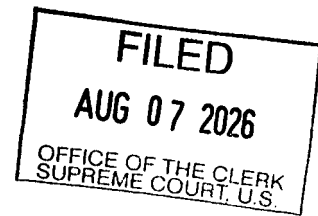


26-5841

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

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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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

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

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.

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.

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

(5th Cir. 1956) (missing sentencing record; remand for hearing); see also *United States v. Selva*, 559 F.2d 1303 (5th Cir. 1977) (treating substantial transcript omissions as serious error).

Under the decision below, that entire body of law is unenforceable in petitioner's posture. The district court says Rule 10 does not apply without a pending appeal. The court of appeals says the resulting denial cannot be appealed. And when a correction motion was tied to an appeal, the court of appeals said the issues were moot the moment that appeal was resolved. The government's merits authority on the scope of Rule 10 addresses the district court's power, which is a reason to decide the appeal rather than dismiss it. Whether the district court correctly held Rule 10 inapplicable is the merits question an appeal exists to answer. Dismissing at the threshold ensured that no court, at any level, ever answers it.

This Court's intervention is warranted under Rule 10(a) and 10(c). The question is important and recurring: every federal prisoner whose proceedings were lost to equipment malfunction, reporter unavailability, or administrative error in a multi-defendant case must use exactly this procedural path, and under the decision below that path terminates in an unreviewable denial. The question is purely legal, cleanly presented on undisputed facts, and outcome-determinative. And because every dismissal of this kind is unexplained and unpublished, the issue will persistently evade review unless this Court takes it.

II. A constitutional right to a record adequate for meaningful review is empty if no procedure exists to reconstruct a record the court system itself lost, and no rule of procedure imposes any time bar on correction

A. The Griffin line establishes the right; this case presents its enforcement

For seventy years this Court has held that meaningful review of a criminal conviction requires a record of sufficient completeness. *Griffin v. Illinois*, 351 U.S. 12, 19 (1956); *Draper v. Washington*, 372 U.S. 487 (1963); *Mayer v. City of Chicago*, 404 U.S. 189, 194–95 (1971) (the burden rests on the government to show that alternatives to a full transcript suffice); *Hardy v.*

United States, 375 U.S. 277 (1964) (new appellate counsel requires a transcript of the testimony and of the court's charge); 28 U.S.C. § 753(f). *Britt v. North Carolina* added the critical corollary: a court may not demand that the defendant specify in advance what a record he has never seen would show, because a transcript's value "can ordinarily be assumed." 404 U.S. 226, 228 (1971). Access to the courts to vindicate such rights must be "adequate, effective, and meaningful." *Bounds v. Smith*, 430 U.S. 817, 822 (1977); *Lewis v. Casey*, 518 U.S. 343 (1996).

This Court has never decided what these guarantees require when the record deficiency persists after the direct appeal through no fault of the defendant, as it does here. The courts below did not dispute that the January 27, 2005 proceeding lacks any meaningful record, or that the deficiency originates in the court's own recordkeeping. They simply held, between them, that no procedure exists to address it. A right without any procedure for its vindication is no right at all; that proposition is the foundation of *Bounds* and *Lewis*, and it is squarely presented here.

United States v. MacCollom, 426 U.S. 317 (1976), is not to the contrary. *MacCollom* sustained the conditions that 28 U.S.C. § 753(f) places on furnishing a free transcript to a § 2255 movant, a question about who pays for a transcript that exists and can be produced. This case presents the opposite problem. Petitioner paid: for the transcripts finally produced after his December 2021 payment to the district clerk (ECF 1552, at 4), and for the appellate docketing fee below. The materials he seeks cannot be purchased at any price, because the court system never preserved them. Section 753(f)'s conditions presuppose a record capable of production; they say nothing about whether any court may settle a record that does not exist. That is the circumstance Rule 10(c) exists to address.

B. Passage of time does not defeat the power to correct the record, and petitioner's diligence is documented across two decades

No rule of procedure imposes a time limit on settling or correcting the record. Criminal Rule 36 authorizes correction "at any time." Rule 10(c) and Rule 10(e) contain no time bar. That silence is not an oversight; a record either truly discloses what occurred or it does not, and the judiciary's interest in the accuracy of its own records does not expire.

The passage of time bears only on the reliability of the reconstruction evidence, and Rule 10(c) itself supplies the safeguards: the statement is prepared from the best available means; the government may serve objections; and nothing becomes part of the record until the district court settles and approves it. A recollection-based statement is not "new evidence" smuggled into an old case; it is the rule's own prescribed substitute for an unavailable transcript, policed by the adversary process. Here, the government declined even to participate: served with the motion below, it filed no objection and allowed the response period to lapse.

Nor can delay be charged to petitioner. The record of diligence runs unbroken from 2006: counsel's March 28, 2006 letter documenting that the record was physically unavailable during the direct appeal and that CJA funds would not pay for copies; the 2009 motion to compel, citing Britt (ECF 1056); a dozen further motions through 2025; and renewed motions promptly after the pretrial transcripts were finally produced in 2022 and the gaps confirmed. If equitable considerations have any place in the analysis, they run entirely in petitioner's favor: the party that lost the record is the court system, and the party that never objected is the government.

C. This motion is not habeas, and the district court said so by its actions

To be clear about what this case is not: petitioner's motion sought no vacatur, no resentencing, and no release. It sought a record. The district court did not construe the motion as a motion under 28 U.S.C. § 2255, did not dismiss it as successive, and did not transfer it for

authorization; it decided the Rule 10 and inherent-authority theories on their own terms. This Court has repeatedly held that not every post-judgment filing in a criminal or habeas case is a habeas application. *Gonzalez v. Crosby*, 545 U.S. 524 (2005); *Banister v. Davis*, 590 U.S. 504 (2020). A motion asking a court to make its record reflect what actually occurred is the paradigm of a filing that attacks nothing and seeks only accuracy. Whatever use a corrected record might later serve, in any forum, is a question for that later day and that later forum. It does not transform a ministerial request into a collateral attack, and it supplies no reason to leave the record forever wrong.

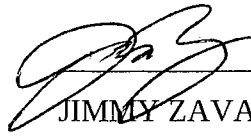
III. At a minimum, the Court should grant, vacate, and remand for a reasoned decision

The panel dismissed the appeal of a prisoner serving a life sentence in two sentences that state no reason, identify no jurisdictional defect, and cite no authority, while the underlying orders themselves total a few sentences more. The en banc court declined review without a poll. Supreme Court Rule 10(a) contemplates review where a court of appeals “has so far departed from the accepted and usual course of judicial proceedings . . . as to call for an exercise of this Court’s supervisory power.” If the Court is not prepared to resolve the finality question outright, a GVR directing the court of appeals to state the basis for its jurisdictional holding would impose minimal burden while ensuring that a recurring question receives, for the first time in this litigation, a reasoned answer that this Court and future litigants can evaluate. The court of appeals itself recalled and stayed its mandate to permit this petition, a recognition that the question merits this Court’s attention.

CONCLUSION

The petition for a writ of certiorari should be granted. In the alternative, the Court should grant the petition, vacate the judgment below, and remand with instructions to issue a reasoned decision addressing appellate jurisdiction.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jimmy Zavala', is written over a horizontal line.

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Date: 8-7, 2026