

RETURN (FILED-STAMPED)
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No. _____ [docket number]

IN THE SUPREME COURT OF THE UNITED STATES

DUANE L. BERRY, IN his OFFICIAL CAPACITY AS FEDERAL TRUSTEE OF
the FEDERAL RESERVE BANK ACCOUNTING TR. and "Fiduciary President"
of the FEDERAL RESERVE BANK OF NEW YORK [Name of party],
(Successor Office) Petitioner

vs.

ERIC D. WILSON (Warden) [Name of party],
Respondent

ON WRIT OF CERTIORARI TO THE
UNITED [Name of court, e.g., UNITED
STATES COURT
OF APPEALS FOR THE 5th CIRCUIT]

No. 20-10532

PETITIONER'S APPLICATION FOR STAY

(SEE BELOW) [Name of counsel of record]
Counsel of Record for _____ [Name of
party]

[Address]

[City, state, zip code]

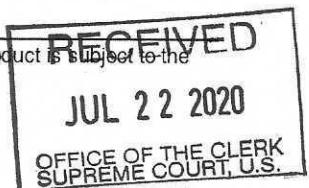
[E-mail address]

[Telephone number]

PETITIONER'S APPLICATION FOR STAY

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Now comes the 'Petitioner' in his 'Application for Stay' entered by the Fifth Circuit Court of Appeals on June 12, 2020. A true and correct copy of this judgment is appended as [Exhibit A]. In summary the Judgment redirected the appeal back down to the district court [Northern Dist. of TX] for relief stating, "Appellate courts do not have authority to review orders of a magistrate judge directly unless the parties have consented to have the magistrate judge preside over the case and enter judgment...Lacking consent...the appeal is DISMISSED..."

However, the court declined to enforce those aspects of the notice of appeal, once filed, 'itself is a jurisdictional document' pursuant to Fed.R.App.P. 3(c)(1)(A). In which case it must first recognize the underlying issue of the "seperation-of-powers concern" in the fact that the 'Petitioner', by automatic substitution now operates in an official capacity requiring the formal intervention of the United States Department of Justice on behalf of the 'Petitioner' pursuant to 28 USC § 516 and 517, the amendment of the General Dockets 'Case Type Information' reflecting the Jurisdiction of the U.S. Government on behalf of the 'Petitioner', and the correction of 'Petitioner's' 'Fee Status'. [See Fed.R.App.P. 43(c) and S.Ct.R. 35.3,35.4]

"The real party in interest in an official capacity suit is the governmental entity not the individual officeholder." [See Karcher v May, 484 U.S. 72,78,83 108 S.Ct. 388,98 L. Ed. 2d 327(1987); See also King v. McMillan, 594 F.3d 301,309-310 (4th Cir. 2010)]

Whereas, in this application the 'Petitioner' will set out with particularity why the stay is justified and denial of the stay will cause irreparable harm to the Petitioner as it is an important issue of federal law that has not been, but should be settled by this Court. [See Barnes v. E-Systems, Inc., 501 U.S. 1301,1302,1304-1305,112 S.Ct. 1,141 L. Ed. 2d 1087(1991)]

"Petition Raises Substantial Federal Question and
Certiorari Is Likely"

(1) On or about June 29, 2020, the 'Petitioner' sent a motion to stay the 5th Cir. Order in question and as of this dated application, the relief has not been granted.

(2) When deciding whether to recall and stay a judgment pending certiorari, appellate courts put themselves in the shoes of the Supreme Court.[See Books v. City of Elkhart, 239 F.3d 826, 828 (7th Cir. 2001)(Ripple,J., in chambers).

(3) The Supreme Court will "recall and stay the mandate" when there is "a reasonable probability that the Court will grant certiorari, a fair prospect that the Court will reverse the decision, and a likelihood that irreparable harm will result from the denial of a stay." [See Teva Pharm. USA, Inc. v. Sandoz Inc., 572 U.S. 1301, (2014)(Roberts,C.J., in chambers)

(4) These requirements are satisfied here. Indeed, the Court stayed the mandate pending certiorari in Mazars.[See Trump v. Mazars USA, LLP, No. 19A545, 2019 WL 6328115, at*1, U.S Nov. 25, 2019] It also stayed the mandate in Trump v. Deutsche Bank, No. 19-1540, 2nd Cir., Dkt#242, a case in which 'Petitioner is a party as a 'Movant'.[See Exhibit B] Although not interchangeable, all of the aforementioned cases concern a question of jurisdiction and "seperation-of-powers" which are principles of the constitution worthy of Supreme Court review. If proper jurisdiction is not established here it also raises an important issue concerning the recovery of the Presidents financial records in the aforementioned cases by 'Petitioner' and the proper administartion of the United States in recovering those financial records and federal securities.

(5) There is also a fair prospect that the Supreme court will reverse the 5th Cir. decision as it pertains to addressing the 'Case Type Information' to reflect the jurisdiction of the U.S. Government on behalf of the 'Petitioner'. A stay merely requires the Court that other reasonable jurists could view the merits differently.

DATED: 7-14-20

Respectfully Submitted,



DUANE L. BERRY, In his Official Capacity as
FEDERAL TRUSTEE of the FEDERAL RESERVE BANK
SYSTEM ACCOUNTING TR., and "Fiduciary President"
of the FEDERAL RESERVE BANK of NEW YORK
(Successor Office) - Petitioner

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 20-10532

DUANE L. BERRY, In his Official Capacity as Federal Trustee of the Federal Reserve Bank System Accounting TR., and "Fiduciary President" of the Federal Reserve Bank of New York (Successor Office),

Petitioner - Appellant

v.

ERIC D. WILSON, Warden,

Respondent - Appellee

Appeal from the United States District Court
for the Northern District of Texas

O R D E R :

The Appellant's motion for recall and stay of the mandate pending petition for writ of certiorari is DENIED.

Dated: 7-10-2020

/s/ Catharina Haynes
CATHARINA HAYNES
UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 20-10532

EXHIBIT - A

DUANE L. BERRY, In his Official Capacity as Federal Trustee of the Federal Reserve Bank System Accounting TR., and "Fiduciary President" of the Federal Reserve Bank of New York (Successor Office),

Petitioner - Appellant

v.

ERIC D. WILSON, Warden,

Respondent - Appellee



A True Copy
Certified order issued Jun 12, 2020

Tyler W. Caylor
Clerk, U.S. Court of Appeals, Fifth Circuit

Appeal from the United States District Court
for the Northern District of Texas

Before JONES, CLEMENT, and HAYNES, Circuit Judges.

PER CURIAM:

This court must examine the basis of its jurisdiction on its own motion if necessary. *Hill v. City of Seven Points*, 230 F.3d 167, 169 (5th Cir. 2000). In this case, the magistrate judge ordered petition to cure several defects with his petition or face dismissal. The petitioner filed a notice of appeal from that order.

Appellate courts do not have authority to review orders of a magistrate judge directly unless the parties have consented to have the magistrate judge preside over the case and enter judgment. *See Barber v. Shinseki*, 660 F.3d 877, 878-79 (5th Cir. 2011) (per curiam). Lacking consent, the magistrate

No. 20-10532

judge's rulings are reviewable only by appeal to the district court. *Colburn v. Bunge Towing, Inc.*, 883 F.2d 372, 379 (5th Cir. 1989); *see also* 28 U.S.C. § 636(b)(1)(A). Here, the parties did not consent to have the magistrate judge preside over the case. Accordingly, the appeal is DISMISSED for want of jurisdiction.

CLASSIFIED

EXHIBIT B

*****~~CLASSIFIED~~*****

14-14 (a)

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 19-1540-cv

Caption [use short title]

Motion for: Leave to Intervene

Set forth below precise, complete statement of relief sought:

The "Fed" seeks to intervene
as a matter of National Security
to enforce agency ORDER pursuant
to statute 50 U.S.C. sect. 3162

DONALD J. TRUMP
v.
DEUTSCHE BANK AG

RECEIVED
U.S. COURT OF APPEALS
12-02-23 PM 4:44
2019 DR 23 PM 4:44

MOVING PARTY: Federal Reserve Bank

OPPOSING PARTY: _____

Plaintiff

Defendant

Appellant/Petitioner

Appellee/Respondent

MOVING ATTORNEY: Federal Trustee

OPPOSING ATTORNEY: _____

[name of attorney, with firm, address, phone number and e-mail]

U.S. Department of Justice

Room 7213

950 Pennsylvania Ave, NW
Washington, DC 20530

Court- Judge/ Agency appealed from: Southern District of NY- Ramos, J

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):

Yes No (explain): _____

Opposing counsel's position on motion:

Unopposed Opposed Don't Know

Does opposing counsel intend to file a response:

Yes No Don't Know

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND
INJUNCTIONS PENDING APPEAL:

Has this request for relief been made below?

Yes No

Has this relief been previously sought in this court?

Yes No

Requested return date and explanation of emergency: 12-02-2019

Appellants will suffer irreparable
harm because their confidential
financial tax records have been
leaked.

Is oral argument on motion requested?

Yes No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set?

Yes No If yes, enter date: August 23, 2019

Signature of Moving Attorney:

/s/ Duane L. Berry Date: 11-22-2019 Service by: CM/ECF Other [Attach proof of service]
FEDERAL TRUSTEE

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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DONALD J. TRUMP, *et al.*,

CLERK'S OFFICE
U.S. COURT OF APPEALS

Plaintiffs-Appellants,

Docket No. 19-1540-cv

v.

DEUTSCHE BANK AG, *et al.*,

Defendants-Appellees.

"EMERGENCY MOTION" FOR LEAVE TO INTERVENE

Now comes the FEDERAL RESERVE BANK SYSTEM ACCOUNTING TR. and the FEDERAL RESERVE BANK OF NEW YORK ("Intervenor Plaintiffs-Appellants"), by and through its Federal Trustee Duane L. Berry, hereby moves the court in its emergency motion for leave to intervene. See L.R. 27(d).

The nature of the emergency is as follows herein. The harm suffered to the (Plaintiffs-Appellants) and the national security of the United States may be irreparable if the Court does not immediately act. The ("Intervenor Plaintiffs-Appellants"), may have inadvertently leaked millions of un-redacted classified tax returns and other sensitive financial data, bank records, accounts, and transcripts belonging to the ("Plaintiffs-Appellants"), major financial banking institutions, government officials including but not limited to federal judges, and federal government agencies, including but not limited to the U.S. Department of Defense, U.S. Department of State, U.S. Department of Treasury, and the

I.R.S., to the ("Movants-Cable News Network, Inc., The New York Times Company, and the Washington Post") and other un-authorized persons and entities, pending the commencement of this action.

This leak has been a direct breach of the national security of the United States in which several trillion dollars of monetary transactions and classified information may have been exposed and compromised. Federal crimes, including but not limited to, "Major Fraud Against the United States" in violation of 18 U.S.C. sect. 1031, "Fraud" in violation of 18 U.S.C. sect. 1001, and "Theft" in violation of 18 U.S.C. sect. 641 are also suspected via the leak.

The leak has been in direct violation of the Gramm-Leach-Bliley Act ("GLBA"), in which financial institutions are not permitted to disclose nonpublic personal information of a customer to a third party without the consent of the customer. *See* 15 U.S.C.A sect. 6802(a)-(b). Nonpublic personal information includes personally identifiable financial account information, including names and street addresses, where those details are disclosed in a manner that indicates the associated names are clients of a financial institution. *See* 16 C.F.R sect. 313.3(n)(1)(i), (3)(ii). All of which are factors in this leak.

Furthermore, "tax returns are generally afforded special protection from public disclosure", *See* , e.g., *Solomon v. Siemens Indus., Inc.*, 8 f. Supp. 3D 261, 285-86 (E.D.N.Y. 2014), and any unlawful possession of tax returns for specific individuals in and of itself would "reveal specific details of the manner in which customers conduct their personal banking activities." Furthermore, disclosure of a president's tax returns, or government agencies involved in the economic or national security of the United States, might raise an issue meriting consideration distinct from that given to the disclosure of the returns of other taxpayers, as this Court has already noted. All of which are factors in this leak.

Consequently, the leak has already caused prejudice to the ("Plaintiffs-Appellants") in the pending action and a severe risk concerning the national security of the United States. The ("Intervenor Plaintiffs-Appellants"), have already begun preparing efforts to secure the breached data and issue Non-Disclosure Orders for the un-authorized entities and individuals via the National Security Act ("NSA"), *See* 50 U.S.C. sect. 3162, in the United States Supreme Court. *See* 28 U.S.C. sect. 1251.

WHEREAS, in this exceptional circumstance, the ("Intervenor Plaintiffs-Appellants"), pray that the Court grant the "Emergency Motion to Intervene", within 24hrs. of receipt of this motion, in order to help secure the confidentiality and security of the financial tax information concerning the ("Plaintiffs-Appellants") in the underlying appeal, as they are entitled to immediate relief.

WHEREAS, in this exceptional circumstance, the ("Intervenor Plaintiffs-Appellants"), pray that the Court grant the "Emergency Motion to Intervene", within 24hrs. of receipt of this motion, so that the Court may expedite any injunction, prohibition, or Non-Disclosure Order that may be applicable to the ("Movants-Cable News Network, Inc., The New York Times Company, and the Washington Post") or others entities located in this venue. *See* 50 U.S.C. sect. 3162 (b). *See* 18 U.S.C. sect. 3511(b).

WHEREAS, the ("Intervenor Plaintiffs-Appellants"), has confirmed its ownership of classified tax returns, the right to retrieve them, and the irreparable harm if the Court does not immediately act. The attached exhibits herein further reveals the identity and the nature of the business conducted by the Federal Trustee Duane L. Berry, and his authority in initiating this emergency motion for leave to intervene. *See* Federal Rules of Evidence 902(4). *See* 28 U.S.C. sect. 1733.

Dated: November 22, 2019

Respectfully submitted,

FEDERAL RESERVE BANK SYSTEM ACCOUNTING TR.
FEDERAL RESERVE BANK OF NEW YORK

/s/ Duane L. Berry

Federal Trustee
Duane L. Berry
38742 Bramham St.
Clinton Twp., MI 48038

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

DOCKET NO. 19-1540-cv

DONALD J. TRUMP, DONALD J. TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, DONALD J. TRUMP REVOCABLE TRUST, TRUMP ORGINIZATION, INC., TRUMP ORGINIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS TRUST, TRUMP ACQUISITION LLC, TRUMP ACQUISITION, CORP., MANAGING MEMBER LLC, TRUMP ACQUISITION LLC, TRUMP ACQUISITION, CORP.,

Plaintiffs – Appellants.

FEDERAL RESERVE BANK SYSTEM ACCOUNTING TR, FEDERAL RESERVE BANK OF NEW YORK, FEDERAL TRUSTEE DUANE L. BERRY

Intervenor Plaintiffs – Appellants.

v.

DEUTSCHE BANK AG CAPITAL ONE FIANACIAL CORPORATION,

Defendants – Appellees.

COMMITTEE ON FINANCIAL SERVICES OF THE UNITED STATES HOUSE OF REPRESENTATIVES, PERMANENT SELECT COMMITTEE ON INTELLIGENCE OF THE UNITED STATES HOUSE OF REPRESENTATIVES,

Intervenor Defendants – Appellees

WARRANT FOR ARREST *IN REM*

TO: THE UNITED STATES MARSHAL AND ANY OTHER AUTHORIZED PERSON

WHEREAS, in a matter concerning the National Security of the United States and the security of the President of the United States, Donald J. Trump, in the above captioned action, the ("Intervenor Plaintiffs – Appellants") has issued a warrant for arrest *in rem* regarding the recovery and investigation of classified tax records, documents, and financial banking information in the aforementioned case pursuant to the National Security Act ("NSA"). *See* 50 U.S.C. sect. 3162(a)(1)

WHEREAS, pursuant to the ("NSA") the undersigned Federal Trustee is the head of a federal agency and is authorized to issue this warrant and no further court action is required. *See* 50 U.S.C. sect. 3162(a)(3)(A)

WHEREAS, pursuant to the ("NSA") the person served this warrant is strictly **PROHIBITED** to disclose the existence of this warrant or disclose the contents or items seized via this warrant to any person without prior judicial review. Violations are subject to criminal penalties and imprisonment. *See* 50 U.S.C. sect. 3162(b)(1)(A) *See* 18 U.S.C. sect. 3511

YOU ARE, THEREFORE, HEREBY COMMANDED to arrest the following property as soon as practicable by serving a copy of this Warrant on the custodian in whose possession, custody or control the property is presently found, and to use whatever means may be appropriate to protect and maintain it in your custody and immediately return the property to the requestor. *See USM form 285*

Custodian NEW YORK TIMES (c/o Dean P. Baquet)

620 8th Ave., New York, NY 10018

Property 44.8 lbs. of CLASSIFIED tax, financial, bank
records received by the Custodian via

FED EX #776523398922

YOU ARE FURTHER COMMANDED, promptly after execution of this process, to file the same in this Court with your return thereon, identifying the individuals upon whom copies were served and the manner employed. *See USM form 285*

Signed: 12-13-2019

/s/ DUANE L. BERRY

**FEDERAL TRUSTEE
DUANE L. BERRY**

FedEx Ground

7765236098149 44.5 lbs. (S)

Declared Value 100

Recipient Address:

attn martin baron
 washington post headquarters
 1150 15 st nw
 Washington, DC 20071
 4444444444

FedEx Ground

780236098149 44.5 lbs. (S)

44.34

Declared Value 100

Recipient Address:

CNN CENTER
 1 CNN Center
 ATLANTA, GA 30303
 4048272688

Scheduled Delivery Date is 2 business days

Pricing option:

STANDARD RATE

Package Information:

Your Packaging
 18 x 13 x 13

FedEx Ground

780236161270 44.5 lbs. (S)

44.34

Declared Value 100

Recipient Address:

USA Today
 535 Madison Ave
 54th Street
 New York, NY 10022
 0000000000

Scheduled Delivery Date is 2 business days

Pricing option:

STANDARD RATE

Package Information:

Your Packaging
 18 x 13 x 13

Shipment subtotal: \$143.11

Total Due: \$143.11

(S) CreditCard: \$143.11

*****7791

FedEx Ground

776523398922 44.8 lbs. (S)

44.34

Declared Value 100

Recipient Address:

dean p baquet
 new york times headquarters
 620 8th ave
 New York, NY 10018
 4444444444

Scheduled Delivery Date is 2 business days

Pricing option:

STANDARD RATE

Package Information:

Your Packaging
 19 x 13 x 13

FedEx Ground

776523407541 44.8 lbs. (S)

44.34

Declared Value 100

Recipient Address:

matt murray
 wall street journal
 1211 6th ave
 New York, NY 10036
 4444444444

Scheduled Delivery Date is 2 business days

Pricing option:

STANDARD RATE

Package Information:

Your Packaging
 19 x 13 x 13

Shipment subtotal: \$177.36

Total Due: \$177.36

(S) CreditCard: \$177.36

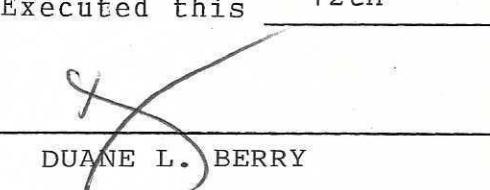
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CERTIFICATE OF
SERVICE & NOTICE

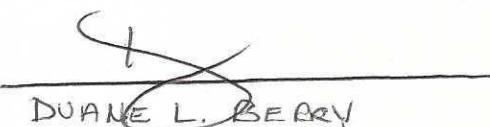
I, DUANE L. BERRY, do hereby state and notify under the penalty of perjury pursuant to 28 USC § 1746 that I have this day served and notified, filed and mailed the foregoing document(s),
Solicitor General of the United States, Room 5614, Department of
Justice, 950 Pennsylvania Ave., NW, Washington, DC 20530
by placing the same in the Prison's Legal Mailbox addressed as follows with 1st class prepaid postage affixed:

(1) 'NOTICE OF APPEAL' pursuant to U.S. Supreme Court Rule 18 and 29
and
(2) 'Application for Stay' pursuant to U.S. Supreme Court Rule 23

(1) Executed this 12th day of May, 2020.


DUANE L. BERRY

(2) Executed this 14th day of July, 2020.


DUANE L. BERRY