

In the Supreme Court of the United States

MARANDA LYNN O'DONNELL, ET AL.

Applicants.

v.

HONORABLE LINDA GARCIA, ET AL.

TO THE HONORABLE SAMUEL A. ALITO,
ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES
AND CIRCUIT JUSTICE FOR THE FIFTH CIRCUIT

**EMERGENCY APPLICATION TO STAY OR RECALL THE MANDATE AND THE
WRIT OF MANDAMUS ISSUED BY THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT PENDING THE FILING AND DISPOSITION OF A
PETITION FOR A WRIT OF CERTIORARI**

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QUESTIONS PRESENTED

The Fifth Circuit issued a mandamus writ to force the Honorable Lee H. Rosenthal to decide, “well in advance of” the upcoming November election, whether to vacate a consent decree on the basis of a *Younger* abstention defense the official-capacity defendants deliberately waived seven years ago. Its reasoning depends on two remarkable propositions: one, that an official-capacity defendant’s waiver of a non-merits non-jurisdictional defense disappears when the individual occupying the office changes, and two, that incumbent officials have a judicially cognizable right to obtain a binding judgment before the election because they may lose reelection to successors who may take a different litigation position. The disappearing-waiver theory contravenes well over a century of precedent holding that an officeholder’s litigation decisions bind his successors in the office. And the election-urgency rationale is unprecedented, legally indefensible, and factually wrong: one of the four official-capacity movants is not on the ballot this year and thus can continue challenging the consent decree regardless of the election’s outcome. The questions presented are:

1. Whether, when a state official sued in their official capacity affirmatively waives *Younger* abstention, that waiver binds their successors in office.
2. Whether an incumbent elected official is entitled to mandamus commanding a speedy binding judgment before an upcoming election because if they lose reelection their successor may take a different litigation position.

PARTIES TO THE PROCEEDING AND RELATED PROCEEDINGS

Applicants are Maranda Lynn ODonnell, Loetha Shanta McGruder, and Robert Ryan Ford, on behalf of themselves and the certified class of indigent misdemeanor arrestees, respondents in the court of appeals and plaintiffs in the district court.

Respondents are the Honorable Paula Goodhart, the Honorable Jessica Padilla, the Honorable Leslie Johnson, and the Honorable Linda Garcia, judges of the Harris County Criminal Courts at Law, who were the petitioners in the court of appeals.

Also respondents, as parties below, are the twelve other judges of the Harris County Criminal Courts at Law—the Honorable Alex Salgado, Shannon Baldwin, David M. Fleisher, Kelley Andrews, Andrew A. Wright, Erika Ramirez, Toria Finch, Juanita Jackson, Sedrick T. Walker, Ashley Guice, Raul Rodriguez, and Tonya Jones; Harris County, Texas; Sheriff Ed Gonzalez; and Ken Paxton, Attorney General of Texas, who intervened below. The Honorable Lee H. Rosenthal, United States District Judge for the Southern District of Texas, was named a special respondent in the court of appeals.

Related Proceedings:

ODonnell v. Harris County, No. 4:16-cv-01414 (S.D. Tex.)

ODonnell v. Harris County, No. 25-20543 (5th Cir.) (appeal by the Attorney General of Texas from the intervention order, voluntarily dismissed)

In re Goodhart, No. 26-20337 (5th Cir. Aug. 26, 2026)

ODonnell v. Harris County, No. 17-20333 (5th Cir. June 1, 2018)

ODonnell v. Salgado, No. 18-20466 (5th Cir. Jan. 14, 2019)

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INTRODUCTION

A divided Fifth Circuit panel issued a writ of mandamus against one of the nation’s most respected federal judges on grounds that are legally and factually indefensible. The Fifth Circuit ordered Judge Lee H. Rosenthal to revisit a *Younger*-abstention defense the official-capacity defendants waived nearly seven years ago—and to do so immediately, “well in advance of” the November election, based on the legally irrelevant and factually mistaken premise that the election might alter the official-capacity defendants’ litigation position. The order is a grievous usurpation of the district court’s authority in a case she has presided over for more than a decade, one which affects the physical liberty of more than 40,000 people a year. Judge Rosenthal presides over hundreds of civil and criminal matters—sentencings, temporary restraining orders, preliminary injunctions, summary-judgment motions, petitions for habeas corpus. Her time is finite. An order compelling her to move one matter to the front necessarily moves others back, and the litigants in those other cases had no notice and no voice in this case. Control over that sequence is “the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants,” and its exercise requires “judgment, which must weigh competing interests and maintain an even balance.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936). To displace that judgment by mandamus requires an abuse of discretion of the highest order. The panel majority identified none.

Mandamus is a “‘drastic and extraordinary’ remedy” reserved for “‘really extraordinary causes.’” *Cheney v. U.S. Dist. Court*, 542 U.S. 367, 380 (2004) (quoting *Ex parte Fahey*, 332 U.S. 258, 259-60 (1947)). A petitioner must establish that it has “no other adequate means”

to obtain relief, that its right to the writ is “clear and indisputable,” and that issuance of the writ is “appropriate under the circumstances.” *Cheney*, 542 U.S. at 380-81 (quotation marks omitted). “Only exceptional circumstances, amounting to a judicial usurpation of power,” justify this extraordinary intervention. *Allied Chem. Corp. v. Daiiflon, Inc.*, 449 U.S. 33, 35 (1980) (per curiam) (citing *Will v. United States*, 389 U.S. 90, 95 (1967)); *see also Will v. Calvert Fire Ins. Co.*, 437 U.S. 655, 666 (1978) (opinion of Rehnquist, J.) (mandamus may issue “[w]here a district court obstinately refuses to adjudicate a matter properly before it”).

These official-capacity defendants have no clear and indisputable right to the relief they seek. Nearly seven years ago their predecessors in office waived *Younger* abstention by withdrawing their pending appeals and entering into a consent decree that they negotiated. A litigant cannot have a “clear and indisputable” right to reorganize a federal district court’s docket on the basis of a waived *Younger* defense. And the upcoming November election—which the Fifth Circuit mentioned no fewer than 11 times, at every step of its analysis—is irrelevant to this litigation, not a basis to expedite it. An official-capacity litigant has no legally cognizable interest in obtaining a binding judgment before voters choose a successor who may take a different litigation position. The panel’s election-urgency rationale also rests on multiple factually incorrect premises. Only two of the four movants are on the ballot in November; one is retiring; and the fourth was elected in 2024 to a term running through 2028. And even if the two on the ballot lose in November, they and the retiring judge will remain in office until January 1, 2027, when their successors are sworn in. So even the contingency the panel feared—that all four judges who oppose the consent decree in this

case will lose reelection in November to successors who will not oppose it—would not eliminate the motion it ordered Judge Rosenthal to decide “well in advance” of the election. The defendants have no right to the underlying relief (vacatur of a consent decree based on a waived defense), no right to expedition (in a race against voters to lock in a judgment that will bind their successors in office), and no election-related injury for mandamus to prevent. And where a matter is committed to a district court’s discretion, “it cannot be said that a litigant’s right to a particular result is ‘clear and indisputable.’” *Will v. Calvert Fire*, 437 U.S. at 666 (opinion of Rehnquist, J.).

Mandamus does not permit a court of appeals to commandeer a district judge’s docket merely because it wants one motion decided sooner. Yet the panel did exactly that. It identified no refusal to act, usurpation of authority, or clear entitlement to the underlying relief. Even so, it displaced Judge Rosenthal’s considered judgment about how to manage discovery, develop the record, and sequence the hundreds of matters before her—all to force a ruling on a waived defense before an election with no legal bearing on the case. This Court has already granted certiorari and reversed a materially similar writ directing a district judge to “proceed immediately.” *Will v. Calvert Fire*, 437 U.S. at 658, 667.

A stay is necessary to preserve this Court’s ability to review the Fifth Circuit’s order. Without intervention, the Rule 60(b) motion will be decided soon at the expense of other important litigation—and the nearly seven-year-old consent decree may be vacated—before this Court can determine whether the court of appeals had authority to resurrect the officials’ waived defense or compel a ruling before a legally immaterial election. Applicants therefore ask the Court to stay or recall the mandate pending certiorari or, alternatively, to

treat this application as a petition for certiorari, grant the petition, and reverse.

To be sure, the Fifth Circuit’s docket has a notation stating that the mandate issue date of September 16, 2026 has been “canceled” pending resolution of Applicants’ motion asking the Fifth Circuit itself to stay its mandate. That notation is irrelevant. Regardless of the status of the Fifth Circuit’s mandate today, the nature of the relief the Fifth Circuit ordered requires this Court’s immediate intervention. Judge Rosenthal is already implementing the Fifth Circuit’s directives, as she must do to comply with the mandate as long as it issues *at any time* before the November 3 election. Temporarily withholding the mandate does nothing to undo the practical consequences of the judgment or the extraordinary and unjustifiable timetable it imposed on Judge Rosenthal. At a minimum, this application will ripen whenever the Fifth Circuit denies the stay motion below. *See* Fed. R. App. P. 41(b). Moreover, even if the issue date is nominally “canceled” for some period, that has no effect on this Court’s ability to stay either the mandate or the judgment below, *see* Sup. Ct. R. 23.2; 28 U.S.C. § 2101(f). Nor does the “canceled” notation eliminate the need for such relief in the circumstances of this case.

OPINIONS BELOW AND JURISDICTION

The unpublished opinion of the court of appeals, *In re Goodhart*, No. 26-20337 (5th Cir. Aug. 26, 2026) (per curiam), and Judge Higginson’s dissent are reproduced at Appendix A. The district court’s opinion granting intervention in part and denying it in part is reported at *ODonnell v. Harris County*, 808 F. Supp. 3d 738 (S.D. Tex. 2025).

This Court may review the judgment on certiorari. 28 U.S.C. § 1254(1); *see Schlagenhauf v. Holder*, 379 U.S. 104, 109 (1964). It may stay the judgment and may stay or

recall the mandate. 28 U.S.C. § 2101(f); Sup. Ct. R. 22, 23.

Applicants complied with Rule 23.3 by seeking the same relief below. On August 29, 2026, they moved the court of appeals under Federal Rule of Appellate Procedure 41(d)(1) to stay the mandate and requested a ruling by September 2. As of the filing of this application, the Fifth Circuit has taken no action on the motion. But a notation on the docket now states that the September 16, 2026 mandate issue date is “canceled.”

STATEMENT

The constitutional violations at issue have been litigated in federal court for a decade and through three appeals. In 2016, a putative class of indigent misdemeanor arrestees sued Harris County, its Sheriff, and the judges of its Criminal Courts at Law, alleging that Harris County’s misdemeanor bail practices violated “the equal protection and due process clauses of the Fourteenth Amendment.” App. 3a (quoting *ODonnell v. Harris County (ODonnell I)*, 892 F.3d 147, 152 (5th Cir. 2018)). The judge defendants moved to dismiss “under *Younger* abstention and other 12(b)(1) grounds” in November 2016. D.Ct.Dkt. 80 (Nov. 9, 2016); *see Younger v. Harris*, 401 U.S. 37 (1971); *see also* D.Ct.Dkts. 83-85. The district court denied those motions in a written opinion, D.Ct.Dkt. 125 (Dec. 16, 2016), then granted a preliminary injunction “requiring the implementation of new safeguards and the release of numerous detainees subjected to the insufficient procedures.” App. 3a (quoting *ODonnell I*, 892 F.3d at 155).

On appeal, the judge defendants and the County argued that *Younger* required Plaintiffs’ claims be adjudicated in state court, but a unanimous Fifth Circuit panel rejected *Younger* abstention. *ODonnell I*, 892 F.3d at 156. The court largely affirmed the injunction’s

substance while trimming its scope, and remanded for a revised decree. *Id.* at 163-67. No party petitioned for rehearing en banc or sought a writ of certiorari.

On remand, the defendants continued to press *Younger* before the district court. D.Ct.Dkt. 420, at 4, 11, 20 (June 25, 2018). The court again rejected *Younger* abstention and entered a modified preliminary injunction, which the defendants appealed. After a divided Fifth Circuit panel stayed certain provisions of the modified injunction pending appeal, *see ODonnell v. Goodhart*, 900 F.3d 220 (5th Cir. 2018), the original judges “were defeated in the November 2018 elections and, by operation of law, were replaced by” new judges who voluntarily dismissed the appeal. App. 4a (quoting *ODonnell v. Salgado*, 913 F.3d 479, 481 (5th Cir. 2019)).

The successor judges then explicitly accepted the federal forum and affirmatively sought and negotiated a federal consent decree. They did not renew a *Younger* abstention defense or otherwise seek dismissal or adjudication in another forum. They negotiated a resolution that included concessions from the other parties, and, with every other party, jointly moved for a consent decree resolving the constitutional claims against them. The district court held an evidentiary hearing and found that the parties—“including the defendants”—had “expressly urged” it “to proceed to an adjudication of the constitutional merits.” 808 F. Supp. 3d at 761. On that record, the court entered the decree on November 21, 2019. The judges continued to invoke federal authority: on the parties’ motion and under an agreed provision of the decree, the court appointed a monitor in early 2020, App. 4a, who has since filed nine reports. No defendant appealed entry of the decree. For six years, the judges administered the federal judgment they had asked the federal court to enter.

In 2023, in a different case involving Dallas County, the en banc Fifth Circuit overruled *ODonnell I*'s abstention holding. *Daves v. Dallas County (Daves II)*, 64 F.4th 616, 631 (5th Cir. 2023). Two years later, in 2025, the Texas Attorney General moved to intervene in this case to press *Younger* anew. The district court held that he could not belatedly intervene for that purpose and had in any event waived the argument. 808 F. Supp. 3d at 758, 761. The Attorney General noticed an appeal from that ruling on November 26, 2025, but moved to dismiss it voluntarily before filing his brief, and the appeal was dismissed; the holding that he waived *Younger* is therefore final. App. 15a.¹

On November 12, 2025, after a scheduling conference, the district court entered a scheduling order requiring any motion to vacate the decree to be filed by December 11, 2025, opening fact discovery, and setting an evidentiary hearing on the motions to vacate for August 27, 2026. App. 79a, 82a. No objection was filed to those dates. App. 15a (Higginson, J., dissenting). On December 11, 2025, four of the county's sixteen criminal court judges moved to vacate the decree under Rule 60(b), including on the ground the federal court should have abstained from the outset under *Younger*. D.Ct.Dkt. 793.

In April 2026 the four judges asked the court to “consider their *Younger* abstention argument” *immediately*, “as a matter of law and without awaiting additional discovery.” D.Ct.Dkt. 803, at 1. Judge Rosenthal declined and explained why: a motion to reopen a final judgment proceeds under Rule 60(b), *Daves II* had not addressed a decree the movants' own

¹ *Daves II*'s 8-7 ruling on *Younger* abstention was wrongly decided, inconsistent with decades of this Court's precedent and the clear holdings of multiple other circuits, and should be overruled in an appropriate case. This application does not present that question, because the panel majority's error is independent of it.

predecessors in office urged the court to enter, and the Rule 60(b) equities could not be weighed without a factual record. App. 85a. Because discovery was still ongoing, Judge Rosenthal moved the hearing to November 16. No party moved to quash a deposition or for a protective order at any point in that discovery. The four judges took significant discovery of their own, serving requests for production and subpoenas on the court-appointed monitors. D.Ct.Dkt. 804, Exs. A-B.

Nearly thirty days after Judge Rosenthal denied their motion for immediate resolution of their *Younger* argument, the judges sought mandamus in the Fifth Circuit to compel Judge Rosenthal to decide their motion. They asked the court of appeals to declare that no discovery or fact findings are necessary to apply *Younger* abstention, to order Judge Rosenthal to decide the question “swiftly” on the briefing they had already filed, and to direct her to “follow” *Daves II*. Mandamus Pet. 22, C.A.Dkt. 2-1 (June 25, 2026). The injury they asserted was that, absent the writ, “the parties will be subjected to continued, extensive discovery and unnecessary delay in a case that should never have been brought in federal court.” *Id.* at 10. They did not argue that the November election entitled them to a ruling before it; that rationale was “not advanced by the parties at any stage.” App. 20a (Higginson, J., dissenting). The supposed urgency was of their own making. They waited two years after *Daves II* to raise *Younger* at all; after raising the argument, they waited more than four months before asking Judge Rosenthal to decide it immediately; and after Judge Rosenthal declined, they waited nearly another month before seeking mandamus. It is the judges’ delay, not any act of the district court, that placed this case near the upcoming November election.

Six weeks after briefing was completed, a divided Fifth Circuit panel granted the writ. The majority relied overwhelmingly on the upcoming election—its opinion mentioned the election at least 11 times, in every part of its opinion. On the first *Cheney* condition—that the petitioner have no other adequate means to obtain relief—the majority wrote two sentences. “An appeal from the district court’s final judgment cannot undo any delay in reaching that final judgment.” And: “there is value here in acting expeditiously: As we noted above, Texas’s judicial election will take place this November.” App. 6a.

On the clear-and-indisputable-right requirement, the majority recognized that docket management is discretionary but held that its 2023 decision in *Daves II* and the election required expedition. It acknowledged that where the issue “is one committed to the discretion of the trial court,” such as “a district court’s management of its docket,” a clear and indisputable right “will arise only if the district court has clearly abused its discretion, such that it amounts to a judicial usurpation of power.” App. 6a. It added that although “district court judges have broad discretion in managing their dockets,” “discretion has its limits.” App. 7a. Because *Daves II* held that such a case “should [not] have been adjudicated in federal court,” the majority reasoned that “[t]his holding, plus the comity and federalism concerns underlying *Younger* ... should have counseled the district court to expedite consideration of whether to end federal oversight of state procedures—particularly in light of the imminent state judicial election.” It concluded: “[t]he district court should not have delayed that consideration such that the hearing on the motion to vacate falls after the state election.” App. 7a.

The majority also rejected both reasons the district court gave for awaiting a developed

factual record. Judge Rosenthal had concluded that *Daves II* was “not directly controlling” because it “addressed a *Younger* argument presented and resolved before final judgment,” while the four judges “move to vacate a final judgment”—a request that “requires the [f]our [j]udges to show under [Rule] 60(b) that the equities favor vacating or amending the consent decree” and thus requires a record. App. 7a. The panel responded that “*Daves II* does not hinge upon factual development or discovery” and that “the district court failed to consider one fact that surely looms large in any balancing of equities: the imminent state judicial election, which counseled expedition here.” App. 8a. It further held that Judge Rosenthal “was also mistaken to the extent [she] believed that the four judges had waived their *Younger* argument.” App. 8a. Although *Younger* “will not apply if application of the doctrine was waived,” the panel reasoned that “[c]onsent alone is insufficient to support a commitment by a public official that ties the hands of his successor” and that “no public official has the power to bind his or her successor in perpetuity.” App. 8a. On the third *Cheney* condition the panel wrote a single sentence: “[t]he pending election and *Daves II* make the writ appropriate here for the reasons that we have already discussed.” App. 10a.

The panel directed that “[t]he district court must consider the four judges’ *Younger* abstention argument on an expedited basis, well in advance of the upcoming Texas judicial election on November 3, 2026,” and instructed her “to follow *Daves II*.” App. 10a. It denied as moot the judges’ motion to stay enforcement of the decree, which remains in force. Judge Higginson dissented.

The writ has already displaced the district court’s schedule. On September 1, the court entered a new scheduling order that pulls the *Younger* question out of the November 16

evidentiary hearing—where respondents’ Rule 60(b) burden was to be tested—and sets responses for September 18, replies for 2:00 p.m. on September 21, and an in-person proceeding on the *Younger*-based motions to vacate for September 22. D.Ct.Dkt. 867. Respondents filed a renewed motion to vacate the decree on *Younger* grounds on September 1, D.Ct.Dkt. 864, and the Attorney General joined it the same day, D.Ct.Dkt. 865.

According to the clerk’s transmittal letter of the opinion of August 26, 2026, the day the opinion issued, “the opinion issued as the mandate.” App. 77a. According to the docket, and to the clerk’s “corrected” memorandum to counsel of August 27, 2026, the mandate was due to issue on September 16. App. 75a. Applicants filed a motion to stay the mandate on August 29, 2026. The docket entry recording Applicants’ motion states that the “[m]andate issue date [is] canceled.” C.A.Dkt. 49 (Aug. 29, 2026). That notation is the clerk’s ministerial act attending the docketing of Applicants’ own stay motion. It is not an order of the court of appeals, it did not disturb the writ, and it does not bear on this Court’s power to act. Rule 23 authorizes an application “to stay the enforcement of [the] judgment” under review, Sup. Ct. R. 23.2, and the statute it cites permits a stay of “the execution and enforcement of such judgment or decree,” 28 U.S.C. § 2101(f). The judgment is the writ of mandamus the panel granted on August 26, which commands the district court to consider *Younger* “on an expedited basis, well in advance of” the November 3 election. App. 10a. The mandate is the instrument that transmits that command. It is not the command.

The command is already being obeyed. On September 1—three days after the issue date was nominally “canceled”—the district court entered a scheduling order doing precisely what the panel directed: responses to the *Younger* motions to vacate due

September 18, replies September 21, an in-person proceeding on those motions September 22, and post-proceeding filings September 24. D.Ct.Dkt. 867. The movants have filed their renewed motion to vacate, D.Ct.Dkt. 864, and the Attorney General—whose intervention to press *Younger* was denied, and who voluntarily dismissed his appeal from that denial—has joined the renewed *Younger* request, D.Ct.Dkt. 865. In other words, Judge Rosenthal has already reordered her docket around the Fifth Circuit’s directives to decide *Younger* well before November 3 and to follow *Daves II*.

Even if the mandate’s issue date remains “canceled” for the time being, that cancellation is not a reprieve but a pause. Once Applicants’ pending motion is denied, the mandate “must issue ... 7 days after entry of an order denying ... [a] motion for stay of mandate, whichever is later,” and the court of appeals “may shorten ... the time by order.” Fed. R. App. P. 41(b). The Fifth Circuit’s clerk issues the mandate immediately “in such other instances as the court may direct,” 5th Cir. R. 41, I.O.P., and issues it “forthwith” in analogous postures, *cf.* 5th Cir. R. 41.1 (direct criminal appeals, on denial of a stay), 41.4 (actions denying mandamus relief). Applicants asked the court of appeals to rule by September 2 so that this Court would not face the question in this posture. That date passed without a ruling.

Whatever the mandate’s present status, one of three things is true, and each supports relief. If the mandate has issued, there is a mandate to recall now. If the mandate issues while this application is pending in this Court, there will be a mandate to recall then. And if the mandate never issues, the Fifth Circuit judgment alone is already operating as though the mandate had already issued, because what the panel ordered—consideration of the abstention question “on an expedited basis, well in advance of” the November 3 election—

cannot be deferred and still be accomplished.

REASONS FOR GRANTING THE APPLICATION

Applicants satisfy each requirement for a stay pending certiorari. *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam).

I. THE FIFTH CIRCUIT’S DECISION GRANTING MANDAMUS IS LEGALLY INDEFENSIBLE AND FACTUALLY INSUPPORTABLE

A. The Defendants Have No Right to Press a *Younger* Defense Because Their Predecessors in Office Waived It Earlier in the Litigation

The Fifth Circuit clearly erred in holding that an official-capacity defendant’s affirmative waiver of a *Younger* abstention defense does not bind their successors in office. These judges are parties only in their official capacities, and an official-capacity suit “is, in all respects other than name, to be treated as a suit against the entity.” *Kentucky v. Graham*, 473 U.S. 159, 166 (1985). The party is the office, not its current occupant. *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 71 (1989); *Lewis v. Clarke*, 581 U.S. 155, 162 (2017). When an officeholder leaves, whether by election, resignation, or death, the successor “is automatically substituted as a party,” Fed. R. Civ. P. 25(d), and the action does not abate. *Graham*, 473 U.S. at 166 n.11.

An official-capacity defendant’s waiver of a non-jurisdictional defense binds their successors. A waiver binds the party that makes it, and substitution of one officeholder for another changes only the caption. Fed. R. Civ. P. 25(d). Here, the predecessors did far more than remain silent about abstention: they asked the district court to reach the constitutional merits, litigated to a settlement they negotiated for months, jointly moved for a consent decree, and declined to appeal the final judgment. Their successors inherited the action as it stood, including the judgment and the concessions that produced it. “The mere fact that

there has been a change in the person holding the office does not destroy the effect of the thing adjudged.” *City of New Orleans v. Citizens’ Bank of La.*, 167 U.S. 371, 389 (1897). The same rule governs a sovereign’s waiver through litigation: a State that “voluntarily become[s] a party” to a suit “cannot escape the result of its own voluntary act.” *Gunter v. Atlantic Coast Line R.R.*, 200 U.S. 273, 284 (1906); *College Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 675-76, 681 n.3 (1999).

The panel’s contrary ruling does not withstand scrutiny. The panel reasoned that “[c]onsent alone is insufficient to support a commitment by a public official that ties the hands of his successor,” and that no official “has the power to bind his or her successor in perpetuity.” App. 8a. But the predecessors did not bind their successors personally or dictate future policy. Acting as official-capacity defendants, they waived a non-jurisdictional defense, obtained a judgment, and declined to appeal. Their successors inherited the same party position, including the litigation consequences that came with it. Nothing in this reasoning prevents successors from seeking relief from a consent decree under Rule 60(b). Officials do that routinely, on a showing of changed circumstances, a change in law, or the careful balancing of equities over time, and the district court stood ready to decide such a motion here on a developed record. What Rule 60(b) does not supply is a vehicle for a current officeholder to resurrect a non-merits, non-jurisdictional defense that their predecessor in office abandoned before that decree was entered.

The judges were right to waive *Younger*. Abstention requires, as a precondition, that the state proceeding afford an “adequate opportunity” to raise the federal challenge. *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass’n*, 457 U.S. 423, 432 (1982). It did

not here. This Court held in *Gerstein v. Pugh* that a federal challenge to pretrial-detention procedures is “not directed at the state prosecutions as such, but only at the legality of pretrial detention without a judicial hearing, an issue that could not be raised in defense of the criminal prosecution.” 420 U.S. 103, 108 n.9 (1975). On that authority the unanimous panel in *ODonnell I* held that “[t]he third prong of this test is not met.” 892 F.3d at 156.

Younger’s narrow compass points the same way: it reaches only three “exceptional” categories, and this Court has unanimously “clarif[ied] and affirm[ed] that *Younger* extends to [them] ... but no further.” *Sprint Commc’ns, Inc. v. Jacobs*, 571 U.S. 69, 82 (2013). A contrary rule “would make a mockery of the rule that only exceptional circumstances justify a federal court’s refusal to decide a case in deference to the States.” *New Orleans Pub. Serv., Inc. v. Council of New Orleans*, 491 U.S. 350, 368 (1989). And *Younger* is only a “far-from-novel” exception to the federal courts’ “virtually unflagging” obligation to exercise the jurisdiction given them. *Sprint*, 571 U.S. at 77 (quoting *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976), and *New Orleans Pub. Serv.*, 491 U.S. at 364); accord *First Choice Women’s Res. Ctrs., Inc. v. Davenport*, 146 S. Ct. 1114, 1126 (2026). Federal courts “do not have freewheeling discretion to spurn categories of cases that they don’t like.” *Texas v. California*, 141 S. Ct. 1469, 1469 (2021) (Alito, J., dissenting from denial of motion for leave to file complaint). Applicants do not ask this Court to decide whether *Younger* would bar this suit today. The defense the predecessors intentionally relinquished was one this Court’s decisions had likely already foreclosed.

This Court’s decisions establish both that *Younger* may be waived and that these defendants waived it. *Younger* abstention “does not arise from lack of jurisdiction in the

District Court, but from strong policies counseling against the exercise of such jurisdiction,” and “[a] State may of course voluntarily submit to federal jurisdiction even though it might have had a tenable claim for abstention.” *Ohio C.R. Comm’n v. Dayton Christian Schs., Inc.*, 477 U.S. 619, 626 (1986). Waiver exists where “the State expressly urged this Court or the District Court to proceed to an adjudication of the constitutional merits.” *Id.* That is precisely what Judge Rosenthal found: the parties—“including the defendants”—had “expressly urged” the court “to proceed to an adjudication of the constitutional merits.” 808 F. Supp. 3d at 761. Once a government defendant makes that choice, “considerations of comity are not implicated.” *Brown v. Hotel & Rest. Emps.*, 468 U.S. 491, 500 n.9 (1984); accord *Ohio Bureau of Emp. Servs. v. Hodory*, 431 U.S. 471, 480 (1977) (“If the State voluntarily chooses to submit to a federal forum, principles of comity do not demand that the federal court force the case back into the State’s own system.”).

B. The Upcoming Election is Legally and Factually Irrelevant to This Litigation

Even if the Defendants had not waived their *Younger* abstention defense, nothing comes close to warranting the extraordinary remedy of mandamus against Judge Rosenthal. The upcoming election, which was the panel majority’s only reason for expediting this case, is categorically irrelevant to every element of mandamus. The election does not make ordinary appellate review inadequate, create a “clear and indisputable” right to an immediate ruling, or make extraordinary intervention “appropriate under the circumstances.” *Cheney*, 542 U.S. at 380-81. It is the panel’s only basis for distinguishing this case from every ordinary request to make a district judge rule faster. The premise that mandamus is warranted because these judges might lose reelection, and their successors withdraw the Rule 60(b) motion, is legally indefensible and factually wrong.

The election cannot justify mandamus. The official-capacity party remains unchanged no matter who holds the office. The panel invoked the election in the introduction, statement of facts, analysis of each mandamus requirement, and decretal paragraph. App. 2a, 5a-8a, 10a. Although the panel never spelled out why it believed the upcoming election warranted mandamus, App. 22a (Higginson, J., dissenting), the reason is clear: the panel supposed that all four current judges could lose reelection and their successors could abandon the Rule 60(b) motion before the district court decides it. The panel accordingly mandamusd the district judge to rule before that could happen.

As a legal matter, that is indefensible. It is the equivalent of a party claiming a right to an expeditious ruling on its motion because the party fears it may soon change its own litigation position. The party is the office, not its occupant. *Graham*, 473 U.S. at 166; *Will v. Michigan*, 491 U.S. at 71; *Lewis*, 581 U.S. at 162. An election does not change the office, only its occupant. A party, including an official-capacity defendant, may abandon its own motion without suffering an injury. The only persons interested in preventing the office from changing position are its current occupants personally, and they are not parties. *Karcher v. May*, 484 U.S. 72, 77-81 (1987).²

As a factual matter, the panel’s election-urgency rationale is simply incorrect, for two

² The panel also wrote that “[a]n appeal from the district court’s final judgment cannot undo any delay in reaching that final judgment.” App. 6a. That is true in every case in which a litigant would prefer a faster ruling, which is why it has never sufficed. The extraordinary writs “cannot be used as substitutes for appeals ... even though hardship may result from delay and perhaps unnecessary trial.” *Bankers Life & Cas. Co. v. Holland*, 346 U.S. 379, 383 (1953). If delay alone made appeal inadequate, every scheduling order a litigant disliked would support the writ, and the first *Cheney* condition would do no work.

reasons. First, not all four of the judges are leaving this year. Only two are on the ballot in November; one is retiring; and the fourth, Judge Garcia, was elected in 2024 to a term running through 2028. So even if the other three judges are gone, Judge Garcia can continue challenging the consent decree on *Younger* grounds. Second, even if the two judges facing voters lose reelection in November, they and the retiring judge will serve until January 1, 2027, when their successors are sworn in. The Fifth Circuit mandamus a respected judge based on a fundamental (and inexplicable) misunderstanding of Texas elections: who is on the ballot and when new officials are sworn in. Even assuming the Fifth Circuit was right on the law as to every particular in this case, there *still* was absolutely no valid reason to rush Judge Rosenthal beyond the entirely reasonable schedule she had already adopted.

This is a crucially important matter for this Court to correct. Mandamus *is* the most extraordinary remedy in the federal system. It should only issue when it is *indisputably clear* that a district court has abused its discretion and there is *no other* means to correct it. It should never issue without the most serious attention to the relevant facts and law. That did not happen here. And this Court should make clear that it is inappropriate.

II. THE COURT'S IMMEDIATE INTERVENTION IS NECESSARY

A stay is necessary now because compliance with the writ will foreclose review of the decision below. Once Judge Rosenthal rules on the Rule 60(b) motion, any challenge to the panel's erroneous decision to mandamus her will be moot. And the writ is not merely accelerating that ruling: it directed her to "follow *Daves II*," App. 10a, and compressed the schedule she had set to develop the Rule 60(b) record. A record that is never made cannot be reviewed, and no later stay restores it. The compressed schedule requires a ruling "well in advance of" the November election, before Applicants can obtain plenary review in this

Court. Only a stay or recall of the mandate, coupled with expedited consideration of a petition for a writ of certiorari, will preserve that review.

The panel's unexplained assertion of ultimate judicial power finds no support in this Court's mandamus decisions. Mandamus is a "drastic and extraordinary" remedy whose "office is not to 'control the decision of the trial court,' but rather merely to confine the lower court to the sphere of its discretionary power." *Will v. United States*, 389 U.S. at 104, 106. And because of "the extremely awkward position in which it places the District Judge," an issuing court must "give a reasoned exposition of the basis for its action." *Id.* at 107. This Court vacated the writ in *Will v. United States* for lack of that exposition. Here, the panel disposed of the first *Cheney* condition in two sentences. App. 6a. It identified no abuse of discretion in the schedule it displaced, and no statute gives a *Younger* argument priority over the rest of a district court's docket.

This Court has reversed a materially similar use of mandamus. In *Will v. Calvert Fire Ins. Co.*, a court of appeals ordered a district judge to "proceed immediately" with a case whose timing it considered too important to leave to him. 437 U.S. at 658. This Court reversed. *Id.* at 667. The plurality explained that a busy federal trial judge has "wide latitude in setting his own calendar," that exercising this discretion "ought not to be overridden by a writ of mandamus," and that no litigant has a "clear and indisputable" right to a different result where the matter is committed to the district court's discretion. *Id.* at 665-66 (opinion of Rehnquist, J.). Justice Blackmun agreed that a writ compelling immediate adjudication was premature. *Id.* at 667-68 (Blackmun, J., concurring in the judgment). Mandamus is even less defensible here: Judge Rosenthal considered the intervening decision on which

respondents relied, established a process for resolving their motion, and never refused to rule. Her authority is not a courtesy; its exercise demands “judgment, which must weigh competing interests and maintain an even balance.” *Landis*, 299 U.S. at 254-55. The panel replaced that judgment with its own preference about sequence without finding any abuse.

The bar for this writ is far higher than the panel supposed. Courts entertaining unreasonable-delay claims against agencies apply a flexible, multi-factor reasonableness inquiry rather than insisting on a clear and indisputable right—and even under that far more forgiving standard, they decline to order the actor to move by a date certain after delays that dwarf anything in this record, because there are competing priorities and the work takes what it takes. *In re United Mine Workers of Am. Int’l Union*, 190 F.3d 545, 551, 556 (D.C. Cir. 1999) (declining to issue the writ “at this time” despite an eight-year violation of a statutory deadline, retaining jurisdiction, and ordering status reports rather than a completion date).³ Judge Rosenthal set an evidentiary hearing nearly six months out, after ordering discovery, and committed to rule. If eight years past a congressional command does not justify fixing a date, nearly six months of an Article III judge’s own calendar cannot. *See also Sierra Club v. Gorsuch*, 715 F.2d 653, 658 & n.35 (D.C. Cir. 1983) (“an agency’s control over the timetable of a rulemaking proceeding is entitled to considerable deference,” because of its “discretion to set its own priorities”).

³ *See also Da Costa v. Immigration Investor Program Office*, 80 F.4th 330, 343-44 (D.C. Cir. 2023) (multi-year delay in performing a mandatory adjudicative duty not unreasonable, because moving one claimant to “the head of the queue simply moves all others back one space and produces no net gain” (quoting *In re Barr Labs., Inc.*, 930 F.2d 72, 75 (D.C. Cir. 1991))); *Vaz v. Neal*, 33 F.4th 1131, 1138-39 (9th Cir. 2022) (four-year delay in performing a “clear, mandatory duty” not unreasonable).

The consequences of endorsing this abuse of the writ are not confined to this case. An approaching election is not a rare thing. Texas elects its judges every two years, and some officeholder is always about to be replaced. A rule that converts the electoral calendar into a source of mandamus jurisdiction has no stopping point: it would equally entitle a newly elected sheriff to demand expedited dissolution of a policing decree, a new attorney general to force adjudication of an environmental or immigration decree on the eve of a primary, or a school board to compel a ruling on a desegregation order before its seats turn over. This case proves the point. The Attorney General of Texas intervened below, was held to have waived *Younger*, appealed that ruling, and voluntarily dismissed his appeal—and two days after the panel’s decision moved to re-urge *Younger* expressly “in light of” it. He is not standing for re-election to that office; whoever holds it next year will be someone else, and on the panel’s own reasoning nothing he obtains now would bind that successor. A writ available whenever an officeholder changes his mind, timed to whenever an election approaches, is not an extraordinary remedy reserved for the clearest usurpations of power.

The equities decisively favor preserving the district court’s schedule. A stay would change nothing on the ground: the consent decree remains in force either way, and the court of appeals denied as moot the judges’ motion to stay enforcement. App. 10a. It would instead preserve a schedule designed to permit discovery before the district court applies the fact-bound modification standard of *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 383-84, 391 (1992). Respondents would lose only speed—the very speed the panel never justified. Applicants, by contrast, could lose both the judgment they hold and the opportunity for this Court’s review. And twelve of the sixteen judges on respondents’ court “all ... support the

consent decree's continuation." App. 9a.

The panel's decision, if left undisturbed, will also wreak havoc in Harris County's pre-trial system, with the harm falling on taxpayers, law enforcement officers, and tens of thousands of indigent arrestees each year in the third-largest jail in the country. According to the independent court-appointed monitors, Harris County saves many millions of dollars a year under the consent decree. And its hundreds of law enforcement officers, healthcare workers, jailers, and civilian employees have a significant reliance interest in the system that has been in place for nearly seven years. By permitting these judges to re-raise a previously waived defense, the panel's decision will destabilize that carefully crafted system on a recklessly fast schedule.

Vacating the decree would inflict irreparable harm on thousands of indigent misdemeanor arrestees in Harris County. This litigation began because indigent arrestees were detained under procedures the district court found unconstitutional. The consent decree has governed that system for nearly seven years. If it is wrongly dissolved, the burden will fall on the people who enter Harris County's misdemeanor system each day and depend on the decree's protections against unlawful detention. Respondents answer that Texas law already supplies the individualized consideration of ability to pay that the Constitution requires. But that is a different question from the one on which they now seek to win, which is a *Younger* defense that has no nexus with the merits. If Defendants prevail on this waived *Younger* theory—and the decision below suggests that is the panel majority's view—that liberty cannot be restored. A person jailed for a day, a week, or a month under procedures the decree forbids cannot recover that time if this Court later holds that the

decree should not have been vacated. Respondents identify no comparable harm from preserving the decree long enough for this Court to review the Fifth Circuit's extraordinary intervention.

CONCLUSION

The Court should stay or recall the court of appeals' mandate and its writ of mandamus pending the filing and disposition of a petition for a writ of certiorari. In the alternative, the Court should treat this application as a petition for a writ of certiorari and grant it.

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Respectfully submitted,



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