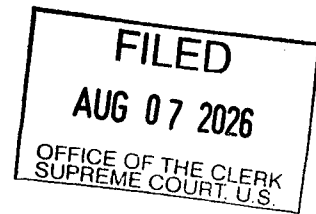


26-5841

No. _____



IN THE
SUPREME COURT OF THE UNITED STATES

JIMMY ZAVALA,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

JIMMY ZAVALA
Petitioner, Pro Se
BOP Reg. No. 49053-180
Redgranite Correctional Institution
1006 County Road EE, P.O. Box 925
Redgranite, WI 54970

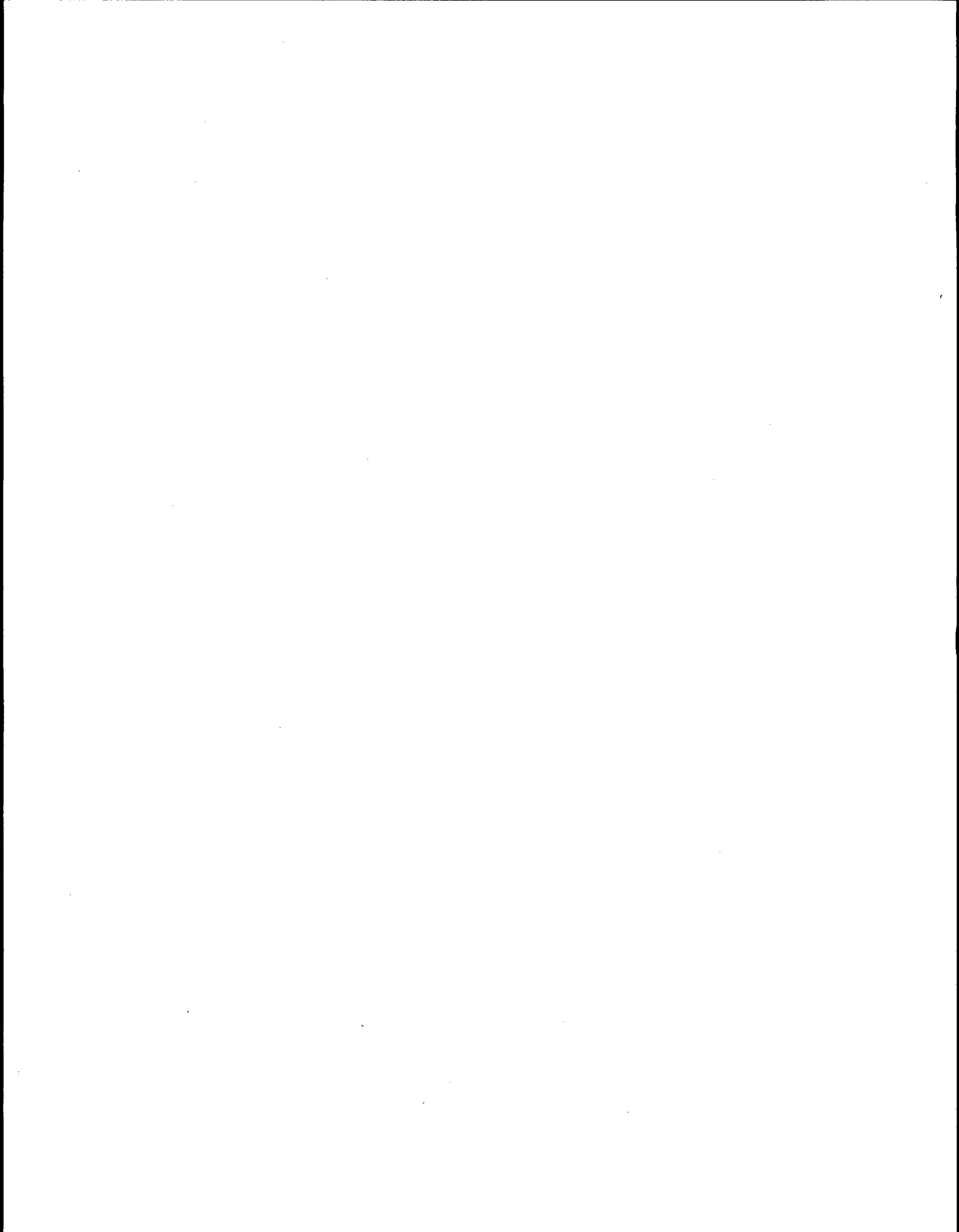
FILED
AUG 01 2008
OFFICE OF THE CLERK
SUPREME COURT OF
MISSISSIPPI

QUESTIONS PRESENTED

The court system never preserved the record of two proceedings in petitioner's 2004–2005 federal capital-eligible prosecution: the August 18, 2004 initial appearance, reflected only by a template minute entry, and a January 27, 2005 status conference of which no meaningful record exists at all. Twenty years later, petitioner moved in the district court under Federal Rules of Appellate Procedure 10(c) and 10(e), and the court's inherent authority, to settle and reconstruct that record. The district court denied the motion on the ground that Rule 10 was "not applicable" because no appeal was pending. When petitioner appealed that denial, together with the denial of his timely Rule 59(e) motion, the Fifth Circuit dismissed the appeal for lack of jurisdiction in a two-sentence order granting the government's motion, without stating any reason. The questions presented are:

1. Whether the denial of a discrete post-judgment motion to settle or reconstruct the record of a federal criminal proceeding is a "final decision" appealable under 28 U.S.C. § 1291, where the order fully disposes of the only matter pending before the district court, or whether, as the decision below holds, no court of appeals ever has jurisdiction to review it, so that the district court's refusal is unreviewable by any court.

2. Whether the Due Process Clause of the Fifth Amendment, and this Court's decisions recognizing an indigent defendant's right to a record of sufficient completeness for meaningful review, *Griffin v. Illinois*, 351 U.S. 12 (1956); *Mayer v. City of Chicago*, 404 U.S. 189 (1971); *Britt v. North Carolina*, 404 U.S. 226 (1971); *Hardy v. United States*, 375 U.S. 277 (1964), permit the federal courts to deny a diligent prisoner every mechanism, whether Rule 10(c) reconstruction, Rule 10(e) correction, or inherent authority, for reconstructing the record of a proceeding that the court system itself failed to preserve, where no rule of procedure imposes any time limit on correcting the record.



PARTIES TO THE PROCEEDING

Petitioner Jimmy Zavala was the defendant-appellant below. Respondent United States of America was the plaintiff-appellee below.

RELATED PROCEEDINGS (Sup. Ct. R. 14.1(b)(iii))

United States v. Zavala, No. 5:04-CR-425-OLG-2 (W.D. Tex.) (judgment entered Aug. 11, 2005; orders denying record-settlement motion entered July 29, 2025 (ECF 1624) and Oct. 7, 2025 (ECF 1626))

United States v. Zavala, No. 25-50913 (5th Cir.) (appeal dismissed Apr. 16, 2026; rehearing denied May 14, 2026; mandate recalled and stayed May 29, 2026)

United States v. Zavala, No. 05-51699 (5th Cir.) (direct appeal, consolidated under United States v. Valles, No. 05-51209; judgment affirmed Apr. 12, 2007, 484 F.3d 745; cert. denied, No. 07-5249 (U.S. Oct. 1, 2007))

United States v. Zavala, No. 22-50751 (5th Cir.) (appeal from denial of prior record-correction motion dismissed for lack of jurisdiction Mar. 17, 2023)

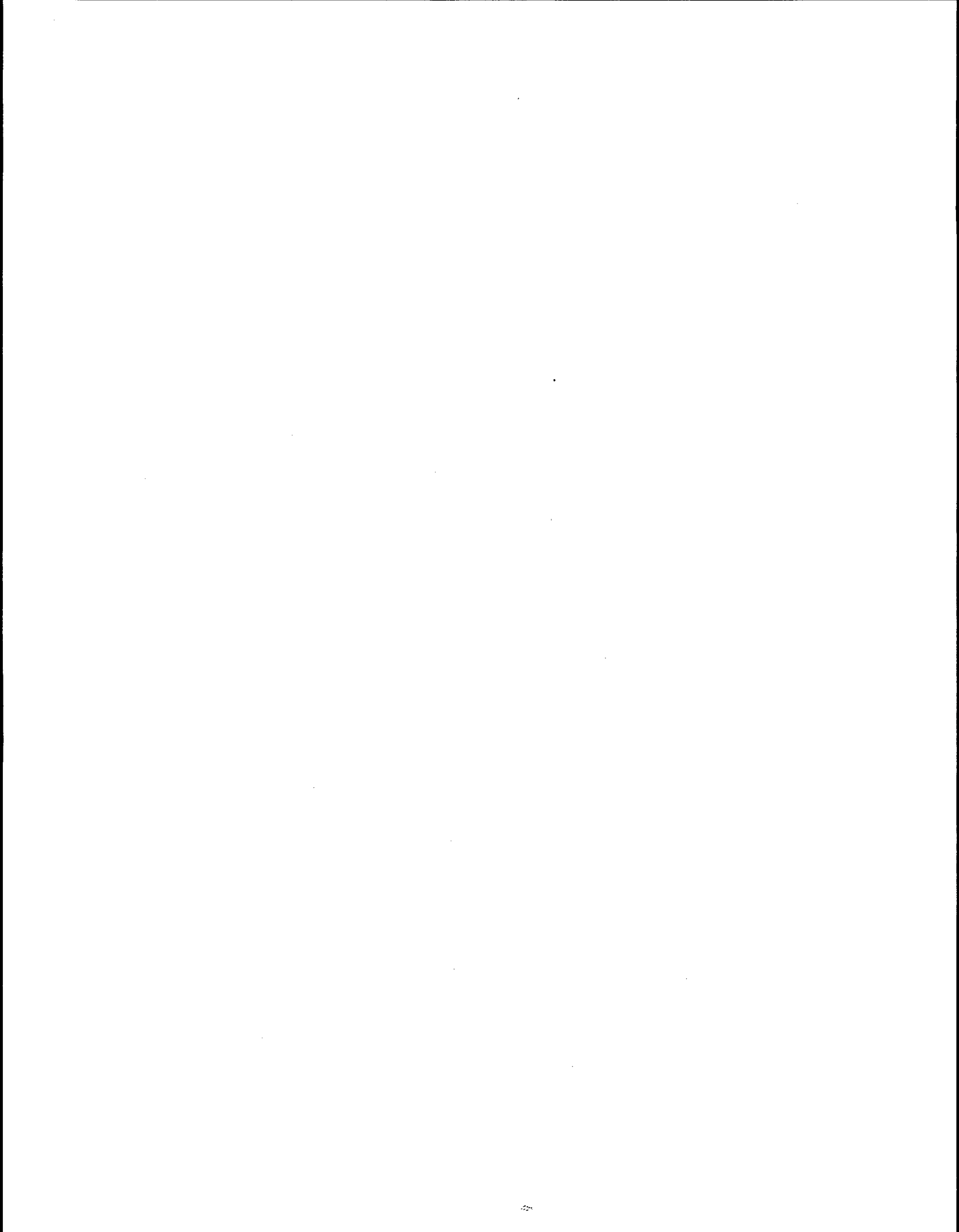


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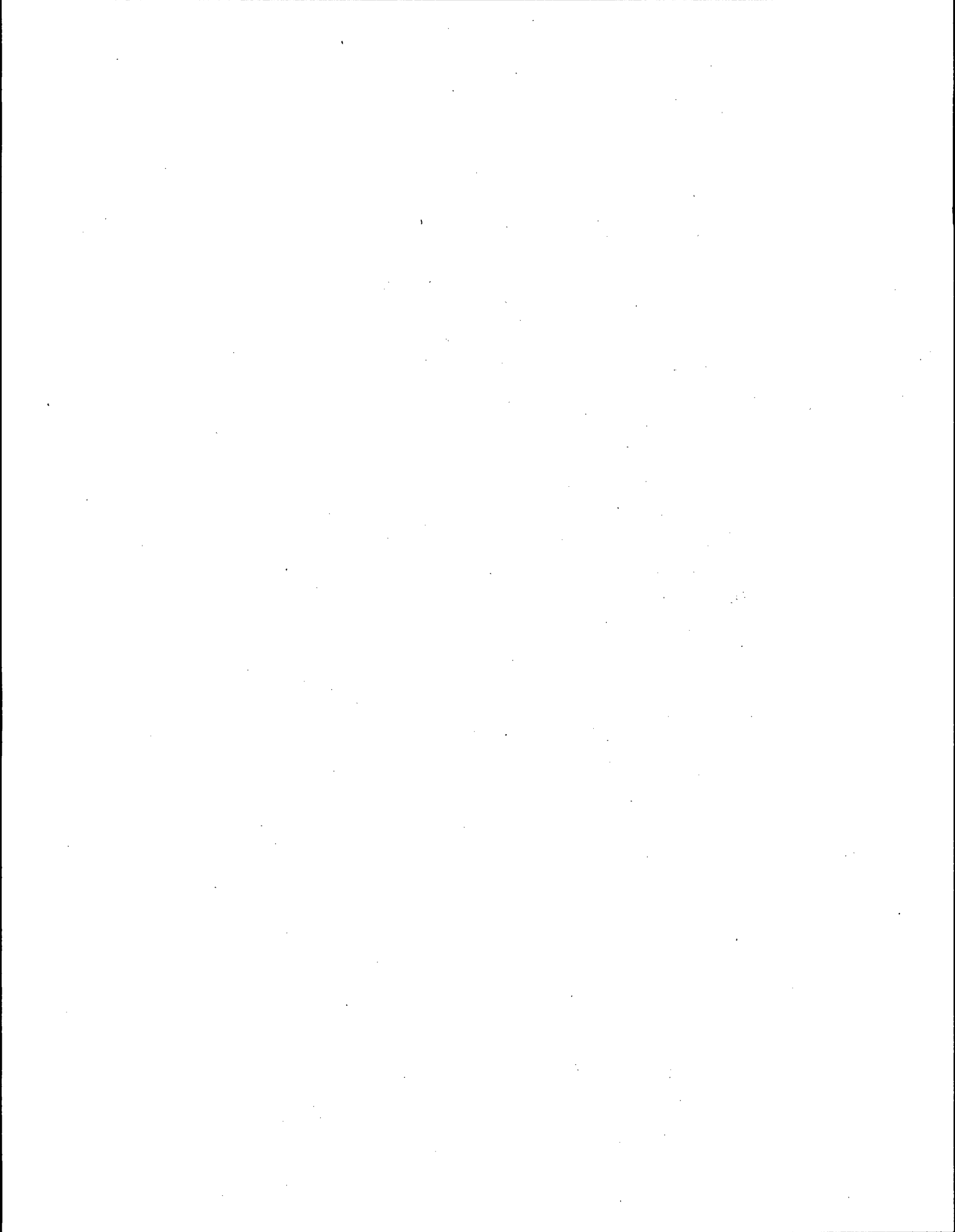


TABLE OF AUTHORITIES

Cases

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4. The fourth part of the document provides a summary of the key findings and conclusions of the audit. It identifies the areas of strength and the areas that require further attention. It also provides recommendations for improving the internal controls and the overall financial reporting process.

5. The fifth part of the document discusses the implications of the audit findings for the company and its stakeholders. It highlights the potential risks and the need for proactive measures to address them. It also emphasizes the importance of communication and collaboration between the auditor and the company's management.

6. The sixth part of the document provides a final summary and a conclusion. It reiterates the importance of the audit process and the role of the auditor in ensuring the integrity of the financial statements. It also expresses confidence in the company's ability to implement the recommended improvements and to maintain high standards of financial reporting.

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2. The second section focuses on the role of technology in modern record management. It highlights how cloud storage and data analytics tools can enhance the efficiency and security of record-keeping processes. The author notes that while technology offers significant advantages, it also introduces new challenges related to data privacy and system reliability.

3. In the third part, the document explores the legal and regulatory requirements governing record retention. It provides a detailed overview of relevant laws and standards, such as the General Data Protection Regulation (GDPR) and industry-specific guidelines. The text stresses the importance of staying up-to-date with these regulations to avoid legal penalties and ensure compliance.

4. The fourth section addresses the human element of record management. It discusses the need for training and education to ensure that staff members understand the importance of accurate record-keeping and are equipped with the necessary skills to perform their duties effectively. The author suggests implementing regular training sessions and clear communication channels to foster a culture of responsibility and accuracy.

5. Finally, the document concludes with a summary of key findings and recommendations. It reiterates the importance of a comprehensive record management strategy that integrates technology, legal compliance, and human resources. The author encourages organizations to regularly review and update their record-keeping practices to adapt to changing requirements and technological advancements.

OPINIONS BELOW

The order of the United States Court of Appeals for the Fifth Circuit dismissing the appeal for lack of jurisdiction (App. A) is unpublished. The order denying rehearing en banc without a poll (App. B) is unpublished. The order of the United States District Court for the Western District of Texas denying petitioner's motion to clarify and correct the record, entered July 29, 2025 (ECF 1624) (App. C), is unreported. The order denying petitioner's Rule 59(e) motion, entered October 7, 2025 (ECF 1626) (App. D), is unreported. The Fifth Circuit's order of May 29, 2026, recalling and staying its mandate pending this petition (App. E), is unpublished.

JURISDICTION

The court of appeals entered its judgment on April 16, 2026. A timely petition for rehearing en banc was denied on May 14, 2026. On May 29, 2026, the court of appeals recalled and stayed its mandate through August 13, 2026, pending the filing of this petition. This petition is timely filed within 90 days of the denial of rehearing. Sup. Ct. R. 13.1, 13.3. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Due Process Clause of the Fifth Amendment provides in relevant part: "No person shall . . . be deprived of life, liberty, or property, without due process of law."

28 U.S.C. § 1291 provides in relevant part: "The courts of appeals . . . shall have jurisdiction of appeals from all final decisions of the district courts of the United States"

Federal Rule of Appellate Procedure 10(c) provides that if a transcript of a proceeding is "unavailable," the appellant "may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection," to be served on the appellee, who may

2. The second section focuses on the role of communication in achieving organizational goals. It highlights the importance of clear and concise communication, both internally and externally. The text provides examples of effective communication strategies, such as regular team meetings, open-door policies, and the use of various communication channels like email, phone, and face-to-face interactions. It also discusses the importance of listening and understanding the needs and concerns of all stakeholders.

3. The third part of the document addresses the challenges of managing a large and diverse workforce. It discusses the importance of providing ongoing training and development opportunities to keep employees up-to-date with the latest skills and knowledge. The text also touches on the importance of fostering a positive work environment and promoting diversity and inclusion. It mentions the need for effective conflict resolution and problem-solving skills to address any issues that may arise.

4. The final section discusses the importance of staying up-to-date with the latest trends and technologies in the industry. It emphasizes that continuous learning and innovation are key to staying competitive in a rapidly changing market. The text provides examples of how organizations can stay informed, such as attending conferences, participating in workshops, and investing in research and development. It also mentions the importance of building a strong network of industry contacts and professionals.

object, with the statement and any objections “submitted to the district court for settlement and approval.”

Federal Rule of Appellate Procedure 10(e)(1) provides that if any difference arises about “whether the record truly discloses what occurred in the district court, the difference must be submitted to and settled by that court and the record conformed accordingly.” Rule 10(e)(2) provides that omissions or misstatements may be corrected by stipulation, by the district court, or by the court of appeals. Rule 10(e)(3) provides that “[a]ll other questions as to the form and content of the record must be presented to the court of appeals.”

Federal Rule of Criminal Procedure 36 provides: “After giving any notice it considers appropriate, the court may at any time correct a clerical error in a judgment, order, or other part of the record, or correct an error in the record arising from oversight or omission.”

The full texts of Rules 10 and 36 and of 28 U.S.C. §§ 753(f) and 1291 are reproduced at App. F.

STATEMENT OF THE CASE

A. The proceedings whose record was never preserved

In August 2004, petitioner was indicted in the Western District of Texas as one of many defendants in a large drug-conspiracy prosecution in which the government sought the death penalty. He was tried before a jury in April 2005, convicted, and sentenced on August 11, 2005 to life imprisonment. His conviction was affirmed on direct appeal, *United States v. Valles*, 484 F.3d 745 (5th Cir. Apr. 12, 2007) (No. 05-51209, consolidated with petitioner's appeal, No. 05-51699), and this Court denied certiorari on October 1, 2007, No. 07-5249.

Two proceedings at the foundation of that prosecution have no adequate record. The docket reflects an "initial appearance" on August 18, 2004 only through a pre-printed template minute entry. And the docket reflects a status conference on January 27, 2005, held weeks before a capital-eligible trial, of which no meaningful record exists at all: no transcript, no substantive minutes, nothing disclosing what occurred, who appeared, or what was decided. These gaps are the product of how the proceedings were recorded. During this period the district court conducted numerous proceedings under electronic-recording-only conditions with no court reporter present, and the docket in petitioner's own case contains a minute entry from September 9, 2004 stating that the court's electronic recording equipment malfunctioned during arguments. Pretrial proceedings from 2004–2005 were not transcribed until 2022, seventeen years later (ECF 1556–1559), and when they were, the gaps remained.

B. Two decades of documented diligence

Petitioner has sought his record continuously since his direct appeal. His CJA-appointed appellate counsel's contemporaneous letter of March 28, 2006, filed on the district docket as Exhibit 1 to ECF 1552, told him that the record, "including all pleadings and transcripts for all of the defendants," had been forwarded to the court of appeals for use in a co-defendant's motion, and

4. The fourth part of the document discusses the role of the accounting system in managing the company's financial resources and controlling costs. It highlights the importance of budgeting and cost accounting in achieving the company's financial goals.

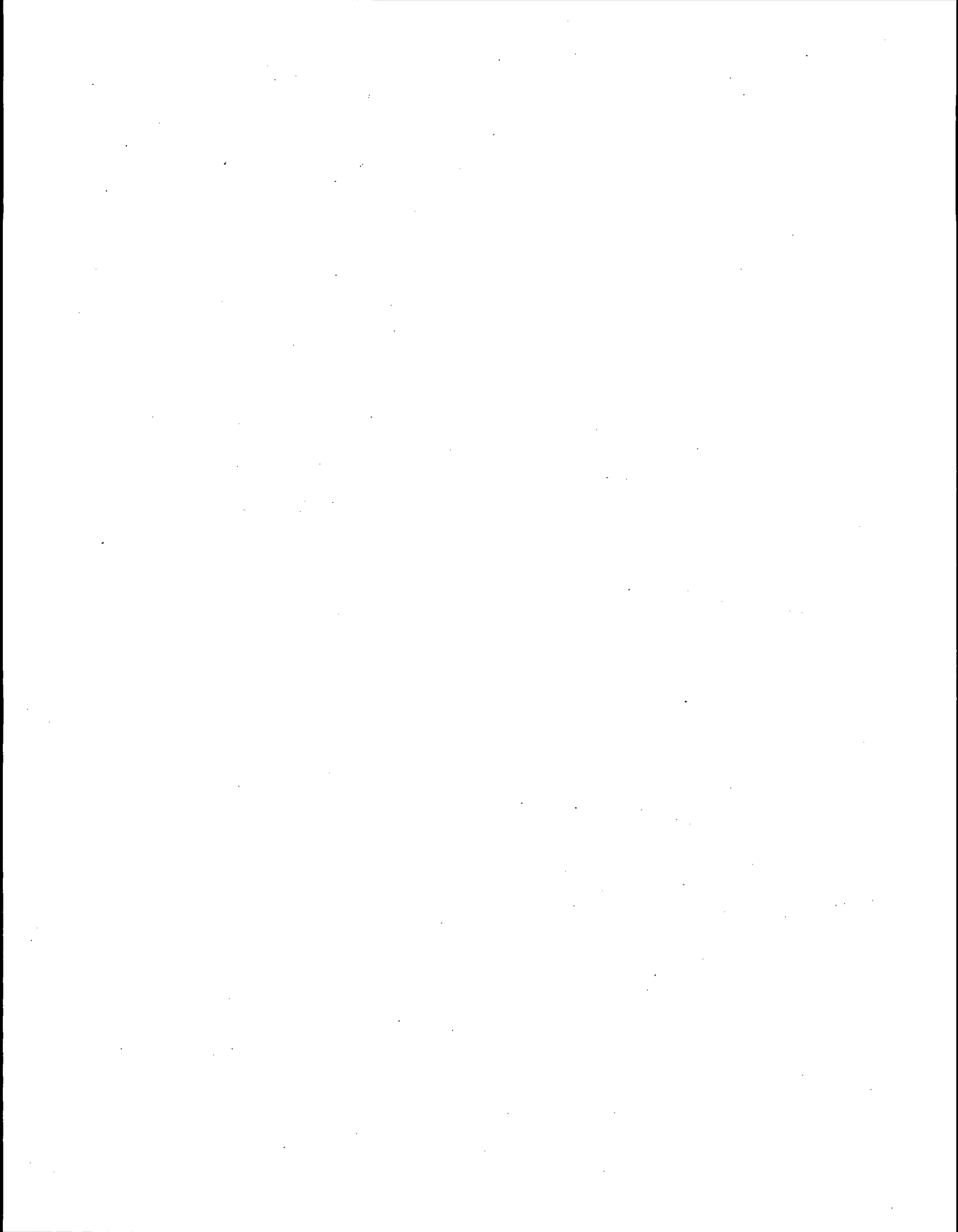
5. The fifth part of the document concludes by summarizing the key points discussed and emphasizing the overall importance of the accounting system in the success of the company. It reiterates the need for accuracy, transparency, and accountability in financial reporting.

that counsel could not copy the “thousands of pages” of transcripts for him because the Criminal Justice Act “will not pay for copies for clients.” In 2009 petitioner moved to compel his trial file from former counsel, citing *Britt v. North Carolina* in his supporting memorandum (ECF 1056, filed June 8, 2009). That motion, and at least a dozen record-related motions filed between 2012 and 2025, were all denied. In May 2022 petitioner moved to reconstruct and correct the record under Rule 10 (ECF 1552, filed May 27, 2022); the district court denied the motion, and the Fifth Circuit dismissed his appeal from that denial for lack of jurisdiction on March 17, 2023, reasoning that the denial “related to his already-resolved appeal in another case” and was therefore neither final nor live. *United States v. Zavala*, No. 22-50751 (5th Cir. Mar. 17, 2023) (unpublished) (citing *Cunningham v. Hamilton County, Ohio*, 527 U.S. 198, 204 (1999), and *United States v. Heredia-Holguin*, 823 F.3d 337, 340 (5th Cir. 2016) (en banc)).

C. The motion below and the district court’s denial

On June 27, 2025, petitioner filed a post-judgment “Motion to Clarify and Correct the Record” (ECF 1622), invoking Federal Rules of Appellate Procedure 10(c) and 10(e), the court’s inherent authority over its own records, and the All Writs Act. The motion sought ministerial relief: settlement of the August 18, 2004 initial-appearance entry, and reconstruction of the January 27, 2005 status conference of which no record exists, through a Rule 10(c) statement prepared from the best available means, including recollection, subject to the government’s objections and the court’s settlement and approval. The motion did not seek vacatur of any conviction, resentencing, or release. It asked only that the record reflect what occurred.

The government was served and filed no response. After the local-rule response period expired, petitioner moved for the motion to be granted as unopposed (ECF 1623). On July 29, 2025, the district court denied both motions (ECF 1624), ruling that Rule 10 was “not applicable”



because no appeal was pending, and that it was “neither necessary nor appropriate” to invoke the All Writs Act. The district court did not construe the motion as a motion under 28 U.S.C. § 2255, did not dismiss it as an unauthorized successive motion, and did not transfer it for authorization; it adjudicated the record-correction theories on their own terms and denied them. Petitioner timely moved to alter or amend under Rule 59(e) (ECF 1625); the district court denied that motion on October 7, 2025 (ECF 1626).

D. The court of appeals’ dismissal

Petitioner appealed both final orders and paid the appellate filing fee. The government moved to dismiss for lack of jurisdiction, arguing that the denials “relate[d] to . . . potential future litigation” and so were not final under *Cunningham v. Hamilton County*, supra, and by analogy to the discovery-order cases, *A-Mark Auction Galleries, Inc. v. American Numismatic Ass’n*, 233 F.3d 895 (5th Cir. 2000); that Rule 10 governs only the record on a pending appeal; and, in the alternative, that the appeal was frivolous. Petitioner responded that the July 29 and October 7 orders fully disposed of the only proceeding pending before the district court and were therefore final under *Catlin v. United States*, 324 U.S. 229, 233 (1945), and were therefore appealable.

On April 16, 2026, the panel resolved the motion in a two-sentence order: “IT IS ORDERED that Appellee’s motion to dismiss appeal for lack of jurisdiction is GRANTED.” App. A. The order states no reasoning, identifies no jurisdictional theory, and cites no authority. The panel simultaneously denied as moot the government’s alternative request to dismiss the appeal as frivolous. Rehearing en banc was denied on May 14, 2026, no judge having requested a poll. App. B. On May 29, 2026, the court of appeals recalled and stayed its mandate through August 13, 2026, expressly to permit the filing of this petition, with the stay to continue until this Court’s final disposition if the petition is filed. App. E.

2. The second part of the document addresses the challenges of data management in a rapidly changing environment. It highlights the need for flexible and scalable solutions that can adapt to new technologies and evolving business requirements. The author argues that investing in modern data infrastructure is not just a technical necessity but a strategic imperative for long-term success.

5. The fifth part of the document focuses on the importance of staying up-to-date with industry trends and developments. It encourages organizations to engage in ongoing learning and development, whether through formal training programs or informal knowledge sharing. The author notes that staying informed is crucial for identifying opportunities and threats, and for making informed decisions that keep the organization competitive.

E. The result

These rulings, taken together, close every door. The district court held that Rule 10 relief is unavailable because no appeal is pending. The court of appeals held that when petitioner appeals that very denial, the appeal must be dismissed at the threshold. And in 2023, when a record-correction denial was connected to a resolved appeal, the court of appeals held the issues were moot for that reason. Under this trio of rulings there is no procedural moment, whether before, during, or after an appeal, at which the record of the January 27, 2005 proceeding can ever be settled by any court. That is the question this petition presents.

2. The second section focuses on the role of communication in project management. It highlights the need for clear, concise, and timely communication between team members and stakeholders. The author provides several strategies for effective communication, such as regular meetings, status reports, and the use of collaborative tools.

3. The third part of the document addresses the challenges of resource allocation and management. It discusses how to identify and prioritize tasks, allocate resources efficiently, and monitor progress. The text also touches upon the importance of flexibility and adaptability in the face of changing circumstances.

4. The fourth section explores the significance of risk management in decision-making. It explains how to identify potential risks, assess their impact, and develop mitigation strategies. The author stresses that proactive risk management can help prevent costly mistakes and ensure the successful completion of projects.

5. The final part of the document provides a summary of the key points discussed and offers some concluding thoughts. It reiterates the importance of a structured approach to project management and encourages the reader to apply the principles and techniques outlined in the document to their own work.

REASONS FOR GRANTING THE PETITION

I. The decision below holds, in effect, that no court ever has jurisdiction to review the denial of a post-judgment record-settlement motion: a ruling that misreads § 1291, conflicts with this Court's finality precedents, and leaves a federal rule with no forum to enforce it

A. The order below is final under Catlin

Section 1291 grants the courts of appeals jurisdiction over “all final decisions” of the district courts. A decision is final when it “ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.” *Catlin v. United States*, 324 U.S. 229, 233 (1945). The July 29, 2025 order did precisely that with respect to the only litigation then pending: it denied ECF 1622 and ECF 1623 in full, on the merits of the Rule 10 and inherent-authority theories, and left nothing for the district court to do. The October 7, 2025 order likewise ended the reconsideration proceeding, leaving nothing further pending before the district court. The panel nonetheless dismissed the appeal in its entirety, including the appeal from the Rule 59(e) denial, without explaining how an order that terminates every pending matter can be anything but final.

B. Cunningham was applied outside its posture, and the error converts “not final yet” into “never reviewable”

The only finality authority the government offered, and the only authority the Fifth Circuit has ever cited in dismissing petitioner's record appeals, is *Cunningham v. Hamilton County, Ohio*, 527 U.S. 198 (1999). *Cunningham* held that a Rule 37 sanctions order against an attorney, entered while the underlying litigation was ongoing, was not immediately appealable. That holding rests on the premise that postponing review costs nothing permanent: an eventual final judgment will supply an appeal in which interlocutory rulings can be reviewed. The same is true of the discovery-order cases the government cited by analogy. *A-Mark*, 233 F.3d at 897–98.

That premise is absent here, and its absence is the whole case. Petitioner's criminal judgment became final in 2007. There is no future final judgment coming, ever, into which review

of the July 29 order can be folded. In the post-judgment posture, the denial of a discrete motion is not interlocutory to anything; it is the terminal act of the only proceeding in existence. Applying Cunningham's interlocutory logic here does not postpone appellate review; it abolishes it. An order that is "not final" today, and that can never become reviewable through any later judgment, is an order no court will ever review.

The panel's rule also proves far too much. Post-judgment orders are routinely treated as final and appealable precisely because they dispose of discrete post-judgment proceedings: denials of motions for relief from judgment (Browder, 434 U.S. at 263 n.7; cf. *Gonzalez v. Crosby*, 545 U.S. 524, 535–36 (2005) (adjudicating the merits of such an appeal)), and analogous post-judgment applications. If the denial of a post-judgment record-settlement motion is uniquely unappealable among post-judgment orders, some court should have to say why. None has: the district court gave two sentences, the panel gave two sentences citing nothing, and the en banc court declined without a poll.

C. The rule below leaves Rule 10's mandatory text without any enforcing forum

Rule 10(e)(1) commands that when a difference arises about "whether the record truly discloses what occurred in the district court, the difference must be submitted to and settled by that court." Rule 10(c) prescribes the exact mechanism petitioner invoked for an unavailable transcript: a statement from the best available means, including the appellant's recollection, tested through the appellee's objections and settled by the district court. And Rule 36 of the Rules of Criminal Procedure empowers the court "at any time" to correct errors in the record arising from oversight or omission. The Fifth Circuit itself has long exercised exactly this authority. *United States v. Mori*, 444 F.2d 240 (5th Cir. 1971) (Rule 10(e) record correction); *Parks v. United States*, 233 F.2d 321