

NOTE: This order is nonprecedential.

# United States Court of Appeals for the Federal Circuit

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In Re FEI CAI,  
*Petitioner*

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2026-120

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On Petition for Writ of Mandamus to the United States Court of Federal Claims in No. 1:24-vv-01881-LAS, Senior Judge Loren A. Smith.

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## ON PETITION AND MOTION

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Before STOLL, WALLACH, and CUNNINGHAM, *Circuit Judges*.

PER CURIAM.

## ORDER

In the underlying Vaccine Act case, the United States Court of Federal Claims dismissed Fei Cai's motion to review the special master's dismissal of her action after she failed to comply with the court's page limits for such filings. Within 60 days of that order, she filed at this court a petition for a writ of mandamus challenging the dismissal and a motion for leave to proceed *in forma pauperis*.

Although Ms. Cai's petition is styled as a request for mandamus relief, we have discretion to consider whether

her filing constitutes a notice of appeal. *See Smith v. Barry*, 502 U.S. 244, 248 (1992). Here, the petition satisfies the general requirements for a notice of appeal under Rule 3 of the Federal Rules of Appellate Procedure and would be timely if treated as a notice of appeal.<sup>1</sup> We conclude that the petition should be construed as a direct appeal, and thus we also conclude mandamus relief is not appropriate. *See Mallard v. U.S. Dist. Ct. for the S. Dist. of Iowa*, 490 U.S. 296, 309 (1989) (holding that a party seeking a writ bears the burden of proving that it has no other adequate means of attaining the relief, such as by appeal).

As to Ms. Cai's motion for leave to proceed *in forma pauperis* on appeal, no motion is necessary because she was granted leave to proceed *in forma pauperis* before the Court of Federal Claims. Fed. R. App. P. 24(a)(3); Fed. Cir. R. (a)(1)(C).

Accordingly,

IT IS ORDERED THAT:

(1) The petition is denied. ECF No. 2 is treated as a timely notice of appeal in this matter. The Clerk of Court shall transfer this matter to the court's normal appeals docket, and Ms. Cai's opening brief is due within 60 days from the date of docketing.

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<sup>1</sup> Though the Court of Federal Claims stated the dismissal was without prejudice, the dismissal was involuntary, did not provide for leave to amend, and indicates intent to close the case, rendering it appealable. *See H.R. Techs., Inc. v. Astrotechnologies, Inc.*, 275 F.3d 1378, 1383 (Fed. Cir. 2002).

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(2) The motion for leave to proceed *in forma pauperis* on appeal is denied as moot.

FOR THE COURT



Jarrett B. Perlow  
Clerk of Court

January 22, 2026  
Date