In the United States Court Of Appeals, 5th Circuit

Brian P. Carr, Rueangrong Carr, and Buakhao Von Kramer Appellants versus United States, US Department of Justice, USPS, USPS OIG, USPS BoG, US CIGIE, Department of State, Department of State OIG, USCIS, DHS OIG, and SSA Appellees	Case No. **26-10025** Verified[1] Brief of Mr. Carr Concerning Written Process Gaps And The Resulting Failures

Written Process Gaps And The Resulting Failures

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I. USCA5 Procedural Mistakes and Failures

This affirmed statement will discuss the various court errors and mistakes which, it is argued in the Petition for Rehearing En Banc, led to the denial of due process as we were not given any opportunity to prepare an adequate appeal brief. The emergency panel review in this matter was 5CC99-1 which summarily denied the relief we sought of:

1. a single correct and accurate ROA as well as

2. time and length relief once the ROA was made available as well as

3. corrections to the USCA5 process to improve judicial efficiency, reduce errors and rework, and provide for fair hearings and due process

This affirmed statement will demonstrate that there has been significant motion practice in this appeal due almost exclusively to the lack of a reliable written processes in TXND and USCA5. The only real motion that required serious adjudication was 5CC25 and everything else was the result of mistakes and rework

which can all be attributed to a lack of reliable written process for managing the record (as will be argued in the base Petition).

II. History of Procedural Gaps in Workflow Process

1. Process Breakdowns Degrade Judicial Efficiency

This affirmed statement will list the various actions in this matter in TXND and USCA5 which led to a surprisingly long and complex history of motion practice. These statements are strictly factual but are intended to support suggestions that improved written published processes can improve judicial efficiency. This statement is submitted in support of the Petition for Rehearing En Banc and is the first exhibit for that motion.

That Petition argues that numerous procedural errors prevented USCA5 from promptly and accurately addressing important issues to include:

1. Staying the briefing schedule,
2. Correcting the caption (adding 8 parties it turns out in Order 5CC85-1),
3. Correcting the ROA (with duplicate ROAs with different pagination and other distinct errors in each ROA),
4. Supplementing the ROA with a new legal question based on recent TXND decisions which have USCA5 balancing of public access to documents overriding clear and specific rules for redacting PII incorporated in FRCP 5.2, and
5. Adding time and length relief based on the number of parties (eight new

parties, now five appellants and 13 appellees) due to the difficulties of condensing the 65 separate and independent briefs into a single joint appeal.

This brief demonstrates that these mistakes and errors resulted from the current absence of written published processes for the handling of standard procedural matters by clerks going from the submission by litigants to the resolution by the court.

There is another affirmed statements and several exhibits with:

- *Exhibit 2*: Brief with possible Standard Procedural: Motions, Notices, Memos (with associated standing orders from the court) together with the required written published process to efficiently and accurately implement the case updates. Also includes possible 'Process Improvement Committee' which could systematically implement and continuously improve the written processes for increasing judicial efficiency,

- *Exhibit 3*: Exhibit with examples of possible Standard Procedural: Motions, Notices, Memos (for demonstrative purposes only)

- *Exhibit 4*: DocketSheet-106607.pdf, 1at ROA docket sheet sent via email from TXND Appeals Clerk o2 22 Apr 2026

- *Exhibit 5*: DocketSheet-107860.pdf, 2nd ROA docket sheet sent via email from TXND Appeals Clerk 17 Jun 2026

- *Exhibit 6*: USCA5 email notice of docket update on 6 Jul 2026 that incorrectly requires submission of a brief to repoen the case. However the actual motion argues that the dismissal was premature due to the lack of

required 15 day notice in 5CCLR 42.3.1.2) for appeals without counsel. No brief required to correct clerk error.

- *Exhibit 7*: USCA5 email notice of docket update of 5CC44 on 4 Aug 2026 that incorrectly states 5CC44 was Withdrawn (and restricts public access to a critical document)

- *Exhibit 8*: USCA5 email notice of docket update of 5CC45-1 on 4 Aug 2026 that incorrectly states 5CC45-1 was Withdrawn (and restricts public access to a critical document). Should be active and sibling of 5CC46-1 as is clear in email exchange in 5CC62

- *Exhibit 9*: USCA5 email of docket update of 5CC46-1 on 4 Aug 2026 that reduces docket entry to 'MOTION to reopen case [46] Default Remedied' and incorrectly omits original text with 'MOTION... to file separate briefs [46], to reopen case [46] , to amend caption [46], for reconsideration of the Order dated 05/07/2026 [46], to vacate the decision of the district court'

- *Exhibit 10*: USCA5 email notice of Order 5CC58-2 on 10 Aug 2026 adds some of the missing details identifying the granted MTR in 5CC58-2 as the Motion for Panel Review 5CC46-1. It also adds the extraneous and unsupported 'mooting Motion to file motion in excess of the word count limitations [5CC47]'

- *Exhibit 11*: USCA5 email notice of docket update on 15 Sep 2026 of MTR 5CC72 filed on 21 Aug 2026 which inaccurately lists only a fraction of the docket updates presumably made in preparation of the 17 Sep 2026 Order 5CC85-1 of 17 Sep 2026.

2. Overview of the Procedural Errors and Successes

There will be a discussion of the errors, mistakes, and successes in:

1. **TXND Lack Of Reliable Written Processes Left Errors in the Record** TXND was unable to correctly seal two exhibits with unredacted PII. Numerous documents were mistakenly sealed without any court order and, much later, when that error was corrected over a year later, the two exhibits with unredacted PII were restored to public access in conflict with FRCP 5.2,

2. **Sample Motions Worked Well, Prototype for Standard Procedural Processes** USCA5 Clerk quickly and efficiently handled a 'Sample' motion for a pro se party (myself) to be able to file documents electronically directly in ECF, 5CC8. There is also an example where the lack of a published standard procedural motion for a time extension, 5CC20-1, led to a complex judicial request. The clerks did not address the content of the judicial request but instead treated it as standard procedural request. However, there was no written authorization for clerks to adjudicate judicial requests.

3. **Simple Issues Requiring Judicial Review Never Addressed, Clerk Errors Compounded USCA5 Record into an Incomprehensible Mess with 23 Extraneous Motions** Four initial Motions for corrections and relief were not processed correctly resulting in mistaken dismissal of the case Clerk Order 5CC33-1 on 2 Jun 2026 and 15 additional motions before any judicial review which reopened the case in Order 5CC58-2 on 10 Aug 2026 and vacated the mistaken dismissal.

4. **Judicial Orders Were Incomplete, Did Not Address Critical Issues** The underlying issues were significantly delayed by these clerk errors and mistakes. For example the caption issues were first raised in Motion 5CC20-1 of 12 Apr 2026 and fully discussed in Motion (5CC25) of 25 May 2026 but there was no resolution until Panel Order 5CC85-1 of 17 Sep 2026 with a delay of almost six months. At that late date, the panel did not provide for any opportunity to update the preliminary brief to include the additional arguments based on the new parties.

   There were six judicial orders in this matter and all of these decisions were incomplete and did not address the other issues before the court. This failure of incomplete judicial orders can be attributed to the confusion which resulted from an excessive workload / docket and everyone working harder and faster to keep up. It is also the logical result of not addressing the underlying process problems which cause too much rework.

   By the time the judges were brought in to reolve the underlying issues there was a maze of motions to consider, each of which was necessary to preserve the issues through numerous clerk errors. The resulting errors from these incomplete decisions had the effect, it is argued, left us, the appellants, deprived of due process and unable to prepare and submit an appeal brief which presented our substantial and legitimate arguments.

III. Table With Overview of USCA5 Record Updates

There are 58: clerk updates, corrective motions / responses, and judicial decisions with complex interactions which are considered in this statement. Given the large number of actions there is a table below which lists each action with a brief

summary of the action which can be used as a sort road map to navigate through the different events and their relationships. There is also a broad categorization of each event in order to support the totals which are developed in Table.

The body of this affirmed statement then delves into the details of each set of actions and their relationship to each other.

1. Categories Used to Group Actions / Events for Counts

The following table describes the broad categories used to count the number of events of each category, e.g. was the action a clerk error or mistake or was the action processed correctly by the clerks?

The counts of such broad category of events can help establish the magnitude of the problem and justify resolution of the failing processes with justifiable expectations of good 'return on investment' for time spent fixing the process with significant improvements in judicial efficiency.

Code	Category Description
SM	Sample / Standard Motion, this is a motion which is well suited to clerk procedural resolution and which was actually processed by the clerk with accuracy and efficiency
SO	Sample / Standard Clerk's Memo / Update, this is a clerk's update which is well suited to becoming a standard clerk action supported by a Memo referring to a standing court order and which was processed by the clerk with accuracy and efficiency
IM	Initial Motion filed with the expectation of judicial review and all of which remain unresolved in some fashion
XM	Extra Copy of Motion / Brief due to Clerk Redocketing
UU	Unauthorized Clerk Update, in the current environment these updates can take many forms from updates to docket text without proper notice or justification to clerks issuing non procedural orders (adjudicating issues rather than referring them for judicial review)

Code	Category Description
CM	Corrective Motion / Brief / Response filed in response to clerk mistake / error. Such motions / briefs / responses could plausibly be eliminated with strict adherence by the clerks to written and published rules.
IJ	Incomplete Judicial Review / Order. These are orders issued which are incomplete and which do not address the underlying issues.
JM	Judicial Motion which was submitted for judicial review but which was improperly resolved with clerk order

2. Table with Activity In This Case by Broad Category

In the category column below, one of the above broad categories are assigned to each action with the numeric count of such actions following the category to justify the cumulative totals for further analysis.

Doc ID	Date	Cate-gory	Filing / Action Description
5CC8	2 Feb 26	SM1	Sample / Standard Motion to File Electronically
5CC12	16 Feb 26	SO1	Sample / Standard Order / Memo granting permission to file electronically
5CC13	16 Feb 26	IM1	Motion to Seal ECF20-1 and ECF67-13
5CC14-1	24 Feb 26	XM1	Motion to Seal ECF20-1 and ECF67-13, Redocketed 5CC13

Doc ID	Date	Cate-gory	Filing / Action Description
5CC14-2	24 Feb 26	UU1	Clerk Memo / Order Redocketed 5CC13 Motion to Seal ECF20-1 and ECF67-13, No Action Taken, Already Sealed
5CC20-1	12 Apr 26	JM1	Motion for Extension of Time to File Brief seeking 40 days, beyond clerks authority
5CC24	20 Apr 26	UU2	Clerk memo Granting Motion for Extension of Time to 13 May 2026, 30 days, less than requested time
5CC25	7 May 26	IM2	Motion to Toll Briefing Schedule, Amend Caption, and for Time and Length Relief
5CC26	13 May 26	IM3	Motion to Amend ROA, correct garbled records
5CC27-1	7 May 26	XM2	Redocketed 5CC25 with "No action will be taken at this time" in docket text
5CC27-2	19 May 26	UU3	Clerk Memo Deferring Judicial Review, No Action Taken
5CC31	21 May 26	UU4	Clerk Memo / Order denying 5CC26, no justification provided
5CC32	30 May 26	IM4	Unopposed Motion to Strike ROA, duplicate ROA, public access to unredacted PII
5CC32DU	2 Jun 26	UU5	Docket Update of 5CC32 from Unopposed to Opposed without justification 3 days after initial service and 5 minutes before 5CC33-1 Dismissal
5CC33-1	2 Jun 26	UU6	Order Dismissing Appeal

Doc ID	Date	Cate-gory	Filing / Action Description
5CC35-1	4 Jun 26	CM1	MTR opposing clerk order 5CC31 denying 5CC26, amend ROA to correct garbled records
5CC36-1	5 Jun 26	UU7	Clerk Memo Deferring Action on 5CC35-1, redocketed as 5CC36-2, noting case is dismissed
5CC36-2	4 Jun 26	XM3	Motion for Reconsideration (redocketed)
5CC37-1	9 Jun 26	CM2	MTR 5CC33-1 Dismissal, Suspend Briefing and Expedite Pending Motions
5CC38	22 Jun 26	CM3	DoJ Response opposing MTR 5CC37-1 supporting Clerk Order 5CC33-1
5CC42	23 Jun 26	UU8	Clerks Memo denying 2 motions which docket identifies as 5CC32 and 5CC37-1. No order cited or attached.
5CC43-1	1 Jul 26	CM4	Consolidated Motion for Relief, Process Corrections, and ROA Supplementation
5CC43-13	1 Jul 26	UU9	Clerk / AI Memo declaring 5CC43-1 insufficient for word count/length violations
5CC44	4 Jul 26	CM5	Motion for Ruling on 5CC43-1 and Motion to Reopen Case (Unauthorized Clerk update as Withdrawn 4 Aug 26)
5CC44du	6 Jul 26	UU10	Critical Docket Text update with clerks rejection of 5CC44, declaring Default, and requiring Appeal Brief
5CC45-1	8 Jul 26	CM6	Motion for ruling on 5CC14-1, 5CC36-2 MTR Clerk Order 5CC31 denied 5CC26, MTR Clerk Order 5CC42 denied 5CC32

Doc ID	Date	Cate-gory	Filing / Action Description
5CC45-2	8 Jul 26	CM7	Rushed Placeholder Brief / Single-Issue Brief
5CC46-1	8 Jul 26	CM8	Motion to Vacate 5CC33-1, overturn / vacate 5CC42, compel action 5CC27-1 corrects length defect in 5CC43-1 as specified in 5CC43-13 adds preliminary appeal as exhibit
5CC46-2	8 Jul 26	CM9	Rushed Placeholder Brief / Single-Issue Brief
5CC47	15 Jul 26	CM10	Motion for Future Document Length Relief, length limited by words excluding specified sections according to FRAP
5CC44wd	4 Aug 26	UU11	Clerks Docket Update motion 5CC44 incorrectly listed as Withdrawn, Should be Rejected, Timely Superceded with 5CC46-1 and 5CC46-2 as seen in 5CC62
5CC45wd	4 Aug 26	UU12	Clerks Docket Update motion 5CC45 incorrectly listed as Withdrawn, Should be should be active and sibling of 5CC46-1 as is clear in 5CC62
5CC58-1	10 Aug 26	UU13	Clerk Memo concerning 5CC58-2 granting motion to reopen appeal and clerk adds request that TXND correct ROA (not in order)
5CC58-2	10 Aug 26	IJ1	Order setting accelerated briefing timeline following reopening
5CC58-3	10 Aug 26	XM4	Redocketed 5CC37, Motion to Strike New ROA Generated 28 May 26
5CC58du	10 Aug 26	UU14	Clerk incorrect implementation of written order, there is no mention of 5CC47 in written order much less any incorrect analysis that it is moot

Doc ID	Date	Cate-gory	Filing / Action Description
5CC61	10 Aug 26	CM11	Motion to Reconsider Withdrawal of 5CC45-1 and Submit for Judicial Review
5CC70-1	17 Aug 26	IJ2	Order granting judicial review of 5CC45-1 but deferring consideration to merits panel
5CC71	17 Aug 26	CM12	Appellant's Provisional / Placeholder Opening Brief filed under protest
5CC71du	17 Aug 26	SO3	Docket update reflecting filing of provisional opening brief 5CC71, notice that DoJ response due 16 Sep 2026
5CC72	21 Aug 26	CM13	Motion to Stay Briefing Schedule, Compel Correction of: caption and ROA with supplement
5CC73	23 Aug 26	CM14	MTR Order 5CC70-1 to Judge and potentially panel to stay briefing schedule, correct ROA and captions and grant relief in appeal length and time
5CC74-1	8 Sep 26	CM15	Motion for panel review of judges failure to resolve basic issues and provide briefing schedule relief
5CC75	14 Sep 26	SM2	DoJ request for 30 day extension on submission of their appeal response
5CC76	14 Sep 26	SO4	Clerks Order granting 30 day extension to 10/16/2026
5CC72du	15 Sep 26	UU15	Docket update adds specific caption changes but omits caption Magistrate Rutherford and Judge Scholer, incorrectly claims ROA has been fixed

Doc ID	Date	Cate-gory	Filing / Action Description
5CC73du	15 Sep 26	UU16	Docket update incorrectly claims MTR 5CC73 of 23 Aug 2026 for Order 5CC58 of 10 Aug 2026 was submitted late and defers action
5CC77-1	8 Sep 26	XM5	Redocketed 5CC74-1, Motion for panel review of judges failure to resolve basic issues and provide briefing schedule relief
5CC77-2	15 Sep 26	UU17	Clerk entry taking no action on 5CC77-1
5CC85-1	17 Sep 26	IJ3	Order granting unspecified caption relief (clerks adjudicated actual caption changes),denying length exception, submit new brief, no new topics, no brief deadline in order
5CC85-2	17 Sep 26	UU18	Clerk Memo with Clerk Adjudicated Caption which incorrectly omits Magistrate Rutherford and Judge Scholer (only judges can adjudicate caption changes). Clerks also updated docket text with Brief deadline updated to 10/01/2026 without any underlying rule or order to justify that date
5CC86	23 Sep 26	CM16	Emergency Motion for Panel Reconsideration of 5CC85-1 seeking stay, fix ROA, new briefing schedule
5CC91-1	28 Sep 26	IJ4	Single-judge order denying requested Panel Reconsideration of Panel Order 85-1. Any review of motion text makes jurisdiction problem apparent, not in docket text
5CC92	29 Sep 26	CM17	Emergency Motion to Vacate single-judge order 5CC91-2 and for Panel Reconsideration
5CC99-1	1 Oct 26	IJ5	Panel order denying MTR of 5CC85-1 and 5CC91-2 (and stay). Any review of motion text reveals vacate sought for 5CC91-2 (not MTR) which challenges jurisdiction. Only docket text falsely confuses this

Doc ID	Date	Cate-gory	Filing / Action Description
			relief.
5CC100	1 Oct 26	CM18	Rushed Placeholder Brief
5CC101-1	7 Oct 26	XM6	Redocketed Placeholder Brief 5CC100, Header illegible
5CC101-2	7 Oct 26	UU19	Clerk Memo claiming brief 5CC100 is invalid as it was filed incorrectly. However, there was no sufficient brief on 1 Oct 2026
5CC102	16 Oct 26	SM3	DoJ request for 7 day extension on submission of their appeal response
5CC103-1	16 Oct 26	XM7	Redocketed Placeholder Brief 5CC100, Header illegible
5CC103-2	16 Oct 26	UU20	Clerk Memo contradicting 5CC-101-2, presumably accepting 5CC100 as sufficient, though 5CC103-1 has illegible header
5CC104	16 Oct 26	SO5	Clerk order granting DoJ 7 day extension to 23 Oct 2026
	23 Oct 26	SO6	ECF Web Server down for upgrade, web notice of automatic extension to 26 Oct 26
	26 Oct 26	SO7	ECF Web Server found ambiguous errors in DoJ Brief, offered 3 day extension to 29 Oct 26 instead of filing potentially flawed brief
	27 Oct 26	UU21	ECF Web Server did not recognize extension of 26 Oct 2026, claimed out of time, would not accept revised brief, clerk agreed

Doc ID	Date	Cate-gory	Filing / Action Description
5CC106-1	27 Oct 26	CM19	Motion for Leave to File Appellees' Brief Out of Time
5CC106-2	27 Oct 26	SM4	Tendered Brief for Appellees submitted with motion for leave
5CC106du	27 Oct 26	SO8	ECF email Notice of Docket Update noting Brief attached
5CC110	28 Oct 26	SO9	Clerk Memorandum granting Appellees' motion for leave to file brief out of time
5CC111	28 Oct 26	SM5	Official Brief for Appellees docketed and served

3. Cumulative Counts for Broad Categories

IV. Summary Analysis of Case Activity and Category Totals

To quantify the judicial inefficiency caused by the absence of published, reliable written workflow processes, relevant docket actions and filings in this matter have been categorized and tallied in the table below.

1. Summary Totals by Action Category

Category Code	Category Description	Total Count
SM	Sample / Standard Motion (Suited to clerk procedural resolution; processed with accuracy & efficiency)	3
SO	Sample / Standard Clerk Order	4

Category Code	Category Description	Total Count
	/ Memo (Suited to standard clerk action citing standing order)	
IM	Initial Motion (Filed with expectation of judicial review; remaining unresolved in some fashion)	4
UU	Unauthorized / Unexpected Clerk Action (Docket text updates, non-procedural orders, or ad hoc changes)	19
CM	Corrective Motion, Brief, Order, or Response (Filed or issued in response to clerk mistake or error)	19
XM	Extra Copy of Motion / Brief due to Clerk Redocketing	6
IJ	Incomplete Judicial Review / Order (Orders issued which do not address underlying issues)	5
TOTAL	**Total Quantified Categorized Actions**	**60**

2. Overview: The Impact of Process Gaps on Judicial Efficiency

The empirical data reflected in the category totals above illustrates a stark breakdown in administrative efficiency, demonstrating how the absence of reliable, written workflow processes transforms simple appellate proceedings into a needlessly complex procedural maze.

Out of 60 total categorized actions across the record:

- **Routine Administrative Efficiency (7 Actions / 12%):** Only 7 total events —3 standard motions (**SM**) and 4 standard clerk orders or memos (**SO**)— were processed accurately and efficiently under standard procedural operations.

- **Substantive Matters Seeking Judicial Review (4 Actions / 7%):** Only 4 initial motions (**IM**) were filed seeking substantive judicial resolution on the merits and none were fully resolved.

- **Extraneous Administrative Friction & Rework (42 Actions / 73%):** A total of 19 unauthorized clerk updates or non-procedural orders (**UU**), 6 extra redocketed filings (**XM**), and 19 corrective motions, briefs, or responses (**CM**) were generated directly by administrative instability and clerk errors.

- **Incomplete Judicial Adjudication (5 Actions / 8%):** A total of 5 incomplete judicial orders (**IJ**) were issued, none of which fully resolved the underlying issues raised in the initial motions.

This data highlights a compelling narrative of administrative burden: while litigants brought only **4 initial motions** requiring substantive court review, administrative breakdowns introduced **19 extraneous clerk updates** and required **19 corrective filings**—forcing judges to sort through **25 extra filings, motions and briefs** generated by procedural friction, all while the original 4 substantive motions remained unresolved.

The Petition argues that establishing clear, published Standing Orders together with Standard Procedural Motions, Notices, and Memos would eliminate ad hoc

clerk interventions. Implementing a systematic Process Improvement Committee (PIC) to address recurring CM/ECF workflow failures would immediately restore order to the record, protect litigants' due process rights, and yield a significant return on investment in judicial efficiency.

V. Sealing / Striking Documents Handled on an Ad hoc Basis in TXND

The Lack of Clear Written Processes Permits Needless Errors

1. TXND Process Gaps in Sealing Records Caused Errors

In ECF101pg9 there is a detailed description of how two records with unredacted PII were processed in TXND.

A. Original Error, Two Exhibits with Improperly Redacted PII

I had accidentally and separately filed two one page exhibits which had unredacted PII. When I discovered the error, I called the TXND clerk who put in 'temporary' seals on two document groups of 25 documents and 133 pages until the anticipated motions to seal were processed.

B. Complex Delayed Ad Hoc Process to Correct Simple Mistake

I promptly submitted the motions but they languished for months and when the magistrate resolved the motions the magistrate appears to not have been aware of her responsibility to remove the overly broad temporary seal and put in place a proper court ordered seal on the two exhibits.

C. Improper Resolution Creates Dual Problem

As a result, on appeal all 25 documents were still sealed when the ROA was created but there was no court order to support the seal. Of particular importance, there was also no court ordered seal on the two exhibits with unredacted PII.

2. USCA5 Has Similar Gaps in Process to Seal Records

There was a similar gap in USCA5 processing of 5CC13 (redocketed as 5CC14-1 which was a prophylactic motion to seal two exhibits ECF20-1 and ECF67-13 with unredacted PII as suggested in 5CC6).

However, rather than issuing a procedural memo sealing the specific exhibits based on standing court orders with respect to unredacted PII, the clerk had no guidance for how to handle motions to seal unredacted PII.

Without guidance, the clerk did a preliminary review and noticed that the two exhibits were already sealed in TXND ECF. However, the clerk did not verify the existence of proper TXND judicial orders for the seals. Instead, the clerk concluded that an additional order sealing the specific exhibits was unnecessary and issued the memo as 5CC14-2 which incorrectly concluded there were valid TXND orders sealing the exhibits and left 5CC14-1 in a pending state with the common 'no action taken'.

Errors from gaps in TXND processes were transferred into the USCA5 ROA creating further downstream errors and rework.

3. Remediation of Invalid Seals in ROA Caused Additional Rework

A. Garbled Records in ROA Possible Result of Pro Se Delivery

In 5CC26 I identified errors in the ROA which had been sent to us via email. In particular the text layers were flattened in the process of combining multiple pdf files into a single large volume for 'easy' pagination and email delivery to pro se parties. The result was at least two garbled records as can be seen in comparing ECF10-9 (shown in 5CC35-2) with ROA10-9 (shown in 5CC35-3).

It is unclear if the garbled records are also in the USCA5 ECF version of the ROA as pro se parties are not permitted access to the actual ROA used by USCA5 judges. However, if pro se parties with electronic access were permitted access to the USCA5 ECF version of the ROA, that question could be resolved.

However, in 5CC26 I also identified the 25 documents and 133 pages which were sealed without any supporting court order as described above.

B. Without Proper Guidance, Clerks Unsealed Documents

a. Ill Considered Replacement ROA Violated FRAP 10(e)(2)

When the TXND Appeals Clerk learned that over 25 documents were sealed in the TXND record without any supporting judicial order (and possibly two garbled records), she attempted to correct the error. However, it is apparent that they did not have written procedural guidance on how to do that.

They created an altogether new ROA with different pagination (inserting the missing / previously sealed documents in their original location) which violates FRAP 10(e)(2) which clearly specifies that TXND can correct such errors through a supplement to the existing ROA which includes the improperly sealed records.

FRAP 10(e)(2) also implicitly prevents the creation of a new ROA which can only be done via USCA5 judicial intervention and which would necessitate a reset of all briefing schedules which started with the approval of the original ROA. Had TXND clerks been following a written process for unsealing records in the ROA it would have been clear that generating a new ROA was not an option.

b. New ROA Improperly Exposed Unredacted PII to Public Access

When the clerks unsealed the improperly sealed documents in the new ROA they inadvertently violated FRCP 5.2 and FRAP 25(a)(5) by exposing ECF20-1 and ECF67-13 with unredacted PII to public access. There are pending motions to correct this defect, but proper written guidance from the beginning would eliminate all this rework to correct defects.

C. TXND Clerks Also Unsealed Records in TXND ECF

Without proper guidance, the clerks also removed the temporary seal on the two document groups in TXND and thereby granted public access to unredacted PII in ECF20-1 and ECF67-13 in violation of FRCP 5.2.

Of course, had the original motions to seal ECF24 and ECF69 been immediately processed as Standard Procedural Motions (with standing orders permitting the clerk to seal documents with unreadacted PII with a memo so stating), all of this would not have occurred.

Further, if the USCA5 clerk processing 5CC13 had received a Standard Procedural Motion (with standing orders permitting the clerk to seal documents with unreadacted PII with a memo so stating) there would already be a seal on those documents in TXND ECF and the ROA. Nothing to fix.

However, given the actual absence of written processes in place, there are still additional court actions pending to correct these omissions (carried with the case).

VI. Sample / Proposed Standard Motions Worked Well Early On

1. Pro Se Electronic Filing Access Granted Smoothly

USCA5 does not provide an automated system for pro se parties to request the ability to file electronically. However, there is a standard motion in the USCA5 Pro Se Filer Instructions for applying for such access which I relied on in Motion 5CC8 on 2 Feb 2026 with easy submission (via the precursor Pro_se@ca5.uscourts.gov). The clerk was able to easily identify this as a standard procedural motion and made a prompt response in Memo 5CC12 of 3 Feb 2026 citing what was presumed to have been a standing order.

2. No Standard Motion for Delay Caused Confusion and Errors

In contrast, when we needed to request additional time in the brief schedule, there was no standard motion and we submitted a complex judicial request, Motion 5CC20-1 on 12 Apr 2026 which asked for a 40 day delay (which requires judicial intervention according to local rules). The clerks did not address the content of the judicial request but instead treated it as standard procedural request (as if it were a standard procedural request for a 30 day delay) which was granted after some delay in Clerk Jeanfreau's memo 5CC24 of 20 Apr 2026.

However, there was no written authorization for clerks to adjudicate judicial requests of 40 day delays nor to alter requests to a shortened period of 30 days. The clerks were acting without written published authorization to act as a gatekeeper preventing judicial review of motion requests.

3. USATXN Motions For Additional Time Processed Efficiently

It should be noted that when AUSA Parker needed to apply for similar additional time, she was able to use a templated motion which USATXN uses for such motions in 5CC75 and 5CC102 which were promptly and efficiently resolved in clerks orders 5CC76 and 5CC104 . Judicial efficiency could be improved by making such templated motions available to all parties as Standard Procedural Motions. This standardization also makes the clerks response more efficient as their review time is reduced and the steps they need to take granting such additional time requests is well documented.

VII. Four Initial Motions for Judicial Review Still Pending

1. 5CC13, 5CC25, 5CC26 and 5CC32 Lost in Clerk Quagmire

There were four critical initial motions presented to the court which were never properly considered and decided under judicial review. Indeed the requests

1. Seal two exhibits ECF20-1 and ECF67-13 with unredacted PII (5CC13), a prophylactic measure suggested by USCA5 as USCA5 routinely unseals improperly sealed documents,

2. Stay the briefing schedule, correct the caption, and provide time and length relief (5CC25),

3. Correct 2 records in the original ROA which were garbled, (5CC26) and

4. Strike the second ROA (5CC32) which has different pagination, was not authorized by court order, and does not correct the errors of the first ROA. It was recommended the first ROA be supplemented with 25 documents,

ECF20 and ECF67 which were improperly sealed in TXND without any court order but also striking the two exhibits with unredacted PII, ECF20-1 and ECF67-13.

This specific relief was deferred to the Merit Panel (carried with case) which presented us with an unsolvable dilemma as 5CCLR 28 requires all references to the record include the page number in the ROA but we have two different page numbers and no method to determine which is correct.

2. Instead of Judicial Review, Case Improperly Dismissed

Just after the fourth motion had been submitted for judicial review, Clerk Jeanfreau who is the USCA5 Case Management Clerk improperly dismissed the case with Clerk Order 5CC33-1 on 2 Jun 2026. There were 15 additional corrective motions before any judicial review which reopened the case in Order 5CC58-2 on 10 Aug 2026 and vacated the mistaken dismissal.

It is of particular interest that it was Clerk Jeanfreau's responsibility to promptly refer the pending motions for judicial review but instead she delayed and finally ignored the clear and specific 15 day notice requirements of 5CCLR 42.3.1.2 and dismissed the matter on her own signature in violation of 5CCLR 42.3.1.2.

3. Motion to Toll Briefing Schedule Sidelined, No Action Taken

Unauthorized ROA Delayed Remediation of Authorized ROA

Prior to the confusion over duplicate ROAs, 5CC25 (needlessly redocketed as 5CC27-1 when it was sidelined with 'no action taken' in 5CC27-2) had asked that the briefing schedule be tolled and for critical corrections to the caption as well as time and length considerations but deferred judicial review until two motions for

ROA corrections were submitted (so that the judicial review could resolve all the pending problems). Indeed it was this motion which originally called attention to the 25 improperly sealed documents.

Further, the sidelining of this critical motion rather than forwarding it for judicial review would have prevented the numerous motion practice following the improper dismissal of the appeal 5CC33-1 (now overturned with 5CC58-2).

4. Motion to Correct Garbled Records in ROA Denied

No Justification or Authorization Specified

However, the motion to correct two garbled records in the ROA, 5CC26 was inexplicably denied by Clerk Jeanfreau in 5CC31 with no explanation or justification. 5CCLR 27.1 does authorize clerks to process motions procedurally but certainly not to deny correct and proper contested motions seeking judicial relief. Had there been strict adherence to written processes this error would not have occurred.

5. Motion to Strike Unauthorized ROA 5CC32 Improperly Sidelined

TXND Clerk Email Discussion Unsuccessful at Correcting ROA

In ECF100-1 there is an email exchange where I had explained to the TXND Appeals Clerk the insurmountable problems presented by an unauthorized duplicate ROA with different pagination and suggested that a much simpler solution would be to supplement the ROA with the improperly sealed documents (while striking the two exhibits with unredacted PII) which was the motion I was preparing at the time).

6. TXND Clerk Generates Second ROA Without Authorization

Duplicate ROAs, Different Pagination Precludes USCA5 Appeal

The motion to supplement the ROA with the improperly sealed documents was delayed because as I was preparing it, the TXND Appeals Clerk generated a new and unauthorized ROA. It been planned to ask for a supplement to the ROA unsealing 23 documents which were improperly sealed while also striking the two exhibits with unredacted PII.

However, shortly after I received the second (and unauthorized) ROA I submitted Motion 5CC32 of 30 May 2026 to strike the new and unauthorized ROA because, along with being unauthorized, it released unredacted PII to public access. It also altered the pagination of all records after ROA20pgSealed without the approval of USCA5 as required by FRAP 10(e)(2).

As our prior motions had referenced the original ROA as required by 5CCLR 28 this second ROA would harm us as our pending motions would become gibberish referring to critical documents with meaningless page numbers.

7. Clerk Alters 5CC32 From Unopposed to Opposed

No Justification Provided For This Critical Docket Update

As the second and unauthorized ROA granted public access to two exhibits with unredacted PII, I altered the planned motion to correct the original ROA to instead be Motion 5CC32 to strike the second ROA because along with being unauthorized, it also exposed unredacted PII to public access.

It was clearly unopposed as AUSA Parker on 29 May 2026 stated in an email:

Defendants will not oppose sealing materials that contain PII

from the Conference Compliance section of 5CC32.

A. Unauthorized Docket Update Sidelines Critical ROA Motion

As an unopposed motion seeking non procedural relief it was immediately available for judicial review (as the clerk could not provide the requested relief). All the other motions for relief were also ready for judicial review and should have promptly referred to a judge for resolution.

However, instead the clerk on 2 Jun 2026 inexplicably altered the status of the motion to 'Opposed' with notice in email 5CC32DU of 2 Jun 2026 which states:

> OPPOSED MOTION ... to amend the record on appeal [32]...
> REVIEWED AND/OR EDITED -
> The original text prior to review appeared as follows:
> UNOPPOSED MOTION ... for expedited ruling on [32], to strike The original ROA of 15 Apr 2026 should be amended as necessary rather than striking portions of the ROA generated on 28 May 2026. from the record on appeal.

There was no listed justification and there was the clear Conference Compliance section in 5CC32 cited above which clearly denoted this as an Unopposed motion.

This alteration was another example of clerks altering the record without any published written process. If there was some justification for the alteration there could have been a Standard Procedural Notice by AUSA Parker advising the clerk of the change in circumstances which required the change in status and then the clerk could have changed the status to Opposed using a Standard Procedural Memo which would cited the Notice and thoroughly documented the change is status.

B. Unexplained Alteration Creates Appearance of Bias

Further, this update was made only minutes before the improper dismissal of the appeal 5CC33-1 (now overturned with 5CC58-2).

Had there been formal Standard Procedural Notices for the parties and this motion status with written procedures for the clerks to document the changes (in Standard Procedural Memos) this change would have been either prohibited or adequately supported by the record and there would not be the unanswered questions of bias in these numerous errors sidelining critical motions for relief.

8. Order 5CC33-1 Dismissed Appeal In Violation of 5CCLR 42.3.1.2

Clerks Order 5CC33-1 (now overturned with 5CC58-2) dismissed the appeal for 'failure to prosecute' even though there were several motions waiting for judicial review. The dismissal stated:

> Under 5th Cir. R.42.3, the appeal is dismissed as of June 2, 2026, for want of prosecution. The appellant failed to timely file appellant's brief

A. MTR 5CC37-1 Challenged Improper Dismissal

a. Notice Required Before Dismissal For Appeals Without Counsel

We submitted MTR 5CC37-1 contesting the premature dismissal of the appeal. It noted that while the clerks order 5CC33-1 cited 5CCLR 42.3, it specifically states:

> 42.3.1.1 **Appeals with Counsel.**...[15 days notice required before dismissal plus possibility of sanctions for counsel]
> 42.3.1.2 **Appeals without Counsel**. The clerk must issue a notice to appellant that 15 days from the date of the notice the appeal will be dismissed for want of prosecution, unless the default is remedied before that

> date. If the default is remedied within that time, the clerk must not dismiss the appeal.
> 42.3.2 **In all other appeals** when appellant fails to... file a brief... the clerk must dismiss the appeal

Clearly the clerk was not following written processes as the rule only provides for notice of impending dismissal for pro se parties (**Appeals without Counsel**), not actual dismissal prior to notice.

b. Pending Motions Preclude Dismissal

MTR 5CC37-1 also listed and explained the initial four motions: 5CC13, 5CC25, 5CC26 and 5CC32. It noted that:

> Indeed due process requires that the briefing schedule be held in abeyance whenever there are motions to update the caption or ROA.

and explained that the relief sought of: tolling the briefing schedule, amended caption, time and length relief, and resolution of the duplicate ROAs (with different pagination) must all be resolved before the appeal can be dismissed. Indeed the ROA issues precluded any compliant brief.

B. Defendants Filed Untimely Reply 5CC38 to MTR 5CC37-1

It is important to note that the decision on 5CC37-1 was delayed until DoJ was permitted to file a late Response 5CC38 at 13 days while FRAP 27(a)(3)(A) allows 10 days. The denial was made the next day, not permitting any Reply. This lax enforcement of rules for DoJ with the hyper (unlawful) enforcement of rules for pro se parties creates the appearance of bias.

C. Clerk Order 5CC42 Denies 5CC37-1 In Violation of FRAP 27

Clerks Not Permitted To Adjudicate Contested Matters

We submitted an MTR 5CC37-1 on 9 Jun 2026 as an Opposed motion contesting the premature dismissal and citing 5CCLR 42.3.1.2 but this motion was denied by Clerk Jeanfreau in Clerks Order 5CC42 on 23 Jun 2026 which states:

> The court has taken the following actions in this case:
> The motion to amend the record on appeal is denied.
> The motion for reconsideration of the clerk order dismissing the appeal, to suspend briefing, and for expedited ruling on the motion is denied.

referring to MTR 5CC32 and Motion 5CC37-1. However, the signature was only Clerk Jeanfreau which is a clear violation of 5CCLR 27.1 which only allows the clerk to resolve motions on procedural grounds. No procedural issues were identified and it was an opposed motion with the DoJ opposing response as 5CC38. There were contested issues which required adjudication.

However, instead of referring 5CC37-1 for judicial review as required by 5CCLR 27.1 the clerk denied the critical matter without justification or authorization.

FRAP 27 and 5CCLR 27.1, grants clerical authority which is strictly delegated to specific routine items and does not include the power to decide substantive issues where judicial review is sought. The failure of the clerks to refer this pressing matter for judicial review and instead 'decide' the matter in direct violation of clear and specific rules (and the underlying statutes) creates the appearance of bias and violates our right to due process through a fair hearing.

There does not appear to be appropriate review of mistaken clerical actions or

errors which would prevent these errors as the judicial order 5CC58-2 which overturned the dismissal, actually granted the MTR 5CC37-1 but did not consider the damages which resulted or what corrections were appropriate to correct violations of due process. Had there been written published guidance for the procedural actions permitted to clerks, this error would not have happened and judicial efficiency would be greatly enhanced.

It is important to note that both Clerk Orders 5CC37-1 and 5CC42 were issued without authority by Clerk Jeanfreau. There are obvious problems with clerks reviewing there own orders and blocking judicial review of their actions.

9. Motion to Reopen Appeal 5CC43-1 Rejected, Too Long

A. USCA5 Makes No Length Exceptions for Consolidated Motions

As there were so many discrepancies in the USCA5 record due to lack of written processes, a single motion which covered all the corrections was required to put the appeal back on track for a speedy and fair resolution with a single consolidated motion, but the motion was rejected because it was too long. This had the sad effect of insuring that multiple consolidated motions would need to resolved together with an increasingly complex record.

It is recommended that USCA5 adopt a relaxed length standard for certain consolidated motions to allow numerous issues to be heard without fragmenting the motions and briefs into multiple documents and making a complex record even more complex.

B. 5CC43-1 Rejected by AI in 5CC43-13 on Filing Requires Multiple Motions to Correct Complicated Record

USCA5 AI was used to file the Motion to Reopen 5CC43-1 but the USCA5 AI also rejected the filing with an automated response 5CC43-13 based on the length of the motion.

a. Wrong Criteria For Resubmission Required in AI Decision Exceptions Specified in FRAP 32(f) Omitted

Further, the AI program insisted on an incorrect measure of length of 20 pages for a corrected motion citing FRAP 27 but that is not the length measurement measurement for computer generated motions (which are the only motions which AI could analyze) which should have been measured in word count. Forcing a computer generated motion to adhere to the arcane number of pages length hinders both the litigants and court as described in 5CC47 a motion to correct the length requirements generated by automated AI rejections.

Further, and perhaps most important, the requirements stated in 5CC43-13 omitted the exceptions listed FRAP 32(f) stating that the table of contents and other tables and certifications are not counted in the page or word limits. This discrepancy is also described in 5CC47.

b. Lack of Standard Procedural Notice of Clerical Error

By omitting the exceptions, the incorrect ruling effectively required that the consolidated motion to reopen the case and correct the underlying defects which caused the premature dismissal would be multiple motions and harder for the clerks and judge to respond to. Later confusion resulted from the need to split this

motion into two motions, 5CC44 which became 5CC46-1 and 5CC45-1

Further, there was no written published method to correct the clerical / AI error beyond an additional MTR which had been proven to be ineffective at correcting clerical errors (e.g. 5CC37-1 MTR to correct premature dismissal, which led to the unauthorized Clerk Order 5CC42 denying the MTR and requiring these larger and more complex motions).

Had there been a Standard Procedural Notice of Clerical Errors which are considered by the clerk and their supervisor in a prompt time frame (perhaps one business day) then this error could have been corrected promptly without further complicating the record with multiple motions when one would have sufficed. Of course all such notices would have further review and consideration for improvements to the written published process for clerical actions so that such errors are not repeated with the inherent judicial inefficiency created by the errors and rework correcting them.

10. Unwarranted Requirement to Submit Brief to Reopen Appeal

A. 5CC44 Rejected, Replaced with 5CC46-1

5CC44 met the incorrect page length restrictions without the exceptions of FRAP 32(f) and was submitted timely on 4 Jul 2026, but did not have an Appeal Brief attached. As a result two days after we filed 5CC44 it was rejected with a docket update (notice shown in Exhibit 6) on 6 Jul 2026 which stated:

> Document is insufficient for the following reasons: brief must be attached for motion to reopen to be submitted to the court

This was not an automated rejection and was made after two days consideration

but was just as surely an unauthorized clerk docket update.

Of course we argue that it is not reasonable to require an appeal brief when there is nothing to correct (the appeal was dismissed through an improper clerk mistake or error) and while there were duplicate inaccurate ROAs (with different pagination) and the caption was not settled and there were pending motions seeking correction of these defects along with a stay of the briefing schedule until the issues are resolved).
This was an unuathorized clerk update as clerk's are not authorized to adjudicate a pending issue under FRAP 27 (was the appeal dismissed because of the missing brief or was it in error as there was not proper notice required in 5CCLR 42.3.1.2).

B. Lack of Process to Correct Clerk Error Forced Abbreviated Brief

While this was an obvious clerk error or mistake there was no realistic alternative as an MTR of clerk's orders had been demonstrated to be a waste of time and resources for all as in 5CC37-1.

However, when 5CC44 was rejected we submitted a timely single issue appeal brief 5CC46-2 on 8 Jul 2026 (two days later) which was attached to motion 5CC46-1. 5CC46-1 was an approximate copy of 5CC44 but with additions stating that the preliminary appeal brief was submitted under protest and insistence that we be granted permission to supplement the brief once the ROA, caption, and other issues were resolved.

Just prior to submitting 5CC46-1 on 8 Jul 2026 we submitted the sibling motion 5CC45-1 which focused on the ROA issues and duplicated the request to reopen the case. In order for 5CC45-1 to be accepted it also had a copy of same single

issue preliminary brief as 5CC45-2. All motions were timely from clerks order 5CC42 of 23 Jun 2026.

11. Two Motions Incorrectly Withdrawn By Clerk, Split of 5CC43-1

5CC45-1 Dealt with ROA Issues and

5CC46-1 Dealt with Caption and Tolling Relief

As 5CC43-1 was rejected for length issues and the rejection listed incorrect (and uncorrectable) resubmission requirements, 5CC43-1 needed to be broken into two motions which became 5CC45-1 which dealt with ROA issues and 5CC46-1 (originally 5CC44) which dealt primarily with caption, tolling, time and length relief.

A. Clerk Jeanfreau Incorrectly Withdrew 5CC44

Clerk Sealed Document From Public Access W/O Court Order

5CC44 dealt primarily with caption, tolling, time and length relief but was rejected for lack of an attached appeal brief. The replacement for 5CC44 was 5CC46-1 which had the same single attached appeal brief as required. However, 5CC44 was not withdrawn.

Based on the email exchanged with Clerk Jeanfreau 5CC62 the motion should have been classified as ‘Superceded’ to alert parties that the active version was 5CC46-1. A careful review of the timeline shows that each motion for relief was carefully preserved across multiple clerk errors but the false and uncorrected category of 'Withdrawn' makes it appear that the issues were not preserved. The actual docket update is shown in the ECF notice Exhibit 7 of 4 Aug 2026 which states:

> COURT ACTION withdrawing Motion for ruling on motion... [44]

Another unfortunate side effect of this improper docket update was the document was also Restricted. Restricted prevents public access which is the logical equivalent of sealing as can be seen in the docket entries for 5CC44 and 5CC45-1 in docket listing in 5CC77-4. The resulting error message which the public receives when attempting to access 5CC44 or 5CC45-1 is:

> You do not have permission to view this document

as shown in 5CC77-6

D. Clerk Jeanfreau Incorrectly Withdrew 5CC45-1

a. Clerk Sealed Document From Public Access W/O Court Order

A more serious error was that even after the clerk was notified that 5CC45-1 was still an essential motion (one half of the replacement for 5CC43-1) as shown in the emails in exhibit 5CC62, 5CC45-1 was still Withdrawn requiring an additional motion 5CC61 to correct the mistaken withdrawal and the logical sealing of the document from public access without any court order (5CC45-1 is still listed as Restricted with no public access).

b. Clerk Successfully Hid 5CC45-1 From Judicial Review

The incorrect docket update is shown in the ECF notice of the clerk's docket update in Exhibit 8 which states:

> COURT ACTION withdrawing Motion for ruling on motion... [45]; withdrawing Motion for reconsideration... [45]; withdrawing Motion to supplement the record on appeal... [45]; withdrawing Motion to reopen

case... [45] [26-10025] (RLJ)

The false docket update withdrawing 5CC45-1 had the actual effect of confusing the reviewing judge so that in Judge's Order 5CC58-2 there is no mention of the ROA issues requiring an additional correction.

E. MTR 5CC61 Required To Correct False Docket Update

MTR 5CC61 was submitted to correct the two false docket updates in Exhibit 7 and Exhibit 8. Sadly, 5CC70-1 did not actually address the critical ROA issues but instead deferred resolution to the Merits Panel. These two false docket entries appear to have had the desired effect of hiding the critical ROA issues from judicial review. Indeed the underlying Petition for En Banc hearing on these issues is a direct consequence of the clerk errors or mistakes described here.

12. Electronic Filing Access Removed During Critical Motion Practice

A. ECF Help Desk (One Person) Required, Not Available That Week

On 10 Aug 2026 I attempted to file 5CC61 electronically and it was rejected (system time out with error of not having privileges). I called the USCA5 ECF Help Desk as recommended but the call was diverted to another person because there was only one person as the ECF Help Desk and they were out that week. I filed the motion and its exhibit via email to Pro_se@ca5.uscourts.gov (which I had used to submit my motion for electronic filing access). The motion was recorded as submitted on the date of the email but the notice was delayed for a few days which created concerns as to submitting the motion timely (to preserve the issue).

This was a particularly troubling time for such problems to arise as on that date the appeal was reopened and I was given one week to submit our appeal. On the

Sunday the day before the deadline I still could not submit our appeal electronically.

On the morning of 17 Aug 2026 I attempted to file the required brief but got the same errors. I called the ECF Help Desk as I could not submit the appeal due that date and asked that she restore my electronic access.

She confirmed that my privileges to file electronically had been removed even though the order supporting the access was still in place. It is unclear who / why access was removed as there was no order supporting the removal. However, in a few hours I was able to file a more complete preliminary appeal 5CC71 electronically with the automated checks for validity.

It is concerning that there is no backup person or procedure for an operation which is time critical in USCA5. It is also concerning pro se privileges to file elelctronically should be removed without cause or notice and, it appears, without adequate records of who made the alteration or why.

13. Motion 5CC73 Required Correction of Numerous Errors

5CC25 / 5CC27-1 Was Only Motion Which Required Adjudication

Before the first judicial review in Order 5CC58-2 there had been significant motion practice in this appeal due, it is argued, almost exclusively to the lack of a reliable written process in TXND and USCA5. The only real motion that required serious adjudication was 5CC25 and everything else was the result of errors and rework which can all be attributed to a lack of reliable written processes for managing the record.

VIII. Six Judicial Orders Were Incomplete, Did Not Address Critical Issues

Several critical issues which required judicial review were never addressed. Clerk errors compounded the USCA5 record in this matter into an incomprehensible mess with 25 extraneous motions and 19 unauthorized clerk orders and docket updates. The result was six judicial orders which were incomplete and did not address the issues presented to the court.

It will be argued that each of the six judicial orders were incomplete based on well understood legal principles that in order for the decision of an adjudicator to comply with due process requirements the decision must be written and:

1. Describe the evidence considered in the decision,
2. Include the findings of facts based on the evidence considered,
3. Discuss the applicable legal standards that apply under the circumstances, and
4. Clearly state the decision or order based on the facts and legal standards.

None of the six judicial decisions met the due process requirements listed above.

1. Order 5CC58-2 Reopened Case, Did Not Address Cause of Closure

A. Order Omits Critical Elements of Due Process Judicial Decision

Order 5CC58-2 of 10 Aug 2026 was quite brief, stating only:

> IT IS ORDERED that Appellant's opposed motion for reconsideration of the clerk order issued on June 23, 2026 is GRANTED
> IT IS FURTHER ORDERED that Appellant's opposed motion to reopen the

> case is GRANTED.
> IT IS FURTHER ORDERED that Appellant's brief must be filed no later than August 17, 2026.

apparently referring to clerk order 5CC42 of 23 Jun 2026.

While this order does have an unequivocal order that the case is reopened and that our Appeal Brief was due on 17 Aug 2026, no other part of the order corresponds to the record in this matter.

B. Judge Order 5CC58-2 Refers to MTR of Clerk Order 5CC42

There Is No MTR of Clerk Order 5CC42

The text of Judge Order states:

> Appellant's opposed motion for reconsideration of the clerk order issued on June 23, 2026 is GRANTED

It appears that the Judge is saying that Order 5CC58-2 is in response to our MTR of clerk order 5CC42 of 23 Jun 2026 but on the date of the Judge Order 5CC58-2, 10 Aug 2026, the only pending motion was Motion 5CC46-1 of 7 Jul 2026 which is titled:

> Motion to Re-Open the Appeal and Refer to a Three-Judge Panel and Compel Action

Any review of 5CC46-1 would reveal clear jurisdiction for Panel Review as the original clerk order 5CC33-1 had been properly challenged with MTR 5CC37-1 and the motion for panel review 5CC46-1 had challenged the denial of MTR 5CC37-1 in clerk order 5CC42 . To be clear a motion for panel review is not an MTR of a clerk order (which should have been decided by a single judge but

apparently was not).

C. Judge May Have Only Read Revised False Docket Text

The ECF notice email Exhibit 9 of the 4 Aug 2026 docket update of 5CC46-1 shows that the 5CC46-1 docket entry was incorrectly altered almost a month after initial filing to:

> OPPOSED CORRECTED MOTION to reopen case [46] Default Remedied.

with the original docket reading:

> OPPOSED MOTION... to file separate briefs [46], to reopen case [46] , to amend caption [46], for reconsideration of the Order dated 05/07/2026 [46], to vacate the decision of the district court

The original docket text would have alerted the judge that some consideration was required rather than a rubber stamp order based on the false claim of 'Default Remedied' (there was no default, only clerk error dismissing the matter prematurely).

From the actual text of Motion 5CC46-1, it is clear that 5CC46-1 sought to vacate Clerk Order 5CC42 of 9 Jun 2026 as clerks are not authorized to deny contested MTR 5CC37-1 of clerk order 5CC33-1. To be clear, a motion to vacate is not an MTR.

However, from the actual Order 5CC58-2 it is clear that the judge wrote the order 5CC58-2 based solely on the false 'CORRECTED' docket test and ignored the original docket text and certainly the motion papers themselves in 5CC46-1.

D. Judge Granted Reconsideration , Did Not Reconsider

While Order 5CC58-2 explicitly granted motion 5CC46-1 (incorrectly identified as an MTR) there was no consdieration of:

1) the relief sought in the motion 5CC46-1,

2) why the clerk had violated 5CCLR 27.1 to prematurely dismiss the appeal, or

3) what amelioration was appropriate to restore due process in light of these errors.

Further, Order 5CC58-2 only 'reconsidered' the granted MTR (actually a Motion to Vacate) to the degree that the “MTR” was encapsulated in the incorrect and false altered docket text for motion 5CC46-1.

It appears the numerous docket updates by Clerk Jeanfreau on 4 Aug 2026 had the desired effect of focussing the judge's attention on reopening the case without considering the numerous clerk errors and mistakes which had caused the premature dismissal and what amelioration was appropriate (there had never been a default to remedy).

E. Judges Required to Fully Consider All The Papers Before Them

If the Judge relied solely on the altered (and false) docket text and received guidance from Clerk Jeanfreau that the:

> first priority is to get the motion to reopen before the court

from email exchange 5CC62 it could be plausible that the Judge Order 5CC58-2

was fully adequate.

The judge did not fulfill her judicial responsibility when deciding important issues based solely on a cursory review of the docket text for the motion 5CC46-1 or other superficial criteria.

Indeed a review of all the papers submitted in a matter and consideration of all the legal issues and reliefs is required before a due process judicial decision can be rendered and the decision 5CC58-2 was clearly incomplete.

2. Clerk Memo 5CC58-1 Unsuccessfully Adjudicates ROA Issues

A. Clerks Are Not Authorized to Adjudicate Ambiguous Decisions

As noted previously, Order 5CC58-2 of 10 Aug 2026 ambiguously stated:

> IT IS ORDERED that Appellant's opposed motion for reconsideration of the clerk order issued on June 23, 2026 is GRANTED

As the Clerk Order 5CC42 of 23 Jun 2026 simply denied two motions (with no discussion or explanation or justification), overturning the denial means that the court must also reconsider (or consider for the first time as the initial consideration was an unauthorized clerk adjudication) motions 5CC32 and 5CC37-1.

It is important to remember that motion 5CC32 was a motion to strike the second and unauthorized ROA and included all the relief necessary to fully correct the ROA. It also appears the false docket text for motion 5CC46-1 successfully hid these important issues and Order 5CC58-2 did not address any issue other than reopening the case and providing a punitive 7 days to file the full brief (ignoring the caption and ROA issues)

B. Clerk Recommends TXND Comply With Motion 5CC32

c. No ROA Corrections Forthcoming

Clerk Memo 5CC58-1 states:

> Enclosed is an order entered in this case.
>
> The court has granted the motion to amend or correct the record in this case. The originating court is ***requested***[2] to correct the record in accordance with the attached motion.

and attached Motion 5CC32 as redocketted motion 5CC58-3. This motion 5CC32 to strike the unauthorized second ROA (which had made submission of a compliant appeal brief impossible due to duplicate and different pagination) also requested the required corrections to the original ROA.

However, TXND did not actually take any action (the clerk memo only *requested* not ORDERED) and the ROA remained uncorrected even though Clerk Jeanfreau later falsely claimed the ROA issue was resolved.

3. Docket Text for Order 5CC58-2 Has Unauthorized Clerk Alterations

A. Clerk Adds Missing Details, Continues Errors

Exhibit 10 is the USCA5 email notice of Order 5CC58-2 on 10 Aug 2026 states:

> ORDER granting Motion to reopen case ...[5CC46-1]; granting Motion for reconsideration... [5CC43-1]; rescinding order ruling on Motion to amend record on appeal... [5CC32]; granting Motion to amend record on appeal... [5CC32]; Appellant's brief must be filed no later than August 17, 2026

2 I highlights 'requested' because litigants normally request relief while judges normally order actions. As the order itself made no mention of the ROA it is clear that the clerk was asking the TXND court to correct the ROA rather than the clerk seeking clarification from the judge and getting a proper order.

> [5CC58-2]. A/Pet's Brief deadline updated to 08/17/2026...; mooting Motion to file motion in excess of the word count limitations... [5CC47]

It adds some of the missing details and identifies the granted MTR in 5CC58-2 as the Motion for Panel Review 5CC46-1 which sought stay, caption, length and time relief and demonstrated there was no default.

The apparent missing elements of Order 5CC58-2 can not be corrected by clerk updates to the docket text. Under due process the written judge order must contain a full explanation of the evidence considered, the conclusions reached, and the relief provided.

B. Apparently Clerk Denies Motion 5CC47 as Moot

Clerk Not Permitted to Ajudicate Contested Motions

The docket text in Exhibit 10 also added the extraneous and unsupported 'mooting Motion to file motion in excess of the word count limitations... [5CC47]' which misstates the actual motion 5CC47 which sought future relief preventing future clerk errors in length requirements.

While the judge may or may not have given verbal approval of this mooting, such verbal orders are not permissable unless they are encapsulated in written orders under the judge's signature which are part of the record. For a clerk to independently add the mooting text which was not under the judge's signature is a procedural violation and creates the appearance of impropriety as the clerk is not authorized to adjudicate contested motions.

4. Motion 5CC61 Required to Preserve Critical Issues

The previous mistake / error of Clerk Jeanfreau withdrawing Motion 5CC44 in

docket update Exhibit 7 and 5CC45-1 in docket update Exhibit 8 had the effect of hiding these critical issues for judicial review, in particular the ROA corrections required to prepare a compliant appeal brief.

To preserve these issues as well as to get the relief necessary to prepare a compliant brief, I submitted 5CC61 to insure that the ROA issues were promptly addressed and not hidden by Clerk Jeanfreau inaccuracies and that Motion 5CC44 Motion 5CC45-1 were not withdrawn but were actually superceded and active awaiting judicial review. Motion 5CC61 also contested the Restricting of public access (a.k.a. sealing) to Motion 5CC44 Motion 5CC45-1 without court order and based solely on false docket text (they were not withdrawn).

5CC61 was promptly addressed by the same judge in 5CC70-1.

5. In Order 5CC70-1 Avoids Addressing Critical ROA Issues

5CC70-1 of 17 Aug 2026 states:

> IT IS ORDERED that Appellant's motion for reconsideration of withdrawals and extraordinary relief that said motion be treated as a motion for judicial notice is carried with the case.

6. Rushed Placeholder Brief 5CC71 filed on 17 Aug 2026 Under Protest

Clerk Accepts Brief 5CC71, Schedule Proceeds

ECF Notice of docket update 5CC71du on 19 Aug 2026 to Brief 5CC71, states:

> A/Pet's Brief deadline satisfied. Appellee's Brief due on 09/16/2026

7. Motion 5CC72 Required to Resolve Relief Ignored in 5CC58-2

A. Order 5CC58-2 Based On False Docket Text, Ignored Motion Relief

In Exhibit 9 it is clear that Clerk Jeanfreau had altered the docket text of Motion 5CC46-1 to make it appear that it was a simple MTR to reopen the case after the default had been remedied (which is inaccurate). The court resolved motion 5CC46-1 with Order 5CC58-2 which actually only addressed the altered docket text and ignored most of the actual relief sought in 5CC46-1.

B. Order 5CC58-2 Ignored 'Hidden' Motion 5CC45-1

In Exhibit 8 it is clear that Clerk Jeanfreau had successfully hidden 5CC45-1 from the court by falsely and incorrectly updating the docket entry as withdrawn (see email exchange with Clerk Jeanfreau in 5CC62

Needlessly to say the court did not address a 'withdrawn' motion 5CC45-1 concerning serious ROA issues in its Order 5CC58-2

C. Motion 5CC72 Sought Relief:

Stay, Amended Caption and ROA, Time and Length

Motion 5CC72 was a unique effort to preserve the initial four motions: 5CC13, 5CC25, 5CC26 and 5CC32 which were lost in clerk error quagmire with all four motion remaining unaddressed

The relief sought in Motion 5CC72 was different from its predecessors as it specifically asked for judicial review (to avoid the clerk error quagmire) and included all the relief sought in the original four motions as well as unredacted PII corrections and process improvements.

The relief sought in 5CC72 of 21 Aug 2026 was quite extensive as it incorporated all the ROA relief sought in 5CC45-1 and Caption and associated relief sought in 5CC46-1 (including stay).

8. Motion 5CC73 Is Judge MTR and Panel Review of Order 5CC58-2

Just as 5CC72 was an effort to get judicial review of the actual various reliefs sought in Motion 5CC46-1 and its hidden sibling Motion 5CC45-1, Motion 5CC73 sought to have an actual judicial review of the issues deferred in Order 5CC70-1 where the judge chose to defer to the Merits Panel (carried with the case) all raised issues which the court did not consider. The list of issues which the court deferred without any consideration is actually quite extensive with all issues in:

1. Motion 5CC44,
2. Motion 5CC45-1,
3. Motion 5CC58-2 and
4. Motion 5CC61 which discussed routine improper sealing of essential USCA5 documents from public access contrary to longstanding USCA5 policies supporting public access of such documents as well as clerk errors and mistakes preventing due process and a fair hearing by hiding important issues from judicial review.

Order 5CC70-1 makes a travesty of due process and a fair hearing in USCA5 appeals as essential issues in the completion of the appeal are deferred to the Merits Panel which could well never happen if the issues of clerk and judicial errors prevent the appeal from proper completion and assignment of a Merits

Panel. All without any discussion of the numerous issues being deferred.

9. Docket Update of 15 Sep 2026 Alters 5CC72 Incomprehensibly

A. Required Notice of Actual Updates Not Made to Parties

The ECF email notice of 15 Sep 2026 (three weeks after submission) of the docket update in Exhibit 11 which stated:

> OPPOSED MOTION to file brief in excess of the word count limitation but not to exceed 65,000 words [72]

but omitted all the relief listed in the original docket entry. The docket update in Exhibit 11 also listed:

> The original text prior to review appeared as follows:
> OPPOSED MOTION... to amend caption [72], to suspend briefing notice [72], to file corrected brief [72].

Three weeks after the motion 5CC72 was filed. The docket text on 14 Sep 2026 for 5CC72 included only:

> OPPOSED MOTION... to amend caption [72], to suspend briefing notice [72], to file corrected brief [72].

However, the docket text on 16 Sep 2026 for 5CC72 then stated:

> OPPOSED MOTION to file brief in excess of the word count limitation but not to exceed 65,000 words [72]; to suspend briefing notice; to file corrected brief; to amend caption to add parties Rueangrong Carr, Rujipas Lawichai, Tanapon Lawichai, Buakhao Von Kramer, Tami C. Parker, George Monroe Padis, the IRS, TIGTA. No action will be taken on the motion to supplement/append the record on appeal as district court has already corrected it.

which introduces unauthorized updates (specifically adjudicating the caption relief and omitting two parties) as well as false statements (the ROA has been corrected) with no proper notice of these significant docket changes.

B. Clerks Omitted Two Parties From Amended Caption Relief

a. Motion 5CC72 Relief Includes TXDN Magistrate and Judge

Motion for Panel Review 5CC72 asked for the addition to the caption of my wife, her sons, her sister, the IRS, TIGTA, Mr. Padis, and AUSA Parker (which were correctly added to the caption but it went on with:

> **Other Requested Parties**: Additional administrative changes concerning the lower court judges are fully detailed and preserved for this Court's review within the text of 5CC27-1.

which asked that TXND Magistrate Rutherford and TXND Judge Scholer be added as appellees as well but the revised caption list in the clerk generated docket text omitted those two parties without explanation and in an apparent mistake or error. While the panel could reasonably have omitted those two parties from the revised caption list (after due consideration of the merits of the arguments), clerks are not permitted to adjudicate such issues. The omission of the two judges from the caption was an unauthorized update.

A. Revised Docket Text Adjudicates ROA Issues Without Facts

As cited above, the docket text on 16 Sep 2026 for 5CC72 stated:

> No action will be taken on the motion to supplement/append the record on appeal as district court has already corrected it.

However, this is contradicted by the actual facts in the record including Exhibit 4

DocketSheet-106607pdf and Exhibit 5 DocketSheet-107860.pdf, the actual docket sheets sent via email from TXND Appeal Clerk for the two different ROAs. Each docket sheet demonstrates that the pagination is different and each ROA has their own uncorrected errors.

While TXND Appeals Clerk could well have corrected the first ROA with the corrections requested in Motion for Panel Review 5CC72 those corrections have remained secret in the USCA5 record and until the TXND formally publishes the corrected first ROA to all parties and the court, the lack of a single correct ROA prevents the creation of any brief compliant with required citations under 5CCLR 28.

USCA5 clerks are not permitted adjudicate whether the ROA has been corrected and make findings to that effect. That is the job of the panel and the record only supports the conclusion that uncorrected duplicate ROAs with different pagination preclude any compliant brief according to 5CCLR 28.

10. Emergency Panel Review Motion 5CC74-1 Sidelined By Clerks

The clerks in USCA5 apparently routinely act as gatekeepers routinely preventing judicial review. Motion 5CC74-1 was an emergency motion submitted on 8 Sep 2026 seeking relief from the due process failures substantially the same as Motions 5CC72 and 5CC73 but noted the pressing deadline of 16 Sep 2026 when DoJ was scheduled to submit their response. Once DoJ had responded to the rushed placeholder Appeal Brief 5CC71 (prepared in just six days) it would be less clear how to preserve the due process rights of all parties.

It was timely as 5CCLR 27.1 allows:

> motion for reconsideration made within the 14 or 45 day period set by [FRAP 40(d)(1)]

while FRAP 40(d)(1) states:

> (d)... (1) Time. ...in a civil case... may be filed by any party within 45 days after entry of judgment... if one of the parties is:
> (A) the United States;
> (B) a United States agency;

Clearly several of the appellees are the Untied States and United States agencies.

As Order 5CC58-2 was filed on 10 Aug 2026, Motion 5CC74-1 was filed on 8 Sep 2026 after only 29 days, well within the 45 days permitted by 5CCLR 27.1 and FRAP 40(d)(1).

B. Clerk Falsely Claimed Motion 5CC74-1 Was Untimely

On 15 Sep 2026 Clerk Jeanfreau redocketed 5CC74-1 as 5CC77-1 in Clerk Memo 5CC77-2 which stated:

> We received your motion for reconsideration of the court order of 8/17/2026. Because it is untimely, we are taking no action on this motion.

Incorrectly citing Order 5CC70-1 of 17 Aug 20126 rather than Order 5CC58-2 of 10 Aug 2026 (which was cited in 5CC74-1). However, this is not important (other than an indication of improper review to documents to insure they are correct and minimize rework) as both orders were within the 45 days permitted by 5CCLR 27.1.

Of greater relevance is that Clerk Jeanfreau effectively sidelined this motion to prevent its imminent review by the Panel Review of motions 5CC72 and 5CC73

where the USCA5 clerks had improperly altered the docket text without notice to conceal previous clerk errors and the lack of any correction of the ROA issues.

As the Panel Review of motions 5CC72 and 5CC73 was imminent there was no opportunity for us to correct these clerk errors to allow proper review of 5CC74-1 (redocketed as 5CC77-1) by the Panel. Standard Procedural Notices Of Clerk Errors / Mistakes are recommended so that such errors can be timely corrected allowing the proper preservation of critical issues.

11. Standard Motions to Delay Response Processed Efficiently

There were two standard motions for extensions by USATXN which were processed efficiently and accurately.

A. Motion for 30 Day Extension

There was a standard motion for a 30 day extension by appellees which I did not oppose in motion 5CC75 of 14 Sep 2026 and Clerk Electronic Order 5CC76 of 14 Sep 2026 which states "Brief deadline updated to 10/16/2026".

B. Motion for 7 Day Extension

There was a virtually identical Motion for 7 Day Extension 5CC102 of 16 Oct 2026 and Clerk Electronic Order 5CC104 of 16 Oct 2026 which states "Brief deadline updated to 10/23/2026".

12. Order 5CC85-1 Grants Caption Relief From 5CC72 Docket Text

Other Relief From Docket Text Denied Without Consideration

No Consideration of Evidence, Findings of Facts or Legal Analysis

The Order 5CC85-1 itself was incredibly brief with only:

> IT IS ORDERED that Appellant's motion to file a new brief in excess word count is DENIED; the brief already filed will remain for consideration.
> IT IS FURTHER ORDERED that Appellant's motion to suspend briefing is DENIED.
> IT IS FURTHER ORDERED that Appellant's motion to file corrected brief is GRANTED as to nits but DENIED as to new arguments.
> IT IS FURTHER ORDERED that Appellant's motion to amend the caption is GRANTED.
> IT IS FURTHER ORDERED that Appellant's motion for reconsideration of the court order of August 10, 2026 is DENIED.

referring to Order 5CC58-2 of 10 Aug 2026.

There is no mention of which motions are being resolved, any evidence considered (such as the various motion papers), findings of facts (based on the evidence), or the law as it applies to the facts in the matter.

A. Orders Resolve Docket Text for Motions, Not Actual Motion Text

It is also interesting to note that while both motions 5CC72 and 5CC73 sought both time and length relief (based on the complexity of consolidating the various claims of 5 appellants and 13 appellees, or 65 individual appeals into a single joint appeal) the docket text only listed the length relief without any foundation. This was denied with no mention of other relief in the motion text.

While the time relief was a critical component of the motion text (based on the

increased complexity with additional parties from the caption relief) the docket text omitted the time relief and the judges did not consider it.

The absence of any mention of the sibling time relief in the motions 'considered' creates the appearance that the judges' order was based on a review exclusively of the clerk provided docket tect (with its established errors, mistakes, and false statements) and not the actual motion text, which, admittedly, was quite extensive at this late date as preceding clerk errors and mistakes had helped make simple issues into a complex quagmire. Had the court simply reviewed the four initial motions the decisions would have been much simpler.

B. ROA Defects Ignored According to Clerk Jeanfreau Docket Directions

As explained previously both motions 5CC72 and 5CC73 had extensive discussions demonstrating that the duplicate ROAs with different pagination and other errors (each unique to the two ROAs) prevented the submission of a compliant brief with required citations under 5CCLR 28. as USCA5 rules required citations with page numbers but there was no single accurate reliable ROA to determine which page numbers to use.

However, Clerk Jeanfreau had added (without notice) the docket text on 16 Sep 2026 for 5CC72 which stated:

> No action will be taken on the motion to supplement/append the record on appeal as district court has already corrected it.

This false notice that the TXND district court had corrected the ROA problems was controverted by the actual motion text of 5CC72 which demonstrated that no corrections had been provided to the parties to resolve the ROA problems.

It appears that Clerk Jeanfreau had attempted to correct the ROA in Clerk Memo 5CC58-1 and redocketing of Motion 5CC32 as Motion 5CC58-3, but it is also clear that TXND Court had not responded to any such request (not order).

It is also possible that Clerk Jeanfreau and / or the TXND Appeals Clerk were not adequately trained to understand the critical nature of ROA pagination or did not have written procedures on how to correct ROA errors. However, it is not Clerk Jeanfreau's position to adjudicate issues of facts and the duplicate ROA issue with different pagination remains unresolved.

C. Docket Text for Order 5CC85-1 Describes Documents Considered

a. Clerk Docket Text Not Substitute For Judicial Decision

Order 5CC85-1 docket text which was provided by Clerk Jeanfreau clarifies the hugely ambigous order by citing the motions being resolved but there are no indications that the court reviewed anything beyond the docket text for the two motions with:

> COURT ORDER denying Motion to file brief in excess of word count... [72]; denying Motion to suspend briefing notice... [72]; granting in part Motion to file corrected brief...; the motion is granted as to nits but denied as to new arguments [72]; granting Motion to amend caption... [72]; denying Motion for reconsideration of... court order [5CC58-2] [73] [26-10025] Sufficient Brief deadline updated to 10/01/2026 for Appellant Brian P. Carr. (RLJ)

However, it is not within the clerk purview to correct failings in the written orders of the judges after they are signed.

D. Clerk Adjudicated Caption Issues, Eliminating Two Parties

It is also important to note that Panel Review Order 5CC85-1 was in response to Motion for Panel Review 5CC72 which asked for the addition of my wife, her sons, her sister, the IRS, TIGTA, Mr. Padis, and AUSA Parker (which were correctly added to the caption but it went on with:

> **Other Requested Parties**: Additional administrative changes concerning the lower court judges are fully detailed and preserved for this Court's review within the text of 5CC27-1.

which asked that TXND Magistrate Rutherford and TXND Judge Scholer be added as appellees as well but the revised caption list provided by Clerk Jeanfreau omitted those two parties without explanation and in an apparent mistake or error.

E. Clerk Memo 5CC85-2 Has Unauthorized Update of Caption List

The second page of Clerk Memo 5CC85-2 provides the parties with the revised caption for the case. Needless to say it continues the clerk adjudicated omission of TXND Magistrate Rutherford and TXND Judge Scholer.

The additions to the caption were ordered from the strongest, my wife, with clear support in rules and the law, to the weakest, the TXND judges. It would have been quite reasonable for the USCA5 judges to consider the facts (from the motions) and the law and to choose not to add those two judges to the caption, but due process requires that it be judges who make such a decision.

It violates due process for such adjudication to be deferred to the clerks to do without any of the elements of due process, exceeding their authority by adjuciating non procedural questions.

13. Emergency Panel MTR 5CC86 of Order 5CC58-2

As the previous Panel Order 5CC58-2 had not actually addressed or corrected the critical duplicate ROA problem (with different pagination) or granted us any opportunity to fold in the new claims and arguments supported by the additional parties, we sought both time and length relief to include in a more complete appeal brief.

A. Clerk Restates and Trivializes Relief Sought in Docket Text

Clerk Jeanfreau altered the docket text for Emergency Panel MTR 5CC86 to be:

> OPPOSED MOTION to stay further proceedings in this court. Reason: pending supplemental record on appeal, to supplement the record on appeal with inclusion of district court post-appeal filings and legible copies of documents 10-9 and 16-1 [86], to establish briefing notice[86].

from the original and somewhat incomplete docket text of:

> The original text prior to review appeared as follows:
> OPPOSED MOTION to stay further proceedings in this court. Reason: Duplicate ROAs prevent filing brief, for reconsideration of the Order [5CC58-2] to supplement the record on appeal with ECF20 and ECF67 but excluding ECF20-1 and ECF67-13; ECF10-9 and ECF16-1; ECF97 through ECF104 [86]

omitting the relief sought of granting us an opportunity to fold in the new claims and arguments needed by the additional parties. We sought both time and length relief to include in a more complete appeal brief. Indeed 5CC86pg10-14 discusses these issues in depth but the filing process does not allow the filer to adequately describe their filing and the clerks seem to regularly trivialize the issues and relief sought before submission to the court.

14. Judge Order 5CC91-2 Improperly Denies Review of Panel Order

A. Judge Order Based on Docket Text, Not Motion Text

Judge Order 5CC91-2 of Sep 26 2026 states:

> IT IS ORDERED that Appellants' opposed motion to stay the appeal pending the filing of a corrected record on appeal is DENIED.
> IT IS FURTHER ORDERED that Appellants' opposed motion to have district court issue a single supplemental record on appeal containing the entirety of ECF 20 and ECF 67 but excluding ECF 20-1 and ECF 67-13; separately extracted legible copies of documents ECF 10-9 and ECF 16-1; and inclusion of district court post appeal filings ECF 97 through ECF 104 is DENIED.
> IT IS FURTHER ORDERED that Appellants' opposed motion to establish a new briefing schedule following the entry and distribution of the corrected supplemental record on appeal is moot.

referring to Motion 5CC86 from docket text for Order 5CC91-2.

While it appears that the Judge did review the original docket text for greater detail as to the supplemental ROA, the Judge did not address the problems with duplicate ROAs (with different pagination) in both the docket text and motion text. Further the time and length relief to include in a more complete appeal brief central to the motion text was ignored.

B. Single Judges Can Not Reconsider Panel Order, No Jurisdiction

Motion 5CC86 Text Clearly Seeks Panel Review of Panel Order 5CC58-2

Further, judges do not have jurisdiction to reconsider panel reviews (as requested in the text of Motion 5CC86) so that any review of the actual text of Panel Order 5CC58-2 or Emergency Motion of Panel Review 5CC86 should have told the

judge that she did not have jurisdiction to rule on this motion.

Indeed, according to USCA5 normal procedures, once she had drafted her proposed order she should have consulted with the other panel members to confirm her decision (as they also seem inclined to rule based on docket text and ignoring motion text and the other due process requirements for a judicial decision). Their concurrence would have been sufficient for a Panel Order resolving the issues.

However, likely due to the lack of clear written processes mandating the processing of such Panel MTRs, the improper denial of MTR for Panel Review 5CC86 by a single Judge without proper authorization necessitated further motion practice.

15. Emergency Motion for Panel Review 5CC92 Required to Correct Error

As a judge improperly denied emergency MTR for Panel Review 5CC86 in Judge Order 5CC92. This corrective motion was on a much more aggressive schedule (3 days). Fortunately it sought roughly the same relief as in MTR for Panel Review 5CC86 though it also sought to vacate of the judge order which denied a review of the panel order (due to lack of jurisdiction).

A. Docket Text of 5CC92 Misstates Relief Sought

The dual purposes of Motion 5CC92 was abundantly clear in the title and headers which stated:

> Panel Vacatur of Single-Judge Order 5CC91-2 and Panel Reconsideration of 5CC85-1

The dual purpose of the motion is abundantly clear in the Table of Contents and

the various section headers which deal with those two purposes:

1. vacating the erroneous single judge review 5CC91-2 of a panel order 5CC85-1 and

2. addressing the critical issues left unresolved by panel order 5CC85-1 such as resolving the duplicate ROA's (with different pagination) and time and length relief based on the corrected caption.

However, the docket text of Motion 5CC92 was completely misstated by USCA5 Clerks in:

> OPPOSED MOTION for reconsideration of... court order [5CC91-2] denying Motion to stay further proceedings in this court... [86], Motion establish briefing notice... [86], Motion to supplement the record on appeal... [86]; for reconsideration of court order [5CC58-2] denying motion to suspend briefing notice... [72], Motion to file corrected brief... [72], Motion to file brief in excess of word count... [72] [92]

with original docket text:

> The original text prior to review appeared as follows:
> OPPOSED MOTION... to stay further proceedings in this court., to vacate [84], Motion [86], Motion [86], Motion [86] [92], for reconsideration of the Order [5CC85-1] [92], to supplement the record on appeal with ECF20 and ECF67 but excluding ECF20-1 and ECF67-13; ECF10-9 and ECF16-1; ECF97 through ECF104 [92].

The docket text has no mention of vacating the erroneous single judge review 5CC91-2 of a panel order. That relief is falsely stated as an MTR of 5CC91-2 which makes no sense. Single judges simply can not review Panel Orders even if they were the lead judge in the panel.

Further, the clerk generated docket text omitted the relief sought of granting us any opportunity to fold in the new claims and arguments supported by the additional parties, we sought both time and length relief to include in a more complete appeal brief.

Indeed Panel Review Motion 5CC92 discusses these issues in depth but the filing process does not allow the filer to adequately describe their filing. The clerks seem to regularly trivialize the issues and relief sought or, in the extreme, falsely declare a vacate request as an MTR before submission for judicial review.

16. Panel Order 5CC99-1 Denies Motion 5CC92 Without Discussion

A. Panel Order 5CC99-1 Based Solely On Docket Text

Panel Order 5CC99-1 states:

> IT IS ORDERED that Appellant's motion for reconsideration of the court orders of September 17, 2026 and September 28, 2026 is DENIED.

This decision lacks critical elements of a due process judicial decision as there is no: discussion of the evidence considered, findings of facts by the court based on the evidence, or relevant law with respect to the facts. Indeed there are no indications that the panel reviewed anything other than misstated docket text as described above.

Further a review of the document text in 5CC92 makes it clear that the panel could not have considered the actual text of the motion as shown below.

A. 5CC92 Challenged Jurisdiction of Judge Order 5CC91-2

Panel Never Reviewed Actual Text of Motion 5CC92

Any party who actually opened the document 5CC92 would immediately see that the motion was seeking vacatur of the single judge order 5CC91-2 which purported to reconsider Panel Order 5CC85-1.

Indeed Motion 5CC92 stated:

> Under FRAP 27(c) and 5CCLR 27.2, a single circuit judge lacks procedural jurisdiction to reconsider, modify, or overrule an order issued by a three-judge panel. Because order 5CC91-2 purports to dispose of ripe panel reconsideration issues and leaves uncorrected ROA pagination defects intact days before the active Oct 01, 2026 briefing deadline, immediate panel intervention is required to vacate 5CC91-2 and grant the underlying relief requested in 5CC86.

A motion to Vacate an Order where the Court / Judge did not have jurisdiction to consider the matter is completely different from a motion to reconsider (MTR) a matter which was decided (with jurisdiction to resolve the matter) and the deciding judge or panel may have misunderstood or overlooked some relevant fact or legal authority.

It is clear that none of the panel members ever looked at the text of the Motion 5CC92 which they denied (apparently based solely on the inaccurate docket text).

B. Single Judge Had Violated Published Rules By Denying Panel MTR

Motion 5CC92 Was Rework to Correct Process Error in Judge Order

Published Written Policies Would Have Required Panel Members Sign Off

The motion 5CC92 was required by the improper dismissal of its predecessor by a single judge who could not reconsider a panel order (no jurisdiction). Had the single judge actually read the original motion text it would have been clear that, according to USCA5 working practices, the single judge was required to get the other two panel members to sign off on the text of the order before publishing the order denying the original Panel MTR 5CC86 under the signature of the panel. However, it is clear the single judge never actually read 5CC86 which clearly stated it was seeking Panel Reconsideration of Panel Order 5CC85-1 and that panel sign off was required.

IX. Rushed Placeholder Brief 5CC100 Filed Under Protest

Appeal Brief 5CC100 was submitted on the mandated date of 1 Oct 2026 and was just under the maximum length with 12,364 words out of the allowed 13,000 and omitted several important issues due to both time and length constraints (as well as the 'no new arguments' condition).

1. Majority of Record References Not Compliant

As we were never provided with any single accurate ROA, but rather duplicate ROAs with different pagination and other errors each distinct to each ROA, we could not include the ROA page numbers in our record references as required in under 5CCLR 28.

While it is conceptually possible that the

> district court has already corrected it

(referring to the ROA) as stated in the docket text on 16 Sep 2026 for 5CC72, any such correction is irrelevant from a due process perspective unless the parties are informed of the corrected ROA and I have not received any such corrected ROA.

Ideally any updates to the ROA should be documented in the USCA5 record so that all parties are aware of how to refer to the lower court record documents in their appeal briefs as required by 5CCLR 28.

2. Length of Rushed Placeholder Restricted Arguments, 12,364 Words

The rushed placeholder brief 5CC100 contains 12,364 words (which is less than the permitted 13,000) but improvements and additions were stopped when any major addition would make the brief over length and risk being rejected.

3. Two Clerk Updates Redocketed 5CC100

A. Clerk Memo 5CC101-2 Rejected 5CC100 on 7 Oct 2026

Clerk Memo 5CC101-2 stated:

> We received your brief. It was filed incorrectly. It must be filed as a proposed sufficient brief.

Brief 5CC100 was removed from the USCA5 docket (no longer accessible to the public at large) and replaced with Brief 5CC101-1 which has illegible headers (added to ECF from the previous document so that the new document has USCA5 headers for both versions and neither is legible (overwrite problems).

A. We Were Unable to Refile a 'Sufficient' Brief

As it was and is impossible for us to provide compliant Brief with references to the record (in compliance with 5CCLR 28) with the duplicate ROAs with conflicting pagination, I could not file any brief and claim in filing that it is sufficient. It is not compliant.

Further, as the brief is under the signatures of all appellants, it must represent the concerns (and preserve their claims) but we were not permitted to add new arguments and there are several additional arguments which are required to adequately represent and preserve all appellants.

Within the length and no new arguments constraints we could not file a sufficient brief (any brief which omits the critical arguments of any signing party is not sufficient).

B. Clerk Memo 5CC103-2 Accepts 5CC100 on 16 Oct 2026

5CC103-2 stated:

> Please disregard the docketing notice of 10/1/2026 taking no action on your brief. I have filed it. It is sufficient.

referring to 5CC101-2

Brief 5CC100 was again redocketted with Brief 5CC103-1 which has illegible headers (added to ECF from the previous document so that the new document has USCA5 headers for both versions and neither is legible (overwrite problems).

X. Procedural Breakdown in Extension Processing, System Outage Notices

1. Automated System Outage Extensions, Administrative Errors

On 23 Oct 2026, the primary briefing deadline for Appellees, AUSA Parker attempted to submit their brief electronically but was unable to do so and suspected a system outage. She sent me an email explaining the problem very late on 23 Oct 2026 and asking about my position on a further extension.

The next morning on 24 Oct 2026 I notified AUSA Parker that I was not opposed to such an extension, but I also checked the CM/ECF system status and confirmed the system was offline for scheduled maintenance starting at 8:00 PM on 23 Oct 2026 and informed her that the system outage notice stated that deadlines falling during this system outage were automatically extended to the next business day, moving Appellees' filing deadline to Monday, 26 Oct 2026.

2. Invalid Automatic Extensions for Subsequent Remedial Filings

On the evening of 26 Oct 2026, AUSA Parker attempted to file the brief using the USCA5 ECF system. The court's automated review software flagged non-fatal formatting errors in the case caption and signature block. The automated CM/ECF system presented her with a choice: file a potentially deficient brief or accept an automated 3-day extension of time to correct the errors. She chose the system-offered 3-day extension, and the CM/ECF system should have generated an official docket transaction granting a 3-day extension.

However, on 27 Oct 2026, AUSA Parker was informed by the clerks that the 3-day extension offered by CM/ECF was not valid as an extension had already been applied for the weekend maintenance outage. The system was not authorized

under local administrative rules to grant a secondary automatic extension. However this qualification is not widely published and is not implemented in the system which offered the second 3-day extension.

As a result of this administrative system failure, AUSA Parker was forced to submit a Motion for Leave to File Brief Out of Time 5CC106-1 on 27 Oct 2026, which was subsequently granted by clerk order on 28 Oct 2026 (5CC110). However, the motion was only required because of the inconsistent ad hoc policies of 3-day extensions

Impact of Unpublished Administrative Rules for Electronic Systems

This incident further demonstrates the absence of clear, published administrative rules governing automated CM/ECF workflows. Litigants and government counsel alike are forced to rely on automated system prompts that may contradict internal court policies, resulting in unnecessary motion practice, improper docket entries, and administrative rework that degrades overall judicial efficiency.

XI. Summary Unauthorized Clerk Updates Caused Errors And Rework

Appeal Complicated, Delayed by Unauthorized Clerk Updates, Rework

21 Unauthorized Clerk Updates Made Appeal Into Quagmire

The four initial motions could have resolved all the issues needed to send a fully sufficient appeal brief. They were:

1. 5CC13,

2. 5CC25,

3. 5CC26 and

4. 5CC32

The last of the four motions was submitted on 30 May 2026.

Were these motions referred to a judge for judicial review, it is plausible that all the issues could have been resolved by 30 June 2026 with a compliant sufficient appeal brief submitted by about 10 August 2026 and the appeal could be fully briefed and ready for the merits panel queue early in Nov 2026.

Instead, Clerk Jeanfreau dismissed the appeal without required notice in Clerk Order 5CC33-1 and we needed to submit about 16 corrective motions / briefs which were redocketed for an additional 6 motions / briefs. Further there were 5 judge / panel orders which came when the case was so complex that the judges relied solely on the docket text causing further errors and confusion.

It is my estimation that one judge dealing with four simple motions would take less time than having 9 judge interruptions / task switches to superficially deal improperly with a complex quagmire of 22 motions / briefs to consider.

The rush and incomplete consideration of the judges only aggravated the problem of too many clerk errors delaying the case needlessly and requiring extensive rework with numerous problems still pending and unresolved. Judicial efficiency would have been greatly improved with accurate and correct processing of each filing for faster and more efficient processing.

Respectfully submitted,

Verification of Document

I hereby affirms under penalty of perjury in both the United States and Thailand that as an individual:

1. I have reviewed the above affirmation and believe all of the statements to be true to the best of my knowledge.

2. I have reviewed the associated documents and exhibits and believe them to be true and accurate copies with the exception of the documents identified as being redacted. The redacted documents have only been altered to remove sensitive personal information or other redactable information (as cited in the redaction) according to normal redaction procedures.

I hereby reaffirm that the above is true to the best of my knowledge under penalty of perjury in both the United States and Thailand.

/s Brian P. Carr

_____

Brian P. Carr
1201 Brady Dr
Irving, TX 75061

Date: 5 Nov 2026
Location: Irving, Texas

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