Supreme Court, U.S.
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No. 26A684

IN THE
SUPREME COURT OF THE UNITED STATES

PAUL DAVID SCHULTZ, Applicant,

v.

BOKF, N.A., 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 immediate and narrowly tailored interim relief arising from Fourth Circuit No. 26-2405. The immediate relief is narrow, but the record giving rise to it is not. Two time-sensitive interests require preservation: the first appellate merits judgment should not be entered by the District Judge whose continued participation is under live prospective review, and Bankruptcy Dkt. 625 should not be allowed to produce a December 17, 2026 foreclosure that may destroy 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 injuries 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 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." 556 U.S. 418, 427 (2009). 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* and *Margolin* 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 a cumulative *DeTemple* reasonable-observer controversy and disclaimed an adverse-rulings/bias theory; yet Judge

Brinkema, in Dkt. 8, substituted a Court-generated *Liteky*-type inquiry centered on bias, exceptional favoritism or antagonism, extrajudicial source, and judicial error. 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 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.

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.

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 Shows No Threshold Adjudication.

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." See App. 272a-274a. 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. 276a-277a. *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. 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. 259a-264a, 270a-271a.

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. See App. 280a-287a. 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. *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. Illinois Department 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 Defect.

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. App. 292a-294a. 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.
6. Virginia enforcement	*Richmond* and Va. Code §§ 8.3A-117, -203, -301, -303, -305, -308(b) govern rights, transfer, PETE, defenses, and modification.

Binding-law constraint	Required boundary the exclusion could not supply
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 Confirm the Recurring Pattern.

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. 297a-299a.

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. 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. 71a-72a. 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 contradiction specific to Judge Brinkema 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 Record Isolates a Five-Stage Adjudicative Sequence.

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 App. 300a-315a. Applicant's July 31, 2026 filing put the question directly: "Where is each adjudication?" App. 295a-296a.

That is the inquiry issue-preclusion law itself requires. *Sedlack v. Braswell Services Group, 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. 26-2405 presents two immediately preservable events: the first District Court merits adjudication of Bankruptcy Dkt. 625 by the challenged District Judge, and a noticed December 17, 2026 foreclosure of Applicant's occupied residence that may destroy or materially alter the underlying appellate controversy. Applicant asks for preservation, not a merits award: preserve the home and the first appellate adjudication long enough for the pending Rule 40 and stay proceedings to operate.

EMERGENCY REQUEST

First, Applicant requests an immediate temporary administrative stay while this Application is considered: (a) no final merits disposition by the challenged District Judge in E.D. Va. No. 1:26-cv-01125-LMB-IDD; and (b) no enforcement or operative effect of Bankruptcy Dkt. 625 sufficient to permit consummation of the noticed December 17, 2026 foreclosure of 18436 Kapalua Terrace.

Second, Applicant requests continuation of that limited 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. 14, or such shorter period as the Circuit Justice deems appropriate.

Third, if the Circuit Justice concludes that a direct stay cannot technically prevent the foreclosure, Applicant requests the narrower fallback restraint already requested below: temporarily enjoin BOKF, N.A., Trustee Services of Virginia, LLC, and persons acting in concert with them from conducting or consummating the December 17 sale while the preservation question is adjudicated.

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. 26-2405, *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-01125-LMB-IDD, *Schultz v. BOKF, N.A.* — underlying bankruptcy appeal presently assigned to the challenged District Judge. The District Court denied Applicant's Rule 8007(b) request on October 28, 2026. The Bankruptcy Court denied Dkt. 830 on October 28, entered October 29, 2026.

JURISDICTION AND AUTHORITY

A. Rules 22 and 23 Authorize This Application.

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 does not rely on *Malliotakis* to enlarge this Court's jurisdiction; its relevance is narrower: current emergency practice confirms that interim preservation may protect prospective Supreme Court review while proceedings necessary to that review remain underway.

B. §§ 1254(1) and 1651(a) Protect Prospective Jurisdiction.

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 Is a Preservation Stay.

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 RIGHTS BEING PRESERVED ARE FUNDAMENTAL

A. The Fifth Amendment and § 455(a) Protect a Neutral Tribunal.

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. Party Presentation and Notice 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 Protects Public Interest in Judicial Redress.

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 FIRST SOUGHT BELOW, THE TIMING PROBLEM IS 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 is considered. Applicant also pursued the ordinary Bankruptcy Rule 8007 route. The District Court denied its first Rule 8007(b) request without prejudice solely because the Bankruptcy Court had not yet ruled. The Bankruptcy Court has now denied Dkt. 830. The lower-court-first record is therefore complete as to both the Bankruptcy Court and the District Court.

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. 26-2405 was entered October 22, 2026; Applicant's filing calculates the ordinary period through December 7, 2026. 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 Administrative Stay is Necessary to Preserve Review.

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 Stay Factors Strongly Favor Narrow Preservation.

A. Further Review and Success Are Reasonably Probable.

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.

An Unopposed Recusal Ruling Presents a Direct Party-Presentation Defect

The same neutral-arbiter principles apply here in an unusually direct posture. Applicant's recusal motion expressly invoked *DeTemple* and presented the objective cumulative § 455(a) 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 order shifted the controversy to whether Applicant had demonstrated "bias," "exceptional favoritism or antagonism," an "extrajudicial source of bias," or judicial errors remediable on appeal—the distinct *Liteky*-type inquiry Applicant hadn't presented. App. 73a-75a. The substitute controversy therefore came from no adversary; it appeared in the disposition itself.

That is the precise neutral-arbiter problem preserved by *Sineneng-Smith*, *Clark*, and *Margolin*. Indeed, *Margolin* itself arose from an Eastern District of

Virginia proceeding before Judge Brinkema. Applicant then presented the transformation prospectively to the Fourth Circuit before the challenged District Judge could conduct the first merits adjudication of the bankruptcy appeal. The Fourth Circuit denied mandamus upon the unexplained conclusion that Applicant had not made the "requisite showing," without separately resolving whether the unopposed recusal controversy had been materially transformed. The issue therefore remains live while the challenged judge remains positioned to perform the adjudicative act sought to be preserved. Applicant asks only that the act be preserved long enough for that prospective question to be decided. *Nken* exists so appellate review does not become an "idle ceremony." 556 U.S. at 427.

B. The Eleven-Event Record Makes the Concern Concrete.

The present concern does not arise from a prediction based on one adverse ruling. Applicant's recusal motion was accompanied by a filed ten-page audit of twenty-two prior related District Court bankruptcy matters. That audit distinguishes matters that received ordinary record-based presentation from those that did not and identifies eleven first-level bankruptcy appeals in which final disposition preceded the ordinary appellate-record and merits-presentation process. The audit is included at App. 60a–70a so that the recurrence can be examined directly rather than accepted from Applicant's characterization.

The Bankruptcy Court later independently corroborated the central record-transmission fact. Main Dkt. 821 stated that, in all ten appeals identified there, "the United States District Court entered judgment without the record on appeal,"

and directed transmission after judgment had already entered. App. 71a–72a. The eleventh audited matter separately ended nine days before its Bankruptcy Transmittal Cover Sheet and fifteen designated-record items arrived. Thus, the historical premise is not merely that Applicant repeatedly lost. It is that eleven audited first-level matters reached disposition before the ordinary record-based presentation process through which an appellant ordinarily presents the controversy for adjudication.

That history is not collateral background to this emergency. It is objective evidence bearing on whether another first-level merits adjudication should occur before the live prospective challenge to the District Judge's continued participation is resolved. The present BOKF appeal is materially more advanced because Applicant has now been able to brief the merits. But that difference heightens rather than eliminates the prospective issue: after eleven documented pre-presentation dispositions, the same District Judge is now positioned to perform the first appellate merits adjudication of Dkt. 625 while her continued participation remains under live review. Section 455(a)'s preventive function and the Fifth Amendment's neutral-tribunal guarantee have practical force only if that threshold controversy can be reviewed before the adjudicative act sought to be preserved becomes historical fact.

C. The Irreparable Constitutional Injury: Later Vacatur Cannot Recreate.

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: a later remedy is not adequate when the constitutional injury consists of allowing the challenged event itself to occur before review. *Lockheed Martin*, 503 F.3d at 353–54, supplies the closest remedial analogy: later appeal after bench adjudication could not recreate the asserted right to have the first adjudication occur before a jury. Applicant invokes that principle only as to temporality—the protected mode and sequence of adjudication cannot necessarily be restored after the adjudicative act occurs.

The Petition Clause independently reinforces that injury. Resort to courts for redress is protected petitioning activity. 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 the loss of First Amendment freedoms even briefly 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).

The cumulative factual chain supporting that contention has already been established above and need not be repeated here. Applicant's contention is that attributed adjudication progressively displaced first adjudication while the channels used to seek the missing determinations became predicates for repetition, credibility, and filing-access consequences. Its asserted cumulative legal effect is deprivation of the bankruptcy process itself as a forum for first adjudication of the threshold rights governing the estate. Later vacatur cannot retroactively recreate the periods during which protected judicial petitioning was unavailable, truncated, or treated as a basis for further restriction.

Williams supplies the parallel Fifth Amendment consequence. If due process ultimately required recusal, participation by the constitutionally disqualified adjudicator is structural; later review cannot transform the original act into the neutral first adjudication due process required. Applicant therefore seeks preservation of the next dispositive adjudicative act, not premature resolution of the underlying recusal or bankruptcy merits.

D. The Balance of Harms and Public Interest Favor Preservation.

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, party presentation, and appellate review. Prompt administration is a legitimate bankruptcy objective, but it is not a license to bypass the Code or make appellate review an idle ceremony. See *Nken*, 556 U.S. at 427; *Law v. Siegel*, 571 U.S. 415, 421 (2014); *Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 465–71 (2017). The Supreme Court likewise continues to describe a fresh start as a principal purpose of bankruptcy law. *Harris v. Viegelahn*, 575 U.S. 510, 513–14 (2015).

III. The Prior Mootness Sequence Confirms the Need for Preservation.

Applicant sought prospective preservation during the original mandamus proceeding; when mandamus was denied, the accompanying emergency requests became moot. The timely Rule 40 petitions now create a materially different posture: the renewed requests do not seek reconsideration of those expired temporary motions, but preservation of the subject of a still-live rehearing proceeding. Without interim relief, the same sequencing problem can recur—the event sought to be preserved against can occur before the court decides whether prospective protection is warranted. That prior sequence therefore makes the present preservation need concrete rather than speculative.

NO. 26-2405: DATE-CERTAIN FORECLOSURE; STRUCTURAL DEFECT

No. 26-2405 presents the same prospective neutral-tribunal problem plus a separate date-certain threat to the property and the appeal itself. The underlying appeal concerns Bankruptcy Dkt. 625, which granted BOKF relief from the automatic stay as to Applicant's occupied residence at 18436 Kapalua Terrace. The property has not been formally abandoned, the bankruptcy case remains open, and a foreclosure sale is scheduled for December 17, 2026 at 10:00 a.m. The Bankruptcy Court has now denied Applicant's Rule 8007(a) stay motion, making the emergency concrete and eliminating the premise on which the District Court had called Rule 8007(b) relief premature.

Dkt. 625 did not return to the scheduled merits hearing after the two threshold questions identified in Dkt. 546 were assumed in Applicant's favor.

Instead, it treated termination of the personal stay plus the Trustee's stated nonadministration position as § 362(d)(1) cause affecting estate property and canceled the evidentiary process. The new October 28 stay-denial order does not cure that transformation. It characterizes Dkt. 625 as a "straightforward application" of § 362(c)(3), while Dkt. 625 itself had assumed for purposes of decision that estate-property protection remained and then relied on Trustee nonadministration to supply cause. That shift in characterization is itself material to the pending appeal.

That sequence implicates several lines of law at once. *Sineneng-Smith*, *Clark*, and *Margolin* protect the party-presentation principle; *Nelson*, *Day*, and the Fourth Circuit's notice-before-disposition cases protect the opportunity to address a court-generated dispositive ground; *Robbins* and *Herlihy* require individualized § 362(d)(1) analysis; and *Law v. Siegel* and *Jevic* confirm that bankruptcy courts may not invent extra-statutory substitutes for mechanisms Congress specified in the Code.

The property emergency is fixed by documentary notice. Brock & Scott's October 16, 2026 package states that 18436 Kapalua Terrace will be offered at public auction at the Loudoun County courthouse on December 17, 2026 at 10:00 a.m. The Bankruptcy Court's new order expressly concedes the resulting irreparable injury: foreclosure "is true, and this is a factor that favors the Debtor." It nevertheless discounted that factor based on asserted "inaction," while making no finding that the $950,000 appraisal was unreliable, that BOKF's lien was undersecured, or that the collateral was declining in value.

Applicant pursued the ordinary Bankruptcy Rule 8007 path. On October 28 the District Court denied Rule 8007(b) relief. The Bankruptcy Court denied Dkt. 830 on October 28, entered October 29, without holding a hearing. Those rulings satisfy the lower-court-first predicate.

Nken is especially important here. A stay can suspend the enforceability of an order so appellate review remains meaningful; it is not the same thing as an affirmative injunction commanding a new merits result. The Bankruptcy Court itself now agrees that foreclosure is an irreparable harm favoring Applicant. The remaining dispute is whether the reviewing courts will preserve the property long enough to decide whether the order authorizing foreclosure was entered through a lawful decisional process.

THE OCTOBER 28 ORDER CONFIRMS THE STRUCTURAL DEFECT

The October 28 stay-denial order does not merely deny interim relief. It repeats and compounds several of the same adjudicative mechanisms and binding-law constraints identified above. Most prominently, Dkt. 833 characterizes Dkt. 625 as a "straightforward application" of § 362(c)(3). App. 125a. But Dkt. 625 had expressly assumed, for purposes of decision, Applicant's construction that § 362(c)(3) terminated the stay only as to Applicant personally and **did not terminate estate-property protection**. App. 108a. Having assumed that proposition, Dkt. 625 then supplied a different decisional ground: the Trustee's stated nonadministration position, "coupled with" termination of the personal stay, "constitutes cause" under § 362(d)(1). App. 108a–109a. Dkt. 833 thus does not

answer the party-presentation and decisional-scope problem presented on appeal; it recharacterizes the earlier ruling as though the assumed-away § 362(c)(3) issue itself supplied the result. That is precisely the kind of scope enlargement and controversy substitution the Application's Mechanism One and Mechanism Two analysis places at issue.

The order also doubles down on an unresolved substitution between **administrative intent and statutory abandonment**. Dkt. 833 states that the Trustee "indicated his intent to abandon and not administer" Kapalua and relies on Dkt. 549, the Report of No Distribution, and notice of that report. App. 126a. Yet Dkt. 549 itself said only that, despite what "may well be substantial non-exempt equity," the Trustee was not then in a practical position to sell the property and anticipated filing an NDR. App. 81a–82a. The Code separately identifies the means by which estate property ceases to remain estate property: § 554(a) and (b) provide for abandonment after notice and hearing; § 554(c) ordinarily abandons scheduled but unadministered property at closing; and § 554(d) provides that property not abandoned and not administered remains property of the estate. Section 362(c)(1), correspondingly, protects estate property until it ceases to be estate property. Here the case remains open under an order providing that it "will remain open until the issues on appeal have been resolved," App. 83a, the NDR objection remains unadjudicated, and the Appendix identifies no order formally abandoning Kapalua. Administrative nonadministration therefore cannot silently become the fourth abandonment mechanism that Congress did not enact. See *Law*, 571 U.S. at 421; *Jevic*, 580 U.S. at 465.

Dkt. 833 likewise concedes the very irreparable harm for which preservation is requested: foreclosure "is true, and this is a factor that favors the Debtor." App. 127a. It nevertheless discounts that conceded injury through factual and motive premises—including asserted "inaction," absence of a current listing or refinancing effort, and the conclusion that substantial equity is "entirely chimerical"—without an evidentiary hearing. App. 126a–128a. The record, however, contains a professional $950,000 appraisal, App. 155a–162a, while BOKF represented an approximate $415,218.72 payoff as of January 5, 2026. App. 78a. The order does not find the appraisal unreliable, the collateral declining, or BOKF undersecured. Nor does it conduct the individualized prejudice-versus-hardship analysis required by *Robbins*, 964 F.2d at 345, and *Herlihy*, 167 F.4th at 151–52. That omission matters especially because the Bankruptcy Court had previously scheduled a final evidentiary hearing, established appraisal and exhibit procedures, and then canceled that process when Dkt. 625 substituted Trustee nonadministration for the joined § 362(d)(1) controversy. App. 84a–89a, 106a–111a.

The prior sale record further demonstrates why "not presently listed" is not itself an adjudication of realizable estate value. The Trustee initially sought to sell Kapalua for $675,000 after marketing began at $889,900, and a later competing offer was $700,000. App. 163a–172a. After McCarthy became successor trustee, his own filing acknowledged that the Court required a new § 327 employment application for the realtor; Applicant and his spouse objected; the application was withdrawn in open court; and the sale motion was later withdrawn after the proposed purchasers declined to proceed. App. 169a–184a. Whatever ultimate

conclusions a merits court may draw from that history, it was not an adjudicated market determination that the $950,000 appraisal was false or that equity protection was nonexistent.

Finally, Dkt. 833 heightens rather than resolves the neutral-tribunal problem because it **converts an unadjudicated objection into a motive finding**. The order calls Applicant's NDR objection "quite disingenuous," says he seeks to remain in the residence "ad infinitum," attributes the duration of the case to "endless objections and appeals," and states that he "clearly" objected to the NDR to prolong the case. App. 126a. Yet the same footnote acknowledges that the Court has refrained from holding a hearing on the NDR objections because of the pending appeals. *Id.* Applicant does not ask the Circuit Justice to infer subjective hostility from that language. Its objective significance is stronger and narrower: a statutory objection that the Court acknowledges it has not adjudicated is nevertheless used as a premise for improper motive, credibility, and denial of preservation. That sequence implicates the same Scope, Transformation, and Credibility Shields identified earlier and reinforces the need for independent appellate review before foreclosure converts the controversy into an irreversible property consequence.

Dkt. 833 therefore does not stand outside the sixteen binding-law constraints summarized above. It places several of them into immediate operation again: decisional scope and party presentation; constitutional notice before court-generated dispositive grounds; statutory estate-property and abandonment rules; individualized § 362(d)(1) adjudication; and the requirement that disputed facts be tested rather than converted into motive or credibility predicates. The Circuit

Justice need not decide those merits now. The emergency question is whether the property and the first appellate adjudication should be preserved long enough for a reviewing court to decide them before foreclosure makes that review practically or legally ineffectual.

Most importantly, Dkt. 833 does not confront the controlling adequate-protection record on its own terms. BOKF represented an approximate payoff of $415,218.72 as of January 5, 2026, App. 78a, while Applicant submitted a professional appraisal valuing Kapalua at $950,000, App. 155a–162a. That leaves a gross equity cushion exceeding one-half of the appraised value. Fourth Circuit law makes that fact legally consequential. *Snowshoe Co. v. Shenandoah Federal Savings & Loan Ass'n*, 789 F.2d 1085, 1088–89 (4th Cir. 1986), recognizes equity protection as material to adequate protection, and *In re James River Associates*, 148 B.R. 790, 796–97 (E.D. Va. 1992), observed that reported decisions commonly regarded a 20% equity cushion as substantial, while declining to impose a categorical percentage rule. Dkt. 833 does not find the $950,000 appraisal unreliable, does not find BOKF undersecured, does not find Kapalua declining in value, and does not identify evidence showing that the resulting equity cushion is insufficient to protect BOKF. Instead, it calls the equity "entirely chimerical" because the property is not currently listed and Applicant does not intend to sell it. App. 127a.

That is not merely a disagreement over weighing evidence. It substitutes a different legal inquiry for the one the governing law requires. The question under § 362(d)(1) is whether "cause," including lack of adequate protection, exists—not

whether the debtor presently wishes to sell or refinance property whose documented value materially exceeds the secured debt. *Snowshoe* and *James River* therefore expose the significance of the substitution: rather than adjudicate whether the existing collateral value adequately protects BOKF under the governing standard, Dkt. 833 avoids that merits inquiry by treating Applicant's present disposition plans as though they negate the equity itself. Applicant contends that this is an unlawful extra-statutory workaround, not an adjudication of the question the Code and controlling law actually present. And it is especially consequential because the Bankruptcy Court had already established an evidentiary process for resolving the § 362(d)(1) controversy, App. 84a–89a, only to cancel that process when Dkt. 625 relied instead on Trustee nonadministration as "cause." App. 106a–111a.

That substitution is not isolated. It is the latest endpoint of the longer record described next: threshold legal questions are excluded from the decisional path, a different premise is supplied in their place, the substituted premise acquires the force of adjudication, and later proceedings treat efforts to obtain the missing determination as repetition. The Kapalua orders now place an occupied residence at risk through that same sequence. The decade-long Clear Sky/Oppenheim record shows why independent review is necessary before another irreversible consequence follows from an adjudication that never occurred.

THE DECADE-LONG CLEAR SKY/OPPENHEIM NON-ADJUDICATION

A. The Recurring Threshold Defect Predates Applicant's Filing History and Appears Exclusively Across Five Judge Kenney Matters.

Applicant does not ask the Circuit Justice to adjudicate five bankruptcy cases on an emergency application or to infer a subjective motive from adverse rulings. The cross-case history matters because the new stay order portrays the present case as needless prolongation while the threshold claimant/enforcement defect that generated much of the litigation has never received the first adjudication Applicant repeatedly sought. 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. See App. 185a-206a.

In 17-13863-BFK, involving a different debtor, Clear Sky Claim No. 8-1 identified Clear Sky as current creditor and answered "No" to acquisition even though the same sworn claim package attached an Oppenheim-lender note and Oppenheim-to-Clear-Sky transfer or endorsement language. That debtor objected; Clear Sky responded; and the reviewed docket reflects no adjudication of acquisition disclosure, transfer chain, holder/person-entitled-to-enforce status, Rule 3001, real-party status, or § 502(b)(1) enforceability before dismissal. In 18-12533-BFK, amended Claims Nos. 1-2, 1-3, and 1-4 again identified Clear Sky as creditor, listed Oppenheim, and answered "No" to acquisition without a located first-instance instrument explaining how Clear Sky acquired enforcement rights in the Oppenheim-lender note. The earlier 16-14261-BFK matter supplies the transfer/entity precursor: Judge Kenney approved substantial payments to Clear Sky Holdings and Clear Sky Financial without a located adjudication of the recurring Oppenheim/Clear Sky threshold-status issue.

The same documentary structure then reached Applicant. In 24-11033-BFK, Claim No. 10-1 again used the "No acquisition"/Oppenheim-lender structure and omitted the final note page containing the transfer language. Applicant's July 29, 2024 Dkts. 56 and 58 placed the funding-and-transfer controversy before the court, including title-company material identifying Clear Sky—not Oppenheim—as the funding source; the case ended without a threshold adjudication. Current Claim No. 1-1 repeated the acquisition denial and omitted final page. See App. 259a-271a. Main Dkt. 366 overruled the claim objection by importing prior adversary reasoning rather than independently deciding Rule 3001, § 502(b)(1), acquisition, transfer, PETE, or real-party status. App. 278a. Main Dkt. 697 later acknowledged that an incorrect "No acquisition" answer could carry civil consequences, but still did not adjudicate Clear Sky's enforcement status. Across the comparator record, the contradiction is documentary and specific, not merely thematic.

B. The Virginia-Law Sequencing Defect Was Expressly Presented to Judge Kenney and Affirmatively Preserved.

The record eliminates any suggestion that the state-law sequencing issue was merely overlooked. Main Dkt. 535 acknowledged that the original note identified Richard Oppenheim, Jr. as "Lender," but relied on later modifications identifying Clear Sky as "Lender" and bearing Applicant's signature. App. 207a-208a. Dkt. 552 squarely identified the statutory inversion: Virginia Code § 8.3A-117 permits modification by a separate agreement of the obligor and a "person entitled to enforce the instrument." Section 8.3A-301 defines the relevant person-entitled-to-

enforce status. Existing enforcement status is therefore a predicate to the modifying agreement; the later agreement cannot be self-validating proof of the antecedent status necessary to give it the asserted effect. Dkt. 552 told the Court: "The validity of those modifications turns on antecedent enforcement authority, not the other way around." App. 209a-218a. Dkt. 598 reproduced the challenge, repeated the signature-based reasoning, and concluded: "This was not an error of law." App. 219a-221a.

For present emergency purposes, the Circuit Justice need not decide whether that persistence reflected conscious disregard, misunderstanding, or some other cause. The objective fact is sufficient: the precise statutory sequence was presented, expressly recognized, and not corrected before the same unresolved Clear Sky premise continued to generate federal consequences. That is why Applicant characterizes the problem as non-adjudication followed by substitution, not merely as disagreement with one adverse ruling.

C. Non-Adjudication Became Repetition and Filing Restriction.

The accumulated history later became the basis for two categorical prefiling injunctions in AP No. 24-01058 Dkt. 202, App. 222a-224a, and AP No. 25-01026 Dkt. 107, App. 225a-227a. Applicant's record-based challenge is that those orders converted heterogeneous notices, evidentiary filings, procedural dispositions, and derivative rulings into a repetitive-motion narrative without the filing-specific and circumstance-specific *Cromer* analysis required before restricting access. See App. 228a-258a. The significance here is not collateral sanctions history. It is causal:

unresolved threshold issues were first treated as already resolved; renewed attempts to obtain the missing adjudication were then characterized as repetition; and filing access was restricted on that transformed history. In Applicant's shorthand: non-adjudication became prior adjudication; prior adjudication became repetition; repetition became silence.

D. The Decade-Long Historical Record Explains Why Preserving Independent Appellate Review Now Is Indispensable.

The new stay-denial order should therefore not be read in isolation as a routine disagreement over foreclosure timing. Judge Kenney now relies on case-closing rhetoric and attributes improper motive to Applicant while again declining to adjudicate whether the NDR lawfully accomplished the estate consequence attributed to it, whether the § 327-defective sale history can support nonadministration, whether the $950,000 appraisal and resulting equity protection defeat creditor prejudice, or whether Dkt. 625 satisfied *Robbins* and *Herlihy*. At the same time, the larger record shows a decade-long recurrence of the same Clear Sky/ Oppenheim status defect without a located first-instance adjudication and an express refusal to correct the § 8.3A-117 sequencing problem after notice. The new order itself emphasizes that stay relief has been granted with respect to all three of Applicant's properties. Applicant's point is not that this fact alone proves wrongdoing; it is that irreversible property consequences have accumulated while the threshold Clear Sky enforcement controversy remained unresolved and while no

independent supervisory reset supplied the missing adjudication. The residence is now the next property at risk.

Applicant's position is that the underlying Clear Sky instrument and enforcement structure may be unenforceable under Virginia law and that federal bankruptcy consequences have accumulated without the threshold state-law status questions ever being adjudicated. This Application does not ask the Chief Justice to decide that ultimate merits question now. It asks for the narrower protection *Nken* contemplates: preserve the home and the first independent appellate review long enough for a reviewing tribunal to decide whether the statutory predicates were lawfully established before another irreversible property consequence occurs.

FORECLOSURE RELIEF: STAY FIRST; INJUNCTION AS FALLBACK

Under *Nken*, Applicant principally asks the Circuit Justice to suspend the operative effect of Dkt. 625 sufficiently to prevent the December 17 foreclosure while the pending preservation and rehearing proceedings are adjudicated. That relief preserves the status quo; it does not award the ultimate bankruptcy merits relief. Dkt. 833 now expressly concedes that foreclosure is an irreparable injury favoring Applicant. App. 125a–129a.

Only if a stay cannot technically prevent consummation of the foreclosure does Applicant request the narrower fallback restraint against BOKF and the substitute trustee. *Ohio Citizens for Responsible Energy, Inc. v. NRC*, 479 U.S. 1312 (1986) (Scalia, J., in chambers), requires exceptional justification for affirmative All Writs relief; that concern is satisfied here by a date-certain sale of an occupied

residence, the resulting risk of foreclosure-created appellate mootness, and the limited duration requested. App. 112a–117a. *Volkswagenwerk* likewise supports temporary preservation where relief was first sought below but the intervening event may occur before the lower tribunal acts. Applicant therefore requests preservation at least until the Fourth Circuit acts on Dkt. 13 and, alternatively, through disposition of rehearing or such shorter period as the Circuit Justice determines appropriate.

CONCLUSION

Applicant respectfully requests an immediate temporary administrative stay preventing final merits disposition in E.D. Va. No. 1:26-cv-01125-LMB-IDD and preventing enforcement of Bankruptcy Dkt. 625 through foreclosure while this Application is considered; continuation of that protection at least until the Fourth Circuit acts on its pending emergency preservation motion and, alternatively, through disposition of rehearing or a shorter period fixed by the Circuit Justice; and, only if a stay cannot technically reach the foreclosure mechanism, a narrowly tailored injunction preventing consummation of the December 17 sale during that preservation period.

The requested relief decides neither recusal nor the bankruptcy merits. It preserves an occupied residence and the first appellate adjudication long enough for the pending courts to determine whether the challenged adjudicative and property consequences may lawfully occur before meaningful review. *Nken* exists so review of questions this consequential does not become an idle ceremony.

Respectfully submitted,



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Dated: November 3, 2026

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