

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

June 12, 2026

Christopher M. Wolpert
Clerk of Court

In re: DAVID WELLINGTON,

Petitioner.

No. 26-2085
(D.C. Nos. 1:24-CV-01279-WJ-JMR &
1:21-CR-00853-WJ-JMR-1)
(D. N.M.)

ORDER

Before **MATHESON, McHUGH, and ROSSMAN**, Circuit Judges.

David Wellington, a federal prisoner proceeding pro se, has filed a petition for a writ of mandamus related to his habeas proceedings pending before the district court. Wellington initiated those proceedings when he filed a 28 U.S.C. § 2255 motion to vacate in December 2024. The government responded in January 2026, and Wellington replied in February. For the reasons discussed below, we deny the requests for relief in the mandamus petition.

“[A] writ of mandamus is a drastic remedy, and is to be invoked only in extraordinary circumstances.” *In re Cooper Tire & Rubber Co.*, 568 F.3d 1180, 1186 (10th Cir. 2009) (internal quotation marks omitted). It “is used only to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so.” *Id.* (internal quotation marks omitted). “[W]e will grant a writ only when the district court has acted wholly without jurisdiction or so

clearly abused its discretion as to constitute usurpation of power.” *Id.* (internal quotation marks omitted).

To be entitled to this drastic remedy, Wellington must show he has “no other adequate means to attain the relief he desires” and “that his right to the writ is clear and indisputable.” *Id.* at 1187 (internal quotation marks omitted). Further, this court, “in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances.” *Id.* (internal quotation marks omitted).

Wellington first requests an order directing the district court to rule on his pending § 2255 motion. Inordinate delay in district court proceedings may warrant mandamus relief. *See Johnson v. Rogers*, 917 F.2d 1283, 1284-85 (10th Cir. 1990) (granting writ of mandamus where a fully briefed habeas petition had been pending for fourteen months). But there has been no such delay here. Wellington’s § 2255 motion has been fully briefed for about four months, which is nowhere near the delay in *Johnson*. We therefore deny his request for a writ of mandamus directing the district court to rule on his motion.

Wellington next requests that we order his release from custody while his § 2255 motion is pending. But he has “adequate means to attain the relief he desires” outside of mandamus relief. *In re Cooper Tire & Rubber Co.*, 568 F.3d at 1187. The district court has the authority to release Wellington on bail pending its decision on his § 2255 motion. *See Pfaff v. Wells*, 648 F.2d 689, 693 (10th Cir. 1981) (“[I]t is within the inherent power of a federal district court to enlarge a state prisoner on bond, pending hearing and decision on a petition for habeas relief.”). Wellington’s request for such relief remains

pending before the district court. We therefore deny his request for a writ of mandamus releasing him from custody.

Wellington also requests that we appoint counsel for his § 2255 proceedings. But he has an adequate alternative remedy to obtain counsel. “The appointment of counsel in a civil case is left to the sound discretion of the district court.” *Shabazz v. Askins*, 14 F.3d 533, 535 (10th Cir. 1994); *see also Cullins v. Crouse*, 348 F.2d 887, 889 (10th Cir. 1965) (“Habeas corpus is a civil remedy.”). Wellington should direct his request for counsel to the district court. We therefore deny Wellington’s request for a writ of mandamus appointing him counsel.

Wellington’s last request is for “any further relief necessary to protect [his] constitutional rights.” Pet. at 17. This request is too vague to show a “clear and indisputable” right to a writ of mandamus. *In re Cooper Tire & Rubber Co.*, 568 F.3d at 1187 (internal quotation marks omitted).

The petition for a writ of mandamus (Dkt. No. 1) is denied. Wellington’s motion to proceed without prepaying costs or fees (Dkt. No. 3) is granted.

Entered for the Court

Per Curiam