No. 24-645

IN THE
Supreme Court of the United States

KELSEY CASCADIA ROSE JULIANA, ET AL.,
Petitioners,

v.

THE UNITED STATES OF AMERICA, ET AL.
Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For the Ninth Circuit

BRIEF OF PUBLIC JUSTICE AND MONTANA TRIAL LAWYERS ASSOCIATION AS AMICI CURIAE SUPPORTING PETITIONERS

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INTERESTS OF THE AMICI CURIAE

Public Justice is a nonprofit legal advocacy organization that specializes in precedent-setting socially significant civil litigation, with a focus on fighting corporate and governmental misconduct.[1] Public Justice has a long history of challenging weak government regulation and ensuring that aggrieved parties have access to courts.

The Montana Trial Lawyers Association (MTLA) is an organization of Montana attorneys who work to secure just results for the injured, the accused, and those whose rights are jeopardized. MTLA's goals include improving the adversary system and upholding the just resolution of disputes by trial.

This case is of interest to Public Justice and MTLA because it raises questions regarding the ability of the Government to seek writs of mandamus to avoid going to trial. The improper application of the mandamus standard would prevent injured parties whose rights have been violated from getting their day in court.

SUMMARY OF ARGUMENT

The court of appeals erred in granting the Government's petition for a writ of mandamus. The

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[1] Pursuant to Rule 37.6, Amici affirms that no counsel for any party authored this brief in whole or in part, and no person or entity other than Amici, its members and its counsel has made a monetary contribution to support the brief's preparation or submission. Pursuant to Rule 37.2, Amici affirms that counsel of record for all of the parties received notice of Amici's intention to file an *amicus* brief at least ten days prior to the deadline to file the brief.

court of appeals failed to analyze the Government's petition under the binding standard set out by this Court in *Cheney v. United States District Court for the District of Columbia*, 542 U.S. 367, 380–81 (2004). If the court of appeals had properly applied the *Cheney* mandamus standard, it would have been required to deny the Government's petition.

The Government cannot meet the *Cheney* mandamus standard because the Government has other means to attain the relief it desires through the traditional appellate process. The Government's sole argument to justify mandamus is the Department of Justice's past and anticipated future litigation expenses associated with going to trial. That argument is firmly foreclosed by precedent. And even if it wasn't foreclosed by precedent, the argument trivializes the extraordinary nature of mandamus and would improperly circumvent the final judgment rule. This Court should grant certiorari to uphold the mandamus standard set out in *Cheney*.

ARGUMENT

This case involves the first attempt in history of the United States Government to seek the extraordinary remedy of mandamus solely to avoid the litigation expenses of going to trial. On May 1, 2024, in an unpublished 3-page order, the Ninth Circuit granted the Government's petition for writ of mandamus. That order is the first time that the Ninth Circuit applied *de novo* review instead of the standard set out in *Cheney v. United States District Court for the District of Columbia*, 542 U.S. 367 (2004) to determine whether a writ of mandamus is appropriate. It makes sense why the Ninth Circuit has never done this before—there is not a single legal

authority that permits the court of appeals to ignore the *Cheney* standard and apply *de novo* review. In applying *de novo* review, the court of appeals sidestepped the Government's complete inability to meet the *Cheney* standard for mandamus. Indeed, the court of appeals never acknowledged the only argument that the Government makes for mandamus: a desire to avoid litigation expenses. Allowing litigation expenses to justify mandamus defies precedent and weakens the traditional appellate system. This Court should grant the petition for writ of certiorari to uphold the traditionally high bar for mandamus set out in *Cheney*.

I. The Court Of Appeals Erred By Failing To Apply The *Cheney* Standard.

The court of appeals improperly ignored the standard set out by this Court and the Ninth Circuit for whether a writ of mandamus is appropriate. In *Bauman v. United States District Court*, the Ninth Circuit set out five factors to determine whether mandamus is appropriate:

> (1) The party seeking the writ has no other adequate means, such as a direct appeal, to attain the relief he or she desires. (2) The petitioner will be damaged or prejudiced in a way not correctable on appeal. (This guideline is closely related to the first.) (3) The district court's order is clearly erroneous as a matter of law. (4) The district court's order is an oft-repeated error, or

> manifests a persistent disregard of the federal rules. (5) The district court's order raises new and important problems, or issues of law of first impression.

557 F.2d 650, 654–655 (9th Cir. 1977) (internal citations omitted). Several years later, this Court in *Cheney* held:

> As the writ [of mandamus] is one of the most potent weapons in the judicial arsenal, three conditions *must be satisfied* before it may issue. First, the party seeking issuance of the writ must have no other adequate means to attain the relief he desires—a condition designed to ensure that the writ will not be used as a substitute for the regular appeals process. Second, the petitioner must satisfy the burden of showing that his right to issuance of the writ is clear and indisputable. Third, even if the first two prerequisites have been met, the issuing court, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances.

Cheney, 542 U.S. at 380–81 (emphasis added) (internal citations and quotations omitted). Thereafter, Ninth Circuit precedent required the application of the *Bauman* factors in a manner "consistent with" *Cheney*. *In re United States*, 791 F.3d 945, 955 n.7 (9th Cir. 2015).

Instead of properly applying this binding

precedent, the court of appeals misapplied the *de novo* review standard set out in *Vizcaino v. United States District Court for Western District of Washington*, 173 F.3d 713 (9th Cir. 1999). *See* Pet. at 26–30 (discussing how the court of appeals opinion deepened a circuit split). In *Vizcaino*, the Ninth Circuit held that the *Bauman* standard "does not apply when mandamus is sought on the ground that the district court failed to follow the appellate court's mandate." 173 F.3d at 719. As an initial matter, it is questionable whether *Vizcaino* was correctly decided, given the existing binding circuit precedent. *See Hart v. Massanari*, 266 F.3d 1155, 1171 (9th Cir. 2001) (holding that "a later three-judge panel considering a case that is controlled by the rule announced in an earlier panel's opinion has no choice but to apply the earlier-adopted rule; it may not any more disregard the earlier panel's opinion than it may disregard a ruling of the Supreme Court."); *see also Pit River Tribe v. U.S. Forest Serv.*, 615 F.3d 1069, 1079 n.1 (9th Cir. 2010) (noting nothing in *Bauman* allows for the *Vizcaino* "exception and indeed it has not even been alluded to in the subsequent 22 years after we filed *Bauman* until *Vizcaino*.").

Even if the *Vizcaino* panel had the authority to craft such an exception to *Bauman*, that exception was eradicated, or, at the very least, limited by this Court's opinion in *Cheney*. *Langere v. Verizon Wireless Servs., LLC*, 983 F.3d 1115, 1122 (9th Cir. 2020) ("[W]hen a rule announced by this court and a rule later announced by the Supreme Court cannot both be true at the same time, they are clearly irreconcilable. In such a case, the former must give way to the latter."); *see also United States v. Lindsey*, 634 F.3d 541, 550 (9th Cir. 2011) (declining to follow prior

circuit precedent in light of Supreme Court opinion that applied a different standard of review). *Vizcaino* is irreconcilable with *Cheney*. Pet. at 33; *see also In re Trade & Com. Bank By & Through Fisher*, 890 F.3d 301, 303 (D.C. Cir. 2018) (per curiam) (rejecting a *Vizcaino* exception because "[n]either *Cheney* nor any later case created an exception for mandamus actions seeking to enforce a mandate."). At a minimum, for *Vizcaino* to be consistent with *Cheney*, it must be limited to the specific facts before the court in *Vizcaino*. Here, unlike in *Vizcaino*, there will be a future opportunity to appeal after a final judgment is rendered. *See Vizcaino*, 173 F.3d at 719–20. Therefore, *Vizcaino* is inapplicable, and the Ninth Circuit was bound by the *Cheney* standard.

Had the Ninth Circuit properly considered the *Cheney* standard, it would have been forced to deny the petition. Indeed, the Government cannot even satisfy the first *Cheney* factor, as it has other means to attain the relief it desires.

II. Litigation Expenses Do Not Satisfy The First *Cheney* Factor.

The Ninth Circuit erroneously granted the petition without considering the fact that the Government has other means to attain the relief it desires. As this Court held in *Cheney*, "[f]irst, the party seeking issuance of the writ [must] have no other adequate means to attain the relief he desires, a condition designed to ensure that the writ will not be used as a substitute for the regular appeals process." 542 U.S. at 380–81 (alteration in original) (internal citations and quotations omitted). Here, both orders at issue in the Government's mandamus petition are appealable after final judgment. Ct. App.

VII Doc. 1.1 at 23, 49.[2] The *only* argument the Government has to justify mandamus is past litigation expenses and anticipated future litigation expenses from trial. *Id.* at 48. However, it is well established that "where the appeal statutes establish the conditions of appellate review[,] an appellate court cannot rightly exercise its discretion to issue a writ whose only effect would be to avoid" "costly and inconvenient" litigation expenses. *Roche v. Evaporated Milk Ass'n*, 319 U.S. 21, 30 (1943). Moreover, allowing litigation expenses to justify mandamus would erode the final judgment rule and abandon the tradition against piecemeal appeals. Therefore, litigation expenses do not justify mandamus, and the Government cannot satisfy even the first *Cheney* factor necessary to warrant mandamus.

A. Precedent Forecloses The Argument That Litigation Expenses Justify Mandamus.

Litigation expenses alone do not justify the issuance of a writ of mandamus, because they do not demonstrate that the movant has no other adequate means of obtaining relief. This Court has long held that "extraordinary writs cannot be used as substitutes for appeals, even though hardship may result from delay and perhaps unnecessary trial[.]" *Bankers Life & Cas. Co. v. Holland*, 346 U.S. 379, 383 (1953) (internal citations omitted); *see also Roche*, 319 U.S. at 30. This holding has not been disturbed and has been uniformly followed by the Ninth Circuit. *See,*

[2] Amici adopt the docket references set out by Petitioners. Pet. at iv.

e.g., In re Creech, 119 F.4th 1114, 1124–25 (9th Cir. 2024); *In re United States*, 884 F.3d 830, 835–836 (9th Cir. 2018); *In re Boon Glob. Ltd.*, 923 F.3d 643, 654–55 (9th Cir. 2019); *In re Swift Transp. Co.*, 830 F.3d 913, 916 (9th Cir. 2016); *In re Orange, S.A.*, 818 F.3d 956, 964 (9th Cir. 2016); *In re Sussex*, 781 F.3d 1065, 1075 (9th Cir. 2015); *DeGeorge v. U.S. Dist. Ct. for Cent. Dist. of Cal.*, 219 F.3d 930, 935 (9th Cir. 2000); *Calderon v. U.S. Dist. Ct. for Cent. Dist. of Cal.*, 163 F.3d 530, 534–535 (9th Cir. 1998), *abrogated on other grounds*, 538 U.S. 202 (2003); *Mortgages, Inc. v. U.S. Dist. Ct. for Dist. of Nev. (Las Vegas)*, 934 F.2d 209, 211 (9th Cir. 1991); *Plastic Sci., Inc. v. U.S. Dist. Ct. for Cent. Dist. of Cal.*, 863 F.2d 886, at *3 (9th Cir. 1988) (unpublished table decision); *Wash. Pub. Utils. Grp. v. U.S. Dist. Ct. for W. Dist. of Wash.*, 843 F.2d 319, 325 (9th Cir. 1987); *In re Sugar Antitrust Litig.*, 559 F.2d 481, 484 (9th Cir. 1977) (per curiam); *see also Gulf Rsch. & Dev. Co. v. Harrison*, 185 F.2d 457, 459 (9th Cir. 1950). The ubiquitous and consistent application of this holding makes sense, as writs of mandamus issue under drastic and extraordinary circumstances, whereas "mere cost and delay [] are the regrettable, yet normal, features of our imperfect legal system." *DeGeorge*, 219 F.3d at 935 (internal quotations omitted); *In re United States*, 884 F.3d at 835–36. Even highly complex or lengthy trials do not warrant the issuance of a writ of mandamus. *See, e.g., Roche*, 319 U.S. at 30 (holding that the inconvenience of a trial which "may be of several months' duration" is insufficient to justify a writ of mandamus); *In re Orange, S.A.*, 818 F.3d at 964 (noting that the Ninth Circuit has "consistently rejected the position that the costs of trying massive civil actions render review after final judgment inadequate." (internal citations

and quotations omitted)).

The Ninth Circuit has found that expected litigation costs justified mandamus relief in just three prior cases, all of which are easily distinguishable based on exceptional additional circumstances. First, the Ninth Circuit found costs justified a writ of mandamus where a district court improperly denied a motion to transfer. *Pacific Car & Foundry Co. v. Pence*, 403 F.2d 949, 953 (9th Cir. 1968). The Ninth Circuit later explicitly limited *Pacific Car*'s holding to specific types of forum non convenience challenges. *In re Orange, S.A.*, 818 F.3d at 964. *Pacific Car* is thus inapplicable. Second, the Ninth Circuit found costs justified a writ of mandamus in a pension benefits suit where the *in forma pauperis* plaintiff's sole source of income was social security, and the costs of a *second* trial and delay in receiving any benefits would "severely prejudice[]" the plaintiff. *Varsic v. U.S. Dist. Ct. for Cent. Dist. of Cal.*, 607 F.2d 245, 251–52 (9th Cir. 1979). The Government is certainly not an *in forma pauperis* party whose sole source of income is at stake in this suit, and it is attempting to avoid a *first* trial, not a second. Finally, the Ninth Circuit found costs justified a writ of mandamus where a judge's motion to recuse would "significantly impair the progress of [] litigation," and the court was "concerned with far more than the injury to these particular petitioners[.]" *In re Cement Antitrust Litig. (MDL No. 296)*, 688 F.2d 1297, 1303 (9th Cir. 1982). *In re Cement Antitrust Litigation* should be read narrowly to "issues that could potentially have a profound effect on the administration and operation of the courts, (i.e. a challenge to district court's recusal order)." *Plastic Science, Inc.*, 863 F.2d at *3. This concern is not relevant here.

In sum, litigation expenses do not justify the issuance of a writ of mandamus, and the Government has not pointed to a single authority to the contrary. If the court of appeals had properly analyzed the Government's petition under the *Cheney* standard, it would have been forced to confront this longstanding precedent and deny the Government's petition.

B. Holding That Litigation Expenses Justify Mandamus Relief Would Dismantle The Traditional Appellate System.

The Government's position trivializes the exceptional nature of mandamus and would allow for piecemeal appeals. Litigation expenses do not warrant the abandonment of the final judgment rule. The Government, like any other party, must bear its litigation expenses. This is not an extraordinary case of expense. It is simply a case in which the Government improperly seeks to use mandamus to avoid trial. But a mandamus cannot be issued in a case such as this, where the Government has other means to attain the relief it is seeking.

The Government's mandamus argument threatens the traditional appellate system embodied in the final judgment rule. *See* 28 U.S.C. § 1291 ("The courts of appeals . . . shall have jurisdiction of appeals from all final decisions of the district courts of the United States[.]"). As this Court held, the final judgment rule is essential to "preserve[] the proper balance between trial and appellate courts, minimize[] the harassment and delay that would result from repeated interlocutory appeal[], and promote[] the efficient administration of justice." *Microsoft Corp. v. Baker*, 582 U.S. 23, 36–37 (2017).

To protect this rule, this Court has admonished that mandamus must not become a substitute for the normal appellate process. *Bankers Life & Cas. Co.*, 346 U.S. at 383; *Kerr v. U.S. Dist. Ct. for N. Dist. of Cal.*, 426 U.S. 394, 402–403 (1976). Therefore, writs of mandamus will only be issued in truly exceptional circumstances. *Cheney*, 542 U.S. at 380–81. Maintaining a high standard for mandamus is critical, because "[u]nder a more relaxed standard, cases could be interrupted and trials postponed indefinitely as enterprising appellants bounced matters between the district and appellate courts." *United States v. Acad. Mortg. Corp.*, 968 F.3d 996, 1002 (9th Cir. 2020) (internal citations and quotations omitted).

Litigation expenses are not an excuse to bypass the final judgment rule. It is true that "trial may be of several months' duration and may be correspondingly costly and inconvenient. But that inconvenience is one which we must take it Congress contemplated in providing that only final judgments should be reviewable." *Roche*, 319 at 30; *see also Bankers Life & Cas. Co.*, 346 U.S. at 383 (finding Congress contemplated additional litigation expenses in providing the final judgment rule). If writs could be obtained based on litigation expenses, mandamus would eviscerate the statutory scheme established by Congress to "strictly circumscrib[e] piecemeal appeal." *Bankers Life & Cas. Co.*, 346 U.S. at 383 (citing 28 U.S.C. §§ 1291, 1292). Indeed, as the Ninth Circuit explained in *Calderon*, unnecessary litigation expense

> happens every single time a litigant loses a summary judgment motion that

> he or she should have won, every time a district court mistakenly thinks federal jurisdiction exists when it does not, and every time a meritorious motion for judgment as a matter of law is denied. Undoubtedly, the cost and delay occasioned by such erroneous rulings, in the aggregate, are quite significant and can be quite burdensome to the individual litigant. If such harm could support mandamus, however, then mandamus would no longer be an extraordinary remedy and we will have effectively abandoned our tradition against piecemeal appeals.

163 F.3d at 535.

The Government is not exempt from this tradition against piecemeal appeals. As the Ninth Circuit has already held, "Congress has not exempted the government from the normal rules of appellate procedure . . . The government cannot satisfy the burden requirement for mandamus simply because it, or its officials or agencies, is a defendant." *In re United States*, 884 F.3d at 836. The government has other means of obtaining the relief it desires: the traditional appellate process. Therefore, mandamus is not justified.

The implications of the Government's argument make a mockery of the extraordinary and drastic nature of mandamus. According to the Government's reasoning, parties may avoid going to trial by singlehandedly racking up litigation expenses. *See* Ct. App. VII Doc. 1.1 at 48. As an initial matter, the Government must ignore precedent to

make this argument, since litigation expense which already has been incurred "is not correctable by mandamus relief." *In re Swift Transp. Co. Inc.*, 830 F.3d at 916; *see also supra* Section A.1. To hold to the contrary would enable the party that seeks this extraordinary relief to also be the very party that wrought the damage in the first place. Such a prospect is particularly a concern in this case: since 2015, the Government has filed *seven* petitions for writs of mandamus to prevent a trial. *See* Pet. at 5–13.[3] Over a third of the 21,000+ hours the Government has spent on this case has been spent on the appellate process alone–processes the Government itself chose to initiate. *Compare* D. Ct. Doc. 571-1 ¶ 3 *with* Pet. at 5–14 (describing the procedural history of the case). The Government has also attempted to stay this litigation fourteen times, employing other extraordinary legal tools to avoid reaching the merits. *See* D. Ct. Doc. 544 ¶¶ 3, 8. The Government's belaboring of the hours it has spent on this case is simply a reflection of the hours the Government *chose* to spend to deploy extraordinary legal tactics at Petitioners expense. *See Juliana v. United States*, 949 F.3d 1125, 1127 n.1 (9th Cir. 2018) (Friedland, J., dissenting) ("If anything has wasted judicial resources in this case, it was" the Government's requests for interlocutory appeal and mandamus relief).

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[3] This is not a regular practice for the Government, who, in no other case under President Biden's administration has sought even a single petition for writ of mandamus to prevent a trial. *See* D. Ct. Doc. 586 at 9. This is also not a regular practice for the Government at any point in history. Indeed, it is undisputed that the Government has *never* filed as many petitions for writs of mandamus as it has filed in the instant case. *See* D. Ct. Doc. 544 ¶¶ 3, 8.

The underlying facts of the Government's argument further make a mockery of the extraordinary and drastic nature of mandamus relief. Assuming that the Government spent 21,000+ hours on this case from 2016 to 2023, Ct. App. VII Doc. 1.1 at 48, and assuming a combined rate for these attorneys and paralegals is $500/hour, the Government's cumulative expenses approximate $10,500,000. Ct. App. VII Doc. 7.3 ¶ 23. In isolation, that may seem extreme. In context, it is clearly not. The expense of this case totals less than even 0.005% of the Department of Justice's overall budget for 2016–2023.[4] And the expense incurred in this case is far from an outlier; for example, in marked contrast

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[4] The Government's cumulative budget for 2016–2023 was $254,837,000,000. *See* Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, 129 Stat. 2242 (appropriating $29,090,000,000 to the Government in 2016); Consolidated Appropriations Act, 2017, Pub. L. No. 115-31, 131 Stat. 135 (appropriating $28,962,000,000 to the Government in 2017); Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, 132 Stat. 348 (appropriating $30,384,000,000 to the Government in 2018); Consolidated Appropriations Act, 2019, Pub. L. No. 116-6, 133 Stat. 13 (appropriating $30,934,000,000 to the Government in 2019); Consolidated Appropriations Act, 2020, Pub. L. No. 116-93, 133 Stat. 2317 (appropriating $32,605,000,000 to the Government in 2020); Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182 (appropriating $33,790,000,000 to the Government in 2021); Consolidated Appropriations Act, 2022, Pub. L. No. 117-103, 136 Stat. 49 (appropriating $35,207,000,000 to the Government in 2022); Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, 136 Stat. 4459 (appropriating $33,865,000,000 to the Government in 2023). This Court may take judicial notice of the basic addition and division of these numbers. *Miller v. Fed. Land Bank of Spokane*, 587 F.2d 415, 422 (9th Cir. 1978) (taking judicial notice of basic mathematical principles applied to numbers in dispute).

to the estimated $10.5 million spent over *eight years* litigating this case, the Department has spent more than $14 million on a single different case in *just one year*.[5]

Congress and this Court have confirmed that the Government is not exempt from bearing its own litigation expenses. The "American Rule" requires each party to bear its own litigation expenses. *See Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 271 (1975). As this Court recognized, this rule is "deeply rooted in our history and in congressional policy" and "it is not for us to invade the legislature's province by redistributing litigation costs." *Id.* The United States must bear its litigation costs here, as it does in every other case subject to the American Rule. Indeed, Congress has emphatically rejected the notion that the United States should be considered a special exception to this rule.[6] The Government expends resources litigating in every case. But there is no exception in any law that enables

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[5] *Special Counsel's Office – Smith Statement of Expenditures April 1, 2023 through September 30, 2023*, U.S. DEP'T OF JUST., https://www.justice.gov/d9/2024-01/SCO%20John%20L.%20Smith%20-%20SOE%20-%20Apr%201%202023%20to%20Sept%2030%202023_final%20 1.5.2024_0.pdf (last visited Jan. 7, 2025). This Court may take judicial notice of publicly available government records. *Mass. v. Westcott*, 431 U.S. 322, 323 n.2 (1977).

[6] In 28 U.S.C. § 2412, Congress waived the federal government's sovereign immunity and permitted fee shifting against the United States under common law rules and any federal fee-shifting statute. As the D.C. Circuit recognized in *Battle Farm Co. v. Pierce*, 28 U.S.C. § 2412 "is meant to discourage the federal government from using its superior litigating resources unreasonably—it is in this respect an 'anti-bully law.'" 806 F.2d 1098, 1101 (D.C. Cir. 1986), *vacated on other grounds*, 487 U.S. 1229 (1988).

the Government to abandon *both* the American Rule *and* the final judgment rule simply because it is the Government doing the litigating. *See In re United States*, 884 F.3d at 836.

Further, the ability of any defendant to weaponize its legal expenses to kick cases out of court is alarming; the ability of the Government to do so would be catastrophic. The United States is sued more than any other party, being a defendant in tens of thousands of cases each year, making up to fourteen percent of all the cases before federal courts.[7] Permitting the Government's argument gives the Government "one of the most potent weapons in the judicial arsenal" to prevent tens of thousands of aggrieved parties from getting their day in court. *See Cheney*, 542 U.S. at 380 (internal citations and quotations omitted).

This is not just an isolated and abstract threat. The Government's argument in this case is already being used by other parties across the country. Pet. at 31 nn.3–4.[8]

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[7] For the 12-month period concluding March 31, 2023, the United States was a defendant in 40,549 cases of the 284,220 civil cases filed in federal court. *See* Federal Judicial Caseload Statistics 2023, U.S. COURTS, https://www.uscourts.gov/data-news/reports/statistical-reports/federal-judicial-caseload-statistics/federal-judicial-caseload-statistics-2023 (last visited Jan. 7, 2025). This number rose in 2024, where the United States was a defendant in 42,790 cases of the 347,991 civil cases filed in federal court. Federal Judicial Caseload Statistics 2024, U.S. COURTS, https://www.uscourts.gov/data-news/reports/statistical-reports/federal-judicial-caseload-statistics/federal-judicial-caseload-statistics-2024 (last visited Jan. 7, 2025).

[8] For example, the State of Montana attempted to use a similar emergency petition for writ to prevent a case brought by youth under the Montana Constitution from going to trial. The

In conclusion, the Government cannot meet the first *Cheney* requirement for mandamus, since the Government can attain the relief it seeks through the traditional appellate process. Litigation expenses are not a suitable basis for mandamus relief. The court of appeals erred in granting mandamus review.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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Montana Supreme Court denied that petition noting, "[a]lthough the State asserts that this Court should take supervisory control to avoid a trial, we have repeatedly held that conserving resources, without more, is insufficient grounds to justify supervisory control where a party can seek review of the lower court's ruling on appeal and there is no evidence that relief on appeal would be inadequate." *Montana v. Mont. First Jud. Dist. Ct., Lewis & Clark Cnty.*, No. OP 23-0311, 2023 WL 3861790, at *2 (Mont. June 6, 2023). Thereafter the case proceeded to trial, and the Montana Supreme Court subsequently affirmed the district court's findings of fact and conclusions of law, including the ruling that plaintiffs had standing. *Held v. Montana*, 2024 MT 312, --P.3d--, 2024 WL 5151077, ¶¶ 40, 45, 48, 52 (Mont. 2024).

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