IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 21-13425-D

In re: MICHAEL EARL VAN CLEVE,

Petitioner.

On Petition for Writ of Mandamus from the United States District Court for the Southern District of Florida

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Before: ROSENBAUM and GRANT, Circuit Judges.

BY THE COURT:

Michael Van Cleve, a licensed attorney proceeding *pro se*, petitions this Court for a writ of mandamus arising out of the district court's denial of his motion for a three-judge court in his Administrative Procedure Act ("APA") suit challenging the Office of Management and Budget's race categories used in the 2020 census. Van Cleve requests that this Court order the district court to assemble a three-judge court to preside in his APA suit.

Mandamus is available "only in drastic situations, when no other adequate means are available to remedy a clear usurpation of power or abuse of discretion." *Jackson v. Motel 6 Multipurpose, Inc.*, 130 F.3d 999, 1004 (11th Cir. 1997) (quotation marks omitted). Mandamus may not be used as a substitute for appeal or to control decisions of the district court in discretionary matters. *Id.* The petitioner has the burden of showing that he has no other avenue of relief. *Mallard v. United States Dist. Court*, 490 U.S. 296, 309 (1989).

A district court of three judges shall be convened when "otherwise required by Act of Congress, or when an action is filed challenging the constitutionality of the apportionment of

congressional districts or the apportionment of any statewide legislative body." 28 U.S.C. § 2284(a). Section 209 of Public Law 105-119 provides for a district court of three judges to hear an action challenging the use of any statistical method in violation of the Constitution or any provision of law, in connection with the Census, to determine the population for purposes of Congressional apportionment or redistricting. Pub. L. No. 105-119 § 209(b), (e)(1).

When a single district court judge refuses a request to convene a three-judge court but retains jurisdiction over the case, "review of his refusal may be had in the court of appeals either through petition for writ of mandamus or through a certified interlocutory appeal under 28 U.S.C. § 1292(b)." *Gonzalez v. Automatic Emp. Credit Union*, 419 U.S. 90, 100 n.19 (1974). When a single judge has issued a final order disposing of the complaint, however, "appeal lies to the court of appeals under 28 U.S.C. § 1291." *Id.*

Courts of appeals have jurisdiction over appeals from all final decisions of the district courts. 28 U.S.C. § 1291. An appeal from a final judgment brings up for review all preceding non-final orders. *Mickles on behalf of herself v. Country Club Inc.*, 887 F.3d 1270, 1278-79 (11th Cir. 2018).

Here, Van Cleve's petition for mandamus is due to be denied because he has, and is exercising, the adequate alternative remedy of challenging the district court's order denying his motion for a three-judge court as part of his appeal from the district court's final judgment dismissing his lawsuit for lack of standing. *See* 28 U.S.C. § 1291; *Gonzalez*, 419 U.S. at 100 n.19; *Jackson*, 130 F.3d at 1004.

Accordingly, Van Cleve's mandamus petition is **DENIED**.