No. _____

In The Supreme Court of the United States

MITRA RANGARAJAN,
Petitioner,

v.

JOHNS HOPKINS UNIVERSITY, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Before this Honorable Court is the question of when it is appropriate to dismiss an action for discovery violations under Fed. R. Civ. P. 37, in light of the split in practice among federal circuits.

Relatedly, the following sub-questions are also before the Court:

1) Whether an action can be dismissed for discovery violations for which a representing attorney alone is responsible.
2) Whether the discovery violations must prejudice the other side, and to what extent, for dismissal to qualify as an appropriate sanction.
3) Whether a warning that dismissal is possible is a prerequisite for dismissal as a sanction for discovery violations.

PARTIES TO THE PROCEEDING

In addition to the parties listed in the caption, the following co-Defendants in the United States District Court for the District of Maryland, remain a party to this action, and are also party Respondents to this Petition:

1) Johns Hopkins Health System Corporation;
2) Johns Hopkins Hospital, Inc., trading as Johns Hopkins Medicine; and
3) Anthony Kalloo, M.D.

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Fed. R. Civ. P. 37(b)(2)

(2) Sanctions Sought in the District Where the Action Is Pending.

> (vii) For Not Obeying a Discovery Order. If a party or a party's officer, director, or managing agent—or a witness designated under Rule 30(b)(6) or 31(a)(4)—fails to obey an order to provide or permit discovery, including an order under Rule 26(f), 35, or 37(a), the court where the action is pending may issue further just orders. They may include the following:
>
> > (vii) directing that the matters embraced in the order or other designated facts be taken as established for

purposes of the action, as the prevailing party claims;

(ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;

(iii) striking pleadings in whole or in part;

(iv) staying further proceedings until the order is obeyed;

(v) dismissing the action or proceeding in whole or in part;

(vi) rendering a default judgment against the disobedient party; or

(vii) treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination.

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REPORTS OF OPINIONS

The published Opinion of the United States Court of Appeals for the Fourth Circuit is dated February 22, 2019, and is set forth at Appendix A. The Fourth Circuit affirmed the June 16, 2017, Order of the United States District Court for the District of Maryland, which Order and accompanying Memorandum are set forth at Appendix B and C, respectively.

STATEMENT OF JURISDICTION

The Fourth Circuit's Opinion was rendered on February 22, 2019, and this Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Federal Rule of Civil Procedure 37, set forth at Appendix D

STATEMENT OF THE CASE

Mitra Rangarajan ("Ms. Rangarajan," and/or "Petitioner") sued Johns Hopkins University, Johns Hopkins Health System Corporation, Johns Hopkins Hospital, Inc. (trading as Johns Hopkins Medicine), and her supervisor Anthony Kalloo, M.D. (collectively "Johns Hopkins," and/or "Respondents"). Ms. Rangarajan's claims arose from her suspension and subsequent resignation from the Division of Gastroenterology and Hepatology ("the GI division") at the Johns Hopkins University School of Medicine

on or about May 6, 2011. Appendix C ("Memorandum of the United States District Court for the District of Maryland"), pg. A28-A32.

Ms. Rangarajan alleged that she was retaliated against for internally reporting that Johns Hopkins was engaging in fraudulent billing and on the basis of race, national origin, age, and sex, in violation of Title VII and 42 U.S.C. § 1981. Appendix A ("Published Decision of the United States Court of Appeals for the Fourth Circuit"), pg. A5-A6. She also alleged violations of the federal False Claims Act and the Maryland False Health Claims Act as *qui tam* actions. *Id.*, pg. A5.

During discovery, Ms. Rangarajan gave a deposition and produced over 1,573 pages of documents responsive to Johns Hopkins' request for all "jhmi.edu" and "jhu.edu" emails in her possession. *Id.*, pg. A7. Ms. Rangarajan also submitted an additional 85 pages after discovery closed in September 2016, indicating they too were responsive to Johns Hopkins' discovery requests for emails. *Id.*

On the basis of the record produced during discovery, Johns Hopkins moved for summary judgment. *Id.* Ms. Rangarajan's opposition to Johns Hopkins motion to dismiss included a 54-page Declaration which the defense alleged introduced new facts and contradicted the deposition testimony in parts. The Declaration also attached 19 exhibits that had not been previously produced by Ms. Rangarajan's lawyer in discovery. *Id.*, pg. A8. Some of the exhibits suggested thousands of email documents had not been produced during discovery. *Id.*, pg. A9.

Upon receiving Ms. Rangarajan's opposition, Johns Hopkins moved to stay further briefing on the motion for summary judgment, strike the opposition, and to dismiss Ms. Rangarajan's actions as sanction for her alleged discovery violations. *Id*. Without first making any reasonable inquiry of both the litigant and counsel as to who was culpable for the discovery violations, The District Court granted Johns Hopkins' motion for sanctions related to these discovery violations in an Order and accompanying Memorandum, dated June 6, 2017, dismissing all remaining claims. *See* Appendices B and C. Despite the lack of an inquiry, the District Court held that both Petitioner and trial counsel bore responsibility for the discovery violations, but the Petitioner more so. *See* Appendix C, at pg. A34, A44, and A59-A60. The District Court also ruled that Respondents had been "forced to expend a tremendous amount of time, effort, and expense in the discovery process and motions practice," *see id*., at A60, but never stated in what way, or to what extent, this actually prejudiced Respondents in defending against Ms. Rangarajan's claims.

Prior to dismissing the case, the District Court neither warned Ms. Rangarajan of dismissal as a possible sanction, nor provided her with an opportunity to produce any missing documents before issuing the ultimate sanction.

An appeal was undertaken by appellate counsel on behalf of Ms. Rangarajan in the United States Court of Appeals for the Fourth Circuit, challenging the harsh sanction of dismissal over the alleged discovery violations. The Court of Appeals for the Fourth Circuit upheld the District Court's sanction of dismissal in a published decision dated

February 22, 2019. *See* Appendix A. The instant Petition followed.

REASONS FOR ALLOWANCE OF WRIT

I. REVIEW IS WARRANTED TO RESOLVE CONFUSION OVER APPROPRIATE STANDARD FOR DISMISSING ACTIONS AS SANCTION FOR DISCOVERY VIOLATIONS IN FEDERAL CIRCUITS

There is a serious split among federal circuits on the question of when it is appropriate to dismiss an action for discovery violations under the Federal Rules of Civil Procedure, resulting in fundamentally different process being afforded parties depending on which circuit a case is tried in. As Chief Justice Earl Warren once said, "One of the shaping purposes of the Federal Rules is to bring about uniformity in the federal courts by getting away from local rules." *Hanna v. Plumer*, 380 U.S. 460, 472, 14 L. Ed. 2d 8 (1965) (internal quotations and citation omitted).

The current split in practice fails this principle and has been duly noted by various law reviews. As one commenter put it, "This lack of uniformity is troublesome and merits attention because only in extreme situations should a litigant be denied the opportunity to have their case heard on its merits due to a procedural violation." Jodi Golinsky, *DISCOVERY ABUSE: The Second Circuit's Imposition of Litigation Ending Sanctions for Failures to Comply with Discovery Orders: Should Rule 37(b)(2) Defaults and Dismissals Be Determined by a Roll of the Dice?*, 60 Brook. L. Rev. 585, 588 (1994).

This has led to a situation where, with respect to litigation ending sanctions under Rule 37, "no single approach is followed by more than one circuit." *Id*. at 596. Accordingly, there is no clear standard for when a party before the court may be subject to dismissal without hearing. As this Honorable Court long ago said:

> The ***fundamental*** conception of a court of justice is condemnation ***only after hearing***. To say that courts have inherent power to deny all right to defend an action, and to render decrees without any hearing whatever, is, in the very nature of things, to convert the court exercising such an authority into an instrument of wrong and oppression, and hence to strip it of that attribute of justice upon which the exercise of judicial power necessarily depends.

Hovey v. Elliott, 167 U.S. 409, 413–14, (1897) (emphasis added).

This confusion about the reach of Rule 37 sanction powers has further led to circuit splits on other questions related to Rule 37 sanctions, such as whether they apply to Fed. R. Civ. P. 26(c) protective orders, or whether non-compensatory money damages under Rule 37 require contempt findings. *See* Amber M. Bishop, *Remove the Muzzle and Give Rule 37(b) Teeth: Advocating for the Imposition of Sanctions for Rule 26(c) Protective Order Violations in the Eleventh Circuit*, 31 Ga. St. U.L. Rev. 407, 440 (2015) ("The Eleventh Circuit has split from the remaining Federal Circuit Courts in its

interpretation of Rule 37(b)'s applicability to Rule 26(c) protective orders"); Adam Jeffrey Fitzsimmons, *Protect Yourself: Why the Eleventh Circuit's Approach to Sanctions for Protective Order Violations Fails Litigants,* 48 Ga. L. Rev. 269, 271–72 (2013) ("violations of protective orders do not subject the offending party to Rule 37 sanctions, not even the payment of reasonable attorney's fees, in the Eleventh Circuit. Other circuits have taken a different approach"); Gregory A. Neibarger. *Chipping Away at the Stone Wall: Allowing Federal Courts to Impose Non-Compensatory Monetary Sanctions Upon Errant Attorneys without a Finding of Contempt*, 33 Ind. L. Rev. 1045, 1049 (2000) ("Despite the wide discretion given to district court judges in formulating sanctions under Rule 37, a split in authority has developed within the circuit courts as to whether a district court may impose monetary sanctions in excess of the "reasonable expenses" expressed in Rule 37(b)(2), without requiring a finding of contempt."); and Jaymie L. Roybal, *Permission to Punish: Sanctions without Boundaries*, 46 N.M.L. Rev. 217, 224 (2016) ("The issue of whether a finding of contempt is required prior to imposing non-compensatory monetary sanctions [for discovery violations] has caused a split in the federal courts.").

Returning to the issue of litigation-ending sanctions for discovery violations, current jurisprudential literature has also recognized a serious split on the question of whether district courts must consider lesser sanctions prior to imposing litigation ending ones. *See* Nathan T. Smith, *V. Defining the Standard for Imposing Discovery Sanctions*, 66 Geo. Wash. L. Rev. 804, 806

(1998) ("Despite the Supreme Court's position favoring deterrence, circuit courts have split on "whether district courts must consider lesser sanctions before imposing litigation-ending sanctions in instances of willful or intentional disobedience." Circuit courts have articulated varying formulae to evaluate district courts' imposition of sanctions.").

There is also a serious split on the question of whether there must be a finding of bad faith before a district court orders dismissal for a discovery violation:

> A bare majority of the federal circuit courts--including the Fifth, Sixth, Seventh, Eighth, Eleventh, Federal, and D.C. Circuits--require a showing that the producing party acted in bad faith before severe sanctions, such as an adverse inference or dismissal of a case, can be imposed. In addition, the Third Circuit requires bad faith for the most severe sanctions (such as dismissal of the action with prejudice or an adverse instruction); however, within some districts in the Third Circuit, only negligence is required for a judge to order an adverse inference against the producing party. On the other hand, there are a substantial number of circuits—Including the First, Second, Fourth, Ninth, and Tenth Circuits—that do not require bad faith for a judge to issue certain severe sanctions, including adverse inference jury instructions.

Alexander Nourse Gross, *A Safe Harbor from Spoliation Sanctions: Can an Amended Federal Rule of Civil Procedure 37(e) Protect Producing Parties?*, 2015 Colum. Bus. L. Rev. 705, 720–22 (2015). *See also Recent Innovations to Pretrial Discovery Sanctions: Rule 37 Reinterpreted*, Duke L. J. 1959.2, 278, 281-2 (1959) ("Again, the word "willfully," though it appears but once, has caused trouble, some judges and commentators contending and others denying that "willfulness" is always a prerequisite to the meting out of sanctions under the rule.").

It was not so long ago this Honorable Court felt the need to review and clarify confusion regarding the appropriate scope of sanctions under a court's "inherent power." *See Goodyear Tire & Rubber Co. v. Haeger*, 137 S.Ct. 1178 (2017). Review here is also warranted to address all of the disparate practices around sanctions for discovery violations noted thus far. Additionally, review is warranted in order to address the current circuit split on the following three questions:

a) Whether an action can be dismissed for discovery violations for which a representing attorney alone is responsible;
b) Whether a discovery violation must prejudice the other side, and to what extent, for dismissal to qualify as an appropriate sanction; and
c) Whether a warning that dismissal is possible is a prerequisite for dismissal as a sanction for discovery violations.

A. REVIEW IS WARRANTED TO RESOLVE CONFUSION OVER WHETHER AN ACTION CAN BE DISMISSED FOR DISCOVERY VIOLATIONS FOR WHICH A REPRESENTING ATTORNEY ALONE IS RESPONSIBLE

Federal circuits currently treat the question of whether an action can be dismissed for discovery violations attributable to an attorney alone in an inconsistent manner, leaving potential claimants before a federal court more vulnerable to the malfeasance of their attorneys in some circuits than others, and thereby frustrating access to process.

For example, in the Fifth Circuit, where the appropriateness of dismissal for violations of discovery are analyzed under what are known as the four-prong Connor Factors, a discovery violation "must be attributable to the client instead of the attorney" in order for dismissal to inure as a sanction. *See Moore v. CITGO Refining and Chemicals Co., L.P.*, 735 F.3d 309, 316 (5th Cir. 2013); *see also FDIC v. Connor*, 20 F.3d 1376, 1380 (5th Cir. 1994).

The level of culpability of a client herself is a non-determinative but otherwise considered factor in the Third, Fourth, and Tenth Circuits, where the question of dismissal as sanction for discovery violations is concerned. *See Bull v. United Parcel Services, Inc.*, 665 F.3d 68, 80 (3d Cir. 2012) ("[Third Circuit] district courts ordinarily balance six factors in assessing the propriety of an involuntary dismissal with prejudice: (1) ***The party's personal responsibility***; (2) the prejudice to the adversary;

(3) a history of dilatoriness; (4) willfulness or bad faith; (5) the availability of alternative sanctions; and (6) the merit of the claim or defense." (*Id.*; emphasis added; internal quotations and citations omitted)); *Projects Management Co. v. Dyncorp Intern. LLC*, 734 F.3d 366, 373-4 (4th Cir. 2013) ("A [Fourth Circuit] court must consider the following factors: (1) the degree of the wrongdoer's culpability; (2) ***the extent of the client's blameworthiness if the wrongful conduct is committed by its attorney***, recognizing that we seldom dismiss claims against blameless clients; (3) the prejudice to the judicial process and the administration of justice; (4) the prejudice to the victim; (5) the availability of other sanctions to rectify the wrong by punishing culpable persons . . . ; and (6) the public interest." (*Id.*; emphasis added)); and *HCG Platinum, LLC v. Preferred Product Placement Corporation*, 873 F.3d 1191, 1203 (10th Cir. 2017) ("Before imposing dismissal as a sanction . . . a district court should ordinarily evaluate the following factors on the record: (1) the degree of actual prejudice to the [other party]; (2) the amount of interference with the judicial process; (3) ***the culpability of the litigant***; (4) whether the court warned the party in advance that dismissal of the action would be a likely sanction for noncompliance; and (5) the efficacy of lesser sanctions." (*Id.*; emphasis added; internal quotations, citations, and alterations omitted)).

In contrast, the First, Sixth, Seventh, Eighth, Ninth, and D.C. Circuits require no consideration of whether the attorney or client was personally responsible for a violation related to discovery. *See Vallejo v. Santini-Padilla*, 607 F.3d 1, 8 (1st Cir. 2010); *Universal Health Group v. Allstate Ins. Co.,*

703 F.3d 953, 956 (6th Cir. 2013); *Brown v. Columbia Sussex Corp*., 664 F.3d 182, 190 (7th Cir. 2011); *Comstock v. UPS Ground Freight, Inc.*, 775 F.3d 990, 992 (8th Cir. 2014); *Valley Engineers Inc. v. Electric Engineering Co.*, 158 F.3d 1051, 1057 (9th Cir. 1998); and *Davis v. District of Columbia Child and Family Services Agency*, 304 F.R.D. 51, 61 (D.C. 2014). As a result, complainants appearing before a district court in these circuits could have their cases dismissed for discovery violations without a court having to consider whether they were in any way personally liable for such violations. As the United States Court of Appeals for the Fifth Circuit has noted, "[D]ismissal is a severe sanction that implicates due process." *Moore*, 735 F3d, at 315. So fundamental a right as due process should not be left vulnerable to discovery malfeasance for which the client is blameless in some Circuits, but not in others.

In the present case, the District Court found that both the Petitioner and her former counsel were responsible for the various discovery violations that took place. *See* Appendix C, pg. A34, A44. The District Court also found that Petitioner's former counsel "employed questionable judgment in not more thoroughly probing as to what Plaintiff stated she "believes" about her compliance [with discovery]." *Id*., pg. A60.

Despite this, and without affording Petitioner herself any independent opportunity to explain her personal role in the discovery violations versus that of the lawyer, the District Court determined that "responsibility for the lack of compliance with the pertinent rules lies primarily with [Petitioner] and not with her counsel." *Id*., pg. A59. Without making

a direct inquiry of the Petitioner, the District Court was not in a position to make a determination about the extent to which Petitioner was actually personally responsible for violations that took place during the highly technical process of discovery and motions practice.

With so fundamental a right as due process implicated, there should be some specific process afforded to the plaintiff to be heard apart from her counsel on the question of personal responsibility for violations of technical procedural rules, especially when a court is specifically taking a litigant's ***personal*** culpability into account. This is especially important in the context of sanctions for discovery violations, since there is no way for a court to know who actually erred, the litigant or counsel, with respect to any violation of discovery.

It has been mentioned, *supra* at pg. 7-8, that there is a recognized circuit split on the necessity of a finding of bad faith. Had Petitioner's original claims been filed in the Third Circuit, the District Court would have been obligated to consider not only her personal culpability relative her counsel, but also whether any of that culpability was the result of bad faith on her part. *See Bull*, 665 F.3d at 80. In a case where a lay person violates what to non-attorneys are obscure technical rules, it is difficult to imagine such a lay person being found to have acted with anything but zeal for prosecuting her claim before the court. This means claimants filing in the Third Circuit receive fundamentally different process from a federal court of law than claimants who file in the Fourth Circuit.

Accordingly, this Honorable Court should allow the writ herein petitioned for.

B. REVIEW IS WARRANTED TO RESOLVE CONFUSION OVER WHETHER A DISCOVERY VIOLATION MUST PREJUDICE THE OTHER SIDE, AND TO WHAT EXTENT, FOR DISMISSAL TO QUALIFY AS AN APPROPRIATE SANCTION

Similar to the question of the culpability of a party litigant for discovery violations, the question of whether such a violation must prejudice the other side, and to what extent, is treated in an inconsistent manner across the federal circuits.

In the Seventh and Eleventh Circuits, a court considering dismissal under Fed. R. Civ. P. 37 need not consider the prejudice resulting from a discovery violation, and may dismiss an action on a bare finding that a discovery violation was the result of willfulness, bad faith, or fault. *See Brown*, 664 F.3d at 190 (7th Cir. 2011) ("Rule 37 . . . requires a finding of willfulness, bad faith or fault on the part of the defaulting party." (*Id.*; internal citation omitted)); and *U.S. v. Certain Real Property Located at Route 1, Bryant, Ala.*, 126 F.3d 1314, 1317 (11th Cir. 1997) ("The decision to dismiss a claim or enter default judgment ought to be a last resort—ordered only if noncompliance with discovery orders is due to willful or bad faith disregard for those orders." (*Id.*; internal quotations and citations omitted)).

The Second Circuit requires that a court consider prejudice for dismissal as sanction for discovery violations under Fed. R. Civ. P. 41, but not under Fed. R. Civ. P. 37. *See Peters-Turnbull v. Board of Educ. Of City of New York*, 7 Fed Appx 107,

110 (2d Cir. 2001). In contrast, the remaining circuits all require that a district court consider the prejudice resulting from a discovery violation as part of their dismissal analysis. *See Vallejo*, 607 F.3d, at 8 (1st Cir. 2010); *Bull*, 665 F.3d at 80 (3d Cir. 2012); *Projects*, 734 F.3d at 373-4 (4th Cir. 2013); *Moore*, 735 F.3d at 316 (5th Cir. 2013); *Universal,* 703 F.3d at 956 (6th Cir. 2013); *Comstock*, 775 F.3d at 992 (8th Cir. 2014); *Valley*, 158 F.3d at 1057 (9th Cir. 1998); *HCG Platinum*, 873 F.3d at 1203 (10th Cir. 2017); and *Davis*, 304 F.R.D. at 61 (D.C. 2014).

Further, in the Fifth and District of Columbia Circuits, prejudice to the other side must be substantial. *See Moore*, 735 F.3d at 316 (5th Cir. 2013) ("the violating party's misconduct must ***substantially prejudice*** the opposing party." (*Id.*; emphasis added; internal quotations omitted)); and *Davis*, 304 F.R.D. at 61 (D.C. 2014) ("the other party has been ***so prejudiced by the misconduct that it would be unfair*** to require the party to proceed further in the case." (*Id.*; emphasis added; internal quotations and alterations omitted)).

As mentioned *supra*, the question of dismissal for discovery violations implicates a litigant's due process rights, and so fundamental a right should receive consistent interpretation across the circuits in the interest of justice. Requiring a warning ensures that the uninformed acts of a zealous litigant will not lead to dismissal unless the ability of the other side to pursue the case is actually prejudiced, thus protecting access to process. That access to process should be consistent regardless of which circuit happens to have jurisdiction over a particular litigant's case.

In the present case, and with respect to the issue of prejudice, the District Court found that:

> Defendants have been forced to expend a tremendous amount of time, effort, and expense, in the discovery process and motions practice. Plaintiff's conduct has rendered much of that activity essentially meaningless. In addition, as Defendants note, Plaintiff's conduct has impacted the dozen witnesses who could not care for patients while responding to her claims and has also depleted the resources of the Equal Employment Opportunity Commission, the Department of Education, the Department of Health and Human Services, the Department of Justice's Civil Fraud Section, the U.S. Attorney's Office, the Maryland Attorney General's Office, and this Court.

Appendix C, pg. A60.

The problem with this finding is that it is not clear to what extent, if much at all, Respondents were actually prejudiced by Petitioner's actions at the trial level. To begin with, the impact on the Department of Justice, U.S. Attorney's Office, and Maryland Attorney General's Office, can refer only to the decisions by those agencies to not join the *qui tam* claims in Petitioner's lawsuit. *See id.*, pg. A29. To call this prejudice would be to rule that the filing of *qui tam* claims is inherently prejudicial where the relevant government actor declines to intervene.

As to the prejudice determined to have been suffered by Respondents, discovery and motions practice generally requires a "tremendous amount of time, effort, and expense," and there is no suggestion anywhere that any of the discovery actually produced wasted time or effort. While Petitioner allegedly failed to turn over some responsive documents during discovery, it is not clear how this could not have been resolved by a continuance, or an extension. Almost any prejudice against a defendant in a lawsuit, caused by discovery violations such as late production, can be resolved by an extension. This remedy has the additional virtue of not limiting access to process.

Had this case been filed in the neighboring District of Columbia Circuit, that Circuit's rule that a party must be so prejudiced that it would be unfair for the party to continue would not likely have led to dismissal under these facts. This means that Petitioner would have been afforded a fundamentally different process had her employer been located in Washington, D.C., as opposed to its immediate neighbor to the north, Maryland.

Accordingly, this Honorable Court should allow the writ herein petitioned for.

C. REVIEW IS WARRANTED TO RESOLVE CONFUSION OVER WHETHER A WARNING THAT DISMISSAL IS POSSIBLE IS A PREREQUISITE FOR DISMISSAL AS SANCTION FOR DISCOVERY VIOLATIONS

There is currently a split amongst the circuits with respect to the question of whether a district court must warn a party that dismissal is possible prior to dismissing an action as a sanction for discovery violations. This has particular implications for the due process rights of litigants like Petitioner, whose zeal for their cause before the court can overwhelm their acute lack of understanding of highly technical courtroom procedure, rules, and conventions.

Currently, only the Sixth and Tenth Circuits require a warning before dismissal as sanction for discovery violations is permitted the court. *See Universal,* 703 F.3d at 956 (6th Cir. 2013); and *HCG Platinum*, 873 F.3d at 1203 (10th Cir. 2017). This has serious implications for litigant's access to process, since a zealous litigant, one so committed to their cause that even their own counsel cannot constrain their zeal for justice, can easily run afoul of rules they have no familiarity with, much as they have little familiarity with a court's power to dismiss an action as sanction for discovery violations.

At the trial court level, Petitioner was never given any explicit warning by the District Court that violations of discovery rules might lead to dismissal of her claim. The Fourth Circuit has made it clear that the District Court only mentioned that

Respondents' motion for sanctions against Petitioner "raised some serious issues." *See* Appendix A, pg. A14. This is hardly a clear warning that sanctions violations can lead to dismissal, especially when directed at a lay person with no personal expertise, or even familiarity, with the Federal Rules of Civil Procedure.

Had Petitioner's initial claims been filed in the Sixth or Tenth Circuits, her claims could not have been dismissed under the present facts. Because dismissal so fundamentally implicates a litigant's due process rights, and so fundamental a right should receive consistent interpretation across the circuits in the interest of justice, the Court should allow the writ herein petitioned for.

CONCLUSION

For all the aforementioned reasons, this Honorable Court should grant the instant Petition for Writ of Certiorari and reverse the decision of the Fourth Circuit Court of Appeals.

Respectfully submitted,

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