Supreme Court, U.S.
FILED
NOV - 2 2026
OFFICE OF THE CLERK

No. 26A657

IN THE
SUPREME COURT OF THE UNITED STATES

PAUL DAVID SCHULTZ, Applicant,

v.

KEVIN R. MCCARTHY, Respondent.

ON APPLICATION ARISING FROM THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

EMERGENCY APPLICATION TO THE CHIEF JUSTICE FOR AN IMMEDIATE TEMPORARY ADMINISTRATIVE STAY AND A LIMITED STAY IN AID OF THIS COURT'S PROSPECTIVE JURISDICTION

Paul David Schultz
Applicant *Pro Se*
18436 Kapalua Terrace
Leesburg, Virginia 20176
(703) 582-4355
pdschultz1@gmail.com

TABLE OF CONTENTS

Table of Authorities vii
Emergency Application 1
A. Two Recurring Mechanisms Produced a Four-Layer Shield that Made Non-Adjudication Self-Reinforcing 4
B. The Source Record Makes the Missing First Adjudication Objectively Verifiable 5
C. Sixteen Independent Binding-Law Constraints Converge on the Same Missing Safeguard 8
D. Conservative Audits Show Recurrence Across Two Bankruptcy Judges, and the First-Level Appellate Record Shows the Same Mechanisms Continuing Downstream 10
E. The Appellate Record Has Isolated the Controversy to a Five-Stage Sequence, and Further Nonaction Risks Allowing the Disputed Premise to Calcify 12
Emergency Request 14
Related Proceedings 14
Jurisdiction and Authority 15
A. Rule 22 Directs the Application to the Chief Justice; Rule 23 Recognizes Stay Authority "as Permitted by Law." 15
B. Sections 1254(1) and 1651(a) Supply Prospective Jurisdiction and Preservation Authority While Rehearing Remains Pending 16
C. *Nken* Confirms that the Principal Relief Requested Is a Stay Designed to Preserve Appellate Review, Not an Adjudication of the Merits 17
The Constitutional Right Being Preserved Is Fundamental and Prospective 18
A. The Fifth Amendment Protects a Neutral and Impartial Tribunal; § 455(a) Adds an Objective Statutory Appearance Safeguard 18
B. The Party-Presentation and Notice Cases Independently Protect the Neutral-Arbiter Function 19
C. The Petition Clause Reinforces the Public Interest in Keeping a Real Adjudicative Forum Available 20
Relief Was Sought Below 20
Reasons for Granting the Application 21
I. An Immediate Administrative Stay is Necessary so the Application Can Be Considered Before the Protected Event Occurs 21
II. The Substantive Stay Factors Strongly Favor Narrowly Tailored Preservation 22
A. There Is at Least a Reasonable Probability of Further Review and a Substantial Prospect of Success on the Preserved Questions 22

B. The Irreparable Injury is Temporal, Constitutional, and Process-Wide: Later Vacatur Cannot Recreate Either the Protected First Adjudication or the Judicial Petitioning Opportunity Already Denied 23
C. The Balance of Harms and Public Interest Favor Preserving, Not Freezing, the Proceedings 26
III. The First-Round Emergency Requests Becoming Moot Without a preservation ruling demonstrates why the renewed Rule 40 request must be preserved now 27
The McCarthy Appeal is the Successor-Fiduciary Endpoint of the Same Unadjudicated Claim-Status Problem 27
No. 26-2406 Presents the Cleanest Convergence of the Party-Presentation and Neutral-Tribunal Questions 34
The Requested Stay Is Exceptionally Narrow 38
Conclusion 39
Appendix ..... App. 1a
1. United States Court of Appeals for the Fourth Circuit Judgment, No. 26-2406, Dkt. 12-2 (Oct. 26, 2026) ..... App. 6a
2. Unpublished Per Curiam Opinion denying mandamus, No. 26-2406, Dkt. 11 (Oct. 26, 2026) ..... App. 7a–8a
3. Amended Combined Petition for Rehearing En Banc and Panel Rehearing, No. 26-2406, Dkt. 15 (Oct. 28, 2026) ..... App. 9a–30a
4. Emergency Motion for Immediate Temporary Administrative Stay and Limited Stay Pending Disposition of Rehearing, No. 26-2406, Dkt. 14-1 (Oct. 27, 2026) ..... App. 31a–55a
5. Exhibit A - Objective Docket History of the Twenty-Two Prior Related District Court / Bankruptcy Matters ..... App. 56a–66a
6. Main Bankruptcy Case Dkt. 821 (Aug. 27, 2026) — pertinent page confirming that judgment entered in all ten referenced appeals without the record on appeal ..... App. 67a–68a

7. Emergency Motion to Expedite Disposition of Pending Emergency Stay Motion and for Immediate Action on Temporary Administrative-Stay Request, No. 26-2406, Dkt. 16-1 (Oct. 29, 2026) ..... App. 69a–78a

8. Declaration of Paul David Schultz Regarding 45-Days Before Petition Distribution, No. 26-2406, Dkt. 16-2 (Oct. 29, 2026) ..... App. 79a

9. Fourth Circuit docket report for No. 26-2406 ..... App. 80a–81a

10. EDVA Order denying recusal, Schultz v. McCarthy, No. 1:26-cv-02340-LMB-IDD, Dkt. 9 ..... App. 82a–84a

11. Appellant's Motion for Recusal Under 28 U.S.C. § 455(a), Reassignment, and Deferral of Merits Disposition, EDVA No. 1:26-cv-02340-LMB-IDD, Dkt. 5 (selected pages) ..... App. 85a–98a

12. EDVA civil docket report, No. 1:26-cv-02340-LMB-IDD ..... App. 99a–100a

13. Bankruptcy AP No. 25-01061-BFK, Dkt. 50 - McCarthy Motion to Dismiss First Amended Complaint (selected pages) ..... App. 101a–108a

14. June 9, 2026 hearing transcript excerpt from AP No. 25-01061-BFK on McCarthy's motion to dismiss ..... App. 109a–113a

15. Bankruptcy AP No. 26-01022-BFK, Dkt. 63 - Order on Plaintiff's Motion to Strike/Deny Defendant's Motion to Dismiss for Admitted Non-Service ..... App. 114a–115a

16. Bankruptcy AP No. 25-01061-BFK, Dkt. 73 - Selected Findings of Fact and Conclusions of Law dismissing the McCarthy adversary complaint .....App. 116a–121a

17. Bankruptcy AP No. 25-01061-BFK, Dkt. 74 - Judgment Order...App. 122a–123a

18. Main Bankruptcy Case docket report (selected pages).....App. 124a–125a

19. March 17, 2026 Hearing Transcript Excerpt Concerning Trustee McCarthy, Investigation, and Reliance on Prior Clear Sky-related rulings .....App. 126a–135a

20. Main Bankruptcy Case Dkt. 641 - Selected pages from Order denying motion to remove/disqualify Chapter 7 Trustee.....App. 136a–139a

21. Main Bankruptcy Case Dkt. 678 - Order Denying Debtor's Motion to Alter or Amend Order Denying Motion to Remove or Disqualify Chapter 7 Trustee .....App. 140a–141a

22. Selected Official Form 410 / proof-of-claim materials comparing Bankr. No. 24-11033-BFK Claim No. 10-1 and Bankr. No. 24-11959 Claim No. 1-1, including selected supporting-note pages.....App. 142a–153a

23. Bankruptcy AP No. 24-01058-KHK, Dkt. 30 - Summary-Judgment Order (selected pages) .....App. 154a–156a

24. January 21, 2025 hearing transcript excerpt from AP No. 24-01058-KHK concerning Clear Sky's summary-judgment motion .....App. 157a–159a

25. Main Bankruptcy Case Dkt. 535 - Order Denying Debtor's Motion for Mandatory Criminal Referral of Clear Sky Financial, its principals, the Grass Law Firm, and Edward Grass ..... App. 160a–161a

26. Main Bankruptcy Case Dkt. 552 - Debtor's Motion to Alter or Amend Order under Bankruptcy Rule 9023 / Civil Rule 59(e) (selected pages) ..... App. 162a–171a

27. Main Bankruptcy Case Dkt. 598 - Order Denying Debtor's Motion to Alter or Amend Order Denying Mandatory Criminal Referral ..... App. 172a–174a

28. Main Bankruptcy Case Dkt. 291 - Affidavit of Paul Schultz Certifying Evidence Provided to the Bankruptcy Court, with selected supporting exhibits concerning Clear Sky / related-actor evidence ..... App. 175a–200a

29. Main Bankruptcy Case Dkt. 712 - Selected pages and exhibits concerning Clear Sky threshold status, non-adjudication, and the cross-case evidentiary record ..... App. 201a–222a

30. Main Bankruptcy Case Dkt. 366 - Page 1 Only ..... App. 223a

31. Main Bankruptcy Case Dkt. 641 - Page 6 Only ..... App. 224a

32. Claims Register for Main Case 24-11959 - the Single Page Showing Claim No. 1/Claim 1-1 and the Blank "Modified" Field ..... App. 225a

33. Main Bankruptcy Case Dkt. 629 - Miscio Affidavit Showing Note-Identified Lender, Oppenheim, Not Actual Lender ..... App. 226a–233a

34. USCA4 26-1738 Dkt. 29 - Failure to Comply with Rule 3001(c)(1) and Did Not Obtain Rule 3001(f) Prima-Facie Effect ..... App. 234a–237a

35. USCA4 26-1738 Dkt. 26 - Sixteen Independent Binding-Law Constraints Bypassed ..... App. 238a–240a

36. USCA4 26-1738 Dkt. 21 - Where is Each Adjudication? ..... App. 241a–242a

37. USCA4 26-2104 Dkt. 8 - Converging Legal Lanes And 37-of-37 Results Benefiting Creditor who has A Facially Defective Proof-of-Claim ..... App. 243a–245a

38. USCA4 26-1738 Dkt. 30 - Five-Stage Development of the Related Appellate Record; 8 Expired Merits Response Opportunities / 0 Identified Adjudications ..... App. 246a–261a

39. Main Bankruptcy Case Dkt. 756—Declaration and Notice of Lodging Debtor's Exhibit 1 Admitted at March 17, 2026 Evidentiary Hearing, with attached three-email Exhibit A ..... App. 262a–269a

40. March 17, 2026 Hearing Transcript Excerpt concerning Authentication and Admission of Clear Sky/Oppenheim Loan-Origination Emails as Debtor's Exhibit 1 ..... App. 270a–272a

TABLE OF AUTHORITIES

Cases

68th Street Site Work Group v. Alban Tractor Co.,
105 F.4th 222 (4th Cir. 2024) 9

A.A.R.P. v. Trump,
605 U.S. 91 (2025) 16–17, 22

Anderson v. Liberty Lobby, Inc.,
477 U.S. 242 (1986) 5, 8

Armstrong v. Manzo,
380 U.S. 545 (1965) 9, 19, 23

BE&K Construction Co. v. NLRB,
536 U.S. 516 (2002) 9, 24

Bill Johnson's Restaurants, Inc. v. NLRB,
461 U.S. 731 (1983) 9

Borough of Duryea v. Guarnieri,
564 U.S. 379 (2011) 9, 20

Butner v. United States,
440 U.S. 48 (1979) 7–8

California Motor Transport Co. v. Trucking Unlimited,
404 U.S. 508 (1972) 9, 24

Caperton v. A.T. Massey Coal Co.,
556 U.S. 868 (2009) 18

Cheney v. U.S. Dist. Court for D.C.,
542 U.S. 367 (2004) 23

Clark v. Sweeney,
607 U.S. 7 (2025) (per curiam) 3, 8, 19, 23, 34–37

Collins v. Pond Creek Mining Co.,
468 F.3d 213 (4th Cir. 2006) 8

Company Doe v. Public Citizen,
749 F.3d 246 (4th Cir. 2014) 9

Cromer v. Kraft Foods North America, Inc.,
390 F.3d 812 (4th Cir. 2004) 9

Dameron v. Tyson Foods, Inc.,
60 F.3d 1131 (4th Cir. 1995) 8

Day v. McDonough,
547 U.S. 198 (2006) 19, 23, 37

Dubois v. Atlas Acquisitions LLC,
834 F.3d 522 (4th Cir. 2016) 7

Elrod v. Burns,
427 U.S. 347 (1976) (plurality opinion) 24, 26

FCC v. Brown,
610 U.S. ___ (2026) (per curiam) 21

FTC v. Dean Foods Co.,
384 U.S. 597 (1966) 16–17

Fox ex rel. Fox v. Elk Run Coal Co.,
739 F.3d 131 (4th Cir. 2014) 9

Great Coastal Express, Inc. v. International Brotherhood of Teamsters,
675 F.2d 1349 (4th Cir. 1982) 9

Hately v. Watts,
917 F.3d 770 (4th Cir. 2019) 8

Hill v. Braxton,
277 F.3d 701 (4th Cir. 2002) 19

Hollingsworth v. Perry,
558 U.S. 183 (2010) (per curiam) 21–22

In re Beard,
811 F.2d 818 (4th Cir. 1987) 23

In re Harford Sands Inc.,
372 F.3d 637 (4th Cir. 2004) 7

In re Lockheed Martin Corp.,
503 F.3d 351 (4th Cir. 2007) 23–24

In re Microsoft Corp. Antitrust Litigation,
355 F.3d 322 (4th Cir. 2004) 8

In re Moffett,
356 F.3d 518 (4th Cir. 2004) 8

In re Murphy-Brown, LLC,
907 F.3d 788 (4th Cir. 2018) 23

In re Murchison,
349 U.S. 133 (1955) 18

In re Tomlin,
105 F.3d 933 (4th Cir. 1997) 8

Jenkins v. Woodard,
109 F.4th 242 (4th Cir. 2024) 9

JTH Tax, Inc. v. H & R Block Eastern Tax Services, Inc.,
359 F.3d 699 (4th Cir. 2004) 8

Liteky v. United States,
510 U.S. 540 (1994) 3, 35–36

Malliotakis v. Williams,
Nos. 25A914, 25A915 (U.S. Mar. 2, 2026) 15–16

Margolin v. Nat'l Ass'n of Immigration Judges,
608 U.S. 339 (2026) (per curiam) 3, 8, 19, 23, 34–37

Missouri v. Jenkins,
495 U.S. 33 (1990) 17

Morgan v. Tincher,
90 F.4th 172 (4th Cir. 2024) 9

Mullane v. Central Hanover Bank & Trust Co.,
339 U.S. 306 (1950) 9

Nelson v. Adams USA, Inc.,
529 U.S. 460 (2000) 9, 19, 23, 37

Nken *v. Holder*,
556 U.S. 418 (2009) 2, 13, 17, 21–22, 26, 38

Peralta v. Heights Medical Center, Inc.,
485 U.S. 80 (1988) 9

Raleigh v. Ill. Dep't of Revenue,
530 U.S. 15 (2000) 7

Richmond Ass'n of Credit Men, Inc. v. Bar Ass'n of City of Richmond,
167 Va. 327, 189 S.E. 153 (1937) 9

Robertson v. Anderson Mill Elementary School,
989 F.3d 282 (4th Cir. 2021) 19, 37

Roman Catholic Diocese of Brooklyn v. Cuomo,
592 U.S. 14 (2020) (per curiam) 24

Sedlack v. Braswell Servs. Grp., Inc.,
134 F.3d 219 (4th Cir. 1998) 8, 12

Schultz v. Butcher,
24 F.3d 626 (4th Cir. 1994) 9

SummitBridge National Investments III, LLC v. Faison,
915 F.3d 288 (4th Cir. 2019) 8

Travelers Indemnity Co. v. Bailey,
557 U.S. 137 (2009) 8

United States Development Corp. v. Peoples Federal Savings & Loan Ass'n,
873 F.2d 731 (4th Cir. 1989) 19

United States v. DeTemple,
162 F.3d 279 (4th Cir. 1998) 3, 18, 23, 35–36

United States v. Sineneng-Smith,
590 U.S. 371 (2020) 8, 19, 23, 35, 37

United States v. Welsh,
879 F.3d 530 (4th Cir. 2018) 9

Vein & Wellness Group, LLC v. Becerra,
No. 22-2253, slip op. at 10-13 (4th Cir. June 20, 2024) (unpublished) 8

Volkswagenwerk A.G. v. Falzon,
461 U.S. 1303 (1983) (O'Connor, J., in chambers) 15–16, 22, 39

Wells Fargo Bank, N.A. v. AMH Roman Two NC, LLC,
859 F.3d 295 (4th Cir. 2017).....9

Willemain v. Kivitz,
764 F.2d 1019 (4th Cir. 1985).....33, 36–37

Williams v. Pennsylvania,
579 U.S. 1 (2016).....18, 26

Constitutional Provisions

U.S. Const. amend. I 2, 9, 20, 24, 26
U.S. Const. amend. V 2, 9, 18, 26

Statutes

11 U.S.C. § 502(b)(1) 9, 28, 30, 32
11 U.S.C. § 704(a)(4)–(5) 29–30
28 U.S.C. § 1254(1).....1, 16–17
28 U.S.C. § 158(a).....9, 25, 38
28 U.S.C. § 1651(a).....1, 16–17, 22
28 U.S.C. § 1746 20
28 U.S.C. § 2101(f).....17
28 U.S.C. § 455(a).....3, 18, 23, 36–37
Va. Code § 8.3A-117 .....9, 33
Va. Code § 8.3A-203 9
Va. Code § 8.3A-301 .....9, 33
Va. Code § 8.3A-303 9
Va. Code § 8.3A-305 9
Va. Code § 8.3A-308(b) 9

Rules

Sup. Ct. R. 22.....1, 15
Sup. Ct. R. 23.....1, 15
Sup. Ct. R. 23.1.....15, 17
Sup. Ct. R. 23.3.....15–17, 22
Fed. R. App. P. 3(c)(4) 9
Fed. R. App. P. 40.....2, 13, 17, 27, 38
Fed. R. Civ. P. 12(b)(6) 33, 36
Fed. R. Civ. P. 17.....9
Fed. R. Civ. P. 56.....5, 8

Fed. R. Civ. P. 60(b) 9, 11
Fed. R. Civ. P. 60(b)(3) 9
Fed. R. Civ. P. 60(d)(3) 9
Fed. R. Bankr. P. 3001 ..... 7, 9, 28–29, 32
Fed. R. Bankr. P. 7017 9
Fed. R. Bankr. P. 8009 ..... 9, 11
Fed. R. Bankr. P. 8010 ..... 9, 11
Fed. R. Bankr. P. 8014 ..... 9, 11
Fed. R. Bankr. P. 8018 ..... 9, 11
Fed. R. Bankr. P. 9014(c) 9
4th Cir. I.O.P. 40.1 ..... 1, 21

TO THE HONORABLE JOHN G. ROBERTS, JR., CHIEF JUSTICE OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE FOURTH CIRCUIT:

EMERGENCY APPLICATION

Applicant Paul David Schultz respectfully applies pursuant to Supreme Court Rules 22 and 23, and in aid of this Court's prospective jurisdiction under 28 U.S.C. §§ 1254(1) and 1651(a), for an immediate temporary administrative stay and a narrowly limited stay preserving the status quo in Fourth Circuit No. 26-2406 while the United States Court of Appeals for the Fourth Circuit considers Applicant's pending rehearing petition and emergency preservation request. The immediate relief is narrow, but the record giving rise to it is not.

The underlying appeal asks whether a bankruptcy court may supply and decide an unbriefed dispositive standing theory without meaningful pre-disposition notice, while the District Judge assigned to conduct that first appellate review is herself the subject of a live prospective challenge alleging materially similar court-generated transformation of the recusal controversy. As such, a time-sensitive interest requires preservation: the first appellate merits judgment should not be entered by the District Judge whose continued participation is under live prospective review and, by doing so, destroys the underlying appellate controversy before that review can operate. The emergency is sharpened by the Fourth Circuit's own rehearing procedure: I.O.P. 40.1 ordinarily withholds distribution of a rehearing petition until the full filing period expires, which here means that the

prospective recusal controversy remains undistributed while the challenged District Judge remains free to enter the first merits judgment that would make the asserted constitutional injury complete.

This Application presents the endpoint of a process-wide adjudicative problem that Applicant submits has repeatedly displaced two related constitutional protections: the First Amendment right to petition through an available judicial forum and the Fifth Amendment right to notice and a meaningful opportunity to be heard before dispositive judicial action. The cumulative legal effect, Applicant submits, is more fundamental than a series of adverse rulings: Applicant has been deprived of the bankruptcy process itself as a forum for first adjudication of the threshold rights governing creditor status, estate administration, property, and access to judicial review. As such, the Application asks the Circuit Justice to preserve the constitutional and statutory protection while the Fourth Circuit considers the rehearing petition and emergency stay request already before it. The distinction is critical: the asserted injury is not simply an unfavorable judgment that can later be vacated. The asserted injury is the challenged adjudicative act occurring before meaningful review of who may perform it.

Nken v. Holder, 556 U.S. 418, 427 (2009), supplies the governing institutional principle. A reviewing court must have time to bring considered judgment to bear, and interim authority exists so the choice is not between "justice on the fly" and an "idle ceremony." Here, ordinary Rule 40 processing should be allowed to run normally—but not at the price of allowing the event under review to occur first.

The emergency also presents an unusually direct party-presentation sequence. This Court twice recently reversed the Fourth Circuit in *Clark v. Sweeney*, 607 U.S. 7, 9–10 (2025) (per curiam), and *Margolin v. Nat'l Ass'n of Immigr. Judges*, 608 U.S. 339, 342–43 (2026) (per curiam), for materially departing from the controversies the parties presented without adversarial testing. *Margolin* arose from an Eastern District of Virginia case before Judge Leonie M. Brinkema. Here, the alleged transformation occurred in Judge Brinkema's own recusal disposition: no Appellee opposed Applicant's § 455(a) motion; Applicant expressly presented the objective, cumulative reasonable-observer controversy required by *United States v. DeTemple*, 162 F.3d 279, 286–87 (4th Cir. 1998), and disclaimed a tally-of-adverse-rulings theory; yet Judge Brinkema, through E.D. Va. Dkt. 9, shifted to the framework of *Liteky v. United States*, 510 U.S. 540, 555–56 (1994), centered on bias, exceptional favoritism or antagonism, extrajudicial source, and judicial error. See App. 82a-100a. Applicant presented that precise defect prospectively to the Fourth Circuit; mandamus was denied without separately adjudicating it; and Judge Brinkema remains positioned to enter the first merits judgment before rehearing can test whether she may continue to adjudicate at all.

The Court need not decide the ultimate validity or enforceability of the Clear Sky Financial, LLC ("Clear Sky") instrument, any trustee-liability question, or the ultimate recusal question on this emergency application. It need only preserve the controversy long enough for the governing threshold questions to receive the adjudication Applicant contends has repeatedly been displaced before another

merits judgment, property consequence, or access restriction makes the alleged injury complete.

A. Two recurring mechanisms produced a Four-Layer Shield that made non-adjudication self-reinforcing.

Applicant's filed recusal record uses two defined mechanisms. Mechanism One is adjudicative-scope/status enlargement: a narrow, interlocutory, procedural, or nonmerits ruling is later attributed a broader adjudicative status than the source ruling actually supplied. Mechanism Two is party-presentation transformation: Controversy A is presented, a materially different Controversy B is substituted or answered, and B's disposition is later attributed to A. Those two mechanisms produced what Applicant called the Four-Layer Shield: the Scope Shield, Finality Shield, Transformation Shield, and Credibility Shield. See App. 86a, 92a.

The Scope Shield arises when a limited ruling is treated as though it resolved the omitted threshold issue. The Finality Shield arises when later finality, nonappeal, incorporation, law-of-the-case language, or derivative reliance is used to harden that enlarged description without identifying where the threshold issue was actually decided. The Transformation Shield arises when a materially distinct request for first adjudication is recast as reconsideration or repetition of the supposedly settled controversy. The Credibility Shield arises when the resulting repetition history is then used as a premise for findings of abuse, motive, frivolousness, or filing restraint. The four layers are cumulative effects of the two mechanisms, not four freestanding theories.

In combination, the process can become self-validating: non-adjudication becomes attributed prior adjudication; the attributed adjudication becomes repetition; repetition becomes a credibility or access predicate; and the narrowed access then makes the missing first adjudication harder to obtain. The constitutional issue is the operation of that sequence, not whether every ruling was adverse to Applicant.

B. The source record makes the missing first adjudication objectively verifiable.

AP No. 24-01058 Dkt. 30 supplies the cleanest source-record example. Dkt. 30 granted summary judgment on Applicant's counterclaim "for the reasons stated on the record." App. 154a-156a. The incorporated January 21, 2025 transcript therefore defines the ruling's decisional scope. When Applicant's then-counsel raised that Clear Sky "was not a party to the initial note because Mr. Oppenheim was the lender," the Bankruptcy Court answered, "That's not relevant," and then, "That really isn't." Jan. 21, 2025 Tr. 14:23-15:3; App. 158a-159a. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986), explains that irrelevant or unnecessary disputes do not enter the Rule 56 determination. Whatever the correctness of the relevance ruling, "not relevant" and "actually adjudicated" cannot describe the same lender-status predicate in the same incorporated ruling.

The proof-of-claim record makes the consequence concrete. Claim No. 1-1 identified Clear Sky as the current creditor and checked "No" to Official Form 410's acquisition question. The attached original Note identified Richard Oppenheim, Jr.

("Oppenheim") as "Lender" and included pages 1, 2, and 3 of 4 before moving to deed-of-trust materials. Page 4 was absent. That page contains Applicant's signature and notarial acknowledgment and, at the bottom, the purported Oppenheim-to-Clear-Sky transfer language later relied upon by Clear Sky. The claims-register record identified below reflects no amended or corrected Claim No. 1-1, no replacement Form 410 correcting the acquisition answer, and no amended proof of claim adding page 4. The page appeared later in adversary litigation at AP Dkt. 22-10; later production elsewhere did not retroactively amend the penalty-of-perjury proof of claim as filed. App. 142a, 145a-148a, 153a, 225a.

Applicant also placed title-company and sworn Miscio funding evidence into the bankruptcy record identifying Clear Sky, not Oppenheim, as the source of the loan funds. Applicant relies on that evidence here for the narrower proposition that the asserted lender/transfer narrative was directly controverted and therefore required adjudication; he does not ask the Circuit Justice to make the ultimate state-law finding now. See Main Bankr. Dkt. 629; App. 226a-233a. The contradiction is also reflected in evidence actually admitted at the March 17, 2026 evidentiary hearing. Three contemporaneous emails were marked collectively as Debtor's Exhibit 1, authenticated, admitted without objection after authentication, and later lodged in the main-case docket to preserve the admitted exhibit. In one, Clear Sky stated that it was a "business-to-business lender" that needed an attorney "to originate the loan, then assign it to us"; in another, Oppenheim stated, "I am the lender and I am the attorney preparing the loan." Read beside Claim No. 1-1's "No acquisition" answer, the Oppenheim-lender Note, and the Miscio funding

evidence, those admitted communications directly reinforce the unresolved lender, acquisition, transfer, and enforcement-authority controversy. Main Bankr. Dkt. 756; Mar. 17, 2026 Tr. 13–15; App. 262a–272a. *In re Harford Sands Inc.*, 372 F.3d 637, 640 (4th Cir. 2004), applies the familiar proof-of-claim burden sequence: a properly filed claim is presumptively valid, an objector may rebut that presumption with evidence, and the creditor bears the ultimate burden of proving the amount and validity of the claim by a preponderance. *Dubois v. Atlas Acquisitions LLC*, 834 F.3d 522, 528-29 (4th Cir. 2016), likewise describes Rule 3001's prima-facie framework and the statutory claim-examination function. *Raleigh v. Ill. Dep't of Revenue*, 530 U.S. 15, 20-21 (2000), holds that the burden of proof is a substantive aspect of the underlying claim unless the Code provides otherwise; *Butner v. United States*, 440 U.S. 48, 54-57 (1979), supplies the related state-law-first rule for private rights in bankruptcy.

The legal effect Applicant challenges is therefore more fundamental than a disagreement over a single proof of claim. Federal bankruptcy procedure could administer whatever enforceable private right applicable law actually supplied; it could not manufacture the missing antecedent right and then use the consequences of later federal orders as proof that the right existed all along. In Applicant's shorthand, that is the "laundering" concern - not an allegation of statutory money laundering, but the legal conversion of an unresolved and allegedly unenforceable state-law financial instrument into operative federal creditor, estate, property, and filing-access consequences without first adjudicating the antecedent state-law rights on which those consequences depended.

C. Sixteen independent binding-law constraints converge on the same missing safeguard.

The resulting problem does not depend on one doctrine. Applicant previously organized the governing law into sixteen separately numbered binding-law constraints in Fourth Circuit No. 26-1738, Dkt. 26, filed September 11, 2026. See App. 238a-240a. The sixteen are legal constraints, not the separate eleven-event District Court procedural record. Their significance is convergence: independent rules governing Rule 56 decisional scope, actual adjudication and prior-order scope, party presentation, antecedent state-law rights, Virginia enforcement law, real-party status, claim allowance, finality, distinct Rule 60 grounds, constitutional notice and petition rights, bankruptcy appellate procedure, and filing-injunction safeguards all identify boundaries the original "not relevant" exclusion could not silently supply.

Binding-law constraint	Required boundary the exclusion could not supply
1. Rule 56 / *Anderson*	An issue expressly excluded as irrelevant lies outside the Rule 56 determination.
2. Actual adjudication	*Sedlack, Microsoft, Collins, Hately, Vein & Wellness* require issue-specific actual and necessary determination.
3. Prior-order scope	*Travelers, Tomlin, JTH Tax* permit interpretation, not enlargement, of what the source ruling decided.
4. Party presentation	*Sineneng-Smith, Clark, Margolin* prohibit material substitution of a different controversy.
5. Antecedent private rights	*Butner, Dameron, Moffett, SummitBridge* require applicable nonbankruptcy law to define the private right first.

Binding-law constraint	Required boundary the exclusion could not supply
6. Virginia enforcement	*Richmond* and Va. Code §§ 8.3A-117, -203, -301, -303, -305, -308(b) govern rights, transfer, PETE, defenses, and modification.
7. Real party in interest	Rules 17, 7017, and 9014(c) require the action to proceed through the proper rights holder, subject to Rule 17(a)(3).
8. Claim allowance	Rule 3001 and § 502(b)(1) require claim-specific evidentiary and enforceability analysis upon objection.
9. Finality / merger	*Jenkins*, *68th Street*, and FRAP 3(c)(4) distinguish interlocutory status from later final-judgment review.
10. Rule 60(b)	*Welsh* and *Wells Fargo* govern relief from judgment; reconsideration does not enlarge the original adjudication.
11. Rule 60(b)(3)	*Morgan* and *Schultz* require analysis of fraud or misconduct grounds actually presented.
12. Rule 60(d)(3)	*Fox* and *Great Coastal* preserve the distinct fraud-on-the-court inquiry.
13. Fifth Amendment	*Mullane*, *Armstrong*, *Nelson*, *Peralta* require notice and a meaningful opportunity to be heard.
14. First Amendment	*California Motor*, *Bill Johnson's*, *Guarnieri*, *BE&K*, *Company Doe* protect resort to courts for redress.
15. Bankruptcy appellate process	28 U.S.C. § 158(a) and Rules 8009, 8010, 8014, 8018 define record-based appellate presentation.
16. Filing injunction	*Cromer* requires accurate history, notice, alternatives, and narrow tailoring, with special caution for pro se litigants.

No single order must violate every one of the sixteen constraints for the cumulative problem to matter. Their force is that they converge on the same rule-of-law boundary: judicial discretion exists within binding law, not over it. An issue excluded from the decisional path does not become adjudicated merely because later orders, fiduciaries, or appellate dispositions proceed as though it were.

D. Conservative audits show recurrence across two bankruptcy judges, and the first-level appellate record shows the same mechanisms continuing downstream.

Applicant's later-filed audit deliberately used a narrower coding than his earlier classifications. Of 49 reviewed Judge Kenney orders, 28 directly employed Mechanism One, Mechanism Two, or both; five additional orders operationalized consequences dependent on those mechanisms; and sixteen were coded "Neither" where the primary text did not establish direct operation or material dependency. Every one of the 28 direct-mechanism Kenney orders fell within the separately defined Clear Sky-specific or Clear Sky-derivative track and moved in the same substantive direction. A separate conservative Kindred-era audit identified nine direct-mechanism events, all nine operating in that same direction. Combined, 37 of 37 identified direct-mechanism events across the two bankruptcy-judge eras moved toward preserving, extending, or insulating the Clear Sky status premise or its consequences without the missing first adjudication. See Fourth Circuit No. 26-2104, Dkt. 8 at 57-59; App. 243a-245a.

Those are Applicant's transparent record classifications, not judicial findings, and the coding matters because it is conservative: it expressly excludes sixteen Kenney orders from the direct/dependent categories. The point is not that every order used the mechanisms. The point is the categorical directional concentration among the events that did. Reassignment changed the bankruptcy judge; on Applicant's record, it did not break the mechanism.

The first-level appellate record supplies a separate measure. Applicant's recusal filing audited twenty-two related District Court bankruptcy matters and identified eleven first-level appeals in which final disposition preceded ordinary record-based merits presentation. See App. 56a-66a. Main Bankruptcy Dkt. 821 later independently confirmed the central record-transmission fact for ten of them: "In all ten Referenced Appeals the United States District Court entered judgment without the record on appeal," and the Bankruptcy Court directed transmission after judgment had already entered. App. 67a-68a. The eleventh audited matter ended nine days before its Bankruptcy Transmittal Cover Sheet and fifteen designated-record items arrived. Several of those appeals ended at Dkt. 2 before an opening merits brief. That history implicates not merely appellate housekeeping but the ordinary Rule 8009/8010/8014/8018 channel through which an accepted bankruptcy appeal is presented for judicial decision.

One Judge-Brinkema-specific contradiction makes both mechanisms concrete. In E.D. Va. No. 1:25-cv-01334, Dkt. 21 stated that AP Dkt. 30 had not been appealed, that the time to appeal had passed, and that the Rule 60(b) appeal then before the District Court could not review the underlying merits. After final judgment later entered in the adversary proceeding, E.D. Va. No. 1:26-cv-00984 was the first direct appeal from that final judgment. Clear Sky moved to dismiss it as a duplicate; one day later, before Applicant responded, before a Rule 8014 merits brief, and without the appellate record, Dkt. 5 agreed that the appeal raised "no new issues" and sought another "bite of the apple." The first characterization foreclosed merits review because Dkt. 30 had not been appealed; the second

foreclosed the first final-judgment appeal as though the relevant issues already had received the review necessary to make them duplicative. The contradiction is objective and does not require an inference about subjective motive.

E. The appellate record has isolated the controversy to a five-stage sequence, and further nonaction risks allowing the disputed premise to calcify.

The related appellate record progressively reduced the controversy to five stages: (1) assertion that prior adjudication had resolved loan validity, creditor status, or enforceability; (2) derivative reliance on that asserted adjudication through incorporation, finality, repetition, trustee/UST reliance, or downstream orders; (3) source-record reconstruction placing the attributed adjudication beside Dkt. 30, its incorporated transcript, the proof-of-claim record, and derivative orders; (4) burden isolation - identify the court, order, reasoning, holding, and pinpoint portion of the record actually and necessarily deciding each threshold issue; and (5) merits silence after that demarcation, with no responsive identification of the claimed adjudication. See Fourth Circuit No. 26-1738, Dkt. 30 at 2-17; App. 246a-261a. Applicant's July 31, 2026 filing put the question directly: "Where is each adjudication?" See Fourth Circuit No. 26-1738, Dkt. 21 at 22-23; App. 241a-242a.

That is the inquiry issue-preclusion law itself requires. *Sedlack v. Braswell Servs. Grp., Inc.*, 134 F.3d 219, 224 (4th Cir. 1998), places on the proponent the burden to establish, among other elements, that the identical issue was actually determined and was critical and necessary to the prior judgment. Applicant's point

is not that silence proves his ultimate state-law position. It is that the party and courts giving operative effect to supposed prior adjudication have never identified, issue by issue, the actual and necessary determination the attributed consequence requires.

The Fourth Circuit's first-round emergency requests became moot when mandamus was denied; the renewed Rule 40 preservation requests now present the same timing problem in a different procedural posture. Applicant does not attribute subjective motive to appellate nonaction. Its legal effect, however, matters. For a second time in this preservation sequence, time threatens to do what an adjudication has not: allow the challenged lower-court premise to calcify into additional merits judgments, property consequences, or filing-access restrictions before meaningful review can test the premise prospectively. *Nken*'s preservation principle exists so later review does not become an idle ceremony after the event under review has already occurred.

Against that documented background, No. 26-2406 asks for a narrow pause before the first District Court merits adjudication of the McCarthy successor-trustee appeal. That appeal places the mechanism in an unusually direct posture because the Bankruptcy Court used the Trustee's contested Report of No Distribution and a court-supplied standing theory to terminate the fiduciary-accountability action after the next-day evidentiary record called the report's investigative premise into question. Applicant asks only to preserve the first appellate adjudication while the live Rule 40 and recusal-preservation questions remain unresolved.

EMERGENCY REQUEST

First, Applicant requests an immediate temporary administrative stay while this Application is considered, prohibiting final merits disposition by the challenged District Judge in E.D. Va. No. 1:26-cv-02340-LMB-IDD.

Second, Applicant requests continuation of that narrow protection at least until the Fourth Circuit acts on USCA4 Dkt. 14, the emergency preservation motion already pending there; alternatively, through disposition of the operative rehearing petition, USCA4 Dkt. 15, or such shorter period as the Circuit Justice deems appropriate. See App. 9a-30a, 31a-55a.

The requested order should expressly permit briefing, party filings, record transmission and administration, scheduling, and other nondispositive activity to continue. It should not adjudicate recusal, direct reassignment, decide the underlying bankruptcy appeal, or prevent a different lawfully assigned judge from entering a merits disposition.

RELATED PROCEEDINGS

Fourth Circuit No. 26-2406, *In re Paul Schultz* — prospective mandamus petition denied October 26, 2026; operative rehearing petition and renewed emergency preservation motion pending.

E.D. Va. No. 1:26-cv-02340-LMB-IDD, *Schultz v. McCarthy* — underlying bankruptcy appeal presently assigned to the challenged District Judge.

JURISDICTION AND AUTHORITY

A. Rule 22 directs the application to the Chief Justice; Rule 23 recognizes stay authority "as permitted by law."

Supreme Court Rule 22 directs an application to the Justice allotted to the Circuit from which the case arises. The Chief Justice is the Circuit Justice for the Fourth Circuit. Rule 23.1 provides that a Justice may grant a stay "as permitted by law," while Rule 23.3 requires particularity and, "[e]xcept in the most extraordinary circumstances," ordinarily requires that the requested relief first be sought below. Applicant satisfied that requirement by seeking the same core preservation relief in the Fourth Circuit before invoking this Court.

Volkswagenwerk A.G. v. Falzon, 461 U.S. 1303, 1304–05 (1983) (O'Connor, J., in chambers), confirms that the lower-court-first requirement does not permit inaction below to defeat the very interim protection being sought. Applying the predecessor to present Rule 23.3, Justice O'Connor held that "the failure of the Michigan Supreme Court to act promptly should not prevent a Member of this Court from entertaining an application" for a stay, while tailoring relief to preserve the status quo and afford the lower court the first opportunity to act. *Id.* at 1305. Applicant invokes that principle narrowly. He did not bypass the Fourth Circuit; he sought preservation there first. But continued nonaction cannot be allowed to make preservation impossible by permitting the challenged adjudicative event to occur before the pending preservation request is decided.

The Court's recent action in *Malliotakis v. Williams*, Nos. 25A914, 25A915 (U.S. Mar. 2, 2026), is consistent with that preservation principle. There, after the

applicants had sought stay relief in both state appellate courts, this Court granted a stay while the state appellate proceedings continued and through the disposition of any timely petition for certiorari. *Id.* (order of Mar. 2, 2026); see *id.* (Alito, J., concurring), slip op. 2–3. Applicant relies on *Malliotakis* for a narrow point relevant to this Court's jurisdiction: current emergency practice confirms that interim preservation may protect prospective Supreme Court review while proceedings necessary to that review remain underway.

B. Sections 1254(1) and 1651(a) supply prospective jurisdiction and preservation authority while rehearing remains pending.

Section 1254(1) authorizes this Court to review cases in the courts of appeals by certiorari "before or after rendition of judgment or decree." Section 1651(a), in turn, authorizes issuance of writs "necessary or appropriate in aid of" this Court's jurisdiction. *FTC v. Dean Foods Co.*, 384 U.S. 597, 603–05 (1966), establishes that the All Writs Act reaches this Court's potential jurisdiction and permits preservation against intervening events that otherwise could frustrate effective appellate review. *A.A.R.P. v. Trump*, 605 U.S. 91 (2025), recently applied § 1651(a) while proceedings remained active below to prevent events that could defeat meaningful prospective review.

Volkswagenwerk fits that statutory preservation structure, although the in-chambers opinion itself applied the predecessor to Rule 23.3 rather than separately construing § 1651(a). Its procedural lesson is complementary to *Dean Foods*: where the requested stay has been sought below but an imminent event may occur before

the lower court acts, interim preservation by a Circuit Justice need not await the destruction of the status quo. 461 U.S. at 1304–05. Rule 23.3 therefore governs the lower-court-first procedure; §§ 1254(1) and 1651(a), together with *Dean Foods* and *A.A.R.P.*, supply the jurisdictional and preservative foundation for relief during the interval in which Fourth Circuit proceedings remain pending.

The pending Rule 40 petitions make the Fourth Circuit dispositions nonfinal in the ordinary sense. See *Missouri v. Jenkins*, 495 U.S. 33, 46 (1990). Applicant therefore does not rely primarily on § 2101(f) as though a final court-of-appeals judgment were presently awaiting certiorari review. The source of power during this interval is Rule 23.1 "as permitted by law," § 1254(1)'s before-or-after-judgment jurisdiction, and § 1651(a)'s preservative authority.

C. *Nken* confirms that the principal relief requested is a stay designed to preserve appellate review, not an adjudication of the merits.

Nken distinguishes a stay from an injunction. A stay operates on the judicial proceeding or on the enforceability of an order so that appellate review can proceed without the controversy being irreversibly altered. 556 U.S. at 428–29. That is the principal relief requested here: temporarily postpone one final adjudicative act, while allowing the litigation to continue in every other respect. The request preserves the status quo; it does not award Applicant the ultimate recusal or merits relief he seeks below.

The distinction also explains why *Nken* belongs at the center of the Application rather than merely in a list of stay factors. The Court held that

traditional stay principles govern interim preservation and emphasized that the reviewing court must be able to bring considered judgment to bear before the protected interest disappears. *Id.* at 426–27. That institutional concern is exactly what the pending 45-day rehearing interval presents.

THE CONSTITUTIONAL RIGHT BEING PRESERVED IS FUNDAMENTAL AND PROSPECTIVE

A. The Fifth Amendment protects a neutral and impartial tribunal; § 455(a) adds an objective statutory appearance safeguard.

The constitutional floor is bedrock. *In re Murchison*, 349 U.S. 133, 136 (1955), states that a fair tribunal is a basic requirement of due process. *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 876–87 (2009), likewise applies an objective constitutional inquiry where circumstances create a constitutionally intolerable probability of bias. And *Williams v. Pennsylvania*, 579 U.S. 1, 8–16 (2016), holds that when due process requires recusal, participation by the disqualified judge is structural error rather than an ordinary error cured through harmless-error analysis.

Applicant does not collapse § 455(a) into the constitutional minimum. Section 455(a) is broader: it requires disqualification whenever impartiality "might reasonably be questioned," and *DeTemple* requires the perspective of a reasonable, well-informed observer considering all relevant circumstances cumulatively. The constitutional and statutory lanes therefore reinforce one another without becoming identical. The emergency question is whether either lane can remain meaningfully

prospective if the challenged judge completes the very first appellate merits adjudication before the participation objection receives meaningful review.

B. The party-presentation and notice cases independently protect the neutral-arbiter function.

United States v. Sineneng-Smith, 590 U.S. 371, 375–80 (2020), explains that the parties frame the issues for decision and the court serves as neutral arbiter of the matters presented. *Clark*, 607 U.S. at 9-10, reversed the Fourth Circuit for granting relief on a materially different claim the litigant had not asserted and the opposing party had no chance to address. *Margolin*, 608 U.S. at 342-43, again reversed the Fourth Circuit after it transformed the parties' narrower dispute into a broader unpresented question without adversarial testing.

Notice doctrine supplies the related timing rule. *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965), requires an opportunity to be heard "at a meaningful time." *Nelson v. Adams USA, Inc.*, 529 U.S. 460, 466–72 (2000), rejects imposing dispositive consequences first and replacing the actual pre-judgment opportunity with speculation about what the affected party could have argued. *Day v. McDonough*, 547 U.S. 198, 210 (2006); *United States Development Corp. v. Peoples Federal Savings & Loan Ass'n*, 873 F.2d 731, 735 (4th Cir. 1989); *Hill v. Braxton*, 277 F.3d 701, 707–08 (4th Cir. 2002); and *Robertson v. Anderson Mill Elementary School*, 989 F.3d 282, 291 (4th Cir. 2021), likewise require meaningful notice before a court-generated outcome-determinative ground becomes dispositive.

C. The Petition Clause reinforces the public interest in keeping a real adjudicative forum available.

Applicant does not ask the Circuit Justice to decide a freestanding First Amendment claim on this emergency application. The Petition Clause nevertheless reinforces the constitutional weight of preservation. The Court has recognized that access to courts for redress is an aspect of the right to petition. *Borough of Duryea v. Guarnieri*, 564 U.S. 379, 387 (2011). Where a litigant has repeatedly invoked established procedures for judicial redress, the public interest favors preserving a genuine opportunity for those procedures to operate before the controversy is rendered historical or moot.

RELIEF WAS FIRST SOUGHT BELOW, AND THE SWORN 45-DAY RECORD MAKES THE TIMING PROBLEM CONCRETE

Applicant first sought the same core preservation relief in the Fourth Circuit. USCA4 Dkt. 14 asks for an immediate administrative stay and a limited stay while the operative rehearing petition remains pending. On October 29, Applicant filed an emergency motion asking the Fourth Circuit to decide the already-pending temporary preservation request while it can still perform its function, without asking the Court of Appeals to accelerate the merits of rehearing itself. See App. 31a-55a, 69a-78a, 80a-81a.

Applicant has now executed a declaration under 28 U.S.C. § 1746 memorializing an October 28 telephone communication with personnel in the Fourth Circuit Clerk's Office. The declaration states that Applicant was advised

that the applicable rehearing period is forty-five days because the respondent is a judge. The Fourth Circuit judgment in No. 26-2406 was entered October 26, 2026; Applicant's filing calculates the ordinary period through December 10, 2026. See App. 79a. Fourth Circuit I.O.P. 40.1 provides that rehearing petitions are ordinarily held until the time for filing all such petitions has expired and then distributed simultaneously.

The point is not that this Court should alter that ordinary processing rule. The opposite is true. Applicant asks for temporary preservation so the Court of Appeals can follow its normal rehearing process without that very interval becoming the mechanism by which the prospective right disappears. *Nken's* central teaching is that interim authority exists precisely because considered appellate judgment cannot always be delivered instantaneously.

REASONS FOR GRANTING THE APPLICATION

I. An immediate administrative stay is necessary so the Application can be considered before the protected event occurs.

The Court's recent Fourth Circuit practice confirms the propriety of a two-stage emergency structure. In *FCC v. Brown*, 610 U.S. ___ (2026) (per curiam), the Chief Justice first entered an administrative stay so the Court could resolve the stay application before a 48-hour deadline expired; the Court then applied the substantive stay criteria of *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam). An administrative stay here serves the same procedural function. It decides nothing about recusal or the merits. It simply prevents the requested relief

from expiring while the Circuit Justice considers whether longer preservation is warranted.

A.A.R.P. supplies the related All Writs principle: where an intervening event threatens to defeat prospective jurisdiction, § 1651(a) allows temporary preservation while lower-court proceedings remain underway. The requested administrative order is narrower still because it leaves the underlying litigation moving and postpones only the final adjudicative act that would complete the asserted prospective injury. That statutory preservation principle and Rule 23.3's lower-court-first requirement work together rather than at cross-purposes: *Volkswagenwerk* confirms that once preservation has been sought below, lower-court inaction need not be permitted to allow the very event sought to be stayed to occur before the lower court rules. 461 U.S. at 1304–05.

II. The substantive stay factors strongly favor narrowly tailored preservation.

A. There is at least a reasonable probability of further review and a substantial prospect of success on the preserved questions.

Hollingsworth, 558 U.S. at 190, asks whether there is a reasonable probability that four Justices would find the issue sufficiently meritorious for review and a fair prospect that a majority would reverse, together with irreparable harm. *Nken* frames the traditional stay inquiry similarly through likelihood of success, irreparable injury, harm to others, and the public interest, with the first two factors most critical. 556 U.S. at 434.

The operative rehearing petition presents multiple preserved pathways rather than a generalized disagreement with prior rulings: (1) the objective cumulative § 455(a) standard under *DeTemple*, 162 F.3d at 286–87, and *In re Beard*, 811 F.2d 818, 827 (4th Cir. 1987); (2) the prospective-remedy rule reflected in *In re Murphy-Brown, LLC*, 907 F.3d 788, 795–96 (4th Cir. 2018), and *In re Lockheed Martin Corp.*, 503 F.3d 351, 353–54 (4th Cir. 2007); and (3) the neutral-arbiter and notice rules reflected in *Sineneng-Smith*, *Clark*, *Margolin*, *Armstrong*, *Nelson*, *Day*, and the Fourth Circuit's own notice-before-disposition cases. The Fourth Circuit's mandamus disposition identified only a failure to make the "requisite showing," without identifying which pathway failed. That unexplained result leaves substantial federal questions live on rehearing.

Clark and *Margolin* materially strengthen the prospect of further review because they are not remote analogies from another circuit. They are recent Supreme Court reversals of the Fourth Circuit itself for materially departing from party presentation. Applicant's petitions contend that a related transformation-and-notice mechanism occurred again in the recusal proceedings and, in each case, intersects with the controversy awaiting first appellate review below.

B. The irreparable injury is temporal, constitutional, and process-wide: later vacatur cannot recreate either the protected first adjudication or the judicial petitioning opportunity already denied.

Murphy-Brown, 907 F.3d at 795–96, applies *Cheney v. U.S. Dist. Court for D.C.*, 542 U.S. 367, 380–81 (2004), "no other adequate means" requirement

practically: an alternative remedy is not adequate merely because some later tribunal can reverse after the very constitutional injury for which prospective relief was sought has already occurred. *Lockheed Martin*, 503 F.3d at 353–54, supplies the closest remedial analogy. Later appeal after a bench adjudication could not recreate the asserted right to have the first adjudication occur before a jury; mandamus therefore remained appropriate.

The same temporal principle applies with independent constitutional force here. Applicant's claim is not merely that particular rulings were erroneous. He has presented a record-supported First Amendment contention that the channels through which he repeatedly petitioned for adjudication of threshold creditor-status, enforcement, estate, property, and appellate issues were progressively transformed, foreclosed, or converted into predicates for further filing restriction. The Petition Clause protects resort to the courts for redress. See *California Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 510–11 (1972); *BE&K Constr. Co. v. NLRB*, 536 U.S. 516, 524–25 (2002). And where a First Amendment deprivation is sufficiently shown, the injury is inherently temporal: "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion); accord *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020) (per curiam).

That principle has unusual force on this record because the alleged deprivation is cumulative. Applicant contends that an antecedent lender-status issue was expressly excluded from the original decisional path as "not relevant"; that later orders attributed adjudicative force to what had not been decided; that

corrective petitions seeking the missing first adjudication were transformed into different controversies or characterized as repetition; that those resulting histories became credibility and filing-access predicates; and that eleven first-level bankruptcy appeals reached final disposition before ordinary record-based merits presentation. The asserted injury therefore is not simply the loss of one motion or one appeal. Its cumulative legal effect is deprivation of the bankruptcy process itself as a forum for first adjudication of the threshold rights governing the estate.

Put differently, Applicant entered bankruptcy entitled to a judicial process in which disputed creditor status, enforceability, estate administration, property rights, and objections would be adjudicated under governing law before irreversible consequences were imposed. He contends that the record instead shows an unresolved creditor-status premise acquiring progressively greater federal force while the procedural avenues for obtaining first adjudication became progressively narrower. The consequence reached estate administration, property relief, trustee decisionmaking, credibility findings, filing access, and first-level appellate review. That is why the injury cannot be reduced to dissatisfaction with adverse rulings. The asserted constitutional injury is the substitution of attributed adjudication for actual adjudication, followed by restriction of the petitioning channels through which the missing adjudication could be obtained.

Later vacatur cannot restore that lost sequence. If the participation objection is ultimately valid, a later court can vacate a resulting judgment, but it cannot make the first § 158(a) appellate adjudication have occurred only after meaningful review of who may perform it. Nor can a later appellate ruling retroactively recreate

the periods during which protected judicial petitioning was unavailable, truncated, or treated as a basis for further restriction. *Elrod* makes that temporal point constitutionally significant: a First Amendment deprivation does not become reparable merely because judicial relief may eventually arrive.

Williams independently underscores the due-process side of the same injury. Where due process requires recusal, participation by a constitutionally disqualified adjudicator is structural; later review does not transform the original adjudicative act into the neutral first adjudication that due process required. The First and Fifth Amendment injuries therefore converge here. Applicant seeks only preservation long enough for the courts to determine whether the next dispositive adjudicative act may lawfully occur—not a premature ruling on the ultimate merits.

C. The balance of harms and public interest favor preserving, not freezing, the proceedings.

The requested stay imposes minimal institutional burden because it does not halt briefing, filings, record administration, scheduling, or nondispositive activity. Respondents retain every opportunity to litigate the merits. The only temporary restraint is on the act that would complete the prospective controversy before the appellate courts can determine whether prospective protection is warranted.

The public interest strongly favors confidence that federal adjudication occurs before a neutral tribunal and through procedures that preserve meaningful notice and party presentation. It also favors orderly appellate review. *Nken* explains that interim authority allows courts to deliberate rather than choose between rushed

justice and a review process that has become an "idle ceremony." A short stay advances, rather than obstructs, that institutional interest.

III. The first-round emergency requests becoming moot without a preservation ruling demonstrates why the renewed Rule 40 request must be preserved now.

During the original mandamus proceedings, Applicant sought emergency preservation before the prospective injury could occur. The Fourth Circuit ultimately denied mandamus and treated the accompanying emergency requests as moot. Applicant does not attribute subjective motive to that sequence. Its significance is objective: a time-sensitive request can lose practical force through nondecision even when the merits remain reviewable in some retrospective form.

The renewed emergency motions arise from a materially different posture created by timely Rule 40 petitions. They are not motions to reconsider the earlier temporary requests. They ask whether the subject of rehearing should be preserved while rehearing remains alive. Allowing the same sequencing problem to recur would make the availability of prospective relief depend on whether the challenged event happens faster than ordinary appellate processing.

THE MCCARTHY APPEAL IS THE SUCCESSOR-FIDUCIARY ENDPOINT OF THE SAME UNADJUDICATED CLAIM-STATUS PROBLEM

The underlying trustee controversy does not begin with an abstract disagreement about standing. It arises from a decade-plus creditor-specific record in

which the same Clear Sky/Oppenheim threshold-status problem repeatedly generated federal consequences without a located first adjudication of acquisition, transfer, PETE, real-party, Rule 3001, or § 502(b)(1) enforceability. The comparator record already presented below spans Bankr. Nos. 16-14261-BFK, 17-13863-BFK, 18-12533-BFK, 24-11033-BFK, and 24-11959-BFK. In the different-debtor 17-13863 matter, Clear Sky Claim No. 8-1 itself paired a "No" acquisition answer with an Oppenheim-lender note and Oppenheim-to-Clear-Sky transfer or endorsement language; the debtor objected, yet the reviewed docket reflects no threshold-status adjudication before dismissal. See Main Bankr. Dkt. 712; App. 201a-222a.

Current Claim No. 1-1 made the defect facial. It named Clear Sky as current creditor, answered "No" to acquisition from another party, identified Oppenheim as original lender, and omitted page four of four of the original Note—the page containing both Applicant's signature and the purported Oppenheim-to-Clear-Sky transfer language. Rule 3001(c)(1) required the writing on which the claim was based to accompany the proof of claim, and Rule 3001(f) affords prima-facie evidentiary effect only to a proof of claim executed and filed in accordance with the Rules. Applicant does not contend that Rule 3001 noncompliance alone automatically disallowed the claim. The narrower point is that the filing did not earn prima-facie evidentiary effect through compliance, while acquisition, transfer, PETE, real-party, and § 502(b)(1) enforceability remained unresolved. No specialized investigation was required to identify the discrepancy; it appeared on the face of the proof of claim and attached writing. See App. 142a, 145a-148a, 153a, 225a; see also App. 234a-237a.

The trustee's statutory duties make that facial issue operationally important. Section 704(a)(4) requires investigation of the debtor's financial affairs, and § 704(a)(5) directs the trustee, if a purpose would be served, to examine proofs of claim and object to the allowance of any claim that is improper.

Those duties became concrete during McCarthy's own administration; they were not merely inherited from Gold. McCarthy had been appointed successor Chapter 7 trustee before Debtor filed the August 12, 2025 objection to Clear Sky's Claim No. 1. The Bankruptcy Court heard that objection on September 9 and entered Dkt. 366 overruling it on October 9, 2025. During that same period McCarthy was actively administering estate property: on October 3, six days before Dkt. 366 entered, he filed the motion seeking authority to sell the Kapalua property. Thus the Claim No. 1 controversy was live while McCarthy himself was administering a potentially distributable estate; it was not merely a historical defect inherited from his predecessor. See Main Bankr. Dkts. 366, 641; App. 223a-224a.

Dkt. 366 nevertheless supplied no independent adjudication of the facial claimant-and-enforcement defects. It treated Debtor's Claim No. 1 objection as materially the same as prior reconsideration practice and imported the reasoning of AP Dkt. 50 and AP Dkt. 30. But Dkt. 30 existed only "for the reasons stated on the record," and its incorporated transcript expressly excluded the foundational Oppenheim/Clear Sky lender-status issue as "not relevant." Incorporation therefore could not manufacture findings concerning acquisition, transfer, Rule 3001 compliance, person-entitled-to-enforce status, real-party-in-interest status, or §

502(b)(1) enforceability that the source decisional record had never made. See App. 223a; see also App. 154a-159a.

McCarthy later confirmed that he supplied no independent fiduciary examination to fill that gap. He testified that he had not inspected the Proof-of-Claim page whose omission was disputed, did not contest Debtor's representation that the endorsement was absent, and relied on prior court orders "to a great extent." He further explained that, after concluding the estate had no assets, he saw no purpose in pursuing a claim objection. But that later no-asset rationale does not erase the earlier chronology: the Claim No. 1 objection was pending and decided during McCarthy's tenure while he was simultaneously seeking to sell estate property. Applicant therefore contends that the Claim No. 1 episode is not merely evidence of inherited administration. It is direct evidence bearing on whether the successor trustee independently performed the claims-examination and estate-administration functions that § 704 assigned to him before relying on the resulting judicial disposition as a reason no further investigation was required. See App. 128a, 130a, 132a, 134a-135a.

McCarthy therefore both inherited unresolved Clear Sky predicates and administered the estate while those predicates remained live and directly contested. Gold had treated Clear Sky's approximately $1.6 million demand as part of the estate's liability picture while the estate's prepetition Loudoun claim against Clear Sky—pleaded as seeking approximately $500,000 and supported by a written state-court order temporarily enjoining Clear Sky's foreclosure after hearing evidence and argument—remained without corresponding investigation or administration. The

Gold adversary also placed into issue Gold's simultaneous role as Chairman of Freedom Bank and that bank's substantial commercial credit and advisory relationships involving Clear Sky-related entities. See Main Bankr. Dkt 291; App. 175a-200a. Those circumstances made an independent successor-fiduciary reset materially important. The written order is relied upon here only for the existence of actual interim injunctive relief, not as a final merits adjudication.

On March 16, 2026, McCarthy filed Dkt. 571 certifying diligent inquiry, full administration, and no distributable property. App. 125a. His sworn testimony the following day materially impeached treating that certification as proof that the disputed Clear Sky and estate-value predicates had actually been investigated. McCarthy testified that he relied on prior court orders "to a great extent"; that he "wouldn't be surprised" if he had not read the reconsideration motions presenting contrary evidence; that after concluding there were no assets he did not regard claim validity as something he needed to address; and, when confronted with the omitted endorsement page, "I didn't look at that—that page" and "I didn't see it myself." He did not dispute Applicant's representation that the endorsement was absent: "I'm not disputing your representation that there was no endorsement, but I didn't see it myself." See App. 128a, 130a, 132a, 134a-135a.

Applicant contends that this sworn testimony demonstrates that the prior day's "diligent inquiry" certification was materially false as to the very Clear Sky and estate-value matters later used to support the no-asset premise. That testimony is also retrospective evidence concerning McCarthy's own administration of Claim No. 1: he had been trustee throughout the objection proceedings that culminated in

Dkt. 366, yet later acknowledged that he had never independently examined the facial claim-page defect before relying on the resulting orders as settled adjudication.

The supposed judicial substitute for investigation does not supply the missing predicate. McCarthy testified that "The Court ruled that that was a valid claim," identified the AP No. 24-01058 summary-judgment transcript as material he had reviewed, agreed with Judge Kindred, and "therefore" relied on the resulting orders. But that very transcript expressly excluded the foundational lender-status issue. When counsel explained that Clear Sky was not party to the original Note because Oppenheim was the lender, the Bankruptcy Court responded, "That's not relevant," and then, "That really isn't." Dkt. 30, entered "for the reasons stated on the record," therefore did not adjudicate lender identity, acquisition, possession, endorsement, PETE, real-party status, Rule 3001, or § 502(b)(1). The order McCarthy identified as the basis for non-investigation thus affirmatively excluded the threshold predicate he attributed to it. See App. 134a-135a, 154a-159a.

Judge Kenney personally heard that testimony. Dkt. 641 nevertheless held that "The Trustee has done nothing wrong here," and Dkt. 678 went further, holding that McCarthy was justified in relying on the prior Kindred and Brinkema rulings and was "not required to conduct an investigation into matters that have already been adjudicated." By that point, the non-adjudicated premise had become the judicial reason no independent fiduciary investigation was required. The same sequence also could not account for Loudoun: no identified prior adjudication

determined that separate estate asset lacked value or excused its investigation or administration. See App. 139a-141a.

The McCarthy dismissal then added a second transformation. McCarthy's Rule 12(b)(6) motion did not develop the insolvency/pecuniary-interest framework of *Willemain v. Kivitz*, 764 F.2d 1019, 1022 (4th Cir. 1985), later used to dismiss the entire adversary. At the June 9 hearing he referred generically to Gold's "standing, duties, and conclusory allegations" and then stated that he had "nothing further." The Gold source papers had never been served on Applicant; Judge Kenney later recognized that service failure and supplied corrective briefing in Gold, but no comparable corrective process occurred in McCarthy. Judge Kenney, in Dkt. 73, then supplied *Willemain*, treated the contested NDR as evidence of no assets, resolved estate-versus-personal injury, and used that court-developed framework to dismiss all five counts with prejudice. See App. 101a-123a.

The Virginia-law source problem had also been expressly placed before Judge Kenney. Dkt. 535 acknowledged Oppenheim as the original Note lender but relied on later modifications identifying Clear Sky as lender and bearing Applicant's signatures. Dkt. 552 squarely identified the sequencing defect under Virginia Code §§ 8.3A-117 and -301: antecedent person-entitled-to-enforce status is a predicate to the modifying agreement, not a status the later agreement can bootstrap into existence. Dkt. 598 preserved the contrary signature-based rationale without supplying the missing antecedent adjudication. See App. 160a-174a.

For present emergency purposes, the Circuit Justice need not decide whether the NDR was ultimately false in every respect, whether McCarthy ultimately

breached a fiduciary duty, or whether Clear Sky ultimately can prove an enforceable claim. The objective record is enough: the sworn testimony materially impeached the certification as to the identified matters; the stated substitute adjudication excluded the predicate attributed to it; Judge Kenney then adopted "already adjudicated" as the reason no investigation was required; and the accountability action was later dismissed through an operative standing framework McCarthy himself had not developed. Those facts make the underlying appeal substantial and the first-review convergence concrete.

NO. 26-2406 PRESENTS THE CLEANEST CONVERGENCE OF THE PARTY-PRESENTATION AND NEUTRAL-TRIBUNAL QUESTIONS

Clark and *Margolin* directly govern the unopposed transformation alleged in Judge Brinkema's recusal disposition.

This is not an abstract invocation of party-presentation doctrine. Twice within the preceding Term, this Court corrected the Fourth Circuit for materially changing the controversy the parties presented. In *Clark*, 607 U.S. at 9–10, the Court reversed because the Fourth Circuit granted relief on a claim the litigant had not asserted and the opposing party had no opportunity to address. Months later, in *Margolin*, 608 U.S. at 342–43, the Court again reversed after the Fourth Circuit transformed the parties' narrower dispute into a broader court-created controversy without giving either side a chance to address its theory. *Margolin* arose from an Eastern District of Virginia case before Judge Brinkema.

The present proceeding brings that same neutral-arbiter principle into a materially sharper posture. Applicant's recusal motion expressly invoked *DeTemple* and presented the objective cumulative question whether a reasonable, well-informed observer considering all relevant circumstances would question continued impartiality. Applicant expressly disclaimed a tally-of-adverse-rulings theory. No Appellee opposed the motion before disposition. Yet Judge Brinkema's September 29 Dkt. 9 shifted the controversy to whether Applicant had demonstrated "bias," "exceptional favoritism or antagonism," an "extrajudicial source of bias," or judicial errors appropriately addressed on appeal. The substitute *Liteky*-type controversy therefore came from no adversary; it appeared in the disposition itself. See App. 82a-100a.

That distinction matters. *Sineneng-Smith*, *Clark*, and *Margolin* do not merely regulate appellate briefing etiquette; they protect the judiciary's neutral-arbiter function. The parties frame the controversy and the court adjudicates the controversy presented. When a materially different outcome-determinative ground may control, notice and an opportunity to respond provide the adversarial safeguard against surprise adjudication. Here there was not even an appellee submission from which the substitute controversy could have been drawn.

Applicant then presented that precise defect to the Fourth Circuit prospectively, before Judge Brinkema could conduct the first merits adjudication of the bankruptcy appeal. The Fourth Circuit nevertheless denied mandamus without separately adjudicating whether the unopposed recusal controversy had been materially transformed. Thus, after this Court twice corrected that Circuit for

materially departing from party presentation, the preserved party-presentation controversy remains unresolved while Judge Brinkema remains positioned to perform the merits adjudication that will make the asserted prospective injury complete.

No. 26-2406 presents a particularly direct party-presentation problem because no appellee opposition intervened before the District Court denied recusal. Applicant's motion framed the issue under *DeTemple* as an objective, cumulative § 455(a) controversy and expressly disclaimed a personal-hostility or tally-of-losses theory. The recusal order nevertheless resolved the motion through a materially different adverse-rulings/personal-bias/*Liteky* framework, emphasizing judicial acts, absence of an extrajudicial source, and lack of exceptional favoritism or antagonism. On the rehearing petition's account, the substituted dispositive framework was court-generated.

That matters especially after *Clark* and *Margolin*, which twice applied the neutral-arbiter and party-presentation principle to this Circuit within the last year. The present rehearing petition therefore does not invoke an abstract preference for party presentation; it invokes a neutral-arbiter principle the Supreme Court has twice applied to this Circuit in the last year.

The underlying McCarthy appeal makes the issue unusually concrete. McCarthy's written Rule 12(b)(6) motion did not develop the *Willemain*/insolvency/pecuniary-interest theory later used to dismiss the entire adversary proceeding. At the June 9 hearing, McCarthy referred generally to "standing, duties, and conclusory allegations" and stated that Gold's arguments applied, but Gold's motion

and memorandum had never been served on Applicant. In the separate Gold proceeding, that service failure later produced fourteen days and up to thirty pages of supplemental opposition. No comparable corrective process occurred while the McCarthy motion remained under advisement.

The Bankruptcy Court then selected *Willemain*, treated McCarthy's contested Report of No Distribution as evidence that the estate had no assets, resolved estate-versus-personal injury, concluded that no plausible pecuniary interest existed, declined to analyze the five counts individually, and dismissed with prejudice. See App. 101a-123a. The rehearing petition emphasizes that the issue is not whether a court may identify governing law; it is whether the court may supply the operative doctrine and disputed factual predicates for an unbriefed dispositive controversy without meaningful notice before judgment. *Nelson* rejects the idea that a court may impose consequences first and substitute a later prediction about what the affected party could have argued for the actual pre-judgment opportunity to respond.

The same District Judge whose recusal order is challenged is now positioned to conduct the first appellate review of that alleged transformation-and-notice defect. The objective § 455(a) significance is not that this predicts how she will rule. It is that the appellate controversy itself requires application of *Sineneng-Smith*, *Clark*, *Margolin*, *Day*, *Robertson*, and related notice authorities to the same category of alleged court-generated dispositive transformation that the rehearing petition says occurred in the recusal proceeding. A reasonable, fully informed observer would know of that adjudicative convergence.

Later review cannot restore the sequence Applicant seeks to protect: first decide who may adjudicate, then allow the proper tribunal to determine whether the court-generated standing theory below complied with governing law. Once the challenged District Judge enters the first § 158(a) merits judgment, later vacatur may alter the result but cannot make that first adjudication have occurred only after meaningful prospective review of the participation objection.

THE REQUESTED STAY IS EXCEPTIONALLY NARROW

The underlying Claim No. 1, NDR, trustee, and fiduciary facts are offered to establish the substantiality and concrete convergence of the questions awaiting first appellate review, not to obtain an emergency merits adjudication of claim validity, NDR falsity, or trustee liability. The requested stay preserves who will conduct that first review; it does not ask this Court to conduct it.

The Application does not ask this Court to decide whether recusal is ultimately required. It does not ask the Court to decide the underlying bankruptcy merits. It does not ask the Court to accelerate the Fourth Circuit's ordinary Rule 40 process. And it does not prevent the District Court from handling every nondispositive aspect of the appeal.

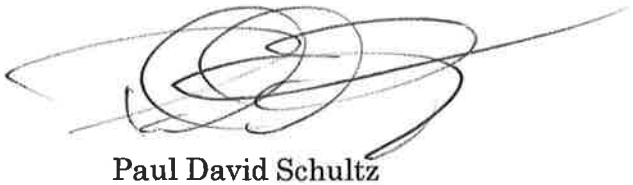
It asks only that final merits disposition by the challenged District Judge be postponed for the short interval necessary to decide the already-pending preservation question. That is precisely the kind of limited status-quo relief Nken describes: it allows the reviewing courts to bring considered judgment to bear without altering the ultimate substantive rights of any party.

Volkswagenwerk provides a further narrowing principle. If the Circuit Justice does not wish to preserve through the entire rehearing period, the stay can terminate when the Fourth Circuit acts on the emergency preservation motion. That disposition would protect this Court's prospective jurisdiction while leaving the Court of Appeals the first meaningful opportunity to determine the duration of any longer stay.

CONCLUSION

Applicant respectfully requests an immediate temporary administrative stay preserving against final merits disposition by the challenged District Judge in E.D. Va. No. 1:26-cv-02340-LMB-IDD while this Application is considered; continuation of that limited protection at least until the Fourth Circuit acts on USCA4 Dkt. 14, or alternatively through disposition of USCA4 Dkt. 15 or a shorter period; and such other narrowly tailored relief as is necessary to preserve this Court's prospective jurisdiction without predetermining the merits. The two-mechanism/Four-Layer record, the conservative 37-of-37 direct-mechanism result, the sixteen converging binding-law constraints, and the eleven-event first-level appellate audit demonstrate why this emergency cannot be reduced to one Rule 12 dismissal.

Respectfully submitted,



Paul David Schultz
Applicant *Pro Se*
18436 Kapalua Terrace
Leesburg, Virginia 20176
(703) 582-4355
pdschultz1@gmail.com
Dated: November 2, 2026

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

PAUL DAVID SCHULTZ, Applicant,

v.

KEVIN R. MCCARTHY, Respondent.

PROOF OF SERVICE

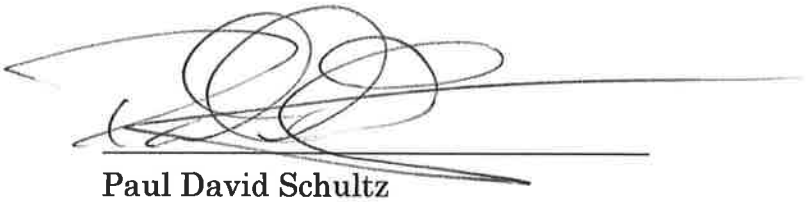
EMERGENCY APPLICATION TO THE CHIEF JUSTICE FOR AN IMMEDIATE TEMPORARY ADMINISTRATIVE STAY AND A LIMITED STAY IN AID OF THE COURT'S PROSPECTIVE JURISDICTION

I, Paul David Schultz, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that on November 2, 2026, I served one copy of the Emergency Application to the Chief Justice for an Immediate Temporary Administrative Stay and a Limited Stay in Aid of the Court's Prospective Jurisdiction, together with any accompanying papers required to be served, on every party required to be served under Supreme Court Rule 29 by depositing the same with the United States Postal Service, with no less than first-class postage prepaid, addressed as follows:

Kevin R. McCarthy, Esq.
8508 Rehoboth Ct.
Vienna, Virginia 22182
(703) 770-9261
Respondent and counsel of record

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 2, 2026, at Leesburg, Virginia.



Paul David Schultz
Pro Se Applicant

APPENDIX TABLE OF CONTENTS

1. United States Court of Appeals for the Fourth Circuit Judgment, No. 26-2406, Dkt. 12-2 (Oct. 26, 2026) ..... App. 6a

2. Unpublished Per Curiam Opinion denying mandamus, No. 26-2406, Dkt. 11 (Oct. 26, 2026) ..... App. 7a–8a

3. Amended Combined Petition for Rehearing En Banc and Panel Rehearing, No. 26-2406, Dkt. 15 (Oct. 28, 2026) ..... App. 9a–30a

4. Emergency Motion for Immediate Temporary Administrative Stay and Limited Stay Pending Disposition of Rehearing, No. 26-2406, Dkt. 14-1 (Oct. 27, 2026) ..... App. 31a–55a

5. Exhibit A - Objective Docket History of the Twenty-Two Prior Related District Court / Bankruptcy Matters ..... App. 56a–66a

6. Main Bankruptcy Case Dkt. 821 (Aug. 27, 2026) — pertinent page confirming that judgment entered in all ten referenced appeals without the record on appeal ..... App. 67a–68a

7. Emergency Motion to Expedite Disposition of Pending Emergency Stay Motion and for Immediate Action on Temporary Administrative-Stay Request, No. 26-2406, Dkt. 16-1 (Oct. 29, 2026) ..... App. 69a–78a

8. Declaration of Paul David Schultz Regarding 45-Days Before Petition Distribution, No. 26-2406, Dkt. 16-2 (Oct. 29, 2026) ..... App. 79a

9. Fourth Circuit docket report for No. 26-2406 ..... App. 80a–81a

10. EDVA Order denying recusal, Schultz v. McCarthy, No. 1:26-cv-02340-LMB-IDD, Dkt. 9 ..... App. 82a–84a

11. Appellant's Motion for Recusal Under 28 U.S.C. § 455(a), Reassignment, and Deferral of Merits Disposition, EDVA No. 1:26-cv-02340-LMB-IDD, Dkt. 5 (selected pages) ..... App. 85a–98a

12. EDVA civil docket report, No. 1:26-cv-02340-LMB-IDD ..... App. 99a–100a

13. Bankruptcy AP No. 25-01061-BFK, Dkt. 50 - McCarthy Motion to Dismiss First Amended Complaint (selected pages) ..... App. 101a–108a

14. June 9, 2026 hearing transcript excerpt from AP No. 25-01061-BFK on McCarthy's motion to dismiss ..... App. 109a–113a

15. Bankruptcy AP No. 26-01022-BFK, Dkt. 63 - Order on Plaintiff's Motion to Strike/Deny Defendant's Motion to Dismiss for Admitted Non-Service ..... App. 114a–115a

16. Bankruptcy AP No. 25-01061-BFK, Dkt. 73 - Selected Findings of Fact and Conclusions of Law dismissing the McCarthy adversary complaint ..... App. 116a–121a

17. Bankruptcy AP No. 25-01061-BFK, Dkt. 74 - Judgment Order ... App. 122a–123a

18. Main Bankruptcy Case docket report (selected pages) ..... App. 124a–125a

19. March 17, 2026 Hearing Transcript Excerpt Concerning Trustee McCarthy, Investigation, and Reliance on Prior Clear Sky-related rulings ..... App. 126a–135a

20. Main Bankruptcy Case Dkt. 641 - Selected pages from Order denying motion to remove/disqualify Chapter 7 Trustee.....App. 136a–139a

21. Main Bankruptcy Case Dkt. 678 - Order Denying Debtor's Motion to Alter or Amend Order Denying Motion to Remove or Disqualify Chapter 7 Trustee .....App. 140a–141a

22. Selected Official Form 410 / proof-of-claim materials comparing Bankr. No. 24-11033-BFK Claim No. 10-1 and Bankr. No. 24-11959 Claim No. 1-1, including selected supporting-note pages.....App. 142a–153a

23. Bankruptcy AP No. 24-01058-KHK, Dkt. 30 - Summary-Judgment Order (selected pages) .....App. 154a–156a

24. January 21, 2025 hearing transcript excerpt from AP No. 24-01058-KHK concerning Clear Sky's summary-judgment motion .....App. 157a–159a

25. Main Bankruptcy Case Dkt. 535 - Order Denying Debtor's Motion for Mandatory Criminal Referral of Clear Sky Financial, its principals, the Grass Law Firm, and Edward Grass .....App. 160a–161a

26. Main Bankruptcy Case Dkt. 552 - Debtor's Motion to Alter or Amend Order under Bankruptcy Rule 9023 / Civil Rule 59(e) (selected pages) .....App. 162a–171a

27. Main Bankruptcy Case Dkt. 598 - Order Denying Debtor's Motion to Alter or Amend Order Denying Mandatory Criminal Referral.....App. 172a–174a

28. Main Bankruptcy Case Dkt. 291 - Affidavit of Paul Schultz Certifying Evidence Provided to the Bankruptcy Court, with selected supporting exhibits concerning Clear Sky / related-actor evidence.....App. 175a–200a

29. Main Bankruptcy Case Dkt. 712 - Selected pages and exhibits concerning Clear Sky threshold status, non-adjudication, and the cross-case evidentiary record.....App. 201a–222a

30. Main Bankruptcy Case Dkt. 366 - Page 1 Only .....App. 223a

31. Main Bankruptcy Case Dkt. 641 - Page 6 Only .....App. 224a

32. Claims Register for Main Case 24-11959 - the Single Page Showing Claim No. 1/Claim 1-1 and the Blank "Modified" Field.....App. 225a

33. Main Bankruptcy Case Dkt. 629 - Miscio Affidavit Showing Note-Identified Lender, Oppenheim, Not Actual Lender.....App. 226a–233a

34. USCA4 26-1738 Dkt. 29 - Failure to Comply with Rule 3001(c)(1) and Did Not Obtain Rule 3001(f) Prima-Facie Effect .....App. 234a–237a

35. USCA4 26-1738 Dkt. 26 - Sixteen Independent Binding-Law Constraints Bypassed .....App. 238a–240a

36. USCA4 26-1738 Dkt. 21 - Where is Each Adjudication? .....App. 241a–242a

37. USCA4 26-2104 Dkt. 8 - Converging Legal Lanes
And 37-of-37 Results Benefiting Creditor who has
A Facially Defective Proof-of-Claim.....App. 243a–245a

38. USCA4 26-1738 Dkt. 30 - Five-Stage Development
of the Related Appellate Record; 8 Expired Merits
Response Opportunities / 0 Identified Adjudications.....App. 246a–261a

39. Main Bankruptcy Case Dkt. 756—Declaration and Notice of
Lodging Debtor's Exhibit 1 Admitted at March 17, 2026
Evidentiary Hearing, with attached three-email Exhibit A.....App. 262a–269a

40. March 17, 2026 Hearing Transcript Excerpt concerning
Authentication and Admission of Clear Sky/Oppenheim
Loan-Origination Emails as Debtor's Exhibit 1.....App. 270a–272a

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