

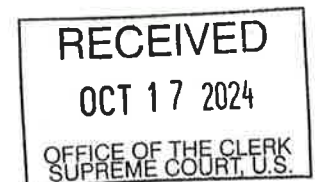
App No.

In the Supreme Court of the United States
In re: Patrick Comack, Petitioner

On Application for an Extension of Time to File
Petition for a Writ of Certiorari to the
United States Court of Appeals for the
Eleventh Circuit

Patrick Comack, Pro Se Applicant
1107 Key Plaza, #173
Key West, FL 33040
(c) 305-609-6773
October 15, 2024

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PARTIES TO THE PROCEEDINGS

Applicant **Patrick Comack** was the Plaintiff and Appellant in the proceedings below.

Special Assistant U.S. Attorney **Richard Blake** is counsel at the appellate level for the Respondent Defendant Commissioner of the Social Security Administration.

U.S. District Court for the Southern District of Florida Key West Division **Judge Jose E. Martinez** is a respondent.

U.S. District Court for the Southern District of Florida Key West Division Magistrate Judge **Lauren Fleischer Louis** is a respondent.

**APPLICATION FOR AN EXTENSION OF TIME
WITHIN WHICH TO FILE PETITION FOR A
WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE
ELEVENTH CIRCUIT**

To the Honorable Clarence Thomas, Associate
Justice of the Supreme Court of the United States
and Circuit Justice for the Eleventh Circuit:

Pursuant to 28 U.S.C. § 2101(c) and Rules 13.5, 22,
and 30.3 of the Rules of this Court, applicant Patrick
Comack (“Comack”) respectfully requests a 60-day
extension of time, up to and including December 27,
2024, within which to file a petition for a writ of
certiorari in this case to review the judgment of the
United States Court of Appeals for the Eleventh
Circuit. The Eleventh Circuit entered its judgment
on July 30, 2024 (the court of appeals’ opinion is
attached hereto as Exhibit A). The petition for a writ
of certiorari would be due on October 28, 2024. This
application is made 13 days before that date.

Reasons For Granting an Extension of Time

Not only is Applicant Comack pro se, but he's also brain injured. He is not a professional, high-level, unimpaired attorney. Hence, Comack needs more time to write a Writ of Certiorari for this Honorable Supreme Court, and respectfully requests that the Honorable Justice Thomas accept this petition and grant the relief requested.

1. In 2016, the Social Security Administration ruled that Comack has a severe impairment called Pernicious Anemia, and put that impairment in the "11.17" impairment listing called "Neurodegenerative Disorders of the Central Nervous System".

2. This nerve degeneration in Comack is brain damage, since the Central Nervous System consists of the brain, spinal cord and optic nerve. Pernicious Anemia causes permanent

brain damage via nerve demyelination in the
brain.

This Court's jurisdiction would be invoked under 28
U.S.C. § 1254(1).

Wherefore, Applicant Patrick Comack again
respectfully requests a 60-day extension of time, up
to and including December 27, 2024, within which to
file a petition for a writ of certiorari in this case to
review the judgment of the United States Court of
Appeals for the Eleventh Circuit.

Dated: October 15, 2024

Respectfully submitted,

Patrick J. Comack
(C) #305-609-6773
E-mail: pcomack@protonmail.com

A handwritten signature in black ink that reads "Patrick J. Comack". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Exhibit A

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-11204

In re: PATRICK COMACK,

Petitioner.

On Petition for Writ of Mandamus to the
United States District Court for the
Southern District of Florida
D.C. Docket No. 4:23-cv-10040-JEM

Before NEWSOM and LUCK, Circuit Judges.

BY THE COURT:

Patrick Comack, proceeding *pro se*, petitions this Court for a writ of mandamus and/or prohibition. Comack has paid the filing fee for his petition. In it, Comack seeks an order directing the recusal of Judge Jose Martinez from Comack's pending case in the U.S. District Court for the Southern District of Florida that challenges the Social Security Administration's refusal to grant his claim for supplemental security income. Comack argues that Judge Martinez should have recused himself from the case because of personal bias against Comack and because of Judge Martinez's graduation from the University of Miami and his employment with the University of Miami Law School as an adjunct professor. Comack contends that his social security proceedings implicate the University of Miami hospital because a disability award would aid Comack in pursuing claims for liability against the hospital.¹

Writs of prohibition and mandamus, both authorized under 28 U.S.C. § 1651, are "two sides of the same coin with interchangeable standards." *United States v. Pleau*, 680 F.3d 1, 4, (1st Cir. 2012) (*en banc*) (persuasive authority). They are available only in drastic situations when no other adequate means are available to remedy a clear usurpation of power or abuse of discretion. *United States v. Shalhoub*, 855 F.3d 1255, 1259 (11th Cir. 2017); *Jackson v. Motel 6 Multipurpose, Inc.*, 130 F.3d 999, 1004 (11th Cir. 1997) (quotation marks omitted). The petitioner has the burden of showing that he has no

¹ Comack also requests the recusal of the assigned magistrate judge, but he makes no arguments specifically related to her recusal, other than the allegation that she is Judge Martinez's magistrate judge.

other avenue of relief, and that his right to relief is clear and indisputable. See *Mallard v. U.S. Dist. Court*, 490 U.S. 296, 309 (1989); see also *In re Wainwright*, 678 F.2d 951, 953 (11th Cir. 1982) (applying the same standard to writs of prohibition). These writs may not be used as a substitute for appeal or to control decisions of the district court in discretionary matters. *Jackson*, 130 F.3d at 1004; *In re Wainwright*, 678 F.2d at 953. When an alternative remedy exists, even if it is unlikely to provide relief, mandamus relief is not proper. See *Lifestar Ambulance Serv., Inc. v. United States*, 365 F.3d 1293, 1298 (11th Cir. 2004).

Under 28 U.S.C. § 455(a), a judge must “disqualify himself in any proceeding in which his impartiality might reasonably be questioned” or in any circumstances “[w]here he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding.” 28 U.S.C. § 455(a), (b)(1). Similarly, under 28 U.S.C. § 144, a judge must recuse himself if a party to the proceeding makes a timely and sufficient showing by affidavit that the judge “has a personal bias or prejudice” against him. *Id.* § 144. Disqualification is required only when the alleged bias is personal in nature, that is, stemming from an extra-judicial source. *Loranger v. Stierheim*, 10 F.3d 776, 780 (11th Cir. 1994). Judicial rulings alone almost never constitute a valid basis for a bias or partiality motion. *Liteky v. United States*, 510 U.S. 540, 555 (1994). Likewise, “opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or

antagonism that would make fair judgment impossible.” *Id.* We have held that “a judge, having been assigned to a case, should not recuse himself on unsupported, irrational, or highly tenuous speculation.” *In re Moody*, 755 F.3d 891, 895 (11th Cir. 2014) (quoting *United States v. Greenough*, 782 F.2d 1556, 1558 (11th Cir. 1986)).

An appeal from a final judgment brings up for review all preceding non-final orders that produced the judgment. *Mickles on behalf of herself v. Country Club, Inc.*, 887 F.3d 1270, 1278-79 (11th Cir. 2018); *Barfield v. Brierton*, 883 F.2d 923, 930-31 (11th Cir. 1989). A district court’s pre-judgment ruling on recusal or disqualification is reviewable upon appeal after issuance of a final judgment. *Steering Comm. v. Mead Corp. (In re Corrugated Container Antitrust Litig.)*, 614 F.2d 958, 960-62 (5th Cir. 1980). Accordingly, such a ruling is not reviewable on appeal until the litigation is final, though a writ of mandamus may issue to correct such a decision in “exceptional circumstances amounting to a judicial usurpation of power.” *Id.* at 960-62 & n.4 (quotation marks omitted); *see id.* at 961-62 (declining to grant mandamus relief relating to a district court judge’s refusal to recuse himself where full review of the issue was available on appeal); *see also In re Moody*, 755 F.3d at 897 (explaining that review of district court judge’s refusal to recuse under mandamus authority was “even more stringent” than the ordinary abuse-of-discretion standard applicable to review on appeal of recusal issue, because the drastic remedy of mandamus was available only in exceptional circumstances). Where a judge’s duty to recuse himself either is debatable or non-existent, a writ of mandamus will not issue to compel recusal. *Corrugated Container*, 614 F.2d at 962.

Comack is not entitled to mandamus or prohibition relief because he has the adequate alternative remedy of appealing the district court's denial of his motion for recusal, if necessary, after final judgment is entered in his case. He has not shown any "exceptional circumstances" to warrant an immediate recusal challenge through mandamus, rather than an appeal. While Comack contends that Judge Martinez lied in his recusal order when he incorrectly stated that Comack had not filed a supporting affidavit, the court went on to consider the merits of Comack's motion. To the extent that Comack relies on Judge Martinez's dismissal of Comack's previous social security case, judicial rulings alone almost never constitute a valid basis for a bias or partiality motion. Finally, Comack has made no showing, beyond mere speculation, of how his claim for supplemental security income would have any impact upon the potential criminal or civil liability of the University of Miami. In sum, Comack's allegations do not make the stringent showing that Judge Martinez has such a non-debatable duty to recuse himself that mandamus or prohibition is an appropriate remedy.

Accordingly, Comack's petition for a writ of mandamus and/or prohibition is **DENIED**.

CERTIFICATE OF SERVICE

I certify that I will be sending a true and correct copy of the forgoing document on October 15, 2024 by U.S. certified mail to the following parties, and that this mailing event is true under penalty of perjury under the laws of the United States of America:

Solicitor General of the United States
Department of Justice
950 Pennsylvania Ave., N. W., Room 5616
Washington, DC 20530-0001

Richard V. Blake
Special Assistant U.S. Attorney
Office of Program Litigation, Office 5
Office of the General Counsel
Social Security Administration
6401 Security Boulevard
Baltimore, Maryland 21235
Email: richard.blake@ssa.gov

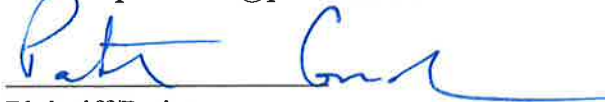
Judge Jose E. Martinez
U.S. District Court for the Southern District of
Florida Key West Division
Wilkie D. Ferguson, Jr. United States Courthouse
400 North Miami Avenue
Room 10-1
Miami, Florida 33128

Magistrate Judge Lauren Fleischer Louis
U.S. District Court for the Southern District of
Florida Key West Division
C. Clyde Atkins U.S. Courthouse
301 North Miami Avenue
11th floor
Miami, Florida 33128

Dated: October 14, 2024

Respectfully submitted,

Patrick J. Comack
(C) #305-609-6773
E-mail: pcomack@protonmail.com



Plaintiff/Patient

Sworn to and subscribed before me
this 14th day of October 2024


Notary Public



**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

July 30, 2024

Patrick Comack
1107 KEY PLAZA #173
KEY WEST, FL 33040

Appeal Number: 24-11204-C
Case Style: In re: Patrick Comack
District Court Docket No: 4:23-cv-10040-JEM

The enclosed order has been entered. No further action will be taken in this matter.

Any pending motions are now rendered moot in light of the attached order.

Clerk's Office Phone Numbers

General Information:	404-335-6100	Attorney Admissions:	404-335-6122
Case Administration:	404-335-6135	Capital Cases:	404-335-6200
CM/ECF Help Desk:	404-335-6125	Cases Set for Oral Argument:	404-335-6141

Enclosure(s)

DIS-4 Multi-purpose dismissal letter