

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 25-20032

UNITED STATES OF AMERICA, Plaintiff-Appellee

v.

JASON DANIEL GANDY, Defendant-Appellant

USDC No. 4:12-CR-503-1

**MOTION FOR LEAVE TO FILE RECONSIDERATION OUT OF TIME;
TO RECONSIDER, VACATE, OR MODIFY THE JULY 9, 2026 DENIAL
OF REINSTATEMENT AND IN FORMA PAUPERIS STATUS; AND,
ALTERNATIVELY, TO IDENTIFY THE PRECISE REMAINING
DEFAULT**

I. RELIEF REQUESTED

Jason Daniel Gandy, a federal prisoner proceeding pro se, respectfully requests: (1) leave to file this motion outside the ordinary reconsideration period; (2) reconsideration, vacatur, or modification of the July 9, 2026 denial of his requests to reinstate Appeal No. 25-20032 and to proceed in forma pauperis ("IFP"); and (3) reinstatement at least for the limited purpose of resolving IFP status and determining the scope of the January 29, 2025 notice of appeal. If either form of relief remains unavailable, Gandy asks for a reasoned order identifying the controlling procedural ground and any deficiency that remains legally curable.

This motion addresses the procedural gateway only. Gandy does not contend that Federal Rule of Criminal Procedure 52(b), standing alone, reopens a final criminal judgment or creates appellate jurisdiction. Nor does he ask the Court in this motion to decide suppression, derivative-evidence, Rule 60(b), or successive-collateral-review issues on the merits.

II. REQUEST FOR LEAVE TO FILE RECONSIDERATION OUT OF TIME

Fifth Circuit Rule 27.1 makes a clerk ruling on reinstatement or IFP reviewable by a single judge on reconsideration within the period supplied by Federal Rule of Appellate Procedure 40(d)(1). Because this is a criminal, post-conviction appeal, the ordinary period is fourteen days; the forty-five-day period in Rule 40(d)(1) applies only in a civil case involving the United States. Measured from July 9, 2026, the ordinary fourteen-day period expired July 23, 2026. A submission deposited in legal mail on August 25, 2026 is therefore thirty-three days outside that ordinary period.

Gandy candidly requests a thirty-three-day enlargement. Fifth Circuit Rule 27.1.1 authorizes limited extensions for a prisoner proceeding pro se, and Rule 27.2.4 authorizes a single judge, for good cause, to extend times prescribed by the federal or local appellate rules except the time for initiating an appeal. This request does not seek to enlarge the time for initiating the appeal: the notice of appeal was filed January 29, 2025. It seeks review of a later procedural ruling in an already docketed appeal.

Good cause appears from the record as a whole. Gandy is incarcerated, unrepresented, dependent on institutional legal mail and record access, and has experienced a prison transfer and address problems recorded on the appellate docket. He repeatedly attempted to pursue the matter before and after dismissal. The requested enlargement is limited, the Government suffers no identified prejudice from judicial review of a fee-and-reinstatement ruling, and denying review solely because a pro se prisoner misunderstood the interaction between the fourteen-day reconsideration period and the separate forty-five-day reinstatement

policy would leave the procedural basis of the July 9 denial unexplained.

III. VERIFIED APPELLATE-DOCKET CHRONOLOGY

The following chronology is taken from the Fifth Circuit docket in No. 25-20032:

1. January 29-30, 2025. Gandy filed a notice of appeal; the Fifth Circuit docketed No. 25-20032 as a criminal, post-conviction appeal. The docket identified the fee as due.
2. April 24, 2025 (Entry 19). The Court received a motion to recuse the district judge but took no action because the appeal was pending and the filing fee had not been paid.
3. May 6, 2025 (Entry 20). The Clerk dismissed the appeal under Fifth Circuit Rule 42 for failure to pay the fee. The docket records no adjudication of any constitutional issue.
4. June 5 and June 9, 2025 (Entries 22-23). Within forty-five days after dismissal, Gandy sent correspondence concerning missing mail and a prison-transfer address change. These entries corroborate both continued communication and a period of disrupted mail.
5. June 30, 2025 (Entry 24). The Court received a status request but took no action because the case was closed for failure to pay the fee.
6. August 4-5, 2025 (Entries 25-26). The Court received a letter with attachments and a financial affidavit. Entry 26 stated: "A motion to reopen is required."
7. January 20 and February 19, 2026 (Entries 27-28). Gandy continued sending correspondence, including notice of a Rule 60(b) filing in the

district court.

8. April 27, 2026 (Entry 29). The Court received a "Motion for Relief under Rule 52(b) and for Vacatur or Limited Remand" but took no action because the appeal remained closed and the fee default had not been remedied.

9. July 9, 2026. The Clerk's Office advised Gandy that the Court had denied his requests to reinstate the appeal and to proceed IFP. The communication did not identify whether the denial rested on the forty-five-day reinstatement policy, incomplete financial documentation, a failure to cure the fee default, the scope of the notice of appeal, or another ground.

IV. THE REINSTATEMENT AND RECONSIDERATION PERIODS ARE DISTINCT

The Court's Internal Operating Procedure following Rule 27 states that the Court ordinarily will not reinstate a case dismissed by the clerk unless the deficiency causing dismissal has been remedied and reinstatement is requested as soon as reasonably possible and, in any event, within forty-five days of dismissal. That policy concerns reinstatement after the May 6, 2025 dismissal. It is distinct from the fourteen-day ordinary period for seeking reconsideration of the July 9, 2026 action.

Gandy does not ask the Court to erase either requirement. He asks the Court to consider whether his June 2025 correspondence, filed within forty-five days and documenting transfer-related mail problems, should be liberally construed as a timely effort to preserve or extend reinstatement; whether the later financial affidavit and motion practice cured or could cure the fee default; and whether the July 9 ruling should be reconsidered by a single judge under Rules 27.1 and 27.2. The repeated docketed

submissions are inconsistent with abandonment.

If the Court concludes that the forty-five-day reinstatement policy independently forecloses relief, Gandy requests an express ruling on that ground. If the obstacle is instead an incomplete IFP showing, he requests a fixed period to submit the current affidavit and certified trust-account statement required by Federal Rule of Appellate Procedure 24 and 28 U.S.C. § 1915. If the district court's March 10, 2025 IFP ruling requires a renewed motion under Rule 24(a)(5), Gandy asks that this submission be construed accordingly or that he be allowed to file the required Rule 24(a)(1) affidavit promptly.

**V. THE APRIL 27, 2026 FILING SHOWS CONTINUED PURSUIT
BUT DOES NOT CREATE JURISDICTION**

Entry 29 is relevant to diligence and good faith, not as an independent jurisdictional source. The April 27 submission followed the April 21, 2025 availability of the previously inaccessible April 27, 2017 transcript identified as District Docket Entry 98. Gandy sought to compare that transcript with later descriptions of the counsel-withdrawal history and to present related questions concerning whether issues he had repeatedly raised were ever adjudicated in their actual scope.

The underlying record questions are specific. DE 98 records Gandy stating that he wanted retained counsel to remain. DE 141 later stated that the record seemed to indicate that he fired counsel. DE 287 alleged governmental use of challenged statements during K.V.'s interrogation; DE 289 characterized the allegation more narrowly as use of Gandy's involuntary statements against him at trial. The later DE 316 filing raised whether that scope difference reflected an unadjudicated procedural-integrity issue or a substantive successive claim. The July

20-26, 2012 sequence identified in the record—Gandy's custodial interrogation, alleged represented transport questioning, and K.V.'s questioning by or in the presence of the same investigating agent—supplies the factual basis for the derivative-use question. See *United States v. Ceccolini*, 435 U.S. 268, 275-80 (1978); *Wong Sun v. United States*, 371 U.S. 471, 487-88 (1963).

Those matters explain why Gandy continued seeking review after the fee dismissal. They do not enlarge the January 29, 2025 notice of appeal, transform Rule 52(b) into a freestanding collateral remedy, or authorize merits review in a closed appeal. See *United States v. Frady*, 456 U.S. 152, 163-66 (1982); *United States v. Olano*, 507 U.S. 725, 731-37 (1993). Gandy therefore asks the Court first to reinstate the matter for the limited purpose of resolving IFP status and determining what order or orders the notice of appeal lawfully placed before it.

VI. A LIMITED REINSTATEMENT WOULD NOT PREJUDGE APPELLATE SCOPE

The January 29, 2025 notice of appeal arose from the district-court proceedings reflected on the docket. Reinstatement would not automatically make every later filing or every challenge to the conviction reviewable in No. 25-20032. The Court can reinstate for the limited purpose of deciding IFP status and appellate scope, then determine whether the April 27, 2026 submission may be considered, must be reclassified, or requires another authorized vehicle. That sequence respects jurisdiction, the successive-review statutes, and finality while avoiding an unexplained procedural dead end.

A reasoned ruling is particularly important because the docket separately states that a motion to reopen was required, yet the later requests to

reopen and proceed IFP were denied without an identified ground. Identifying the ground would allow Gandy either to cure a curable defect or to pursue the appropriate review of a legal bar without repeated misdirected submissions.

VII. REQUESTED DISPOSITION

Gandy respectfully requests that the Court:

1. grant leave to file this motion thirty-three days outside the ordinary fourteen-day reconsideration period, or otherwise accept it under the authority applicable to a pro se prisoner's request for single-judge review;
2. reconsider, vacate, or modify the July 9, 2026 denial;
3. reinstate No. 25-20032 at least for the limited purpose of resolving IFP status and the lawful scope of the January 29, 2025 notice of appeal;
4. accept the existing financial materials if sufficient or allow a fixed period for submission of an updated Rule 24 affidavit and certified trust-account statement;
5. after jurisdiction and scope are resolved, determine whether the April 27, 2026 filing may be considered, reclassified, or must be pursued through another authorized vehicle; and
6. if relief remains unavailable, enter a reasoned order identifying the precise procedural and legal ground.

CERTIFICATE OF INTERESTED PERSONS

The undersigned identifies the United States of America; Jason Daniel Gandy; United States District Judge Lee H. Rosenthal; and counsel of record for the United States as persons or entities with an interest in this

proceeding. Gandy is unaware of any publicly held corporation with a financial interest in the outcome.

POSITION OF THE UNITED STATES

Gandy is incarcerated and proceeding pro se and has not conferred with counsel for the United States. The Government's position is unknown; this motion may be treated as opposed unless the Government advises otherwise.

Respectfully submitted,

JASON DANIEL GANDY, Pro Se

Register No. 73006-279

FCI Memphis

P.O. Box 34550

Memphis, Tennessee 38184

Date: _____

CERTIFICATE OF SERVICE AND PRISON-MAILBOX DECLARATION

I declare under penalty of perjury that on _____, 2026, I deposited this motion in the institution's legal-mail system, with first-class postage prepaid, addressed to the Clerk of the United States Court of Appeals for the Fifth Circuit and served a true and correct copy on counsel for the United States at the address of record. See Fed. R. App. P. 25(a)(2)(A)(iii).

JASON DANIEL GANDY