Supreme Court, U.S.
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No. 26A636

IN THE

SUPREME COURT OF THE UNITED STATES

IN RE CARL GORDON, APPLICANT

Related Ninth Circuit Appeal No. 26-6605

EMERGENCY APPLICATION FOR AN ADMINISTRATIVE STAY AND A STAY OF THE OPENING-BRIEF DEADLINE PENDING THE FILING AND DISPOSITION OF A PETITION FOR A WRIT OF MANDAMUS

TO THE HONORABLE ELENA KAGAN
ASSOCIATE JUSTICE AND CIRCUIT JUSTICE
FOR THE NINTH CIRCUIT

ACTION REQUESTED BY NOVEMBER 4, 2026
Opening brief due November 16, 2026

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October 30, 2026

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Supporting documents are supplied in the accompanying Appendices A–E. References identify the appendix and, where applicable, the source document's own page number.

PARTIES

Applicant Carl Gordon is the appellant in Ninth Circuit Appeal No. 26-6605 and the plaintiff-relator in the underlying district-court action, No. 2:25-cv-04705-AB-SSC.

The defendants identified in the underlying proceeding are Gavin Newsom; Eleni Kounalakis; Rob Bonta; Shirley Weber; Steven J. Reyes; Kevin Calia; Dean C. Logan; California Association of Clerks and Election Officials (CACEO), including all 58 county election officers; SKDK; ActBlue; California Democratic Party; Democratic National Committee; Democratic Governors Association; and Does 1–10. The United States appears in the underlying action's caption as United States of America ex rel. Carl Gordon.

Applicant identifies these participants without conceding disputed questions of service, appearance, representation, dismissal, or appellate-party status. The proposed mandamus relief is directed to the Ninth Circuit in its judicial capacity. This application seeks temporary suspension of the opening-brief deadline while the Court considers whether to entertain and grant that relief.

I. RELIEF REQUESTED

To the Honorable Elena Kagan, Associate Justice and Circuit Justice for the Ninth Circuit:

Carl Gordon requests an immediate administrative stay of the November 16, 2026 opening-brief deadline in Appeal No. 26-6605 while this application is considered, followed by a stay of that deadline pending the timely filing and disposition of his petition for a writ of mandamus. Applicant requests action by November 4 to preserve time for preparation and service if relief is denied.

The October 28 order refers the pending record and service requests to the merits panel to be assigned after briefing is complete, denies a stay of briefing, and retains the November 16 deadline. Appendix A. Applicant seeks the opportunity to obtain review of that sequence before he must complete the acts the pending requests concern.

Applicant is preparing the mandamus petition and requests that any interim order specify the time for its filing. He does not represent that the petition has already been filed. The petition will seek timely adjudication of the reply's procedural status and the pending record and service requests; this application seeks interim protection of the briefing deadline.

II. JURISDICTION AND BASIS FOR INTERIM RELIEF

Applicant invokes 28 U.S.C. § 1651(a) in aid of this Court's potential appellate jurisdiction under 28 U.S.C. § 1254(1), together with Supreme Court Rules 20, 22, and 23. The appeal remains pending in the Ninth Circuit. The anticipated petition concerns that court's October 28 procedural order and its effect on presentation of the appeal.

Hollingsworth v. Perry, 558 U.S. 183, 190, 199 (2010), recognizes a stay pending the filing and disposition of a mandamus petition. Applicant relies on that limited interim function to preserve effective consideration of his proposed petition. He does not invoke Rule 22 as an independent source of jurisdiction or as authority to dispense with the requirements governing the mandamus petition.

The requested stay would suspend the November 16 opening-brief obligation and the operation of the October 28 order to that limited extent. It would leave the Ninth Circuit free to resolve the pending record and service requests. Applicant requests no decision here on the merits of the appeal, the validity of the Government's declination, or the ultimate admissibility or record status of the October 9 reply.

III. MATERIAL PROCEDURAL HISTORY

On October 9, 2026, Applicant submitted his reply through EDSS under tracking number EDS-261009-003-8123. The receipt records submission at 5:53:51 p.m. Civil Intake's October 14 message states "forward to chambers." Appendix C. Applicant relies on these documents as evidence of submission and referral, not as proof that the reply was accepted for filing or considered.

The reply at pages 6–8 explains Applicant's asserted connection between his cited authority and the FCA declination; pages 9–10 present his recusal argument. Appendix C. The October 2 opposition was docketed as Entry 91, but the district-court docket report through October 28 contains no entry for the October 9 reply. Appendix D.

Entry 98, entered October 22, states that the court "has considered the matters raised" and takes the motion under submission without oral argument. Entry 99, dated October 23, denies reconsideration and states that Applicant "fails to explain why a declination to intervene in an FCA case is impacted by his cited authority." Appendix E.

The absence of a docket entry does not prove that the district judge ignored the reply. It leaves unresolved the procedural status of the submission containing Applicant's explanation—the question he has asked the courts to determine.

IV. RELIEF SOUGHT BELOW AND CURRENT STATUS

Applicant sought emergency relief through Ninth Circuit Entries 8 and 9, including record correction and service directions. The October 28 order, Entry 11, refers Entries 7–9 to the merits panel after briefing, expressly denies a stay, and retains the November 16 opening-brief deadline. Appendix A.

Applicant then sought limited reconsideration or modification. Appendix B contains the October 28 motion, whose downloaded pages bear Entry 12.1. The docket entry supplied by Applicant identifies the motion as Entry 13, filed October 28 and entered October 29 at 7:47 a.m. The motion requests determinations of the reply's status, disputed appellee status, and service obligations. Appendix B, motion at 8–9, 18–19.

As of October 30, 2026 2:40 pm Pacific Time, Applicant's review of the Ninth Circuit docket showed no ruling on Entry 13 and no modification of the November 16 deadline.

For purposes of Rule 23.3, the October 28 order documents that suspension of briefing was sought and denied below. The district court cannot modify the Ninth Circuit's briefing order. Applicant seeks interim relief here because continued enforcement of that order may overtake this Court's consideration of the proposed mandamus petition. He will promptly report any subsequent ruling affecting this application.

V. PROSPECT OF MANDAMUS RELIEF

Under Hollingsworth, 558 U.S. at 190, a stay pending mandamus requires a fair prospect that a majority of the Court will grant the writ and likely irreparable harm without a stay. Mandamus requires no adequate alternative means, a clear and indisputable entitlement, and appropriateness in the circumstances. Applicant acknowledges this demanding standard.

Federal Rule of Appellate Procedure 10(a) defines the appellate record, and Rule 10(e) supplies procedures for settling record disputes and correcting material omissions. Applicant's proposed petition will seek adjudication of a documented dispute while that adjudication can guide his opening presentation. It will not ask this Court to presume that submission through EDSS establishes acceptance of the reply.

Applicant submits that deferring the identified preliminary questions until after briefing defeats their practical purpose. His asserted entitlement concerns an effective opportunity to present his appeal on an accurately settled record, rather than a general entitlement to immediate disposition of every motion. The rules do not themselves prescribe November 4 as an adjudication deadline.

The requested writ would preserve the Ninth Circuit's authority to decide the questions, including directing district-court proceedings where necessary. Applicant submits that the documented mismatch between the timing of review and the acts it governs warrants this Court's consideration and interim protection.

VI. The Ninth Circuit received notice of the unresolved service questions on October 16, and its subsequent deferral order threatens a meaningful opportunity to be heard because additional time alone does not resolve the pending disputes.

Applicant notified the Ninth Circuit of the unresolved service questions on October 16, 2026, through Docket Entry 3.1, attaching his October 12 request for instructions and the October 15 confirmation of referral to chambers. That notice expressly sought no extension of appellate deadlines. Ninth Circuit Dkt. 3.1, PDF pp. 2–5, 42.

Applicant subsequently presented the record and service requests through Entries 8 and 9. The October 28 order deferred those requests to a merits panel to be assigned after briefing, denied suspension of briefing, and retained the November 16 opening-brief deadline. Applicant promptly sought reconsideration through Entry 13 and deferred this submission until October 30 to allow the Ninth Circuit an additional opportunity to act.

"After briefing" is the source of the harm. Applicant must complete the very work for which he seeks essential procedural determinations before the designated panel considers whether to provide them. This sequence deprives the requested determinations of their practical use during preparation and service of the opening brief and creates three concrete forms of prejudice.

First, the deferral impairs a meaningful opportunity to be heard. Due process requires an opportunity to be heard "at a meaningful time and in a meaningful manner." Mathews v. Eldridge, 424 U.S. 319, 333 (1976). Applicant must challenge the district court's finding that his explanation was lacking while the procedural status of the October 9 reply containing that explanation remains unresolved. Determinations issued after briefing cannot guide an opening presentation already prepared, filed, and served. Without an opportunity to revise that presentation, later relief leaves the resulting prejudice uncorrected.

Second, the deferral requires merits briefing before settlement of a material record dispute. Federal Rule of Appellate Procedure 10(a) defines the appellate record, and Rule 10(e) provides procedures for settling disputes and correcting material omissions. Applicant documented the October 9 reply's submission, referral to chambers, and absence from the supplied district-court docket. Yet the scheduling order requires him to frame his arguments and record citations before receiving a determination of that reply's status. This uncertainty concerns the explanation Applicant must rely upon to challenge the finding that he failed to explain.

Third, the unequal treatment of the parties' submissions creates a fundamental disparity and structural prejudice against Applicant/Appellant. Defendants' October 2 opposition was docketed and is part of the record, while Applicant's October 9 reply answering that opposition remained undocketed in the supplied district-court docket. The adverse ruling is also docketed. Thus, the opposition and resulting

ruling have established places in the record, while the status of Applicant's responsive explanation remains unresolved.

Federal Rule of Civil Procedure 79(a) requires chronological docket entries, including the substance and entry date of orders and judgments. Federal Rule of Appellate Procedure 10(a) makes the filed papers and certified docket components of the appellate record. Accurate distinctions among submission, filing, and docket-entry dates are therefore essential to establishing what was before the district court when it ruled.

Applicant submits that carrying this unresolved disparity into mandatory merits briefing violates his Fifth Amendment right to a meaningful opportunity to be heard. He must challenge a finding that his explanation was lacking while the record status of the reply containing that explanation remains unsettled. Deferring correction until after briefing carries the unequal treatment of the submissions into the appellate process and deprives Applicant of the determination when he needs it to prepare his opening brief. See Mathews, 424 U.S. at 333.

The service questions likewise require answers before Applicant completes service. Additional time does not itself identify the required recipients, establish the scope of counsel's representation for service, or resolve the requested directions concerning permissible methods. Each day of continued deferral reduces the time available to implement corrections and directions before the November 16 deadline.

Applicant does not waive his record or service objections by preparing the opening brief. But preserving those objections does not supply the missing determinations or eliminate their effect on his presentation. Applicant is eighty years old and proceeding without counsel; requiring him to prepare a brief under unresolved procedural conditions and potentially reconstruct it afterward imposes substantial additional burdens.

An extension of time alone does not resolve these injuries. If the requests remain deferred until after briefing, extending the deadline merely postpones the same problem. Effective relief requires determinations early enough to govern preparation and service, together with sufficient time to implement them.

The existing order provides no express opportunity to revise the opening presentation after the record and service questions are decided. Applicant therefore submits that later review would not adequately remedy the identified prejudice, supporting the absence-of-adequate-alternative requirement under Cheney v. United States District Court, 542 U.S. 367, 380–81 (2004).

In the anticipated mandamus petition, applicant requests action by November 4, 2026, requiring prompt resolution of the pending record and service requests and sufficient time to implement those determinations before the November 16 opening-brief deadline.

VII. EQUITIES AND REQUESTED ORDER

A limited stay would preserve review without deciding the merits or requiring acceptance of the reply. Applicant submits that a short interruption is proportionate to the risk of review arriving after briefing.

Applicant respectfully requests:

1. An immediate administrative stay of the November 16, 2026 opening-brief deadline in Ninth Circuit Appeal No. 26-6605 pending disposition of this application;

2. A stay of that deadline pending the timely filing and disposition of the mandamus petition, subject to a filing deadline specified by the Justice or Court; and

3. Such further interim scheduling relief as is necessary, with action requested by November 4, 2026.

The Ninth Circuit would remain free to resolve the pending requests. Applicant will promptly report any ruling affecting the need for relief.

Dated: October 30, 2026

Respectfully submitted,

Carl Gordon

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Plaintiff-Relator-Appellant, Pro Se.
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(310) 926-3939

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

IN RE CARL GORDON, APPLICANT

PROOF OF SERVICE

I, Mae Gordon, declare:

I am over eighteen years of age and am not a party to this proceeding.

On October 30, 2026, I served true and correct copies of the following documents:

1. **Emergency Application for an Administrative Stay and a Stay of the Opening-Brief Deadline Pending the Filing and Disposition of a Petition for a Writ of Mandamus;**

2. **Supporting Appendices A–F, including the docket-entry confirmation for Ninth Circuit Entry 13**

I served one paper copy of each document on each recipient listed below by depositing the copies with FedEx, with delivery charges prepaid, for delivery within three calendar days. I also transmitted electronic copies of those documents to the email addresses listed below on October 30, 2026.

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For the United States of America.

All parties required to be served have been served.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on October 30, 2026, at Los Angeles, California.



Mae Gordon

APPENDICES A–F

APPENDIX A

Ninth Circuit October 28 order, Docket Entry 11.

FILED

OCT 28 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CARL GORDON,

Plaintiff - Appellant,

v.

GAVIN NEWSOM, Governor of California; et al.,

Defendants - Appellees.

No. 26-6605

D.C. No.
2:25-cv-04705-AB-SSC
Central District of California,
Los Angeles

ORDER

Appellants' October 20, 2026 filings (Docket Entry Nos. 7-9), including the emergency motion, are referred to the panel that will be assigned to decide the merits of this appeal after briefing is complete. The request to stay briefing until after the emergency motion is resolved is denied.

The opening brief remains due November 16, 2026. The answering brief remains due December 16, 2026. The optional reply brief remains due 21 days after service of the answering brief.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

Additional material from this filing is available in the Clerk's Office.