SUPREME COURT OF THE UNITED STATES

CASE NO:_____

KENNETH A. FRANK,
Petitioner,

v.

MICHAEL J. SATZ, et. al.,
Respondent(s).

_____/

ON PETITION FOR A WRIT OF CERTIORARI TO
THE FLORIDA SUPREME COURT

On Petition for a Writ of Certiorari to
the Florida Supreme Court

Motion to Direct the Clerk to File Petition
For Writ of Certiorari Out of Time

Kenneth A. Frank, pro se
DC# I50962
Everglades Correctional Inst.
1599 S.W. 187th Avenue
Miami, Florida 33194

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SUPREME COURT, U.S.

MOTION TO DIRECT THE CLERK TO FILE PETITION FOR WRIT OF CERTIORARI OUT OF TIME

Petitioner, Kenneth A. Frank, pro se (hereafter 'Frank') in the above referenced matter, humbly and respectfully submits this Motion to Direct the Clerk to File Petition for Writ of Certiorari Out of Time pursuant to United States Supreme Court Rule 13(3) and all other and further applicable laws and rules, and in support states as follows:

PRELIMINARY MATTER

Petitioner is a pro se litigant. Accordingly, the Petitioner hereby and respectfully requests the Honorable Court apply the standards for pro se litigants it established in *Haines v. Kerner*, 404 U.S. 579 (1972) when considering all aspects of this Motion and Petition for Writ of Certiorari.

This Honorable Court in *Estelle v. Gamble,* 429 U.S. 97, 106 (1976) described the standards for pro se litigants set out in *Haines v. Kerner*, 404 U.S. 579 (1972) as follows:

> "The Court 'must' liberally construe pro se pleadings." *Estelle v. Gamble*, 429 U.S. 97, 106 (1976) *Haines v. Kerner*, 404 U.S. 579, 520 (1972) (per curiam). Pro se pleadings are held to less stringent standards than those drafted by attorneys. *Haines*, 404 U.S. at 520. The mandated liberal construction means that if the Court can reasonable read the pleadings to state a valid claim on which the Plaintiff could prevail, it should do so. *Estelle*, held "A pro se complaint, however in artfully pleaded, [must] be held to less stringent standards than formal pleadings made by lawyers and can [only] be dismissed

> for failure to state a claim if it appears beyond doubt that Plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Id.*

Accordingly, pro se Petitioner respectfully requests that this Honorable Court consider his status as a pro se litigant under the standard set out in *Haines v. Kerner*, 404 U.S. 579 (1972) when determining any confusion of law that may have occurred in the timely filing of the Petition for Writ of Certiorari, the resulting 'manifest injustice' that will result if the Petition for Writ of Certiorari is procedurally barred from consideration, and that the Court treat this Motion to raise the strongest arguments it suggests pursuant to the *Haines* standards.

PREFACE

The underlying Petition for Writ of Certiorari addresses a matter of great public importance involving and affecting the constitutional rights of millions of citizens of the United States. The issue is one that ultimately should be decided by this Honorable Court.

Petitioner is seeking Certiorari for this Court to review an unelaborated decision of the Florida Supreme Court denying a Petition for Writ of Quo Warranto that affects the constitutional rights of millions of citizens of the United States. Petitioner had filed a timely Motion for Clarification in the Florida Supreme Court. The Petitioner verily believed the time to file the Petition for Writ of Certiorari in

this Honorable Court was "tolled" pursuant to the filing of the Motion for Clarification in the Florida Supreme Court pursuant to this Court's Rule 13(3).

The Florida Supreme Court treated the Motion as a "Motion for Rehearing" and struck the Motion as unauthorized, which Petitioner believes to be the same as denying the Motion. Within 90 days thereafter the Petitioner filed the Petition for Writ of Certiorari with the Clerk of this Court. Petitioner very believed the time to file in this Court was 'tolled' while the Florida Supreme Court considered the Motion.

The Clerk of this Honorable Court returned the Petition on January 22, 2026, and was received by Petitioner on January 30, 2026 stating: 'The Petition is out of time.' The letter dated October 14, 2025 cannot be construed as a denial of Rehearing. *Id.*

FACTS

1. On or about June 10, 2025, the Petitioner filed a Petition for Writ of Quo Warranto in the Florida Supreme Court. The case was assigned case number SC2025-0854. A copy of the Petition and attached relevant exhibits are amended hereto as Exhibit "A," and incorporated herein by reference.

2. By unelaborated opinion, on September 03, 2025, the Florida Supreme Court issued an Order denying the Petition for Writ of Quo Warranto. See, error in

Appendix to Petition for Writ of Quo Warranto (Exhibit "A") attached hereto collectively as Exhibit "A," and incorporated herein by reference.

3. Petitioner, thereafter, filed a timely 'Motion for Clarification and Detailed Written Opinion' with the Florida Supreme Court in anticipation of Petition for Certiorari in this Court. Petitioner's intent was to provide this Honorable Court with the most concise record of the underlying proceedings as possible. See, Motion in Appendix to Petition for Writ of Quo Warranto (Exhibit "C") attached hereto collectively as Exhibit "A," and incorporated herein by reference.

4. On October 14, 2025, by second unelaborated written opinion the Florida Supreme Court treated the above referenced Motion for Clarification and Detailed Opinion as a 'Motion for Rehearing,' and pursuant to the Court's Order dated September 03, 2025, stated that: "Said Motion is hereby stricken as unauthorized." See, Order in Appendix to Petition for Writ of Quo Warranto (Exhibit "B") attached hereto collectively as Exhibit "A," and incorporated herein by reference.

5. Shortly after, the filing of the Petition for Quo Warranto in the Florida Supreme Court the Petitioner was transferred from the Tomoka Correctional Facility located in Daytona Beach, Florida to the Everglades Correctional Institution. In July 2025, located in Miami, Florida because the Petitioner is a disabled inmate within the meaning of the America's with Disabilities Act ("ADA"), 42 United States Constitution 12102, et. seq. The Everglades Correctional Institution is an ADA

facility. Petitioner immediately filed a "Notice of Change of Address" with the clerk of the Florida Supreme Court.

6. In early November, 2025, the Petitioner was informed by a friend (who is not in prison) that they had looked at the Florida Supreme Court's on-line docket, at Petitioner's request, and believed that the Petition for Quo Warranto had been denied. Petitioner [never] received the subject Order in the mail.

7. Petitioner wrote a letter of inquiry to the Clerk of the Florida Supreme Court on November 09, 2025 seeking a status report from the Court, and asked if in fact, an Order had been issued by the Court, and requesting a copy of any Order. See, copy of Petitioner's November 09, 2025 letter to the Court in Appendix to Petition for Writ of Quo Warranto (Exhibit C) amended hereto collectively as Exhibit "A," and incorporated herein by reference.

8. The Florida Supreme Court thereafter sent Petitioner a copy of the Court's Order denying the Petition for Quo Warranto. The timely Motion for Clarification and Detailed Written Opinion followed in the Florida Supreme Court.

THE FILING OF THE PETITION FOR WRIT OF CERTIORARI IN THIS COURT

9. Petitioner verily believed that pursuant to Supreme Court Rule 13(3), the 90 day time period to petition for Certiorari in this Honorable Court prescribed in Rule 13(1) was "tolled" due to the filing of the Motion for Clarification and Detailed Written Opinion in the Florida Supreme Court, and treated by the Florida Supreme

Court as a "Motion for Rehearing."Accordingly, Petitioner verily believed the time for filing a Petition for Certiorari with this Court was within 90 days after the Florida Supreme Court's October 14, 2025 Order, thus, making the deadline to file a timely Petition for Writ of Certiorari with this Court due by January 14, 2026.

10. Petitioner's Petition for Writ of Certiorari for filing with this Court was postmarked on January 09, 2026 within the 90 day period of time to be timely, if Petitioner is correct. See, letter from Clerk of Court confirming that the Petition for Writ of Certiorari was postmarked on January 09, 2025, thus, timely filed which is annexed hereto as Exhibit "B," and incorporated herein by reference.

11. The Clerk of this Court returned the Petition as untimely on January 22, 2026 (Exhibit "B"). The Clerk determined the Petition was out of time because an [Order] issued by the Florida Supreme Court, which the Clerk of this Honorable Court termed as a letter dated October 14, 2025, could not be treated as a Rehearing denial. *Id.* Exhibit "B."

12. With all due respect, Petitioner believes the Clerk of the Court may have erred based on *United States v. Healy*, 376 U.S. 75 (1964), and that the Petition for Writ of Certiorari was timely.

13. Under *Healy*, supra and *United States v. Dieter*, 429 U.S. 6 (1976), while Petitioner's Motion in the Florida Supreme Court was not captioned as a 'Motion for Rehearing,' it was treated as a 'Motion for Rehearing' by the Florida Supreme

Court, in that: Under both *United States v. Healy*, 376 U.S. 75 (1964) and *United States v. Dieter*, 429 U.S. 6 (1976), the Florida Supreme Court's Order denying Petition for Writ of Quo Warranto would not have been final as long as a Motion was pending (emphasis added). See also, *United States v. Ibarra*, 502 U.S. 1 (1991) (on issue).

HEALY ARGUMENT

The following two rules of the United States Supreme Court are relevant to this analysis:

Supreme Court Rule 13(1) provides in pertinent part as follows:

> "Unless otherwise provided by law, a Petition for a Writ of Certiorari to review a judgment in any case, civil or criminal, entered by a State Court of last resort or a United States Court of Appeals... is timely when it is filed with the Court within 90 days after entry of judgment." *Id.*

And

Supreme Court Rule 13(3) provides:

> "[I]f a Petition for Rehearing is timely filed in this lower Court by any party, or if the lower Court appropriately entertains an untimely Petition for Rehearing or Sua Sponte Considers Rehearing, the time to file the Petition for Writ of Certiorari for all parties...runs from the date of denial of Rehearing, or if Rehearing is granted, the subsequent entry of judgment."

This Court held, in *United States v. Healy*, 576 U.S. 75 (1964) - That a 'Motion for Rehearing' renders and otherwise final decision of a District Court

'not final' until it decides the Motion – and *United States v. Dieter*, 429 U.S. 6 (1976) - that there is [no exception] to *Healy's* rule for Petition for Rehearing which do not assert an alleged error of law – did not control in a case where the Government's Motion is based on a previously disavowed theory.

Dieter further held: The Government's appeal was timely. [All] Motions for Reconsideration are subsumed under one general rule- the rule laid down in *Healy*. If a merits inquiry were grafted onto the general rule, litigants would be required to guess at their peril - the date on which the time to appeal commences to run. An alternate method of analysis - that the Government's Motion was not a "true" Motion for Reconsideration because the government did not initially urge the argument on which it based the Motion – would also break down into subcategories the more general category of "Motions for Reconsideration" described in this Court's previous decisions.

Certiorari granted; 920 F. 2d 702, vacated and remanded.

Later in 1995, this Court in *United States v. Ibarra*, 502 U.S. 1 (1991) revisited he *Healy* Rule, citing, *Healy* and *Dieter*, and stating in important part to the point of issue by contention here, the following:

That, in *Dieter*, 429 U.S. 6 (1976), this Court stated – in most important part – that "While the Motion at issue was not captioned a 'Petition for Rehearing,' the government's Motion was precisely that in purpose and effect." In *Dieter*, there

was no strict application of the statute to encompass only those Motions termed "Motion for Rehearing" to toll the time to petition for Certiorari. In *Dieter*, 429 U.S. 6 (1976), the Motion used to toll the time to petition was a "Motion to Set Aside Order of Dismissal." (emphasis added).

Furthermore, this Court in *United States v. Ibarra*, 502 U.S. 1 (1991), again clarifying the *Dieter* decision said:

> "In *Dieter* the Clerk of the Court 'misconceived' the basis of this Court's *Healy* decision." This Court clarified stating in pertinent part: 'That the purpose of *Healy* was to render the judgment not final as long as a '[Motion] was pending. *Id.*

Here, Petitioner had a '[Motion]' pending that, in fact, was treated by the lower Court (Florida Supreme Court) as a 'Motion for Rehearing,' thus, the Florida Supreme Court's judgment was not final until October 14, 2025 which the Court rendered its decision to 'strike the Motion.'

Accordingly, it is with all due respect that pro se Petitioner sets forth that the Clerk of this Honorable Court "misconceived" the basis of this Court's decision in *Healy*. Petitioner's Motion filed in the Florida Supreme Court was sufficient to 'toll' the time to file the Petition for Certiorari in this Court. Pro se Petitioner avers that this Court's Clerk erred in returning the Petition for Certiorari in this case as 'untimely.'

The Petition for Certiorari was timely filed in this case.

THERE HAS BEEN A 'MANIFEST INJUSTICE'

This Court has continuously adopted an exception to the cause and prejudice requirement stating that 'manifest injustice' will overcome a 'procedural bar.' See, *Keeney v. Tamayo-Reyes*, 112 S. Ct 1145 (1992); *McClesky v. Zant,* 111 S. Ct. 1454 (1991) and *Murray v. Carrier*, 106 S. Ct. 2639 (1986). With the manifest injustice that has occurred involving the constitutional rights of millions of citizens of the United States if this Court were not to ultimately declare the issues in the underlying Petition for Writ of Quo Warranto; pro se Petitioner respectfully requests that, if the Clerk of this Court was correct on the law and decision to return the Petition for Certiorari as untimely, and pro se Petitioner has, in fact, misunderstood the applicable law that the Honorable Court excuse the procedural default as a 'good faith' misunderstanding of law by a pro se litigant and consider the Petition for Writ of Certiorari as timely filed because, if not, manifest injustice nonpareil will result.

WHEREFORE, Petitioner respectfully requests that this Honorable Court grant this Motion in its entirety and direct the Clerk of the Court to accept the Petition for Writ of Certiorari as timely filed, and for such other and further relief as to the Court deems just and proper.

Dated: February 17th, 2026.

Respectfully submitted,

Kenneth A. Frank, pro se
Petitioner - DC No. I50962
Everglades Correctional Inst.
1599 S.W. 187th Avenue
Miami, Florida 33194

On behalf of himself and on behalf of the United States Constitution

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

January 22, 2026

Kenneth A. Frank
#I50962
Everglades Correctional Institution
1599 S.W. 187th Ave
Miami, FL 33194

RE: Frank v. Satz, et al.
FLSC Case No. SC2025-0854

Dear Mr. Frank:

The above-entitled petition for a writ of certiorari was postmarked January 9, 2025 and received January 21, 2026. The papers are returned for the following reason(s):

The petition is out-of-time. The date of the lower court judgment or order denying a timely petition for rehearing was September 3, 2025. Therefore, the petition was due on or before December 2, 2025. Rules 13.1, 29.2 and 30.1. When the time to file a petition for a writ of certiorari in a civil case (habeas action included) has expired, the Court no longer has the power to review the petition.

The letter dated October 14, 2025 cannot be construed as a rehearing denial.

Sincerely,
Scott S. Harris, Clerk
By:

Angela Jimenez
(202) 479-3392

Enclosures