No. 19-7060

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In The
Supreme Court Of The United States

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KENT WILLIAMS,
Petitioner,
vs.
GUARD BROOKS, ET AL.,
Respondents.

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On Petition For A Writ Of Certiorari
To The Idaho Supreme Court

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BRIEF FOR GUARD BROOKS, ET AL., IN OPPOSITION

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QUESTION PRESENTED

Whether the Ninth Circuit Court of Appeals correctly affirmed dismissal of Petitioner's lawsuit based on Petitioner's failure to comply with a discovery order.

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INTRODUCTION

Petitioner Kent Williams (hereinafter "Williams") failed to comply with a discovery order, and as a result, the district court dismissed his case. The Ninth Circuit Court of Appeals affirmed the dismissal and later denied Williams's petition for rehearing en banc. Williams now requests that this Court reverse the lower courts' determinations and revive his action, but not for any reasons as decided by the lower courts. Williams alleges to this Court that the district court violated his constitutional and statutory right to petition and his religious freedoms by dismissing his case. However, this Court cannot consider these issues for the first time on appeal.

Even if the questions presented in this appeal had been considered by the lower courts, the Ninth Circuit's decision aligns with this Court's precedent and decisional law from other Circuit Courts. Furthermore, the issues presented are based on a unique set of facts that matter only to the parties, and therefore lack exceptional importance meriting this Court's review. Therefore, Williams's petition should be denied.

STATEMENT OF THE CASE

1. Facts

Williams filed his case on May 22, 2017 against five Ada County Sheriff's Office employees. (SER Vol.II, SER0286-0293). The allegations contained in his

Complaint arose during Williams's incarceration as a pre-trial detainee in the Ada County Jail while he faced multiple felony counts for committing armed bank robberies in Ada County Case No. CR-2015-12724. Williams was ultimately found guilty and sentenced to life in prison with 32 years fixed, and was transferred from the Ada County Jail to the custody of the Idaho Department of Corrections (hereinafter "IDOC"), a state-owned prison. He is currently incarcerated at the Idaho State Correctional Center (hereinafter "ISCC"), which is located on the outskirts of Boise, Idaho in Ada County.

On October 17, 2017, the district court issued a Scheduling Order granting Respondents permission to depose Williams in custody. (SER Vol. II, SER0281-85). According to the Scheduling Order, the parties were required to complete depositions and discovery by April 16, 2018. *Id.*, *see also* Fed. R. Civ. P. 6(a)(1)(B).

Thereafter, on February 26, 2018, Respondents served Williams a timely notice of his deposition to take place at the ISCC on March 22, 2018 at 8:30 a.m.—almost a month prior to the discovery deadline. (SER Vol. II, SER0055, ¶ 2). On the morning of the properly-noticed deposition, two attorneys representing Respondents and a court reporter arrived at ISCC to take Williams's deposition. *Id*. at ¶ 3.

As Respondents' counsel and the court reporter made their way to the room designated for the deposition, they were asked to meet with the warden of the facility, Warden Jay Christensen (hereinafter "Warden Christensen"). *Id*. at ¶ 3. During that meeting, Warden Christensen warned Respondents' counsel and the court reporter that Williams was being held in a segregation unit at the prison

because he had refused to undergo mandatory IDOC/ISCC medical screening for potential health risks. *Id*. at ¶ 4. Warden Christensen could not provide detailed information regarding the particular screening(s) Williams refused, based on federal privacy law constrictions. *Id*. at ¶ 4. He informed Respondents' counsel that ISCC considered Williams a potential health risk, which required Williams's segregation from the general prison population until he passed the required screening. *Id*. at ¶ 4 (SER Vol. II, SER0058). While Warden Christensen indicated that Respondents' counsel and the court reporter would be permitted to continue with the deposition, there was a risk that all three could be exposed to some sort of communicable disease. (SER Vol. II, SER0055, ¶ 4). Based on the information provided by Warden Christensen, Respondents' counsel elected to postpone the deposition, rather than expose themselves and the court reporter to the potential health risks. *Id*.

The following day, March 23, 2018, Respondents' counsel sent Williams a meet and confer letter explaining the reason the deposition was cancelled[1] and informing Williams that Respondents would be forced to seek court intervention if he did not take any steps to remedy the situation. (SER Vol. II, SER0059-60). In response to the meet and confer letter, Williams sent Respondents' counsel two letters containing well over 20 handwritten pages, which counsel received on March 30, 2018. (SER Vol. II, SER0055, ¶ 6 & SER Vol. II, SER0061-82). Williams's

[1] The letter also noted that Williams failed to warn Respondents that he was being segregated from the general prison population based on potential health risks, despite having ample time and opportunity to do so prior to the deposition date. (SER Vol. II, SER0059-60).

response was laced with expletives and vulgarity, including personal threats against Respondents' counsel. *Id*.[2] Between insulting Respondents and their counsel, Williams made clear that he refused to take any actions necessary to illuminate whether—and if so, to what degree—he would pose a risk to defense counsel and the court reporter if they rescheduled his deposition.[3] Based on this response, Respondents sought court intervention to solve the impasse.

On April 10, 2018, Respondents filed a Motion to Compel [Williams]'s Deposition, to Enlarge Time, and for Sanctions, or in the Alternative, to Dismiss [Williams]'s Claims (hereinafter "Motion to Compel"). (SER Vol. II, SER0048-53). In the Motion to Compel, Defendants sought an order requiring Williams to undergo ISCC's required medical screening and extending the deposition and dispositive motion deadlines to accommodate Williams's deposition following such screening. *Id*. Alternatively, Respondents asked the district court to dismiss Williams's claims based on his failure to comply with discovery obligations. *Id*.

On May 14, 2018, the district court issued an Order (hereinafter "May 14 Order") addressing Respondents' Motion to Compel and other various motions. (SER

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[2] "Your an idiot. Dont waste my time or exspense ever again asking me to respond to such idiocy." (SER Vol. II, SER0055, ¶ 6 & SER Vol. II, SER0061) (errors in original). "Yeah, Please, Please get court intervention. I'd love the Judge to Read that ~~Bitch~~[kw] letter." *Id*. (errors and strikethrough in original). "I do believe I will have to pursue action against you also." (SER Vol. II, SER0055, ¶ 6, SER0071 at 2). "You need to get disbarred, pal." (SER Vol. II, SER0055, ¶ 6).

[3] Williams summarizes the sentiment of both letters on page three of his letter titled "Requested Response to your spastic, harassing March 23, 2018 letter": "You requested a response, it is: Fuck you." (SER Vol. II, SER0055, ¶ 3). The district court transcribed the entire meet and confer letter from Respondents' counsel and a lengthy verbatim excerpt of Williams's reply into the body of its May 14 Order (SER Vol. I, SER0005-29).

Vol. I, SER0005-29). To begin with, the district court found that defense counsel acted reasonably in cancelling the deposition after being informed by Warden Christensen that the prison considered Williams a health risk. *Id*. The court noted that Respondents have a right to depose Williams per Fed. R. Civ. P. 30, and that such right should not "require defense counsel or anyone else to depose Williams in an environment where the health risks are unknown as a direct result of Williams's refusal to be screened." (SER Vol. I, SER0024). Based on that, the court ruled that Respondents' request for medical screening prior to Williams's deposition was reasonable. *Id*. The court warned that Williams's future refusal to undergo such screening would therefore "constitute failing to cooperate with that deposition" and would "result in the willful obstruction of his discovery in this matter," subjecting his case to dismissal. *Id*.

The district court then preemptively analyzed the five factors it must consider when determining whether to dismiss a case as a sanction under Rule 37 or Rule 41(b): "(1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the [Respondents]; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions." (SER Vol. I, SER0025) (citation omitted). The court determined that the first, second, third, and fifth factors all would weigh in favor of dismissal if Williams continued to impede his deposition. *Id*. The May 14 Order indicated that Williams's continued refusal to undergo screening "would result in the inability of [Respondents] to safely depose" him, which would impede

the progression of the lawsuit and prejudice Respondents' ability to depose Williams and construct their case. *Id*. Even further, the district court noted the lack of reasonable alternatives available to Respondents if Williams continued to refuse the medical screening. (SER Vol. I, SER0024). Neither a written nor a video deposition would adequately replace a face-to-face deposition, and a video deposition would require ISCC and a videographer, both non-parties to this case, to accommodate Williams's decision by providing additional resources or exposing themselves and non-parties to the potential health risk. *Id*. The court ruled that the sum of the five factors would weigh in favor of dismissal if Williams continued to refuse to undergo the medical screening. *Id*.

In turn, the district court ordered Williams to notify it and Respondents within 10 days of the May 14 Order whether he would undergo IDOC's required medical screening, specifically warning that Williams's failure to so notify, or his refusal to undergo screening, would result in dismissal of this entire action with prejudice based on Fed. R. Civ. P. 37 and/or 41(b). *Id*.

Williams failed to notify the court of his intentions with regard to the medical screening in direct violation of the May 14 Order. On July 2, 2018, the district court entered an Order of Dismissal on the basis that Williams had "utterly ignored" the May 14 Order and dismissed Williams's case with prejudice for "failure to comply with a Court order and for failure to comply with discovery obligations." (SER Vol. I, SER001 & SER004).

2. Proceedings Below

Williams appealed the district court's order to the United States Court of Appeals for the Ninth Circuit claiming that the district court erred in dismissing the lawsuit. The Court of Appeals upheld the district court's dismissal in a Memorandum filed May 28, 2019, holding as follows:

> The district court did not abuse its discretion by dismissing Williams's action as a discovery sanction because Williams was warned that if he chose not to undergo the prison's required medical screening, thereby impeding his in-person deposition, the action would be dismissed, and Williams nevertheless refused to undergo the required medical screening without providing any explanation for his refusal.

Pet. App., Mem. filed May 28, 2019. (internal citations omitted). Williams petitioned the court for rehearing en banc, which was denied.

REASONS TO DENY THE PETITION

Williams's Petition for Writ of Certiorari should be dismissed for three compelling reasons. First, the Ninth Circuit did not rule on any of the issues Williams has presented to this Court, and such issues cannot be considered by this Court in the first instance. Second, the decision below does not conflict with any decisions of this Court or other Circuit Courts. Third, the issues in this appeal are based on a unique set of facts that will not occur frequently; these issues therefore lack exceptional importance meriting this Court's review.

I. THE ISSUES PRESENTED IN THIS APPEAL WERE NOT DECIDED BELOW.

Williams urges this Court to grant review to determine whether the district court's dismissal of his action violated his right to petition and his religious freedoms. *See* Pet., "Question(s) Presented." However, neither the district court nor the Court of Appeals considered those issues. Because this Court cannot decide in the first instance issues not decided below, Williams's petition should be denied.

This Court is "a court of final review and not first view." *Adarand Constructors, Inc. v. Mineta*, 534 U.S. 103, 110 (2001). Therefore, it "ordinarily do[es] not decide in the first instance issues not decided below." *Cooper Industries, Inc. v. Aviall Services, Inc.*, 543 U.S. 157, 585 (2001) (quoting *Adarand Constructors, Inc.*, 534 U.S. at 109 (*per curiam*) (internal quotation marks omitted)).

Here, the Ninth Circuit considered whether the district court abused its discretion in dismissing Williams's case as a discovery sanction. Pet. App. Mem. filed May 28, 2019. Rather than appealing that issue to this Court, Williams sets forth new issues. All three of the questions Williams presents in this appeal revolve around whether the district court violated his constitutional and statutory right to petition and his religious freedoms under the First Amendment and the Religious Land Use and Institutionalized Persons Act ("RLUIPA"). *See* Pet., "Question(s) Presented." Williams's appeal rings more like a new civil complaint, rather than an appeal of the Ninth Circuit's ruling. Because this issue has not been decided below, Williams cannot assert it now, and his petition should be denied.

II. THE DECISION BELOW DOES NOT CONFLICT WITH DECISIONS OF THIS COURT OR OTHER CIRCUIT COURTS.

The district court's decision to dismiss this case as a discovery sanction was based on well-settled decisional law from this Court and other Circuit Courts. The district court dismissed this case under Fed. R. Civ. P. 37 and 41(b). (SER Vol I, SER0002-4). These rules are well-settled in federal case law, and there is no conflict warranting this Court's review. Therefore, the request for certiorari should be denied.

Courts review sanctions imposed under Rules 37 and 41 for abuse of discretion. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 55 (1991); *Pagtalunan v. Galaza*, 291 F.3d 639, 640 (9th Cir. 2002); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992). Although the sanction of dismissal is scrutinized more carefully, ultimately, the standard for reversal is still abuse of discretion. *See id*., *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987) *Velazquez-Rivera v. Sea-Land Service, Inc.*, 920 F.2d 1072, 1075 (1st Cir. 1990); *G. Heileman Brewing Co., Inc. v. Joseph Oat Corp.*, 871 F.2d 648, 655 (7th Cir. 1989); *Nat'l Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639, 642 (1976).

This Court has consistently held that "[t]he question, of course, is not whether this Court, or whether the Court of Appeals, would as an original matter have dismissed the action; it is whether the District Court abused its discretion in doing so." *Nat'l Hockey League*, 427 U.S. at 642 (citations omitted). To that end, the Ninth Circuit requires courts to consider five factors in determining whether to dismiss a case as a sanction under Rule 37 or Rule 41(b): "(1) the public's interest in

expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions." *Malone*, 833 F.2d at 130 (internal quotation marks omitted).

Here, the district court correctly dismissed this case, and the Ninth Circuit properly upheld the decision. The district court appropriately analyzed each of the five *Malone* factors and determined that they weighed in favor of dismissal. (SER Vol. I, SER0025-26). The Ninth Circuit upheld the decision, stating as follows:

> The district court did not abuse its discretion by dismissing Williams's action as a discovery sanction because Williams was warned that if he chose not to undergo the prison's required medical screening, thereby impeding his in-person deposition, the action would be dismissed, and Williams nevertheless refused to undergo the required medical screening without providing any explanation for his refusal.

Pet. App., Mem. filed May 28, 2019 (internal citation omitted).

As further evidence that the district court's determination aligns with federal case law, Williams has yet to cite even a single case supporting his argument that the district court abused its discretion in dismissing this action.

Williams's request for a writ of certiorari should be denied because the district court applied well-settled federal case law in determining that dismissal was an appropriate sanction.

III. THE ISSUES IN THIS APPEAL ARE BASED ON UNIQUE FACTS AND THEREFORE LACK EXCEPTIONAL IMPORTANCE.

This Court's review is also not warranted because the question presented is of limited importance and does not occur frequently. Williams claims that the

specific factual scenario did not merit dismissal as a sanction. The factual scenario giving rise to the dismissal is unique and therefore lacks the exceptional importance that would merit this Court's review.

Respondents attempted to depose Williams in the prison, but were constructively prevented from doing so based on warnings from prison officials that Williams may pose a health risk. The warden himself stated that Williams was being segregated from the general population of the prison based on his refusal to undergo mandatory prison medical screening. Ultimately, the district court determined that Respondents, having been warned by the prison that Williams may pose a health risk, should not have to weigh the possibility of personal harm when determining whether to depose the primary witness in their case (the plaintiff). The court ordered Williams to undergo the mandatory screening to allow Respondents a fair opportunity to depose him without fear of exposure and required Williams to notify the court within 10 days whether he intended on completing the screening. The court also warned Williams that his noncompliance would lead to dismissal of the action. Nonetheless, Williams neither notified the court within 10 days nor completed the mandatory screening. Based on Williams's complete failure to abide by the discovery order, the district court dismissed the case.

The facts of this case are unique. Because of this, the outcome of this action is of little importance to anyone except the parties themselves. This Court's review is not warranted here.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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