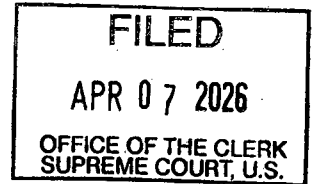


No. 26-484

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



IN RE BARRY BROOKS, JR.,

Petitioner.

ON PETITION FOR AN EXTRAORDINARY WRIT OF MANDAMUS
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITION FOR AN EXTRAORDINARY WRIT OF MANDAMUS

BARRY BROOKS, JR.

Petitioner, Pro Se

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Dated: August 19, 2026

QUESTIONS PRESENTED

1. **CLEAR LEGAL DUTY.** Whether the U.S. Court of Appeals for the 11th Circuit owes a clear, indisputable, non-discretionary, and ministerial duty to submit for judicial determination a motion filed pursuant to Federal Rule of Appellate Procedure 27(b) and 11th Circuit Rule 27-2 seeking reconsideration, vacatur, or modification of an order of its own Clerk, where the delegating rule makes clerical authority expressly "subject to review by the court," where no judicial officer of that court has acted upon the motion, and where no order of that court addresses it.
2. **ABSENCE OF OTHER RELIEF.** Whether a writ of mandamus issued by this Court under 28 U.S.C. § 1651(a) is the only adequate remedy available to Petitioner, where a clerk's disposition of the motion invoking judicial review yields no appealable order and no judgment from which certiorari may be sought under 28 U.S.C. § 1254(1); where no district court may compel a court of appeals to act; where that court cannot issue mandamus to itself; where rehearing is exhausted; and where 11th Circuit Rule 27-3 forbids any successive motion for reconsideration.
3. **ABUSE OR USURPATION.** Is mandamus under 28 U.S.C. § 1651(a) the only adequate remedy when a clerk's disposition creates no appealable order or certiorari-eligible judgment (§ 1254(1)), no district court can compel the court of appeals, the court can't mandamus itself, rehearing is exhausted, and 11th Cir. R. 27-3 bars successive reconsideration?

PARTIES TO THE PROCEEDING

Petitioner

- Barry Brooks, Jr., Petitioner-Appellant below

Respondents

- Frank Reynolds, Sheriff of Cherokee County, Georgia, Acting Captain/Custodian of Petitioner; Respondent-Appellee
- Shannon Wallace, Respondent-Appellee
- Jeffrey S. Banks, Esq., Respondent-Appellee

Respondents

- David J. Smith, Clerk of Court, in his official capacity
- Hon. Kevin C. Newsome, both in his official and individual capacity
- Hon. Andrew L. Brasher, both in his official and individual capacity
- Hon. Britt C. Grant, both in his official and individual capacity
- Hon. Sarah Geraghty, both in her official and individual capacity
- Hon. Regina D. Cannon, both in her official and individual capacity
- Hon. Adele Grubbs, both in her official and individual capacity
- Attorney General Christopher M. Carr, in his official capacity
- Melissa Klatzkow, Esq., both in her official and individual capacity

LIST OF DIRECTLY RELATED PROCEEDINGS
United States District Court for the Northern
District of Georgia

Brooks v. Sheriff of Cherokee County, et al., No. 1:24-

cv-01460-SEG (petition for writ of habeas corpus).

Judgment entered November 13, 2024. Certificate of
appealability denied by order of the district court
entered November 13, 2024 (Dist. Ct. Doc. 15).

United States Court of Appeals for the
Eleventh Circuit

Brooks v. Sheriff of Cherokee County, et al., No. 24-
14144-G.

Habeas appeal docketed December 19, 2024, fee paid

(Doc. 1). Appeal dismissed for want of prosecution

January 28, 2025 (Doc. 13). Appeal reinstated May

16, 2025 (Doc. 32). Opinion and judgment entered

July 2, 2025 (Docs. 35, 36). Rehearing en banc denied

August 22, 2025 (Doc. 43). Mandate issued

September 3, 2025 (Doc. 46). Clerk's notice of no

action upon Petitioner's Motion for Reconsideration

entered September 18, 2025 (Doc. 48).

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PETITION FOR AN EXTRAORDINARY WRIT OF MANDAMUS

Petitioner Barry Brooks, Jr., appearing pro se, respectfully petitions this Court for a writ of mandamus pursuant to 28 U.S.C. § 1651(a) and Rule 20 of the Rules of this Court, directed to the United States Court of Appeals for the Eleventh Circuit and to David J. Smith, Clerk of that Court, in his official capacity.

PRELIMINARY STATEMENT

This petition presents a narrow question of judicial administration with consequences that are anything but narrow: whether the right of judicial review that the Federal Rules of Appellate Procedure guarantee against a clerk's administrative action may be extinguished by the clerk himself.

Federal Rule of Appellate Procedure 27(b) embodies a bargain. A court of appeals may relieve its judges of routine procedural motions by authorizing the clerk to dispose of them. The delegation is lawful precisely because, and only to the extent that, the party aggrieved retains the right to "file a motion to reconsider, vacate, or modify that action"—a motion addressed to the court. Eleventh Circuit Rule 27-1(c) recites the same limitation in terms, making the Clerk's authority "subject to review by the court," and Eleventh Circuit Rule 27-2 supplies the instrument by which review is sought. The clerk acts; the court reviews. That sequence is what keeps the delegation on the constitutional side of Article III, which vests the judicial power in judges and not in the officers who serve them.

On September 15, 2025, Petitioner invoked that right. He filed a Motion for Reconsideration of the Clerk's No Action/Deficiency Notice dated August 25, 2025 (Doc. 47). Its sole object was to secure a judicial determination of a clerical act. Three days later, on September 18, 2025, the Clerk answered it—by entering another notice of the identical character, stating that no action would be taken (Doc. 48). No judge saw the motion. No order of the Court of Appeals addresses it. The docket contains no entry reflecting that it was ever submitted to the court.

Petitioner does not ask this Court to review the judgment of July 2, 2025, to disturb the denial of a certificate of appealability, to reopen the mandate, or to pass upon the merits of his underlying habeas claims. He does not ask this Court to direct how Doc. 47 should be decided. He asks only that it be decided—by a judge. The Court of Appeals may deny the motion in a single sentence, and Petitioner will have obtained all that he seeks here, which is that the sentence be written by an officer vested with the judicial power of the United States.

That is the classic office of the writ. Mandamus does not command a result; it commands the exercise of a jurisdiction that has been withheld. *Roche v. Evaporated Milk Ass'n*, 319 U.S. 21, 26 (1943).

OPINIONS AND ORDERS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit, entered July 2, 2025 (Doc. 35), is unpublished and is reproduced at Pet. App. 1a.

The judgment of the Court of Appeals, entered July 2, 2025 and issued as mandate September 3, 2025 (Doc. 36), is reproduced at Pet. App. 5a.

The order of the Court of Appeals denying rehearing en banc, entered August 22, 2025 (Doc. 43), is reproduced at Pet. App. 7a.

The Clerk's No Action/Deficiency Notice entered August 25, 2025 (Doc. 45) is reproduced at Pet. App. 10a.

Petitioner's Motion for Reconsideration of the Clerk's No Action/Deficiency Notice dated August 25, 2025, filed September 15, 2025 (Doc. 47), is reproduced at Pet. App. 12a.

The Clerk's notice that no action would be taken upon Doc. 47, entered September 18, 2025 (Doc. 48), is reproduced at Pet. App. 28a. That notice is the immediate subject of this petition.

The order of the Court of Appeals granting reinstatement of the appeal, entered May 16, 2025 (Doc. 32), is reproduced at Pet. App. 30a.

The Clerk's letter issuing the mandate, dated September 3, 2025 (Doc. 46), is reproduced at Pet. App. 33a.

The judgment of the United States District Court for the Northern District of Georgia, entered November 13, 2024, is reproduced at Pet. App. 35a.

Relevant excerpts of the docket in Appeal No. 24-14144-G are reproduced at Pet. App. 37a.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1651(a), which provides that this Court "may issue all writs necessary or appropriate in aid of [its] respective jurisdiction[] and agreeable to the usages and principles of law." The Court's appellate jurisdiction over cases in the courts of appeals is conferred by 28 U.S.C. § 1254(1).

Rule 20.1 conditions the issuance of an extraordinary writ upon three showings: that the writ will be in aid of this Court's appellate jurisdiction; that exceptional circumstances warrant the exercise of the Court's discretionary powers; and that adequate relief cannot be obtained in any other form or from any other court. Petitioner addresses the second showing in Parts I through III of the Reasons for Granting the Writ, and the third with the particularity commanded by Rule 20.3(a) in Part IV. The first is addressed here.

The writ would be in aid of this Court's appellate jurisdiction. The matter withheld from judicial determination below is one which, if determined, would produce an order of a court of appeals reviewable in this Court on certiorari under 28 U.S.C. § 1254(1). The withholding of judicial action therefore does not merely postpone this Court's jurisdiction; it forecloses the occasion for its exercise. Where a court of appeals declines to place a motion before a judge, no order issues; and where no order issues, there is nothing upon which a petition for certiorari may operate. The clerk's notice is not a judgment, not a decree, and not an order of the court. It is an administrative communication, and it is not reviewable as such.

This Court's authority under the All Writs Act is not confined to cases already within its appellate jurisdiction. It extends to matters "which are within its appellate jurisdiction although no appeal has been perfected," *Ex parte Peru*, 318 U.S. 578, 583 (1943), and encompasses the protection of the Court's *potential* jurisdiction, *FTC v. Dean Foods Co.*, 384 U.S. 597, 603 (1966). A practice by which an inferior court's clerk may, without judicial participation, terminate the only proceeding capable of generating a reviewable order is a practice that operates directly upon that potential jurisdiction. The writ is the appropriate instrument to preserve it.

**STATEMENT PURSUANT TO RULE 20.3(A): PERSONS AGAINST
WHOM RELIEF IS SOUGHT**

Rule 20.3(a) directs that a petition seeking a writ of mandamus "shall state the name and office or function of every person against whom relief is sought." In compliance therewith, Petitioner states:

1. The United States Court of Appeals for the

Eleventh Circuit. *Office or function:* An inferior court of the United States established by Act of Congress pursuant to Article III, Section 1 of the Constitution, exercising the judicial power of the United States. It is the tribunal in which Appeal No. 24-14144-G was docketed on December 19, 2024 and remains of record, and it possesses exclusive authority to adjudicate motions filed in that appeal.

2. David J. Smith, Clerk of Court, United States Court of Appeals for the Eleventh Circuit. *Office or function:* The clerk of that court, charged by Federal Rule of Appellate Procedure 45(b)(1) with maintaining the docket and recording all papers filed, all process, and all orders and judgments, and authorized by Eleventh Circuit Rule 27-1(c) to act on behalf of the court upon enumerated categories of procedural motions, subject to review by the court. He is named solely in his official capacity as the officer who entered the notices of September 18, 2025 (Doc. 48) and August 25, 2025 (Doc. 45), and who, Petitioner contends, withheld Doc. 47 from judicial consideration.

Petitioner expressly disclaims any relief against either respondent in an individual or personal capacity.

Petitioner seeks no damages, no costs, no sanction, no disciplinary referral, and no finding of misconduct.

Petitioner seeks nothing that would direct the manner in which any motion is decided. The relief sought is institutional, procedural, and ministerial in character: an order commanding that a motion presently withheld from judicial consideration be placed before a judge or panel of the Court of Appeals for determination according to that court's own judgment.

CONSTITUTIONAL, STATUTORY, AND RULE PROVISIONS INVOLVED

U.S. Const. art. III, § 1. "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." The judicial power so vested is committed to the judges of those courts and may not be exercised by non-judicial officers.

U.S. Const. amend. I. "Congress shall make no law . . . abridging . . . the right of the people . . . to petition the Government for a redress of grievances."

U.S. Const. amend. V. "No person shall . . . be deprived of life, liberty, or property, without due process of law"

28 U.S.C. § 1651(a). "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

28 U.S.C. § 1254(1). "Cases in the courts of appeals may be reviewed by the Supreme Court by . . . writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree"

28 U.S.C. § 2071(a). "The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business. Such rules shall be consistent with Acts of Congress and rules of practice and procedure prescribed under section 2072 of this title."

Fed. R. App. P. 27(b). Provides that a court of appeals "may provide by rule or by order in a particular case that its clerk may act on specified types of procedural

motions," and that "[a] party adversely affected by the clerk's action may file a motion to reconsider, vacate, or modify that action."

Fed. R. App. P. 27(c). "A circuit judge may act alone on any motion, but may not dismiss or otherwise determine an appeal or other proceeding. A court of appeals may provide by order or rule that only the court may act on any motion or class of motions. The court may review the action of a single judge."

Fed. R. App. P. 25(a)(2)(A)(i). "A paper not filed electronically is filed by delivering it: (i) to the clerk"

Fed. R. App. P. 41(b)–(d). Governing the issuance, stay, and effect of the mandate.

Fed. R. App. P. 45(b)(1). "The circuit clerk must maintain a docket and an index of all docketed cases in the manner prescribed by the Director of the Administrative Office of the United States Courts. The clerk must record all papers filed with the clerk and all process, orders, and judgments."

11th Cir. R. 27-1(c). The Clerk is authorized to act on behalf of the court upon the categories of procedural motions enumerated therein, subject to review by the court.

11th Cir. R. 27-2. "A party adversely affected by an order may file a motion to reconsider, vacate, or modify the order within 21 days of the entry of such order"

11th Cir. R. 27-5. No action will be taken upon a motion to reinstate an appeal dismissed for want of prosecution unless the deficiencies causing dismissal have

been remedied, and the Clerk's Office will notify the parties when no action is taken.

11th Cir. R. 41-2. Governing motions to stay or recall the mandate.

Rules of this Court, Rules 20.1, 20.2, 20.3. Reproduced at Pet. App. 46a.

STATEMENT OF THE CASE

A. The Habeas Proceedings and the Docketing of the Appeal

Petitioner Barry Brooks, Jr. sought habeas corpus relief in the United States District Court for the Northern District of Georgia, No. 1:24-cv-01460-SEG. On November 13, 2024, that court entered judgment adverse to Petitioner and, by separate order entered the same day, denied a certificate of appealability pursuant to 28 U.S.C. § 2253(c).

On December 19, 2024, Petitioner filed a notice of appeal. The appeal was docketed in the United States Court of Appeals for the Eleventh Circuit as No. 24-14144-G, with the status noted on the docket as "Fee Paid" (Doc. 1). On December 31, 2024, Melissa A. Klatzkow, Esq., of Jarrard & Davis, LLP, entered an appearance for Appellee Sheriff of Cherokee County (Doc. 2). On January 3, 2025, the district court's order denying a certificate of appealability was transmitted to the Court of Appeals (Doc. 3).

Petitioner has at all times in these proceedings appeared without counsel.

B. Dismissal for Want of Prosecution and the Successive Administrative Notices

On January 8, 2025, the Clerk issued a notice advising Petitioner that, pursuant to 11th Cir. R. 42-1(b), the appeal would be dismissed upon the expiration of fourteen days unless a completed Transcript Order Form or a certificate stating that no transcript would be ordered was filed (Doc. 4). On January 23, 2025, the Clerk

issued a further notice of deficiency respecting the Certificate of Interested Persons (Doc. 7).

On January 27, 2025, the Clerk entered a notice that no action would be taken upon Petitioner's brief, assigning as reasons both the pendency of the filing rules and a deficiency in the Certificate of Interested Persons (Doc. 10).

On January 28, 2025, the appeal was **dismissed for want of prosecution** under 11th Cir. R. 42-1(b) for failure to file the Transcript Order Form, and Petitioner's motion for a certificate of appealability, construed from the notice of appeal, was declared moot (Doc. 13).

There followed a series of motions to reinstate and a corresponding series of administrative notices. On March 6, 2025, Petitioner filed a Motion to Reinstate Appeal (Doc. 19). On March 7, 2025, the Clerk entered a notice that no action would be taken (Doc. 20). A duplicate motion was docketed in error and, on March 19, 2025, met with a further notice of no action (Docs. 21, 22). On March 19, 2025, Petitioner filed a Motion to Reinstate Appeal and Motion to Change Address (Doc. 23), and on April 1, 2025, the Clerk entered a notice that no action would be taken, assigning as the reason that the deficiencies causing dismissal had not been remedied and that the motion to change address was unnecessary (Doc. 24). On April 3, 2025, the Clerk entered a notice of receipt stating that no action would be taken upon materials forwarded from the district court (Doc. 25). On April 4, 2025, Petitioner filed a further Motion to Reinstate Appeal (Doc. 28), and on **April 7, 2025**, the Clerk entered a notice

that no action would be taken, assigning as the sole reason that the filing had been forwarded from another court (Doc. 29).

Petitioner recites this sequence not to relitigate any of these notices, each of which is now beyond the reach of ordinary review, but because it establishes the pattern that gives rise to this petition and bears directly upon the adequacy of alternative remedies. *See infra* Part IV.C.

C. Reinstatement of the Appeal by Judicial Order

On March 31, 2025, Petitioner filed a Motion for Reinstatement of Appeal (Doc. 26), accompanied by a completed Eleventh Circuit Transcript Order Form and a Certificate of Interested Persons and Corporate Disclosure Statement identifying, among others, the Honorable Adele Grubbs, the Honorable Shannon Wallace, Sheriff Frank Reynolds, Jeffrey S. Banks, Esq., the Honorable Regina D. Cannon, and the Honorable Sarah E. Geraghty.

On **May 16, 2025**, a panel of the Court of Appeals composed of Circuit Judges Rosenbaum and Abudu entered an order **granting** the Motion to Reinstate Appeal (Doc. 32). The same order denied Petitioner's Motion to Amend the Date on Mail Received, observing that "[i]n general, a filing received through the mail is docketed as of the date of the clerk's receipt," citing Fed. R. App. P. 25(a)(2)(A)(i). Pet. App. 31a.

This order is material to the present petition in one respect only, but that respect is dispositive of any suggestion that Petitioner's filings were frivolous or that

judicial review would be an idle formality: when a motion of Petitioner's was in fact submitted to judges of the Court of Appeals, it was granted, and the appeal that four successive clerical notices had declined to disturb was restored to the active docket.

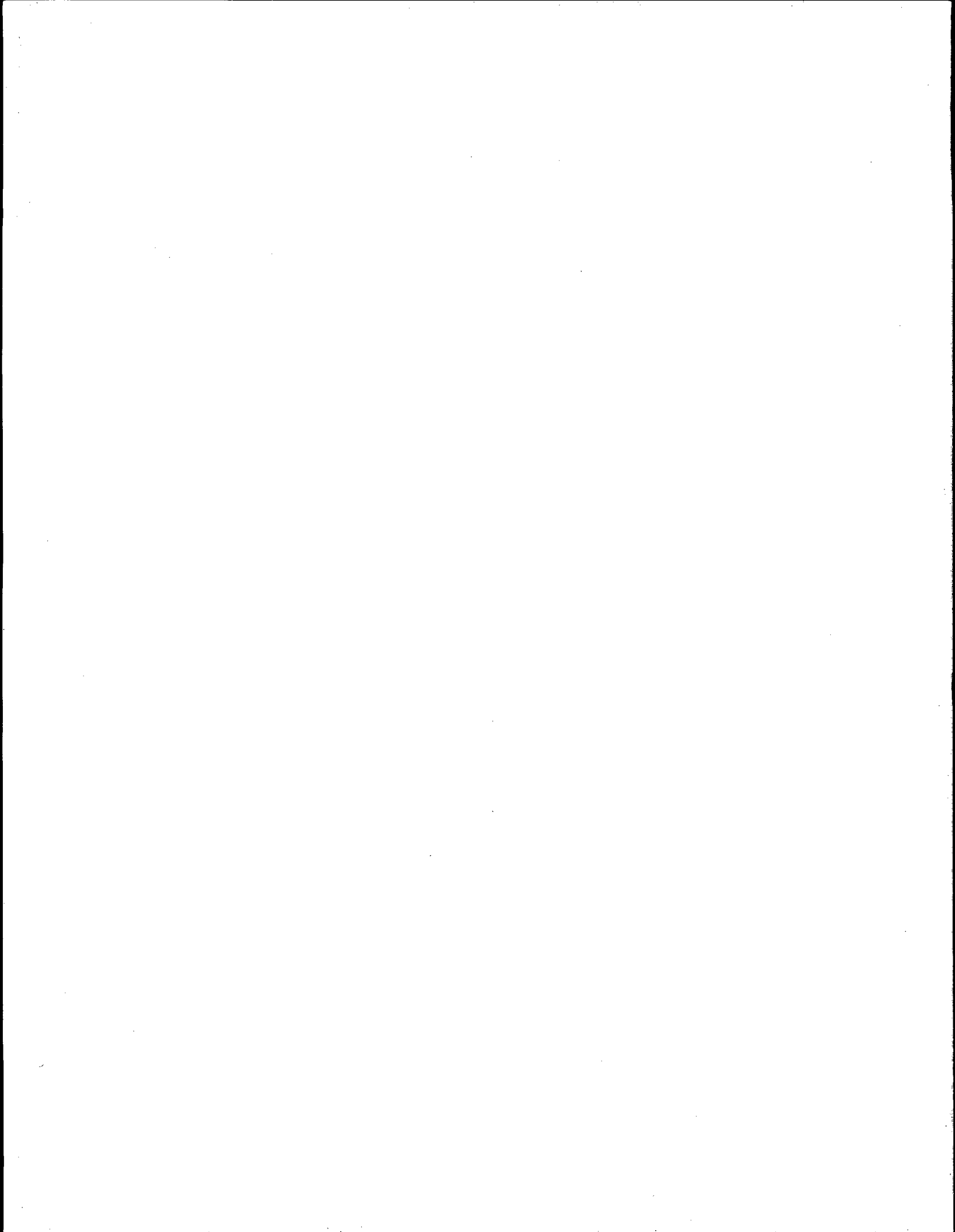
D. The June 30, 2025 Filings and the July 2, 2025 Disposition

On March 31, 2025, Petitioner filed the Transcript Order Form (Doc. 31). On May 27, 2025, Petitioner filed a Motion for Certificate of Appealability (Doc. 33), to which Appellee responded through counsel on June 6, 2025 (Doc. 34).

On **June 30, 2025**, Petitioner delivered to the Clerk of the Court of Appeals two filings: a document in support of the Motion for Certificate of Appealability (Doc. 37) and a Motion for Adoptive Admission and Motion for Extension of Time to File Appellate Pleadings (Doc. 38). The docket records each as **filed June 30, 2025** and **entered July 3, 2025**. Pet. App. 41a.

On **July 2, 2025**, the Court of Appeals issued its opinion, disposing of the appeal by dismissal and denying the Motion for Certificate of Appealability as moot (Doc. 35). Judgment was entered the same day (Doc. 36).

Petitioner does not contend that the Clerk misdated either filing. To the contrary, the docket correctly records June 30, 2025 as the date of filing, consistent with Fed. R. App. P. 25(a)(2)(A)(i) and with the Court of Appeals' own instruction of May 16, 2025. Petitioner's contention is narrower and, he respectfully submits, more consequential: the appeal was resolved on a date falling between the filing of two submissions and their appearance upon the docket, with the practical consequence



that the panel is unlikely to have had those submissions before it when it acted. Whether that circumstance is material, and whether any remedy remains available on account of it, are questions Petitioner has never been permitted to place before a judge.

E. Rehearing and the Issuance of the Mandate

On July 7, 2025, the Clerk entered an order declaring the Motion for Adoptive Admission moot in light of the opinion (Doc. 39). On July 11, 2025, Petitioner filed a Petition for Rehearing En Banc (Doc. 41).

On **August 22, 2025**, the Court of Appeals entered an order denying the Petition for Rehearing En Banc, no judge in regular active service having requested that the Court be polled, and further denying the petition as one for rehearing before the panel (Doc. 43).

On **September 3, 2025**, the mandate issued (Doc. 46), transmitted under cover of the Clerk's MDT-1 letter of the same date. Pet. App. 33a.

F. The Motion Withheld From Judicial Consideration

On **August 13, 2025**, Petitioner filed a Motion for Summary Disposition and Motion for Decision on the Briefs (Doc. 44). On **August 25, 2025**, the Clerk entered a notice that no action would be taken upon that motion, assigning as the reason: "This opinion has issued." (Doc. 45). Pet. App. 10a.

On **September 15, 2025**, Petitioner filed a **Motion for Reconsideration of Clerk's No Action/Deficiency Notice dated August 25, 2025** (Doc. 47). Pet. App.

12a. That motion was, in substance and in form, an application under Fed. R. App. P. 27(b) and 11th Cir. R. 27-2 requesting that the **court** reconsider, vacate, or modify an action taken by its **Clerk**. It was addressed to the court. It sought no relief from the Clerk. Its entire and exclusive office was to invoke the right of judicial review that Rule 27(b) reserves to a party adversely affected by clerical action.

On **September 18, 2025**, the **Clerk** entered a notice that no action would be taken upon Doc. 47, assigning as the reason: "This opinion has issued." (Doc. 48). Pet. App. 28a.

The consequences are these, and they are undisputed upon the face of the record:

First, no judge of the Court of Appeals has ruled upon Doc. 47.

Second, no order of the Court of Appeals addresses Doc. 47.

Third, the docket contains no entry indicating that Doc. 47 was ever submitted to the court, referred to a judge, or placed before a panel.

Fourth, the motion asking the court to review the Clerk's action was answered by the Clerk whose action it asked the court to review.

That circumstance—and not the correctness of the July 2, 2025 disposition—is the subject of this petition.

The most recent entry upon the docket of the Court of Appeals is Doc. 49, entered April 13, 2026, recording receipt on April 6, 2026 of a copy of a Petition for Writ of Mandamus filed with this Court by Petitioner.

REASONS FOR GRANTING THE WRIT

The prerequisites to the issuance of the writ are settled. The party seeking mandamus must have "no other adequate means to attain the relief he desires"; his right to issuance must be "clear and indisputable"; and the issuing court, "in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances." *Cheney v. U.S. Dist. Court for D.C.*, 542 U.S. 367, 380–81 (2004) (citations omitted); accord *Kerr v. U.S. Dist. Court for N.D. Cal.*, 426 U.S. 394, 403 (1976). Rule 20.1 restates the same conditions in the vocabulary of this Court's discretionary practice. Each is satisfied here.

I. The Clerk's Disposition of a Motion Seeking Judicial Review of His Own Order, Without Submission to Any Judge, Is a Usurpation of Judicial Power

The traditional office of the writ in aid of appellate jurisdiction "has been to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so." *Roche*, 319 U.S. at 26; accord *Will v. United States*, 389 U.S. 90, 95 (1967). Both branches of that formulation are engaged here.

A. Rule 27(b) Conditions the Delegation Upon a Right of Judicial Review

The Federal Rules of Appellate Procedure draw the relevant boundary with unusual precision. Rule 27(b) permits a court of appeals to provide "that its clerk may act on specified types of procedural motions." In the very next sentence, the Rule provides: "A party adversely affected by the clerk's action may file a motion to reconsider, vacate, or modify that action."

The juxtaposition is not accidental. The right of review is the condition upon which the delegation rests. It is what permits an Article III court to commit a category of motions to a non-judicial officer without abdicating the judicial power. The clerk's authority is provisional and revisable; the court's authority is final. Eleventh Circuit Rule 27-1(c) recites the identical limitation, authorizing the Clerk to act "subject to review by the court," and Eleventh Circuit Rule 27-2 supplies the procedural instrument—a motion to reconsider, vacate, or modify, filed within twenty-one days of entry.

Article III, Section 1 vests the judicial power of the United States in the Supreme Court and in such inferior courts as Congress may establish. That power is exercised by the judges of those courts. A clerk is an officer of the court, not a repository of its judicial power. The rulemaking authority conferred by 28 U.S.C. § 2071 permits a court to prescribe rules "for the conduct of its business"; it does not permit a court to vest its adjudicatory function in a non-judicial officer, and Rule 27(b) does not purport to do so.

B. The Reviewing and the Reviewed Authority Became the Same Hand

Doc. 47 was the exercise of the Rule 27(b) right in its purest form. It challenged the Clerk's notice of August 25, 2025. It was addressed to the court. It sought a judicial determination, and nothing else.

The Clerk answered it himself, by a notice of the same administrative character as the one under challenge.

The vice is structural, not merely procedural. If the officer whose action is challenged may dispose of the challenge by issuing a further notice, then the right of review secured by Rule 27(b) is a nullity in every case in which it matters; Eleventh Circuit Rule 27-1(c)'s guarantee that clerical action remains "subject to review by the court" describes a review that never occurs; and Eleventh Circuit Rule 27-2 becomes a form without a function. The reviewing authority and the reviewed authority collapse into a single hand.

Federal Rule of Appellate Procedure 27(c) demonstrates how carefully the Rules guard this boundary even among Article III judges: "[a] circuit judge may act alone on any motion, but may not dismiss or otherwise determine an appeal or other proceeding." A rule that withholds dispositive authority from an individual Article III judge cannot plausibly be construed to confer that authority upon a clerk. Yet the practical effect of the notice of September 18, 2025 was terminal: it ended the only proceeding by which Petitioner could obtain judicial consideration of the Clerk's August 25 action.

This is the paradigm case in which "a court has exceeded its authority," *Will*, 389 U.S. at 95—with the aggravating circumstance that the authority exceeded was exercised not by the court at all, but by an officer acting in its name and without its participation.

C. The Reason Assigned Presents a Question of Law for a Judge

The notice of September 18, 2025 assigns a single reason: "This opinion has issued."

That proposition may be correct. It may be that, following the issuance of the opinion on July 2, 2025 and the mandate on September 3, 2025, the Court of Appeals lacked authority to grant the relief Doc. 47 requested. Petitioner does not ask this Court to decide that question, and expressly disclaims any request that it do so.

But the proposition is a **conclusion of law**. Whether the issuance of an opinion and mandate divests a court of appeals of jurisdiction to entertain a particular motion; whether the motion sought relief of a kind that survives the mandate; whether the circumstances are such as would support recall of the mandate under Fed. R. App. P. 41 and 11th Cir. R. 41-2—each is a question of law and of judicial discretion. Each belongs to a judge.

The Clerk's function under Fed. R. App. P. 45(b)(1) is defined by that Rule in ministerial terms: to "maintain a docket and an index of all docketed cases" and to "record all papers filed with the clerk and all process, orders, and judgments." That is a duty of recordation. It is not a warrant to adjudicate, in the first and only instance, whether a motion presents a matter upon which the court retains power to act.

Petitioner takes care to state what he does **not** contend. He does not contend that a clerk's ordinary docketing, screening, and deficiency functions are unlawful;

they are indispensable to the administration of a busy court. He does not contend that every administrative notice is susceptible of mandamus; the overwhelming majority plainly are not. He does not contend that the Clerk acted from any improper motive; nothing in this record suggests any. He contends only this: **where the filing before the clerk is itself an application for judicial review of that clerk's own order, the clerk's disposition of it by administrative notice takes the officer outside the authority delegated by Rule 27(b) and appropriates a function that Article III and the Rules reserve to the court.**

II. Petitioner's Right to a Judicial Ruling Is Clear and Indisputable Because the Duty Invoked Is Ministerial

The second *Cheney* condition requires that the right to issuance of the writ be "clear and indisputable." 542 U.S. at 381; *Kerr*, 426 U.S. at 403; *Mallard v. U.S. Dist. Court for S.D. Iowa*, 490 U.S. 296, 309 (1989). The right asserted here satisfies that standard because of what it is not: it is not a right to prevail.

That distinction answers the objection ordinarily fatal to mandamus. The writ does not lie to control the exercise of judgment or discretion committed to an inferior tribunal. But it has always lain to compel a court to act where it has a duty to act and has declined. *Ex parte United States*, 287 U.S. 241, 248–49 (1932) (writ available to compel the performance of a duty the court is bound to perform); *Will*, 389 U.S. at 95; *Roche*, 319 U.S. at 26; *Mallard*, 490 U.S. at 308–09.

This Court has issued the writ to correct a departure from the allocation of decisional responsibility fixed by rule and statute even where discretionary judgment was nominally implicated. In *La Buy v. Howes Leather Co.*, 352 U.S. 249, 256–57 (1957), the Court sustained the issuance of mandamus where a district judge had referred complex antitrust cases to a master, holding that the writ was properly employed to confine the judge to the decisional function the Rules assigned to him. The principle is *a fortiori* here: *La Buy* concerned a judge delegating to a master appointed by the court; this case concerns a clerk exercising, without any delegation from the court in the particular instance, the review function that the Rules assign to the court itself.

The duty invoked here is ministerial in the strict sense. It is **not** a duty to grant Doc. 47. It is **not** a duty to vacate the notice of August 25, 2025, to recall the mandate, to reopen the appeal, or to grant any substantive relief. It is the **antecedent** duty to place a motion invoking Rule 27(b) before a judicial officer, so that the court—and not its Clerk—may determine whether relief is available. The Court of Appeals may deny Doc. 47 summarily. It may deny it upon precisely the ground the Clerk assigned. Petitioner asks only that the determination be made by a judge.

Because the duty is to **submit** rather than to **decide**, there is no discretion for the writ to invade and no risk whatever that its issuance would substitute this Court's judgment, or the judgment of any court, for that of the Court of Appeals upon any

question committed to that court's discretion. The writ sought is as narrow as the writ can be made.

III. The Sequence of Filing and Docket Entry Surrounding the July 2, 2025 Disposition Confirms That Judicial Review Is Warranted

The docket establishes without contradiction that Docs. 37 and 38 were filed June 30, 2025 and entered July 3, 2025, and that the opinion and judgment issued July 2, 2025.

Petitioner does not assert clerical error in the recording of the filing date. Under Fed. R. App. P. 25(a)(2)(A)(i), a paper is filed by delivery to the clerk, and the docket so reflects. The point is narrower: the appeal was resolved upon a date falling between the filing of two submissions and their appearance upon the docket, with the consequence that the panel is unlikely to have had them before it.

Whether that sequence bore upon the disposition; whether the submissions were material; whether their absence was consequential; whether any remedy survives—these are questions Doc. 47 asked the Court of Appeals to consider. They are questions of the ordinary judicial kind, and clerks are neither authorized nor equipped to resolve them.

The due process guaranteed by the Fifth Amendment requires notice and an opportunity to be heard "appropriate to the nature of the case." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950). The right of access to the courts

is meaningful only if filings tendered for adjudication are in fact tendered to an adjudicator. *Bounds v. Smith*, 430 U.S. 817, 821–22 (1977). A pro se litigant's submissions are held to less stringent standards than formal pleadings drafted by lawyers and are entitled to liberal construction. *Haines v. Kerner*, 404 U.S. 519, 520–21 (1972). And equitable considerations bearing upon procedural default—the danger of prejudice, the length of and reason for the delay, whether the cause lay within the party's reasonable control, and the movant's good faith—are for a court to weigh. *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993); see also Fed. R. App. P. 4(a)(5), 4(a)(6).

No court has weighed them, because no court has been afforded the opportunity.

IV. Adequate Relief Cannot Be Obtained in Any Other Form or From Any Other Court

Rule 20.3(a) requires that the petition "set out with particularity why the relief sought is not available in any other court." Petitioner addresses each conceivable alternative in turn.

A. There is no order to appeal and no judgment from which certiorari may be sought. The disposition of Doc. 47 was a Clerk's notice (Doc. 48), not an order of the court. It bears no judicial signature. It is not the act of any judge. Certiorari under 28 U.S.C. § 1254(1) reaches "[c]ases in the courts of appeals," and this Court's review operates upon judgments, decrees, and orders. The total absence

of any judicial act is the precise injury complained of, and it is equally the precise reason the ordinary avenue of review is unavailable. A litigant cannot petition for certiorari from silence.

B. No inferior court may grant the relief. A district court possesses no authority to direct a court of appeals to act; the supervisory relation runs in the opposite direction. The Court of Appeals cannot issue mandamus to itself: Fed. R. App. P. 21 governs petitions filed *in* a court of appeals and directed *to* a district court, and furnishes no vehicle by which a court of appeals may command itself. *Cf. Bankers Life & Cas. Co. v. Holland*, 346 U.S. 379, 382–83 (1953). This Court alone stands in a supervisory relation to the Eleventh Circuit.

C. Further motion practice in the Court of Appeals is not an adequate remedy. Petitioner has filed successive motions and has received, in response, the administrative notices catalogued above: Docs. 10, 20, 22, 24, 25, 29, 45, and 48. Eight notices; no judicial ruling upon any of them. A remedy is not "adequate" within the meaning of Rule 20.1 where the record demonstrates that its invocation reliably produces an administrative notice rather than a judicial determination. Petitioner has already invoked the one mechanism the Rules provide for obtaining judicial review of clerical action—a motion under Rule 27(b) and 11th Cir. R. 27-2—and it is precisely that mechanism which was withheld from the court.

D. Rehearing is exhausted. The Petition for Rehearing En Banc was denied by order of the Court of Appeals on August 22, 2025 (Doc. 43), no judge in regular

active service having requested a poll, and the petition was denied as well insofar as it sought rehearing before the panel. The mandate issued September 3, 2025 (Doc. 46). No further rehearing is available.

E. Further reconsideration practice is foreclosed by the Court of Appeals' own rule. Petitioner invoked the reconsideration procedure by filing Doc. 47. Eleventh Circuit Rule 27-3 permits only one motion for reconsideration with respect to the same order, and forbids reconsideration of an order disposing of a previously filed reconsideration motion. Petitioner has expended the single motion the rules allow him. He cannot file another, and the twenty-one-day period of Rule 27-2 has in any event long since run.

F. Recall of the mandate. Petitioner states plainly, rather than permitting this Court to assume otherwise, that **he has not moved to recall the mandate.**

Recall is an extraordinary procedure, to be held "in reserve against grave, unforeseen contingencies" and exercised only upon a showing of good cause or extraordinary circumstances. *Calderon v. Thompson*, 523 U.S. 538, 550 (1998). Petitioner does not contend that a motion to recall would necessarily be refused. He declines to rest his petition upon a prediction concerning a filing he has not made, and he does not ask this Court to assume facts about an unfiled application.

G. Summary. There is no order to appeal; no inferior court with power to command; no further motion practice that this record suggests would be submitted to a judge; no rehearing remaining; and no certiorari proceeding capable of reaching the act complained of. Rule 20.1's third condition is satisfied.

V. The Writ Is Appropriate Under the Circumstances and Its Issuance Would Not Displace the Ordinary Appellate Function

Mandamus is a "drastic and extraordinary" remedy "reserved for really extraordinary causes." *Ex parte Fahey*, 332 U.S. 258, 259-60 (1947); *Cheney*, 542 U.S. at 380. It is not a substitute for appeal. *Bankers Life*, 346 U.S. at 383; *Roche*, 319 U.S. at 26.

Petitioner does not offer it as one. He does not ask this Court to review the dismissal of his appeal, the denial of a certificate of appealability, the correctness of the district court's judgment, or the merits of his underlying habeas claims. Not one of those matters is presented. He asks that a motion be placed before a judge.

Relief so confined does not displace the appellate function; it restores the conditions under which that function operates. The writ would leave the Court of Appeals entirely free to deny Doc. 47, upon any ground it thinks proper, in a single sentence. What the writ would secure is that the sentence be written by a judge.

Nor is the question presented one of merely private concern. This Court has recognized that mandamus may serve a supervisory office where a question of first impression respecting the proper administration of the Rules would otherwise evade

review. *Schlagenhauf v. Holder*, 379 U.S. 104, 110-11 (1964); *La Buy*, 352 U.S. at 259-60. The question whether a clerk may dispose of a Rule 27(b) motion for reconsideration of that clerk's own action is, by its nature, a question that can never generate an appealable order, and therefore one that will recur without ever reaching this Court unless it reaches the Court in this posture. Every court of appeals has delegated procedural motions to its clerk. The scope and limit of that delegation is a matter of general and continuing importance to the administration of justice in the federal appellate courts.

CONCLUSION AND PRAYER FOR RELIEF

The Federal Rules of Appellate Procedure permit a clerk to act for the court because the party affected retains the right to ask the court to review what the clerk has done. When the clerk answers that request himself, the condition upon which the delegation rests has failed. What remains is not delegated administrative action but the appropriation of judicial power by an officer in whom that power has never been vested. It is for exactly that circumstance that the writ has been preserved.

WHEREFORE, Petitioner Barry Brooks, Jr. respectfully prays that this Honorable Court:

1. **ISSUE A WRIT OF MANDAMUS** directed to the United States Court of Appeals for the Eleventh Circuit and to David J. Smith, Clerk of that Court, in his official capacity, **COMMANDING** that Petitioner's Motion for Reconsideration of the Clerk's No Action/Deficiency Notice dated August 25,

2025 (Doc. 47, filed September 15, 2025, in Appeal No. 24-14144-G) be submitted to a judge or panel of that Court for judicial determination;

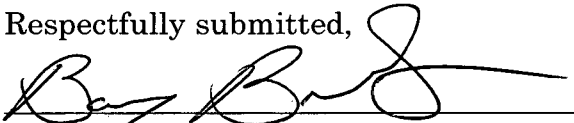
2. **DIRECT** that the Court of Appeals enter an order disposing of that motion, this Court expressing no view and giving no direction whatever as to the disposition thereof;

3. **In the alternative, TREAT** this petition as a petition for a writ of certiorari and **SUMMARILY VACATE** the Clerk's notice entered September 18, 2025 (Doc. 48), with instructions to submit Doc. 47 to the Court for judicial determination;

4. **In the further alternative, HOLD** this petition pending the filing and disposition in the Court of Appeals of a motion to recall the mandate; and

5. **GRANT** such other and further relief as this Court may deem just, equitable, and proper.

Respectfully submitted,



BARRY BROOKS, JR.

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Dated: August 19, 2026