Supreme Court, U.S.
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No. 26A658

IN THE
SUPREME COURT OF THE UNITED STATES

PAUL DAVID SCHULTZ, Applicant,

v.

H. JASON GOLD, 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

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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. 26-2404 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.

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, Applicant's recusal motion expressly presented the objective, cumulative reasonable-observer controversy required by *United States v. DeTemple*, 162 F.3d 279, 286–87 (4th Cir. 1998), and expressly disclaimed a tally-of-adverse-rulings theory. Appellee Gold's Dkt. 10 substituted the materially different framework of *Liteky v. United States*, 510 U.S. 540, 555–56 (1994); Applicant states that he never received that filing, and his response had already been tendered to and file-stamped by the Clerk before Judge Brinkema ruled while the authorized response period remained open. If the recusal order drew from Dkt. 10, the transformed theory became dispositive before Applicant received a meaningful opportunity to answer it; if it did not, substantially the same transformed framework was court-generated. 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 determine whether she may continue to adjudicate at all. See App. 70a-72a, 86a-109a.

The Court need not decide the ultimate validity or enforceability of the 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. 90a.

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. 187a-189a. 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. 191a-192a. *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. 119a, 122a-125a, 130a, 210a.

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. 211a-218a. 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. 247a–257a. *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. 223a-225a. 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.

Binding-law constraint	Required boundary the exclusion could not supply
5. Antecedent private rights	*Butner*, *Dameron*, *Moffett*, *SummitBridge* require applicable nonbankruptcy law to define the private right first.
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. 228a-230a.

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. 57a-67a. 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. 68a-69a. 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. 231a-246a. 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. 226a-227a.

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. 26-2404 asks for a narrow pause before the first District Court merits adjudication of the Gold trustee-accountability appeal. Applicant does not ask the Circuit Justice to decide Gold's ultimate fiduciary liability, Clear Sky's ultimate claim validity, or recusal on the merits. He asks only that the challenged District Judge not enter the first § 158(a) merits

judgment while the live Rule 40 and preservation questions concerning her continued participation 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-02804-LMB-IDD.

Second, Applicant requests continuation of that narrow protection at least until the Fourth Circuit acts on USCA4 Dkt. 13, the emergency preservation motion already pending there; alternatively, through disposition of the operative rehearing petition, USCA4 Dkt. 12, or such shorter period as the Circuit Justice deems appropriate. See App. 9a-29a, 30a-56a.

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. 26-2404, In re Paul Schultz — prospective mandamus petition denied October 22, 2026; operative rehearing petition and renewed emergency preservation motion pending.

E.D. Va. No. 1:26-cv-02804-LMB-IDD, Schultz v. Gold — 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. 13 asks for an immediate administrative stay and a limited stay while the operative rehearing petition remains pending. On October 29, Applicant filed a second 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. 30a-56a, 73a-82a, 84a-85a.

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. 26-2404 was entered October 22, 2026; Applicant's filing calculates the ordinary period through December 7, 2026. See App. 83a. 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 GOLD APPEAL ARISES FROM A FACIAL CLAIM DEFECT AND A DECADE-LONG UNADJUDICATED CLEAR SKY STATUS PROBLEM

The relevance of this history is not a tally of outcomes. It is recurrence of the same creditor-specific threshold defect followed by federal consequences before a located first adjudication of the asserted right. 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 identified Clear Sky as current creditor and answered "No" to acquisition while attaching an Oppenheim-lender note containing Oppenheim-to-Clear-Sky transfer or endorsement language; the debtor objected, but the reviewed docket reflects no adjudication of acquisition, transfer chain, holder/person-entitled-to-enforce status, real-party status, Rule 3001, or § 502(b)(1) enforceability before dismissal. Related creditor-specific structures recur in the remaining comparator matters. See Main Bankr. Dkt. 712; App. 165a-186a.

Current Claim No. 1-1 made the problem facial, not forensic. It named Clear Sky as current creditor, answered "No" to acquisition from another party, identified Richard Oppenheim, Jr. as the 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. No specialized investigation was required to identify the discrepancy; it appeared on the face of the proof of claim and the writing attached to it. 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 to be proved and adjudicated. No specialized investigation was required to identify the discrepancy; it

appeared on the face of the proof of claim and attached writing. See App. 119a, 122a-125a, 130a, 210a; see also App. 219a-222a.

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.

The notice became explicit. Main Dkt. 535 acknowledged that the original Note identified Oppenheim as "Lender" but relied on later modifications identifying Clear Sky as "Lender" and bearing Applicant's signature. Dkt. 552 then squarely identified the sequencing problem under Virginia Code §§ 8.3A-117 and -301: § 8.3A-117 addresses a separate agreement with a person entitled to enforce the instrument, so antecedent person-entitled-to-enforce status is a predicate to the modifying agreement rather than something the later agreement can bootstrap into existence. Judge Kenney, in Dkt. 598, preserved the signature-based rationale without supplying the missing antecedent adjudication. See App. 193a-207a.

Gold demanded "strict proof." See App. 131a-132a. Yet the operative record identifies not only no strict proof, but none at all, establishing Clear Sky's antecedent right to enforce before its approximately $1.6 million demand was incorporated into the estate's liability picture. The question in the Gold appeal is therefore not whether the Trustee should have discovered a concealed defect; it is whether an estate fiduciary could decline to test a facial one while simultaneously leaving a valuable estate claim against that same creditor unadministered.

That administration occurred while Gold simultaneously served as Chairman of Freedom Bank, a regulated financial institution with substantial commercial credit and advisory relationships involving Clear Sky-related entities and Clear Sky principal Charlie Einsmann. The record presented below identifies approximately $3 million in commercial credit exposure to Clear Sky-related entities; identifies Gold as a Freedom Bank director for more than two decades and Chairman since 2018; and pleads Gold's compensation, stock ownership, director benefits, bank-performance interests, and other direct or indirect pecuniary interests as factual matters requiring disclosure and discovery. Those unadjudicated pecuniary details need not be assumed here. The established institutional overlap is itself material to why the Gold adversary sought factual development into disinterestedness, disclosure, and the independence of estate administration. See App. 112a-116a, 139a-164a.

The alleged administration operated asymmetrically on both sides of the estate ledger. On the liability side, Clear Sky's approximately $1.6 million demand received operative effect without a located adjudication of the facial claimant and enforcement predicates. On the asset side, the estate's prepetition Loudoun litigation against that same creditor—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—was left without corresponding investigation, valuation, prosecution, settlement, assignment, or monetization. The written order is relied upon here only for the existence of actual interim injunctive relief, not as a final merits adjudication. A surplus or pecuniary-interest analysis

that fixes the disputed liability while assigning no value to an unadministered affirmative claim risks reproducing the challenged administration instead of testing it.

The same unresolved premise later became part of the repetition and filing-access history placed before Judge Brinkema. Main Dkt. 366 overruled the Claim No. 1 objection by importing AP Dkt. 50 and AP Dkt. 30, even though the January 21 transcript incorporated into Dkt. 30 expressly treated the foundational Oppenheim/Clear Sky lender distinction as "not relevant." Later efforts to obtain the missing threshold adjudication were then treated as repetition, including in the history supporting filing restrictions. The causal significance is straightforward: non-adjudication became supposed prior adjudication; supposed prior adjudication became repetition; and repetition became a reason to restrict further presentation. See App. 208a-209a; see also App. 187a-192a.

For present emergency purposes, the Circuit Justice need not decide Clear Sky's ultimate claim validity, Gold's ultimate fiduciary liability, or the unresolved Freedom Bank pecuniary-interest questions. These facts establish why the underlying appeal presents a substantial trustee-accountability controversy and why the first appellate adjudication of that controversy should not occur before meaningful prospective review of the challenged adjudicator's participation.

THE 26-2404 RECORD SHOWS WHY THE CONSTITUTIONAL INJURY IS THE ADJUDICATIVE ACT ITSELF

Clark and *Margolin* make the transformed recusal controversy independently substantial.

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 neutral-arbiter principle into a notice-sensitive 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. Gold's Dkt. 10 supplied a materially different adverse-rulings, bias, extrajudicial-source, and exceptional-favoritism framework; Applicant states that he never received it; and the response he tendered had already been file-stamped before the recusal order entered while his response period remained open. If Dkt. 11 drew

materially from Dkt. 10, the transformed controversy became dispositive before Applicant had a meaningful opportunity to answer the filing that supplied it. If Dkt. 10 was not considered, substantially the same transformed framework was court-generated. Either path presents the same neutral-arbiter and notice question before the first merits adjudication occurs. See App. 70a-72a, 86a-109a.

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. Applicant presented that precise defect prospectively to the Fourth Circuit; mandamus was denied without separately adjudicating it; and the preserved party-presentation controversy remains unresolved while Judge Brinkema remains positioned to conduct the first merits adjudication that will make the asserted prospective injury complete.

No. 26-2404 presents a completed notice-and-party-presentation sequence that makes the prospective danger concrete. Applicant's recusal motion expressly disclaimed a tally-of-adverse-rulings theory and instead asked whether a reasonable, well-informed observer, considering the cumulative procedural record, would question continued impartial adjudication under § 455(a) and *DeTemple*. Appellee's Dkt. 10 supplied a materially different adverse-rulings/personal-bias framework. Applicant states that he did not receive that filing and learned of it only through independent docket monitoring.

More importantly, Applicant's response, E.D. Va. Dkt. 12, had already been tendered to and file-stamped by the Clerk before the recusal order entered on September 29, while the authorized response period remained open through October 5. The rehearing petition therefore presents a narrow Fifth Amendment question: whether a materially different dispositive controversy may acquire operative force after the affected party has timely filed a response but before that response is docketed for consideration in the ordinary course. *Armstrong*, *Nelson*, *Day*, *United States Development*, *Hill*, and *Robertson* all make timing part of the right to meaningful notice and an opportunity to be heard.

The party-presentation problem is independent of which source supplied the substituted framework. If Dkt. 11 materially drew from Dkt. 10, the transformed theory came from an adversarial filing Applicant says he never received and became dispositive before his response opportunity expired. If, as opposing counsel later suggested, the Court did not consider Dkt. 10, then substantially the same substituted framework was court-generated and became dispositive without advance notice. *Sineneng-Smith*, *Clark*, and *Margolin* make that alternative consequential: courts are neutral arbiters of the controversies the parties present, and a materially different outcome-determinative framework cannot simply replace the controversy without adversarial testing.

The underlying Gold appeal reinforces the need for prospective protection. That appeal itself challenges an admitted service failure, loss of the ordinary pre-hearing preparation opportunity, later supplementation, and an alleged transformation of a dispositive premise. See App. 112a-118a, 137a-138a. The judge

whose continued participation is challenged is therefore positioned to conduct the first appellate review of a materially related notice-and-transformation controversy while rehearing asks whether the process used to deny recusal lawfully resolved the controversy actually presented.

The cumulative record matters because the recusal motion did not ask the court to infer bias from unfavorable outcomes. It identified recurring changes in adjudicative scope or status, recurring transformation of controversies, and eleven first-level bankruptcy dispositions before ordinary record-based merits presentation. The rehearing petition alleges that the response/order sequence in this very recusal proceeding reproduced the procedural mechanism identified in the cumulative record. The Chief Justice need not decide that allegation now. He need only preserve the next adjudicative act long enough for the Fourth Circuit to decide the live prospective challenge.

THE REQUESTED STAY IS EXCEPTIONALLY NARROW

The underlying Clear Sky, 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, trustee liability, or unresolved disclosure issues. 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-02804-LMB-IDD while this Application is considered; continuation of that limited protection at least until the Fourth Circuit acts on USCA4 Dkt. 13, or alternatively through disposition of USCA4 Dkt. 12 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 adverse order.

Respectfully submitted,



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Dated: November 2, 2026

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