Supreme Court, U.S.
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No. 26-5666

# IN THE SUPREME COURT OF THE UNITED STATES

**DONALD EDWARD SMITH,**
Petitioner,
v.
**UNITED STATES OF AMERICA,**
Respondent.

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

## PETITION FOR A WRIT OF CERTIORARI

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**ORIGINAL**

## QUESTIONS PRESENTED

1. Whether due process permits a federal court of appeals to enforce a twenty-one-day deadline for reconsideration of a certificate-of-appealability denial when the Clerk received and file-stamped a pro se litigant's change-of-address notice before the denial issued, but the court mailed the dispositive order to the superseded address and the litigant therefore received no timely notice of the order or the deadline.

2. Whether a federal court of appeals may refuse all corrective relief, without addressing the documented notice failure, where the court's own rules authorize extensions of court-rule deadlines for good cause, subject to Federal Rule of Appellate Procedure 26(b), and authorize recall of a mandate to prevent injustice.

## PARTIES TO THE PROCEEDING

Petitioner Donald Edward Smith was the Petitioner-Appellant in the United States Court of Appeals for the Eleventh Circuit.

Respondent United States of America was the Respondent-Appellee. No party to this proceeding is a nongovernmental corporation, and no party has a stock ticker symbol.

## RELATED PROCEEDINGS

United States v. Donald Edward Smith, No. 5:17-cr-00030-RBD-PRL-1, United States District Court for the Middle District of Florida.

Donald Edward Smith v. United States, No. 18-14759, United States Court of Appeals for the Eleventh Circuit, direct appeal disposed of August 23, 2021.

Donald Edward Smith v. United States, No. 5:22-cv-00214-RBD-PRL, United States District Court for the Middle District of Florida, § 2255 proceeding; district-court order denying a certificate of appealability entered November 6, 2023.

Donald Edward Smith v. United States, No. 23-13760-G, United States Court of Appeals for the Eleventh Circuit; certificate of appealability denied May 7, 2024; motion for leave to file an out-of-time motion for reconsideration and to recall the mandate denied July 22, 2026.

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## OPINIONS AND ORDERS BELOW

The order sought to be reviewed is the Eleventh Circuit's July 22, 2026 unpublished order denying Petitioner's motion for leave to file an out-of-time motion for reconsideration and to recall the mandate. The order denied relief without explanation and is reproduced at Appendix A.

The Eleventh Circuit's May 7, 2024 order denying a certificate of appealability, together with the notice stating that the denial issued as the mandate and that any motion to reconsider was due within twenty-one days, is reproduced at Appendix B. Petitioner's June 25, 2026 Motion to Recall Mandate and for Leave to File Out-of-Time Motion for Reconsideration, together with its attachments and exhibits, including the April 23, 2024 change-of-address notice, Petitioner's declaration, medical materials, counsel-related filings and transcript excerpts, the December 29, 2020 Schaffnit letter, and whistleblower/TCR materials, is reproduced at Appendix C.

## JURISDICTION

The Eleventh Circuit entered the order sought to be reviewed on July 22, 2026. This petition is timely under Supreme Court Rule 13.1. This Court has jurisdiction under 28 U.S.C. § 1254(1). See Hohn v. United States, 524 U.S. 236 (1998).

Petitioner seeks review of the July 22, 2026 order denying corrective relief, not direct review of the May 7, 2024 COA denial as an independently timely judgment. The July 22 order left in place the forfeiture of Petitioner's reconsideration opportunity after the May 7 notice was mailed to his prior address despite

the Clerk's prior receipt of his change-of-address notice.

## CONSTITUTIONAL, STATUTORY, AND RULE PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides, in relevant part:

> "No person shall . . . be deprived of life, liberty, or property, without due process of law."

28 U.S.C. § 2253(c) governs certificates of appealability in § 2255 proceedings.

Federal Rule of Appellate Procedure 26(b) permits a court of appeals, for good cause, to extend time or permit an act after the prescribed time expires, subject to the Rule's stated exceptions.

Eleventh Circuit Rule 22-1(c) permits reconsideration of a certificate-of-appealability denial, but not panel rehearing or rehearing en banc.

Eleventh Circuit Rule 25-7 requires a pro se party to notify the court of any change in mailing or email address and provides that transmission to a prior address is effective only if the pro se party failed to comply with that obligation.

Eleventh Circuit Rule 27-1(d)(6) authorizes extensions of time prescribed by Eleventh Circuit rules for good cause, subject to Federal Rule of Appellate Procedure 26(b).

Eleventh Circuit Rule 27-2 requires a motion to reconsider, vacate, or modify an order within twenty-one days, with no additional time for mailing.

Eleventh Circuit Rule 41-1 permits recall of a mandate to prevent injustice and requires good cause when recall is sought more than one year after issuance.

The pertinent provisions are reproduced in Appendix D.

## STATEMENT OF THE CASE

### A. The § 2255 appeal

This petition arises from Petitioner Donald Edward Smith's proceedings under 28 U.S.C. § 2255. After the district court denied postconviction relief and declined to issue a certificate of appealability, Petitioner proceeded pro se and sought review in the Eleventh Circuit. The appeal was docketed as No. 23-13760.

Petitioner actively pursued the appeal. He submitted a COA application, responded to deficiency notices, filed required documents, and sought transcripts of the February 26, 2018 and March 23, 2018 hearings, which he contended were important to his claims concerning counsel, withdrawal, conflict, and the circumstances leading to his plea.

On January 3, 2024, the appeal was dismissed for want of prosecution based on an asserted deficiency concerning a Transcript Order Form. On January 10, 2024, the Eleventh Circuit reinstated the appeal after determining that the dismissal had been erroneous.

While the COA application remained pending, Petitioner submitted a written notice advising the Court of his new mailing address. The Clerk received that notice before the COA was denied. Nevertheless, when the Court issued its May 7, 2024 order denying the COA, the notice was mailed to Petitioner's former address.

### B. The Clerk received Petitioner's change of address before the COA denial issued.

On April 23, 2024, while his certificate-of-appealability application remained pending, Petitioner submitted a written Notice of Change of Address advising the Eleventh Circuit that his mailing address had changed to:

**62 Almond Road, Ocala, Florida 34472**

The Clerk received and file-stamped the notice on May 2, 2024. (App. C.) The Court's records likewise identify May 2, 2024 as the receipt date for the change-of-address notice. (App. E.) Thus, before the COA was denied, the Clerk's Office had received written notice that Petitioner's mailing address was no longer the address previously associated with the case.

Although the Clerk received the address change on May 2, the filing was not entered into the Court's electronic records until May 13, 2024. (App. E.) During that interval, on May 7, 2024, the Eleventh Circuit denied Petitioner's application for a certificate of appealability. (App. B.) The notice accompanying the denial was not mailed to the 62 Almond Road address Petitioner had provided. Instead, it was mailed to his former address:

**13365 SW 3rd Court, Ocala, Florida 34473 (App. B.)**

The May 7 notice was significant because it did more than inform Petitioner that the COA had been denied. It also stated that the denial issued as the mandate and that any motion to reconsider, vacate, or modify the order had to be filed within twenty-one days, with no additional time allowed for mailing. (App. B.)

Because the notice was mailed to Petitioner's former address, Petitioner did not receive timely

notice of either the COA denial or the twenty-one-day reconsideration period. The missed deadline therefore cannot fairly be characterized as a failure by Petitioner to keep the Court informed of his address. Petitioner had already submitted his new address, and the Clerk had received it before the dispositive order issued.

The Court's own records document the sequence: the change-of-address notice was received on May 2; the COA was denied on May 7; the May 7 notice was mailed to the former address; and the previously received change-of-address filing was not entered by court personnel until May 13. (Apps. B, C, and E.) Petitioner contends that this sequence caused the loss of his reconsideration opportunity through a court-created notice failure, rather than through neglect, abandonment, or failure to provide a current address.

### C. Five days after receiving the address change, the court sent the dispositive notice to Petitioner's former address.

On May 7, 2024, five days after the Clerk received Petitioner's change-of-address notice, the Eleventh Circuit denied Petitioner's application for a certificate of appealability. The accompanying notice was not mailed to the 62 Almond Road address Petitioner had provided. Instead, it was mailed to his former address at 13365 SW 3rd Court, Ocala, Florida 34473. (App. B.)

The May 7 notice was consequential because it did more than announce the COA denial. It also stated that the denial issued as the mandate and that any motion to reconsider, vacate, or modify the order had

to be filed within twenty-one days, with no additional time allowed for mailing. (App. B.)

Because the notice was sent to Petitioner's former address, Petitioner states that he did not receive it during the twenty-one-day reconsideration period. (App. C.) The deadline therefore expired before Petitioner had actual notice that the COA had been denied or that the time to seek reconsideration had begun.

The missed deadline was not caused by abandonment, inattention, or failure to provide a current address. Petitioner had already submitted the required address change, and the Clerk had received it before the dispositive order issued. The loss of the reconsideration opportunity resulted from the mailing of the order to the prior address during the interval between the Clerk's receipt of the address change on May 2 and its later entry on May 13. (Apps. B, C, and E.)

### D. Serious medical circumstances also existed during the twenty-one-day period.

Petitioner's failure to seek reconsideration within twenty-one days should also be viewed in light of his documented medical circumstances. Petitioner's medical history reflects longstanding serious conditions, including cancer, cardiac disease, diabetes, neuropathy, and repeated surgical treatment. (App. C.)

Most relevant here, Petitioner's medical records identify May 14, 2024, only seven days after the COA denial, as the date of neurological surgery followed by approximately six months of rehabilitation. (App. C.) Thus, during the same period in which the twenty-one-day reconsideration deadline

was running, Petitioner was undergoing serious medical treatment and thereafter entered a prolonged recovery period.

Petitioner does not rely on his medical condition as an independent excuse for failing to act on an order he received. His primary contention is that he did not receive the May 7 order at his current address and therefore did not know that the COA had been denied or that the reconsideration deadline had begun. The medical evidence provides surrounding context showing why the missed deadline should not be characterized as neglect, abandonment, or a conscious decision not to pursue available relief.

### E. Petitioner did not discover the COA denial until 2026.

Because the May 7, 2024 notice denying a certificate of appealability was mailed to Petitioner's former address, Petitioner states that he did not receive notice of the denial during the twenty-one-day reconsideration period. He remained unaware that the Eleventh Circuit had ruled until May 11, 2026, when he personally inquired into the status of the matter and obtained a copy of the order. (App. C.)

When Petitioner obtained the May 7 materials, he learned for the first time that the COA had been denied nearly two years earlier, that the denial had issued as the mandate, and that any motion to reconsider, vacate, or modify the order had been due within twenty-one days with no additional time for mailing. He also discovered that the notice had been mailed to 13365 SW 3rd Court, Ocala, Florida 34473, rather than to the 62 Almond Road address the Clerk had received before the order issued.

Petitioner therefore did not simply discover that a deadline had been missed. He discovered that the entire reconsideration opportunity had expired before he knew that the COA had been denied or that the time to seek reconsideration had begun.

After discovering the denial, Petitioner sought corrective relief. On June 25, 2026, he filed a motion asking the Eleventh Circuit for leave to file an out-of-time motion for reconsideration and to recall the mandate. (App. C.) That sequence supports Petitioner's contention that the delay began with nonreceipt of the ruling itself, not with knowledge of an adverse order followed by inaction.

### F. Petitioner raised the notice failure and sought corrective relief after discovering the order.

After discovering in May 2026 that the Eleventh Circuit had denied his certificate of appealability nearly two years earlier, Petitioner sought corrective relief. On June 25, 2026, approximately six weeks after he states that he first learned of the May 7, 2024 COA denial, Petitioner filed a motion seeking leave to file an out-of-time motion for reconsideration and to recall the mandate. (App. C.)

Petitioner explained that the May 7 notice had been mailed to his former address even though the Clerk had received his written change-of-address notice before the COA denial issued. He further explained that he did not receive timely notice of the denial and therefore did not know that the twenty-one-day reconsideration period had begun or expired.

The relief requested was limited. Petitioner did not ask the Eleventh Circuit to set aside the criminal judgment or automatically grant a certificate of appealability because of the mailing error. He asked the Court to restore the reconsideration opportunity he contended had been lost because the order triggering the deadline was not mailed to the current address he had provided.

Petitioner also sought recall of the mandate because the May 7, 2024 COA denial had issued as the mandate of the Court. His request for recall was therefore tied to the same corrective purpose: without relief from the mandate and expired deadline, there was no practical mechanism for the Court to consider the reconsideration motion he could not timely file.

Petitioner also identified the constitutional claims and record materials he intended to present if reconsideration were permitted, including claims concerning conflict-free counsel, meaningful representation at a critical stage, the voluntariness of his plea, medical circumstances, third-party financing of counsel, and whistleblower/TCR materials. He did not ask the Eleventh Circuit to finally decide those claims through the June 25 motion; he asked only for the opportunity to seek reconsideration of the COA denial.

On July 22, 2026, the Eleventh Circuit denied the request without explanation. (App. A.) The order did not state whether the Court rejected Petitioner's account of nonreceipt, discounted the May 2 change-of-address filing, concluded that the twenty-one-day deadline could not be enlarged, or determined that recall of the mandate was unavailable. Thus, the notice failure, the request for relief from the expired reconsideration period, and the request to recall the mandate were squarely presented to the Eleventh

Circuit before the order now under review. By denying the motion, the court rejected the requested corrective relief, but left unexplained the legal basis for doing so. Petitioner therefore seeks review of the July 22, 2026 order refusing corrective relief after the documented notice failure was brought to the Court's attention.

## REASONS FOR GRANTING THE PETITION

### I. The petition presents an important federal question concerning notice before forfeiture of an available appellate procedure.

The issue presented is narrow, but it reaches a fundamental requirement of fair judicial process: whether a litigant may be deemed to have forfeited an available appellate procedure when the court itself failed to provide meaningful notice of the order that triggered the deadline for using that procedure.

Petitioner does not ask this Court to decide the merits of his underlying claims under 28 U.S.C. § 2255 in the first instance. Nor does Petitioner ask this Court to determine whether the Eleventh Circuit ultimately should issue a certificate of appealability. Those matters remain for the lower courts if the lost reconsideration opportunity is restored.

The question before this Court arises one step earlier and concerns the fairness of the appellate process itself.

Petitioner timely invoked the appellate process, continued pursuing his appeal pro se, and submitted a written change of address while his application for a certificate of appealability remained pending. The Clerk received that filing before the Eleventh Circuit ruled on the COA application. Yet, five days after receiving the updated address, the Court sent the

dispositive notice denying the COA to Petitioner's former address.

That notice was not routine correspondence. It informed Petitioner that the Eleventh Circuit had denied the certificate of appealability, that the denial issued as the mandate, and that any motion to reconsider, vacate, or modify the order had to be filed within twenty-one days.

The mailing therefore performed two inseparable functions. It advised Petitioner that his attempt to obtain appellate review had been denied, and it advised him that a limited period had begun in which he could ask the Court to reconsider that denial.

Petitioner received neither form of notice during the relevant period.

The resulting problem is not simply that a piece of court correspondence went to an incorrect address. The notice failure extinguished an expressly available step in the appellate process before Petitioner knew either that the COA had been denied or that further action was required. Under Eleventh Circuit Rule 22-1(c), reconsideration was the mechanism available to challenge the COA denial in the court of appeals; panel rehearing and rehearing en banc were not available. The consequence of the wrong-address mailing was therefore the loss of appellate process itself, not merely delayed receipt of an adverse ruling.

This Court has long recognized that due process requires notice reasonably calculated, under the circumstances, to inform an affected person of governmental action and to afford a meaningful opportunity to respond. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950).

This Court has also recognized that due process is implicated when a party loses a legal opportunity because of a procedural failure outside the party's

control. See Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982). Here, Petitioner had already submitted his address change, and the Clerk had received it before the order issued.

That principle has particular force where the governmental actor is the court itself and the consequence of failed notice is the expiration of a deadline for seeking further judicial review. A procedural opportunity cannot be meaningful in any practical sense if the litigant is never informed that the event triggering the procedure has occurred.

The issue is especially significant here because Petitioner had not failed to provide the Court with his current address. The Clerk had already received Petitioner's written Notice of Change of Address before the COA denial issued. (App. C.) The problem arose after Petitioner supplied the required information and while that filing remained unprocessed for purposes of the May 7 mailing.

Petitioner therefore does not seek an exception based upon his own failure to comply with the Court's address requirements. He asks whether the consequences of an internal processing delay may constitutionally be imposed entirely upon the litigant when that delay causes a dispositive order to be sent to an address the litigant had already replaced through a filing in the Clerk's possession.

The distinction is substantial.

Ordinarily, enforcement of a filing deadline rests upon the premise that the affected party had a fair opportunity to know that judicial action had occurred and that responsive action was required. Here, Petitioner contends that the notice mechanism failed at the very point necessary for him to exercise the reconsideration procedure made available by the Eleventh Circuit's own rules.

The twenty-one-day period did not expire after Petitioner received the COA denial and chose not to act. It expired while Petitioner remained unaware that the Court had ruled.

Petitioner further contends that the problem cannot be resolved merely by stating that court orders become effective when entered. The constitutional issue is not whether the May 7 order legally existed upon entry. The issue is whether the Court may impose the irreversible consequence of procedural forfeiture where the litigant's failure to respond resulted from the Court sending the triggering notice to a superseded address despite having received the correct address beforehand.

That distinction separates this case from ordinary claims of excusable neglect. Petitioner does not contend that he received the order but misunderstood it, misplaced it, overlooked the deadline, or failed to act because of inadvertence. His position is that he did not receive the order at all during the period in which reconsideration could be sought.

Nor does this petition ask the Court to resolve a dispute based solely upon Petitioner's recollection. The chronology is documented by the court records themselves: Petitioner submitted the address change; the Clerk received it on May 2, 2024; the COA was denied on May 7; the May 7 correspondence used Petitioner's former address; and the previously received address-change filing was not entered by court personnel until May 13. (App. E.)

The case therefore presents more than a request to correct an isolated factual mistake. It raises the broader federal question of what process is constitutionally required before a federal appellate court may treat a litigant as having permanently

forfeited a procedural remedy where the litigant complied with the obligation to provide current contact information but the court failed to use that information when transmitting the order that triggered the deadline.

That question fits the considerations identified in Supreme Court Rule 10(c). Rule 10 recognizes as a reason supporting review that a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided such a question in conflict with this Court's relevant decisions.

Petitioner submits that the interaction between due process, court-generated notice, and forfeiture of a court-created reconsideration procedure presents such a question. The answer affects not merely the calculation of a filing period but the minimum process required before a federal court may extinguish an available avenue of review based upon a deadline the litigant had no meaningful notice had begun.

The circumstances also implicate the supervisory consideration recognized in Rule 10(a). That provision identifies as potentially warranting review circumstances in which a United States court of appeals has departed so substantially from the accepted and usual course of judicial proceedings that this Court's supervisory authority may be appropriate.

Petitioner does not contend that every clerical mailing error constitutes such a departure. What makes this case different is the combination of circumstances: the Clerk had already received the corrected address; the dispositive order nevertheless went to the former address; that same notice announced a short reconsideration deadline; the deadline expired without Petitioner receiving the

notice; and when Petitioner later demonstrated the sequence and requested corrective relief, the Eleventh Circuit denied that request without explaining why the documented notice failure did not warrant any remedy.

The absence of explanation is significant because it leaves unresolved the legal basis on which the lost reconsideration opportunity was allowed to remain forfeited. The July 22, 2026 order does not indicate whether the Court rejected Petitioner's evidence of nonreceipt, concluded that prior receipt of the address-change notice was immaterial, regarded the twenty-one-day deadline as incapable of enlargement, or determined that recall of the mandate was unavailable despite the circumstances presented.

As a result, Petitioner remains bound by a procedural forfeiture arising from an order he contends he never received because of a notice failure occurring after he had already supplied the Court with his correct address.

This Court's review would not require it to supervise routine docket administration or correct every mailing mistake. The question is considerably narrower: when the federal appellate court's own handling of a timely address-change notice prevents a pro se litigant from receiving the dispositive order that triggers an available reconsideration period, may the court thereafter enforce the resulting missed deadline without affording any meaningful corrective procedure?

That question concerns the constitutional adequacy of the process itself.

The distinction is particularly important in the context of a certificate of appealability. The denial of a COA prevented Petitioner from proceeding with

appellate review of his constitutional claims, and Eleventh Circuit procedure gave him a specific mechanism through which he could ask the Court to reconsider that threshold determination. The notice failure therefore did not merely delay Petitioner's knowledge of an administrative event; it extinguished his ability to invoke the only reconsideration procedure identified in the Court's notice.

Petitioner asks this Court to establish that, before such a consequence may be attributed to a litigant, the process must provide a meaningful opportunity to know that the triggering order has been entered and that action is required.

The petition thus presents the type of issue contemplated by Rule 10: not merely an allegation that the court below made an erroneous factual determination or misapplied an otherwise settled rule, but a question concerning the minimum constitutional protection required when a federal appellate court's own notice failure causes the forfeiture of an available judicial remedy. Rule 10 cautions that certiorari is rarely granted merely to correct factual error or misapplication of a properly stated rule. This petition instead presents the broader federal question whether an appellate remedy may be forfeited through expiration of a court-created deadline where the court had received the litigant's corrected address before the triggering order issued but nevertheless sent that order elsewhere.

## II. The missed deadline was caused by the court's processing and mailing failure, not Petitioner's failure to keep the court informed.

The circumstances surrounding the missed reconsideration deadline are documented by the

Court's own records and do not depend upon competing recollections or disputed testimony.

While his application for a certificate of appealability remained pending, Petitioner submitted a written Notice of Change of Address advising the Eleventh Circuit that his mailing address had changed to 62 Almond Road, Ocala, Florida 34472. The Clerk received and file-stamped that notice on May 2, 2024. (App. C.)

Five days later, on May 7, 2024, the Eleventh Circuit denied Petitioner's application for a certificate of appealability. Yet the accompanying notice was not mailed to the 62 Almond Road address Petitioner had provided. It was mailed instead to 13365 SW 3rd Court, Ocala, Florida 34473, Petitioner's former address. (App. B.)

The previously received change-of-address filing was not entered by court personnel until May 13, 2024, after the May 7 order and accompanying notice had already issued. (App. E.) The relevant sequence therefore shows that Petitioner had completed his obligation to notify the Court of his new address before the dispositive order was entered, but the new address had not yet been processed when the notice was mailed.

That distinction is important under Eleventh Circuit Rule 25-7. The rule places upon a pro se litigant the responsibility to notify the Court when his mailing address changes and provides consequences when the litigant fails to do so. Petitioner did not fail to comply with that obligation. He provided the new address in writing, and the Clerk received it before the COA was denied.

The failure therefore occurred after Petitioner had done what the Court required of him. Petitioner had no control over the interval between the Clerk's

receipt of his filing and its later processing into the Court's electronic records.

Nor was the consequence merely administrative. The May 7 correspondence was the document that informed Petitioner both that his application for a certificate of appealability had been denied and that any motion to reconsider, vacate, or modify the order had to be filed within twenty-one days.

Because the notice was sent to the superseded address, Petitioner states that he did not receive it during that twenty-one-day period. The reconsideration period therefore expired without Petitioner knowing that the COA had been denied or that the time to seek reconsideration had begun.

Petitioner does not contend that every mailing error requires reopening a concluded proceeding. His contention is narrower: where a pro se litigant timely provides his current address, the Clerk receives that information before a dispositive ruling, and the Court nevertheless sends the ruling to the former address, the resulting loss of a reconsideration deadline should not be attributed to the litigant as though he had failed to keep the Court informed.

The injury here was concrete. Petitioner did not merely receive the order late. He lost the entire twenty-one-day period before learning that an adverse order existed.

## III. Federal appellate rules provided mechanisms for corrective relief, making this case different from cases involving jurisdictional statutory deadlines.

### A. The Eleventh Circuit's own rules authorize extensions of court-rule deadlines for good cause, subject to Federal Rule of Appellate Procedure 26(b).

The twenty-one-day period for seeking reconsideration is established by Eleventh Circuit Rule 27-2. (App. D.) It is therefore a deadline created by the Court's own rules governing motions for reconsideration.

Eleventh Circuit Rule 27-1 also authorizes extensions of time prescribed by the Court's rules for good cause shown, subject to the limitations contained in Federal Rule of Appellate Procedure 26(b). (App. D.)

FRAP 26(b), in turn, generally permits a court of appeals, for good cause, to extend time prescribed by the appellate rules or by court order and to permit an act after the prescribed time has expired, except in specifically identified circumstances.

Those exceptions include matters such as the time for filing a notice of appeal. A motion seeking reconsideration of the denial of a certificate of appealability is not among the categories expressly excluded by Rule 26(b).

Petitioner therefore did not ask the Eleventh Circuit to ignore a jurisdictional time limit imposed by Congress. He asked the Court to determine whether good-cause relief was available from a court-rule deadline where the triggering order had been mailed

to a prior address despite the Clerk's prior receipt of his address change.

The distinction is significant because the question is not whether courts may disregard deadlines whenever a litigant claims hardship. The question is whether the Court's existing authority to grant relief for good cause could be applied where the litigant was prevented from acting by a documented notice problem attributable to the Court's own handling of his filing.

### B. Bowles does not resolve this case.

In Bowles v. Russell, 551 U.S. 205 (2007), this Court addressed a statutory deadline governing the filing of a notice of appeal. The Court treated that deadline as jurisdictional because it was established by Congress.

This case presents a materially different circumstance.

Petitioner timely invoked appellate jurisdiction. His appeal was docketed, prosecuted, and adjudicated by the Eleventh Circuit. Petitioner is not attempting to commence an appeal after expiration of a statutory filing period.

Instead, he seeks restoration of a reconsideration procedure within an appeal that had already been properly before the Court.

The twenty-one-day period at issue arises from Eleventh Circuit Rule 27-2, not from the statute governing the time for filing a notice of appeal. Petitioner therefore contends that Bowles does not answer whether a court-created reconsideration deadline may be relieved for good cause when the Court's own notice failure caused the deadline to expire without the litigant's knowledge.

This distinction is reinforced by FRAP 26(b), which expressly identifies certain deadlines that cannot be enlarged while otherwise preserving authority to extend time or permit late acts for good cause.

Petitioner's request therefore did not challenge the limits of appellate jurisdiction. It asked the Eleventh Circuit to exercise procedural authority within a case over which jurisdiction had already been properly invoked.

### C. Recall of mandate supplied an additional avenue for preventing injustice.

Petitioner also sought recall of the mandate because the denial of his certificate of appealability had issued as the mandate of the Court.

Eleventh Circuit Rule 41-1 provides that a mandate may be recalled to prevent injustice. When recall is sought more than one year after issuance, the rule requires the movant to explain why the request was not filed sooner and to establish good cause for the delay. (App. D.)

Petitioner's June 25, 2026 motion was directed to those considerations. (App. C.) He explained that he had timely advised the Court of his new address; that the Clerk received that notice before the COA denial; that the May 7 order was nevertheless mailed to his former address; that he did not receive timely notice of the ruling or the reconsideration deadline; and that he sought corrective relief after discovering what had occurred.

Petitioner recognizes that recall of mandate is an extraordinary remedy and that finality is an important interest. See Calderon v. Thompson, 523 U.S. 538, 549–50 (1998). He does not contend that a

mandate should be recalled simply because a litigant later disagrees with the Court's decision.

Nor does Petitioner ask the Court to excuse a default caused by his own neglect. This Court has recognized, in the postconviction context, that a litigant should not be charged with a procedural default caused by circumstances external to him. See Maples v. Thomas, 565 U.S. 266 (2012).

His contention is that the circumstances presented here were themselves extraordinary: the procedural default arose from the failure of notice after Petitioner had already provided the Court with the information necessary to avoid that failure.

The Eleventh Circuit therefore had more than one procedural mechanism through which it could consider the problem. It could consider whether good cause justified relief from the court-rule deadline, whether recall of the mandate was necessary to prevent injustice, or whether some other limited corrective relief was appropriate.

Yet the July 22, 2026 order denying relief did not explain whether the Court rejected Petitioner's factual showing, concluded that no procedural authority existed to grant relief, found that good cause had not been established, or determined that the circumstances were insufficient to justify recall of the mandate.

That unexplained denial is central to the present petition. Petitioner does not ask this Court to hold that he was automatically entitled to reconsideration. He asks whether, where the Court's own notice failure caused the loss of the reconsideration period and existing appellate rules supplied mechanisms for corrective relief, the Eleventh Circuit could deny all relief without

addressing the legal significance of those circumstances.

## IV. The lost reconsideration opportunity involved substantial constitutional claims.

The reconsideration opportunity Petitioner lost was not directed to collateral or immaterial matters. Petitioner sought reconsideration of constitutional claims concerning the adequacy and independence of counsel, the circumstances immediately preceding his guilty plea, and whether that plea was knowingly and voluntarily entered.

Petitioner does not ask this Court to decide those underlying claims on the merits. Their relevance here is narrower: they demonstrate that the reconsideration proceeding lost through the notice failure involved substantial constitutional questions supported by contemporaneous record evidence.

### A. Petitioner raised a substantial claim concerning conflict-free and constitutionally adequate counsel.

Petitioner's conflict claim was grounded in events occurring immediately before the scheduled March 2018 trial. On March 22, 2018, appointed counsel David Anthony Wilson filed a Second Motion for Leave to Withdraw. (App. C.) Wilson advised the district court that Petitioner had filed a Florida Bar grievance against him and affirmatively stated that the grievance created a conflict of interest sufficient to warrant withdrawal. (App. C.)

The conflict issue remained active at the March 23 hearing. (App. C.) Wilson explained that the dispute affected his ability to continue the representation, while the government addressed

whether the circumstances had risen to the level of a conflict or complete breakdown sufficient to require withdrawal. The transcript therefore documents an actual dispute concerning counsel's ability to continue representing Petitioner immediately before the scheduled trial.

Petitioner sought reconsideration of whether those circumstances, together with the subsequent involvement of privately retained counsel, presented a debatable Sixth Amendment question concerning his right to conflict-free and constitutionally adequate representation.

This Court has recognized the judiciary's independent interest in ensuring that criminal proceedings appear fair and comply with the right to conflict-free counsel. See Wheat v. United States, 486 U.S. 153 (1988).

### B. Petitioner also raised a Cronic claim concerning meaningful representation at a critical stage.

Petitioner further relied upon United States v. Cronic, 466 U.S. 648 (1984), contending that the circumstances immediately preceding his plea left him without meaningful representation during a critical stage of the criminal proceedings.

The March 23 transcript is significant. Gilbert A. Schaffnit told the court that he had been retained to attempt to negotiate a settlement but had not been retained to try the case. (App. C.) He stated that if negotiations failed and trial proceeded, he did not anticipate entering an appearance as trial counsel.

The court then advised Petitioner that, unless Schaffnit was retained for trial, Petitioner could be defending himself when trial began. Petitioner responded that he did not have the ability to do so,

was not a lawyer, and did not understand the technicalities and details of conducting a trial. (App. C.)

The same transcript also records Schaffnit's acknowledgment that he had been involved in the case for only approximately one week, had very limited access to discovery, and regarded the matter as "a very complicated case." (App. C.)

Petitioner does not ask this Court to determine whether those circumstances ultimately establish a violation under Cronic. He identifies them because his lost reconsideration request involved a concrete Sixth Amendment contention supported by the contemporaneous hearing transcript.

### C. The circumstances also formed the basis of Petitioner's challenge to the validity of his guilty plea.

Petitioner further contended that his guilty plea could not be evaluated in isolation from the circumstances immediately preceding it.

At the time plea negotiations were occurring, Wilson was seeking withdrawal based upon what he described as a conflict; Schaffnit had not been retained to try the case; Petitioner had expressly stated that he could not represent himself; and Schaffnit acknowledged limited access to discovery in a complicated criminal matter.

Wilson himself advised the court that the dispute implicated his ability to practice law and support his family, although he stated that he remained prepared for trial. Meanwhile, Schaffnit explained that his continued representation depended upon a plea being reached and accepted.

Petitioner contended that these circumstances, considered together with his asserted medical,

cognitive, and medication-related circumstances, were relevant to whether his eventual guilty plea represented a knowing and voluntary choice among constitutionally adequate alternatives.

Again, Petitioner does not ask this Court to invalidate the plea in this proceeding. The point is that the reconsideration opportunity lost through the notice failure concerned a substantial constitutional challenge to the validity of the conviction itself.

### D. The third-party financing of Schaffnit's representation supplied additional support for Petitioner's conflict claim.

Petitioner also relied upon evidence concerning who retained and paid Schaffnit.

At the March 23 hearing, Schaffnit advised the district court that Petitioner was indigent and that the source of the funds that caused Schaffnit to be present was not Petitioner. (App. C.)

That circumstance was later confirmed in greater detail by Schaffnit himself. In a December 29, 2020 letter, Schaffnit stated that the fee agreement concerning Petitioner's case was between his office and Mr. Lope and that Petitioner had instead signed an Authority to Represent. (App. C.) Schaffnit further stated that retention of the case files was governed by his fee agreement with Lope and Lope's attorney, and that without a release from them he was not at liberty to provide Petitioner a copy of that agreement. (App. C.)

Petitioner does not contend that third-party payment, standing alone, establishes a Sixth Amendment violation. His contention is that the funding arrangement was relevant when considered together with the contemporaneous conflict over Wilson's representation, Schaffnit's limited role, and

the other relationships Petitioner asserted affected the independence of his defense.

The lost reconsideration proceeding would have allowed the Eleventh Circuit to consider whether those combined circumstances made Petitioner's constitutional claim sufficiently debatable to justify a COA.

### E. Contemporaneous whistleblower materials were relevant to Petitioner's asserted motive, interference, and actual-innocence theories.

Petitioner also relied upon whistleblower/TCR materials that predated his plea proceedings.

An April 25, 2017 engagement letter shows that Petitioner retained the Employment Law Group concerning an IRS whistleblower matter involving Perfect Seven, LLC and identified individuals associated with that business. (App. C.) A later TCR submission dated September 5, 2017 identifies Petitioner as the whistleblower complainant and contains allegations concerning Perfect Seven and related persons. (App. C.)

Petitioner contends that these contemporaneous materials are relevant to his theory that persons whose interests were adverse to his own had a motive to influence or interfere with his criminal defense. He further contends that documents associated with those submissions bear upon his claim of actual innocence.

Petitioner does not ask this Court to accept those allegations as proven or to determine that the whistleblower materials establish actual innocence or unconstitutional interference. Their significance here is that Petitioner's underlying theories were tied to

documents created before the guilty plea, rather than to allegations developed only after his conviction.

### F. The lost reconsideration proceeding therefore presented a concrete, not abstract, injury.

A certificate of appealability involves a threshold inquiry, not a final adjudication of the constitutional claims. See Slack v. McDaniel, 529 U.S. 473 (2000); Miller-El v. Cockrell, 537 U.S. 322 (2003). At the COA stage, the question is whether reasonable jurists could debate the disposition of the constitutional claims, not whether the petitioner has already established an entitlement to ultimate relief. The reconsideration procedure Petitioner lost therefore concerned access to appellate review at the threshold stage, not a demand that the Eleventh Circuit or this Court decide the § 2255 claims in his favor.

Petitioner sought the opportunity to ask the Eleventh Circuit to reconsider whether reasonable jurists could debate the disposition of his claims concerning conflict-free counsel, meaningful representation during a critical stage, the voluntariness of his plea, and the significance of the contemporaneous evidence supporting his theories.

The wrong-address mailing eliminated that opportunity before Petitioner knew that the COA had been denied.

The resulting injury was therefore concrete and procedural: Petitioner lost an identified appellate mechanism through which he could ask the Eleventh Circuit to reconsider whether his constitutional claims were sufficiently debatable to warrant a COA. The wrong-address mailing foreclosed that opportunity before he knew the threshold ruling

existed. Whether the underlying claims ultimately succeed is a separate question. The issue here is whether Petitioner may be charged with forfeiting the opportunity for threshold appellate review when the order triggering that opportunity was sent to his former address after the Clerk had already received his current one.

## V. This case is an appropriate vehicle because the Court need not decide the underlying § 2255 claims.

This case presents a discrete procedural and constitutional question that can be resolved without deciding whether Petitioner ultimately is entitled to relief under 28 U.S.C. § 2255. The material events surrounding the notice failure are documented in the appellate record and do not require this Court to resolve the merits of Petitioner's conviction or his underlying constitutional claims.

The relevant chronology is straightforward. Petitioner submitted a written change-of-address notice identifying 62 Almond Road, Ocala, Florida 34472 as his new mailing address. The Clerk received and file-stamped that notice on May 2, 2024. (App. C.) Five days later, on May 7, 2024, the Eleventh Circuit denied Petitioner's application for a certificate of appealability. The accompanying notice, however, was sent to Petitioner's former address at 13365 SW 3rd Court. (App. B.) The previously received address-change filing was not entered by court personnel until May 13, 2024, after the dispositive notice had already issued.

The May 7 notice also informed Petitioner that any motion to reconsider, vacate, or modify the order had to be filed within twenty-one days. Petitioner states that he did not receive the order during that

period and did not learn that the COA had been denied until May 11, 2026. (App. C.) After discovering the disposition and the wrong-address mailing, Petitioner sought leave to file a motion for reconsideration out of time and requested recall of the mandate. On July 22, 2026, the Eleventh Circuit denied that requested corrective relief without explanation. (App. A.)

Those facts permit the question presented to be considered without deciding whether Petitioner is guilty or innocent, whether his counsel rendered constitutionally ineffective assistance, whether an actual conflict existed, whether United States v. Cronic ultimately applies, or whether Petitioner's guilty plea was constitutionally valid. Nor must this Court determine whether a certificate of appealability ultimately should issue.

Those underlying matters explain why the lost reconsideration opportunity was meaningful, but they are not the merits question presented here.

The narrower issue is whether an available appellate reconsideration procedure may be treated as forfeited where the litigant timely supplied his current address, the Clerk received that information before entry of the order triggering the deadline, the Court nevertheless sent the order to the superseded address, and the court of appeals later declined to provide corrective relief after the notice failure was brought to its attention.

The record therefore presents the notice question without requiring extensive factual development or resolution of the underlying § 2255 claims. The relevant dates, addresses, filings, and disposition are contained in the Court's own records, while Petitioner's assertion of nonreceipt and later

discovery was presented in his request for corrective relief.

Moreover, the remedy Petitioner seeks may be correspondingly limited. This Court need not direct that a COA issue or that § 2255 relief be granted. It may resolve the federal notice question and, if relief is warranted, permit the Eleventh Circuit to consider Petitioner's request for reconsideration under a procedure that accounts for the documented failure of notice.

Accordingly, this case provides an appropriate vehicle for deciding the narrow federal question whether a litigant may lose an expressly available appellate procedure through expiration of a deadline when the court had received his correct mailing address before the triggering order issued but nevertheless sent that order to his former address.

## VI. At minimum, the Court should grant, vacate, and remand for consideration of the notice failure under the proper legal framework.

Petitioner does not ask this Court to adjudicate the merits of his underlying § 2255 claims, determine that a certificate of appealability must issue, or disturb his conviction or sentence. The relief requested is substantially narrower.

At minimum, this Court may grant the petition, vacate the Eleventh Circuit's July 22, 2026 order, (App. A.) and remand so that the court of appeals may address the documented notice failure and determine whether Petitioner should be permitted to pursue the reconsideration procedure that expired without his receiving timely notice of the May 7, 2024 COA denial.

A remand would permit the Eleventh Circuit to address, in the first instance, the matters its unexplained July 22 order left unresolved: the legal effect of the Clerk's receipt of Petitioner's change-of-address notice on May 2, 2024; the significance of the filing not being entered until May 13, 2024; and the application of Eleventh Circuit Rule 25-7 where Petitioner had provided his new address before the dispositive order was issued.

The court of appeals could also determine whether good-cause relief was available under Eleventh Circuit Rule 27-1(d)(6), subject to Federal Rule of Appellate Procedure 26(b), and whether Petitioner established the showing required under Eleventh Circuit Rule 41-1 for recall of the mandate to prevent injustice. (App. D.) Those questions are especially appropriate for the Eleventh Circuit to address because they concern the operation of its own procedural rules in circumstances involving a notice failure occurring within its Clerk's Office.

The court of appeals could further determine the appropriate remedy, including whether Petitioner should be permitted to file his motion for reconsideration out of time, whether the reconsideration period should be restored, or whether some other procedure should be employed to ensure that Petitioner receives a meaningful opportunity to seek the reconsideration that the May 7 notice itself advised was available.

Such a disposition would preserve the distinction between restoring a lost procedural opportunity and deciding the merits of the underlying case. Petitioner would not receive a certificate of appealability merely because the notice was defective. He would receive only the opportunity to have the Eleventh Circuit consider whether reconsideration

should be permitted under circumstances in which the Clerk had already received his correct address before the order triggering the twenty-one-day period was sent elsewhere.

A grant, vacatur, and remand would therefore respect both the important interest in finality and the equally important requirement that procedural deadlines be administered through a fundamentally fair process. It would leave the merits of Petitioner's constitutional claims, and the ultimate disposition of any renewed COA request, entirely to the lower courts.

Petitioner accordingly requests, at minimum, that this Court vacate the July 22, 2026 order and remand for consideration of whether the documented failure of notice permits enforcement of a reconsideration deadline that expired before Petitioner had timely notice that the underlying order had been entered.

## CONCLUSION

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

Alternatively, this Court should grant the petition, vacate the Eleventh Circuit's July 22, 2026 order, and remand for further proceedings concerning the notice failure, the missed reconsideration deadline, and Petitioner's request for appropriate corrective relief.

Dated September 23, 2026.

Respectfully submitted,

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