of the state where the federal court sits." *Id.* Thus, the Eleventh Circuit ruled consistently with *Del Pilar* and reversed the district court's entry of summary judgment in favor of FedEx to "ensure that this case is decided in a Florida federal court as it would be in a Florida state court, and thereby discourage forum shopping as between federal and state courts in Florida and prevent the inequitable administration of the law." *Id.*

With regard to the individual common-law claims, two of the Florida drivers contended that the district court erred in granting summary judgment in favor of FedEx on their individual claims. Both drivers argued that the district court erroneously concluded that they lacked standing to pursue their claims. The district court, however, provided additional alternative bases for granting summary judgment on their claims, with the exception of one claim raised by one of the drivers, and the two drivers did not challenge these alternative bases on appeal. The Court noted that "'[t]o obtain reversal on a district court judgment that is based on multiple, independent grounds, an appellant must convince [the Eleventh Circuit] that every stated ground for the judgment against him is incorrect.'" *Id.* at 1327 (quoting *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 680 (11th Cir. 2014)). Thus, the Eleventh Circuit held that the individual drivers "abandoned any challenges to those grounds, and the district court's judgment must therefore be affirmed." *Id.* ⚖

D.C. CIRCUIT

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D.C. CIRCUIT CONSIDERS CERTIFICATION QUESTION

The D.C. Circuit recently issued two decisions that considered the scope of the court's jurisdiction to issue mandamus relief. In both cases, the court rebuffed efforts to bypass typical finality requirements and seek immediate review in the court of appeals via the All Writs Act. But the decisions followed different paths in reaching that result, and thus exposed a potential rift within the circuit concerning the extent of its mandamus authority.

In the first case, *In re Murray Energy Corp.*, 788 F.3d 330 (D.C. Cir. 2015), several petitioners challenged a proposed rule issued by the EPA. The petitioners argued that, even though the Clean Air Act limits judicial review to final agency action, the court of appeals had jurisdiction under the All Writs Act, 28 U.S.C. § 1651, to review the proposed rule and prohibit the EPA from issuing a final rule. In an opinion authored by Judge Kavanaugh and joined by Judge Griffith, the D.C. Circuit rejected that argument. It held that the All Writs Act did not authorize review of the proposed rule because the final rule could be challenged after it was issued, and reviewing the proposed rule was "not necessary or appropriate to aid the Court's jurisdiction." 788 F.3d at 335. "In short," the court observed, "the All Writs Act does not authorize a court to circumvent bedrock finality principles in order to review proposed agency rules." *Id.*

Judge Henderson concurred in the judgment and wrote separately "to distance [herself] from [her] colleagues' cramped view of [the court's] extraordinary writ authority." 788 F.3d at 337. In Judge Henderson's view, the D.C. Circuit did have jurisdiction under the All Writs Act to review the EPA's proposed rule. She reasoned that, because the court would have authority to review the final rule, the court also had "authority to issue a writ of prohibition in the interim." *Id.* She also determined that the limitations on judicial review in the Clean Air Act did not displace the court's general authority under the All Writs Act because the Clean Air Act did not contain "an explicit command" that courts could not issue mandamus relief. *Id.* at 338. Judge Henderson nevertheless concurred in the denial of the writ because she concluded that the petitioners had not made the necessary showing on the merits.

Two weeks later, in *In re al-Nashiri*, 791 F.3d 71 (D.C. Cir. 2015), the D.C. Circuit considered a mandamus petition filed by a detainee at Guantanamo

Bay that challenged the constitutionality of his trial by military commission. This time, Judge Henderson wrote for the court, in an opinion joined by Judges Rogers and Pillard. And this time, the court held that it had jurisdiction under the All Writs Act. Consistent with her analysis in *Murray Energy*, Judge Henderson's opinion in *al-Nashiri* concluded that the Military Commissions Act did not disturb the court's authority to issue mandamus relief. Although that statute stripped courts of jurisdiction over a broad range of claims by detainees, and although it included a "final-judgment rule," the panel held that the statute did not contain a "clear statement" that limited the availability of a remedy under the All Writs Act. *Id.* at 77–78. Ultimately, however, the court ruled that the petitioner's request for mandamus relief failed on the merits.

The decisions in *Murray Energy* and *al-Nashiri* suggest that there is tension within the D.C. Circuit concerning the scope of its authority to issue mandamus relief. The majority in *Murray Energy* seemed inclined to find that the court's jurisdiction under the All Writs Act was narrowed by principles of finality and other statutes governing judicial review. Judge Henderson and the other panel members in *al-Nashiri*, in contrast, seemed far less disposed to find such limitations on the court's jurisdiction. To be sure, this disagreement often may not make a difference in practice because, as both decisions confirm, it is exceedingly difficult to satisfy the standards for mandamus relief in any event. But it will nonetheless be interesting to see whether this jurisdictional dispute continues to ripen as future mandamus cases arise in the D.C. Circuit. ⚖