environment, categorical mandamus denials do more than close the courthouse doors in individual cases. They reinforce an assumption that pro se litigants as a class cannot present serious legal claims. That pattern is unsustainable as the pro se share of the federal docket continues to grow. It undermines public confidence in the judiciary–particularly when a litigant is a member of the press.

STATEMENT OF THE CASE

This case arises from two related civil rights actions in the Middle District of North Carolina, one under the Fair Housing Act and one under 42 U.S.C. § 1983, both originating from a landlord-tenant dispute in Wake County Small Claims Court in August 2024.

A. State Proceedings

In September 2024, Petitioner appealed from Wake County Small Claims Court to Wake County District Court.

On February 10, 2025, Petitioner filed an interlocutory appeal in the North Carolina Court of Appeals after the state district court issued five orders affecting her substantial rights. The appellate

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[5] Legal Servs. Corp., The Justice Gap: The Unmet Civil Legal Needs of Low-Income Americans (Mary C. Slosar, Slosar Research, LLC, 2022), Table 5C, https://justicegap.lsc.gov/resource/section-5-comparing-income-groups/

court then issued eight orders in her case. Petitioner requested the identities of the deciding judicial officers through multiple channels: public records requests, the state legislature, the Attorney General, and as a member of the press. All requests were denied or ignored, citing an internal court policy.

The North Carolina Court of Appeals dismissed Petitioner's interlocutory appeal on July 1, 2025, without explanation, citation, or judicial identification. The case was remanded to Wake County District Court, where proceedings remain ongoing.

Petitioner also pursued administrative remedies under the Fair Housing Act. The North Carolina Human Relations Commission failed to investigate the retaliation charge. Petitioner requested review by the Office of Administrative Hearings, which also declined relief. Having exhausted state and administrative remedies, Petitioner filed her federal Fair Housing Act action.

B. Federal District Court Proceedings

1. On April 22, 2025, Petitioner filed her Fair Housing complaint and a request for electronic filing access. The magistrate judge denied electronic filing access on April 28, 2025, stating Petitioner must first "demonstrate[] over the initial course of this litigation" an ability to comply with court rules.

On April 30, 2025, Petitioner filed a renewed request for CM/ECF access, citing ADA-related needs, financial hardship, geographic distance, and

prior experience with electronic filing. She concurrently filed a motion to recuse the magistrate judge based on a pattern of restrictive rulings against pro se litigants.

2. On May 23, 2025, Petitioner filed her § 1983 action naming state judicial officers and others as defendants, with an ex parte motion for emergency temporary restraining order seeking disclosure of the unidentified appellate judges and a stay of the state proceedings. Both cases were assigned to the same district judge and magistrate judge, despite the pending recusal motion.

That same day, all pending motions were reassigned to the magistrate judge late Friday afternoon of Memorial Day weekend, leaving Petitioner unable to object due to lack of electronic access. On May 26, 2025 (Memorial Day), the magistrate judge denied the renewed CM/ECF motion via text order, stating that Petitioner's failure to file a supporting brief violated M.D.N.C. Local Rule 7.3(a)[6] and concluding that "Plaintiff simply does not know what she does not know and she should focus first on meeting the basic procedural requirements."

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[6] M.D.N.C. Local Rule 7.3(a) provides that "all motions, unless made during a hearing or at trial, shall be in writing and shall be accompanied by a brief except as provided in section (j) of this rule. Each motion shall be set out in a separate document."

M.D.N.C. Local Rule 7.3(j)[7] excludes motions where all parties consent, and Petitioner was the only party in the case.

On May 27, 2025, the magistrate judge denied the recusal motion using the same procedural reasoning. The district judge denied Petitioner's emergency TRO motion in the § 1983 action, dismissing her assertion that a 15-day appellate deadline posed constitutional harm as "vague, conclusory, and insufficient" and failing to address her request for disclosure of judicial identities.

On May 28, 2025, Petitioner filed a Rule 59(e) motion seeking reconsideration and renewing her request for judicial identification. She also filed a motion to strike improper orders in the Fair Housing case, challenging the magistrate judge's authority to rule on motions submitted to the district judge.

On June 5, 2025, the magistrate judge denied Petitioner's motion for alternative service in the Fair Housing case, again citing, "did not file a brief... in contravention of Local Rule 7.3(a) and (j)" and "that failure alone warrants denial[.]" The order also dismissed a sworn declaration under penalty of perjury and characterized evidence from opposing counsel as "purported," implying unreliability.

On June 6, 2025, the magistrate judge denied Petitioner's CM/ECF motion in the § 1983 action,

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[7] M.D.N.C. Local Rule 7.3(j) lists ten categories of motions that do not require briefs, including "motions . . . for relief sought to which all parties to the action consent."

citing "the same, basic, equally applicable reasons" from the Fair Housing case. Petitioner filed Fed. R. Civ. P. 72(a) objections to both CM/ECF denials and supplemented her Rule 59(e) motion with evidence that the state appellate court was imposing unauthorized fees and threatening dismissal, that her press request for judicial names had been ignored, and that defendants may have exercised improper influence.

On June 13, 2025, Petitioner filed an Emergency Motion to Compel Rulings and Renewed Motion for Emergency Relief. The court took no action. On June 18, 2025, Petitioner attempted to file an emergency supplemental motion notifying the court that opposing counsel had filed motions in state appellate court for sanctions based on the same appellate orders she was challenging. Lacking CM/ECF access, she requested a one-time exemption to file by email due to physical illness and out-of-state travel. The Clerk's Office refused, and the motion was never docketed.

On June 26, 2025, Petitioner filed an administrative complaint with the Chief District Court Judge under Judiciary Policy § 1440.10(a) regarding denial of CM/ECF access, accommodation requests, and pending motions.

On July 1, 2025, the state appellate court dismissed Petitioner's interlocutory appeal on July 1, 2025.

On July 3, 2025, opposing counsel filed a 12(b) motion arguing *Rooker-Feldman* barred relief based

on the July 1 dismissal in the § 1983 action —an outcome Petitioner had warned about in her Motion to Amend.

Petitioner then contacted the Clerk about pending motions and the status of her complaint, citing severe hardship from in-person filing and requesting to speak with the ADA coordinator. The Clerk responded that "The Americans with Disabilities Act does not apply to the federal government, including the Judiciary."

Later that day, the district judge denied Petitioner's Rule 72 objection in the Fair Housing case, upholding the magistrate's denial and citing an internal memorandum as authority. He stated, "If Plaintiff fails to effect service of process within 90 days, must dismiss the action as to an unserved Defendant without prejudice unless good cause is shown for the failure." He did not rule on the identical objection in the § 1983 action.

On July 10, 2025, Petitioner filed a Rule 59(e) motion challenging the Rule 72 denial in the Fair Housing case. She also filed a motion for extension of time to serve under Fed. R. Civ. P. 4(m), supported by a signed affidavit from the Durham County Sheriff's Office stating "service was not gained after multiple attempts."

Petitioner also filed an amended complaint in the § 1983 action adding two parties after discovering new evidence, but she still could not identify the "John Doe" judicial actors. The amended complaint alleged eleven additional constitutional violations

that had occurred since the initial filing. Petitioner also filed a Notice of Ongoing Harm and a Notice of Procedural Misconduct and Clarification of Relief Sought documenting false statements and material evidence submitted by opposing counsel.

On July 18, 2025, Petitioner filed another administrative oversight complaint with the Administrative Office after the Chief District Court Judge declined her prior complaint, stating that she had "not raised any legitimate concern over waste, fraud, or abuse[.]" Despite multiple follow-ups, she received no response.

On July 22, 2025, the district judge denied the extension for lack of evidence of service attempts, despite the affidavit, but sua sponte granted an additional 30 days. The order again stated "that failure to serve the summons and complaint within the time required may result in dismissal without prejudice against any defendant not served within that time."

On July 31, 2025, Petitioner filed motions for alternative service in both cases, supported by a signed affidavit from Wake County Sheriff's Offices, confirming the defendant was "out of the country until further notice." Petitioner also submitted evidence of $160 in unsuccessful service attempts that included certified mailing to the defendant's registered business address that was rejected, and evidence that the defendant had actual notice of the lawsuit as early as April 2025 through admissions by her attorney.

C. Fourth Circuit Proceedings

3. On August 20, 2025, Petitioner mailed her petition for writ of mandamus to the Fourth Circuit and served a copy on the district judge through the district court clerk at 10:50 a.m. At 3:40 p.m. that day, the district court denied Petitioner's renewed motion for alternative service in the Fair Housing case, requiring her to identify the defendant's precise foreign location, propose a service plan compliant with Fed. R. Civ. P. 4(f)(3), and provide supporting case law. The court stated: "Further, even assuming that information was true, it is not clear that it remains true at this juncture," dismissing the Sheriff's sworn affidavit.

On August 21, 2025, the district court denied Petitioner's motion for alternative service in the § 1983 action by adopting the Fair Housing order verbatim. That same day, the court denied Petitioner's Rule 59(e) motion, stating: "These non-dispositive matters are not final decisions within the meaning of Rule 54(a) or 28 U.S.C. § 1291. Therefore, Plaintiff's motion pursuant to Fed. R. Civ. P. 59(e) will be denied for that reason alone."

On August 26, 2025, the Fourth Circuit docketed Petitioner's mandamus petition seeking an order directing the district court to rule on seven pending threshold motions.

On September 3, 2025, Petitioner filed a supplemental petition requesting vacatur of the August 20 and 21 orders as issued in abuse of

discretion and apparent retaliation for filing the mandamus petition.

4. On September 17, 2025, a panel of the Fourth Circuit issued an unpublished per curiam opinion denying the petition. The panel summarized Petitioner's requests: she "seeks an order from this court directing the district court to act. In a supplement to her petition, Mainville also seeks an order vacating various district court orders ruling on motions filed in her cases." (App. 2a.)

The panel recited the standard for mandamus relief quoting *Cheney v. U.S. Dist.* Ct., 542 U.S. 367, 380 (2004) and *In re Murphy-Brown, LLC*, 907 F.3d 788, 795 (4th Cir. 2018)). (*Id.*) The panel noted that "[m]andamus may not be used as a substitute for appeal." (citing *In re Lockheed Martin Corp.*, 503 F.3d 351, 353 (4th Cir. 2007)). (*Id.*)

The panel denied relief in three sentences: "The present record does not reveal undue delay in the district court. Additionally, to the extent that Mainville is attempting to use mandamus to overturn certain district court orders, such relief is not available by way of mandamus. Mainville has not identified any other basis for mandamus relief." (*Id.*)

The opinion did not address the specific grounds Petitioner had identified: abuse of discretion in orders imposing requirements not found in the Federal Rules; denial of access to courts through inability to serve defendants and denial of electronic filing; evidence that the August 20-21 orders (App.

4a-21a) were issued in apparent retaliation; and the absence of any adequate alternative remedy.

The panel's statement that "the present record does not reveal undue delay" (App. 2a.) did not explain what standard it applied or how it measured delay. The opinion did not address Petitioner's argument that the harm was not the passage of time alone, but the district court's refusal to rule on threshold motions preventing her from naming parties, effecting service, and advancing her cases.

The panel's characterization that Petitioner was "attempting to use mandamus to overturn certain district court orders" (*Id.*) contradicted her express statements in both petitions. In her original petition, Petitioner stated: "Petitioner respectfully clarifies that this section is not an attempt to appeal or reverse the district court judge's rulings. She fully understands the scope and limits of mandamus relief." Her supplemental petition reiterated: "Petitioner acknowledges that mandamus is an extraordinary remedy, not intended to substitute for an appeal or reverse discretionary rulings, but rather to compel or correct actions necessary to uphold the rule of law."

Petitioner's request for vacatur was limited to three specific orders issued after the district court had been served with the mandamus petition, on the ground that they were issued in abuse of discretion and apparent retaliation. She cited *Cheney*, 542 U.S. at 380, recognizing that mandamus may issue to correct a clear abuse of discretion, and *Murphy-*

Brown, 907 F.3d at 795, holding that mandamus is appropriate where district court inaction permits ongoing constitutional harm. The panel did not address whether those orders constituted an abuse of discretion or whether supervisory mandamus was appropriate.

On September 18, 2025, Petitioner filed a petition for rehearing and rehearing en banc, explaining that the panel had mischaracterized the relief sought and failed to address the bases she had identified.

On September 19, 2025, Petitioner filed a Notice of Emergency Circumstances informing the Fourth Circuit of ongoing constitutional violations in the state proceedings, including a hearing scheduled for September 25, 2025. Petitioner explained that the district court's continued refusal to rule on her pending TRO motions had enabled these violations to continue and that she had no means to provide timely notice to the district court due to denial of CM/ECF access.

On October 21, 2025, the Fourth Circuit denied rehearing without explanation.

On October 23, 2025, Petitioner filed a motion under 28 U.S.C. § 2106 to correct or modify the opinion, presenting four alternative forms of relief: (1) correct the order to accurately reflect the relief sought; (2) publish the opinion as written, allowing it to become binding precedent; (3) grant permission to refile for a different panel to consider; or (4) deny relief but urge the district court to rule on pending motions, as the Fourth Circuit has done in other

unpublished opinions. Petitioner explained that correction or publication was necessary to preserve her ability to seek certiorari.

On October 24, 2025, the Clerk of the Fourth Circuit rejected the motion, refusing to docket it and citing 4th Cir. R. 40(h)[8], which prohibits motions for reconsideration. Petitioner filed a motion to clarify, explaining that her submission was a request for correction under § 2106, not a motion for reconsideration. She invoked Federal Rule of Appellate Procedure 2, permitting suspension of any rule to prevent injustice, and noted that correction was necessary to preserve her right to seek review in this Court.

On November 18, 2025, the Fourth Circuit denied the motion, construing it as a motion to reconsider its Local Rule 40(h) notice rather than addressing the substance of Petitioner's § 2106 request. (App. 3a.)

D. Current Status

As of the filing of this petition, Petitioner's cases remain in procedural limbo. In the Fair Housing case, the summons expired under Fed. R. Civ. P. 4(m) on August 22, 2025. In the § 1983 action, the summons expired on October 10, 2025. The district court has not dismissed either case but has imposed

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[8] 4th Cir. R. 40(h) provides that, except for limited matters not relevant here, "the Office of the Clerk shall not receive motions or other papers requesting further relief in a case after the Court has denied a petition for rehearing or the time for filing a petition for rehearing has expired."

requirements for alternative service that are not available under law, effectively preventing Petitioner from proceeding.

In the § 1983 action, Petitioner cannot proceed without identification of the judicial officers who issued the anonymous state court orders. Her motion to compel disclosure has been pending for over six months. The district court cannot rule on other motions until it rules on the motion to amend. Petitioner has informed the court that additional claims and parties have arisen during the pendency of these proceedings, but she cannot amend until she knows her case can move forward.

On September 3, 2025, Petitioner filed notices in both federal cases documenting ongoing constitutional violations. On September 24, 2025, she filed responses in opposition to motions to dismiss filed by the judicial officers and other defendants, as well as an Emergency Motion for Protective Order and Injunctive Relief under Fed. R. Civ. P. 65 against opposing counsel based on ongoing harassment in the state proceedings. These motions remain pending.

Petitioner seeks only declaratory and injunctive relief against the judicial defendants. She does not seek monetary damages from judges. She pursues financial penalties only against opposing counsel, the Clerk of the Court of Appeals, and the administrative judge for conduct outside judicial immunity.

The last action in the state court was October 22, 2025, when the court entered an order leaving the case open but unresolved, exposing Petitioner to

further harm. Every violation at every level of this case has been documented on the record.

Had the Fourth Circuit applied the traditional mandamus factors and found that the alternative service orders constituted an abuse of discretion, the district court would have had the opportunity to correct its error. Had it compelled a ruling on Petitioner's motion to disclose the identity of the state judicial officers, the § 1983 action could have proceeded. This left Petitioner trapped between inaction and dismissal in both cases, with no procedural exit. This case illustrates how the "undue delay" requirement, combined with a categorical refusal to consider supervisory mandamus, can foreclose relief even when a litigant demonstrates concrete, escalating harm from district court error.

REASONS FOR GRANTING THE PETITION

I. THE FOURTH CIRCUIT'S UNDEFINED "UNDUE DELAY" PREREQUISITE CONFLICTS WITH THIS COURT'S MANDAMUS STANDARD AND CREATES A CIRCUIT SPLIT

A. This Court's Mandamus Standard Does Not Include "Undue Delay" as a Threshold Requirement

This Court's decision in *Cheney v. U.S. District Court*, 542 U.S. 367 (2004), establishes the governing standard for mandamus relief. A petitioner must demonstrate three things: (1) she has "no other adequate means to attain the relief" desired; (2) her

"right to issuance of the writ is clear and indisputable"; and (3) "the issuing court, in the exercise of its discretion, is satisfied that the writ is appropriate under the circumstances." *Id.* at 380-81 (internal quotations omitted).

Delay may bear on one or more *Cheney* factors. It may be relevant to whether the petitioner has an adequate alternative remedy, or to whether the writ is appropriate under the circumstances. But *Cheney* does not require a petitioner to demonstrate "undue delay" as a separate prerequisite before a court reaches the merits. If it did, this Court would have said so.

The Fourth Circuit's opinion in this case treated the absence of "undue delay" as dispositive. It did not analyze whether Petitioner had an adequate alternative remedy, whether her right to relief was clear and indisputable, or whether the writ was appropriate under the circumstances. The panel foreclosed further analysis based on this single finding.

B. The Third and Fourth Circuits Apply an Undefined Standard While Other Circuits Treat Delay as Grounds to Grant Relief

The Fourth Circuit's approach is not confined to this case, as the statistical patterns set out in the Introduction make clear. The Third Circuit has employed similar language in approximately 67 cases.

These denials contain no definition of what constitutes "undue" delay and no explanation of what

showing would suffice. The Third Circuit's unpublished opinions include a standard disclaimer that "this disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent." Yet the same undefined standard is applied case after case.

The standardless nature of the inquiry is evident from the Fourth Circuit's own decisions. In *In re McQueen*, No. 14-2137 (4th Cir. July 1, 2015) (unpublished), the court granted mandamus where a Rule 59(e) motion had been pending for approximately 19 months in a closed habeas case, finding the delay "excessive." In *In re Pickens*, No. 24-1017 (4th Cir. Mar. 1, 2024) (unpublished), the court denied mandamus but added: "While we deny mandamus relief at this juncture, we encourage the district court to act as expeditiously as possible in this matter."

In Petitioner's case, four months of inaction on threshold motions in active civil rights cases with documented ongoing harm did not constitute undue delay. By the time the Fourth Circuit denied rehearing, it was five months. By the time it refused to address Petitioner's motion for correction, it was six months. The delay the panel found insufficient continues to grow.

Other circuits do not impose this threshold barrier. The Fifth, Sixth, Seventh, Tenth, and D.C. Circuits treat delay as evidence supporting mandamus relief, not as a prerequisite to deny it.

In *In re United States ex rel. Drummond*, 886 F.3d 448 (5th Cir. 2018), the Fifth Circuit granted

mandamus where motions had been pending for four years. The court cited *Will v. Calvert Fire Insurance Co.*, 437 U.S. 655, 662-63 (1978), for the principle that mandamus may issue when a district court "persistently and without reason refuses to adjudicate a case properly before it."

The D.C. Circuit has established that "a reasonable time for agency action is typically counted in weeks or months, not years." *In re American Rivers*, 372 F.3d 413, 419 (D.C. Cir. 2004). While *American Rivers* involved agency delay, the principle applies with equal force to district court delay on emergency motions. A TRO motion exists because the situation is urgent. Delay measured in months defeats its purpose.

C. The Division Is Outcome-Determinative and the Harm from Delay Compounds

This doctrinal division produces different outcomes for identically situated litigants depending solely on geography.

Under the standard applied by other circuits, Petitioner would have a strong claim. She filed an emergency TRO that included seeking an order compelling the state appellate court to release the names of appellate judges who issued eight orders against her. The district court denied the TRO without addressing the release of judicial names. On May 28, 2025, Petitioner filed a motion to amend her complaint. That motion remains pending.

The consequences of this delay have been catastrophic. Because the district court refused to

rule, Petitioner's state interlocutory appeal was dismissed. The dismissal order was signed by the clerk and initiated by opposing counsel, both of whom are defendants in the federal case, and was based on the same orders at issue in the federal district court. Petitioner cannot find a single case anywhere holding that a court may issue orders without identifying the judges who signed them. This is not a routine discovery dispute or scheduling matter. It is a fundamental question of judicial accountability with no precedent permitting the practice the state court has adopted.

The delay has forced Petitioner to file multiple supplemental motions because the harm continues to accumulate. She was forced to use her one free amended complaint under Fed. R. Civ. P. 15(a) to add new claims and additional parties, amendments she tried to prevent through timely motions. Attached to her pending motion to amend are three supplemental motions. None have been ruled upon despite two notices of ongoing harm.

The district court's inaction has created a cascade of procedural consequences. Petitioner has a motion for protective order against opposing counsel that has been pending for three months. There are Fed. R. Civ. P. Rule 12(b) motions with responses, but the court cannot rule on them until it rules on the motion to amend. The case sits in limbo while taxpayer resources are wasted and Petitioner's claims grow stale. She will be forced to amend her complaint again to add more parties, but cannot do so without

leave of court, which requires a ruling on the pending motion to amend.

This is what "undue delay" looks like. This is the kind of case that demonstrates that "justice delayed is justice denied." Not a single discrete motion pending for an arbitrary period, but a systemic failure to manage a docket that compounds with each passing week. The Fourth Circuit found no undue delay because it applied no standard.

The refusal to identify the judges who issued orders against Petitioner implicates constitutional rights beyond access to courts. The First Amendment, applied to the States through the Fourteenth Amendment, guarantees the press and public a right of access to judicial proceedings and the information necessary to make that access meaningful. *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580 (1980). Petitioner is also a member of the press who formally requested the judicial identities through press channels. Her request was ignored.

A court that issues orders while concealing the identity of the deciding judge operates in a manner antithetical to the constitutional requirement of open proceedings. The First Amendment right of access exists precisely to ensure "that procedural rights are respected and that justice is afforded equally." *Id.* at 595 (Brennan, J., concurring). That guarantee is hollow if litigants cannot identify the judges whose orders are enforced against them. The Fourteenth Amendment's due process protections reinforce this principle: a litigant cannot meaningfully challenge

judicial action or seek recusal when she does not know which judge acted.

II. THE FOURTH CIRCUIT'S CATEGORICAL "SUBSTITUTE FOR APPEAL" BAR CONFLICTS WITH THIS COURT'S MANDAMUS STANDARD

The Fourth Circuit denied Petitioner's request to vacate district court orders as an improper attempt to "overturn certain district court orders," stating this relief "is not available by way of mandamus." (App 2a.) The panel never analyzed whether Petitioner had any appeal to substitute for. She does not. The categorical application of the "substitute for appeal" bar without determining whether an appeal exists conflicts with this Court's mandamus framework and creates an irreconcilable trap for litigants with no final judgment.

A. The "Substitute for Appeal" Principle Presupposes an Appeal Exists

This Court has explained that mandamus "will not be used as a substitute for the regular appeals process." *Cheney*, 542 U.S. at 380–81. The principle serves a coherent purpose: when a litigant can obtain review through ordinary appeal, the extraordinary remedy of mandamus is unnecessary.

But the principle contains an obvious premise. There must be an appeal to substitute for. When no final judgment exists and no interlocutory appeal is available, mandamus is not substituting for anything. It is the only avenue of review.

This Court established the framework in *Ex parte Fahey*, 332 U.S. 258 (1947), holding that extraordinary writs "should be resorted to only where appeal is a clearly inadequate remedy" and are "reserved for really extraordinary causes." *Id.* at 259-60. The Court's practical approach weighs the harm of the challenged order against the time needed for normal appeal. Where appeal cannot adequately address the grievance, mandamus may issue.

Other circuits apply this framework correctly. In *In re Al-Nashiri*, 791 F.3d 71 (D.C. Cir. 2015), the D.C. Circuit denied mandamus but explained precisely why the petitioner had an adequate alternative remedy. The court confirmed that the government "acknowledge[s]" the petitioner could raise his constitutional challenges "on direct appeal" after final judgment. *Id.* at 79. The court identified the specific appellate path available before invoking the substitute-for-appeal principle.

The Fifth Circuit in *In re Landry*, 83 F.4th 300 (5th Cir. 2023), granted mandamus after determining that the petitioner had "no other means of relief and is not seeking to use mandamus as a substitute for appeal." *Id.* at 305. The court analyzed whether the specific issue raised could be addressed through the pending merits appeal and concluded it could not. *Id.*

These courts apply *Cheney* and *Fahey* correctly. They ask whether an appeal is available before

invoking the substitute-for-appeal bar. The Fourth Circuit skipped this step entirely.

B. The Fourth Circuit's Own Precedent Recognizes Exceptions the Panel Ignored

The Fourth Circuit has long held that mandamus is proper when constitutional rights are at stake, even when an eventual appeal might theoretically exist. In *In re Lockheed Martin Corp.*, 503 F.3d 351 (4th Cir. 2007), the court acknowledged that mandamus "may not be used as a substitute for appeal" but granted the writ because the petitioner's constitutional right to a jury trial was being denied. The court recognized that some rights cannot wait for final judgment.

The same principle applies here, unless the Fourth Circuit is stating that the constitutional right to access the courts is entitled to less protection than the right to a jury trial. At least in *Lockheed Martin*, the petitioner was able to bring the case into court. Here, the district court's orders blocked meaningful access by denying electronic filing and preventing Petitioner from serving a key defendant, all without providing a final judgment.

The district court itself confirmed that no final judgment exists. When Petitioner filed a Rule 59(e) motion in the Fair Housing case, the court explained that Rule 59(e) applies only to final decisions under Rule 54(a) and 28 U.S.C. § 1291. (App. 18a.) Because there was none, the motion was "denied for that reason alone." The court cannot simultaneously hold that there is no final decision for purposes of Rule

59(e) while the Fourth Circuit holds that mandamus is unavailable because Petitioner should appeal.

The district court has threatened to dismiss Petitioner's Fair Housing case three times if she could not serve the defendant. Yet it first denied an extension to the summons, then granted thirty days sua sponte, then denied alternative service even though Petitioner provided evidence that the defendant is deliberately evading service and committing address fraud. Petitioner exhausted all possible options for service and requested permission to serve by email or through the defendant's state attorney. The court found neither to be adequate and told Petitioner she must propose a plan supported by case law two days before the summons expired. (App 15a.) The district court knows there is no other option available, which is why it stated: "it is not the responsibility of this court to review Plaintiff's motions and explain what actions are required to effect service." (*Id.*) The summons in that case expired on August 22, 2025. The summons in the other case expired in October. This defendant is central to both cases.

The only options are for the order to be vacated and the summons renewed, or for the case to be dismissed so Petitioner can file an appeal. But as *Fahey* instructs, extraordinary writs "should be resorted to only where appeal is a clearly inadequate remedy." That is the case here.

Even if an appeal existed, requiring Petitioner to pursue it would be an extraordinary waste of judicial

resources. Petitioner paid full filing fees, completed all required steps to serve the defendant, and demonstrated that the defendant has actual notice of the litigation. The district court denied alternative service without explanation, pushing Rule 4(m) deadlines toward expiration.

If the district court dismisses the Fair Housing case, Petitioner would pay approximately $600 to appeal. Even if she prevails, she would pay an additional $400 to refile and return to the same district judge with no assurance that the court will not reimpose the same requirements. The $160 she has already spent on service attempts would be forfeited. Dismissing the case would reward the defendant's evasion while penalizing Petitioner for circumstances beyond her control.

The Fourth Circuit's categorical approach would require a year or more of appellate litigation before Petitioner can begin litigating her case on the merits. It has already been seven months since she filed suit. Under the panel's reasoning, it could take eighteen months or longer simply to serve a defendant who is actively evading service. This is not what Congress intended when it created the federal court system.

The Fair Housing case is fundamentally different from disputes over rulings made during active litigation. Here, litigation has not begun. No defendant has appeared. No discovery has occurred. No motions have been briefed. The case is frozen at the threshold because the district court imposed impossible requirements. Requiring Petitioner to

wait for a final judgment that may never come, or to pursue an appeal of a dismissal that should never happen, perverts the appellate process into a tool for delay rather than a mechanism for justice.

When a litigant cannot even commence her case, there is no final judgment to appeal. Mandamus is not substituting for appeal, as the panel claimed. It is the only remedy available. The panel's denial makes clear that it did not analyze whether mandamus would affect the rights of the parties. It simply denied relief.

C. The Fourth Circuit Applies This Bar Without Analysis, Creating a Constitutional Problem

In *In re Butler*, No. 14-1418 (4th Cir. Jun 19, 2014), the court denied mandamus stating the petitioner sought to use mandamus "as a substitute for an appeal." But the court added a footnote: "To the extent Butler's filing could be construed as an appeal... we lack jurisdiction to consider the appeal because the district court has not issued a final order." The court acknowledged in the same opinion that no appeal was available yet still invoked the substitute-for-appeal bar.

In re Collins, No. 14-1318 (4th Cir. Jul. 14, 2014), contains identical language and the same footnote acknowledging the absence of a final order.

These opinions demonstrate the Fourth Circuit's categorical approach. The court applies boilerplate language without analyzing whether the premise

holds. If no final order exists, there is no appeal to substitute for. The court cannot invoke *Fahey*'s principle while ignoring *Fahey*'s framework.

If mandamus is denied as a "substitute for appeal" without determining whether an appeal exists, the litigant is trapped indefinitely. The Fourth Circuit uses this phrase overwhelmingly in unpublished opinions, and in all but six involve pro se litigants. While some cases may legitimately fall within the substitute-for-appeal framework, the circumstances are often unstated, making review impossible.

When a categorical approach replaces analysis with boilerplate, denying litigants the individualized consideration this Court's precedents require, the circuit court undermines its supervisory role over the district courts.

The correlation between high pro se mandamus filing rates and high denial rates through categorical language raises serious questions about whether district courts are being held accountable. This concern is heightened in Petitioner's case, where the district court issued the challenged orders within hours of being served with the mandamus petition. The Fourth Circuit's denial confirmed that the district court faced no consequence for this conduct.

Other circuits rarely employ this language because they apply *Cheney* and *Fahey* as written, whether the petitioner is pro se or represented. They analyze whether an adequate alternative remedy exists before denying mandamus.

The right of access to the courts is no less fundamental than the right to a jury trial. The constitutional right of access to the courts is well established under the First Amendment. This Court has recognized that access claims arise when "systemic official action frustrates a plaintiff in preparing and filing suits at the present time." *Christopher v. Harbury*, 536 U.S. 403, 413 (2002).

Here, the district court's orders are not isolated procedural setbacks but a pattern of systemic obstruction that denies meaningful access to the judicial system.

When a categorical mandamus rule shields this pattern from appellate review, it transforms the court of appeals from a check on district court conduct into a barrier to constitutional relief. The Fourth Circuit's refusal to analyze whether Petitioner had an adequate alternative remedy before invoking the substitute-for-appeal bar effectively ratifies the denial of access. A litigant who cannot commence her case has suffered a constitutional injury that mandamus exists to remedy.

III. THIS CASE IS AN APPROPRIATE VEHICLE FOR REVIEW

A. Both Questions Were Squarely Presented and Decided Below

The Fourth Circuit squarely addressed both claims. On delay, the panel held that "the present record does not reveal undue delay in the district

court." App. 2a. On Petitioner's request to vacate district court orders, the panel held that "such relief is not available by way of mandamus." *Id.*

The questions presented are not hypothetical. They arise from specific rulings with concrete consequences.

B. The Record Is Fully Developed

The factual record is complete. The mandamus petition documented the timeline of Petitioner's filings, the district court's inaction, the pending motions, and the ongoing harm. The Fourth Circuit had a complete picture.

Petitioner ensured the Fourth Circuit understood the record by filing a petition for rehearing identifying concerns with the panel's characterization. When that was denied, she filed a motion to correct, offering four alternative forms of relief to avoid burdening this Court or, at minimum, to ensure an accurate record. The Fourth Circuit declined, invoking a local rule without addressing substance. The panel's errors resulted not from an incomplete record but from its failure to engage with the record before it.

C. Petitioner Has No Adequate Alternative Remedy

Petitioner cannot obtain relief through any other channel. The few orders issued have created barriers requiring vacatur before Petitioner can proceed.

The Fourth Circuit held mandamus unavailable. State courts refused disclosure of judicial identities.

State officials declined to intervene. The only defendant who could provide the judicial identities is the Clerk of the North Carolina Court of Appeals, the official responsible for withholding the names and a named defendant in the § 1983 action.

This Court is Petitioner's last resort. Without intervention, she remains unable to identify the judges whose orders are enforced against her, unable to serve a defendant evading process, unable to pursue claims against proper defendants, and unable to obtain any ruling on the questions her case presents.

CONCLUSION

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

Respectfully submitted,

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