APPENDIX

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APPENDIX A

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
MISSISSIPPI
ABERDEEN DIVISION**

**RACHEL HARRIS,
GUARDIAN OF
STEVEN JESSIE HARRIS** — **PLAINTIFF**

V. — **NO. 1:18CV167 M-P**

**CLAY COUNTY,
MISSISSIPPI et al** — **DEFENDANTS**

ORDER

This cause comes before the court on the motion of defendants to continue the trial in the above-entitled action. This court is prepared to rule on this motion, and it will also use this order as an opportunity to correct what it believes to be a mischaracterization of its ruling in this case, in briefing before the U.S. Supreme Court.

In seeking to continue this trial, presently set for March 6, 2023, defendants argue that:

> The United States Supreme Court is considering the Defendants' Petition for Writ of Certiorari on the issue of whether Defendants Huffman and Scott are entitled to qualified immunity. The

> United States Supreme Court has requested a Response be filed by Respondent Harris a mere twelve (12) days prior to this Court's scheduled trial date. It is respectfully submitted that given the Supreme Court's current briefing schedule and consideration of the Petition, this Court should exercise its discretion and stay the trial date and pretrial deadlines until which time the United States Supreme Court has rendered a decision in the matter.

[Motion at 1].

In considering defendants' motion, this court notes that this case is on its "three-year list" of older cases, as to which the Civil Justice Reform Act strongly advises it to act expeditiously. Moreover, defendants' motion includes no authority indicating that a trial continuance is appropriate in this particular procedural circumstance, as to which the U.S. Supreme Court no doubt has its own available procedural devices, such as stays pending appeal. Furthermore, this court believes that defendants' motion is undercut by their own Exhibit C, which is a December 28, 2022 letter from their counsel to the Clerk of the Supreme Court. In that letter, counsel requested a shorter extension of time for plaintiff to respond to the cert petition than she had requested, writing that:

> In addition, trial of the case has been set by the district court for March 6, 2023, which pre-dates the requested extension date of March 14 for Respondents to oppose the Petition. (Exhibit.) Petitioners hesitate to oppose any reasonable request for an extension of time particularly in this Court

> and given the gravity of the issues presented in this case. Under the circumstances, however, Petitioners respectfully suggest that an extension of no more than 30 days, through February 22, 2022, would be reasonable for Respondent to respond to the Petition.

[Exhibit C at 1-2].

It is thus clear that the Supreme Court is well aware of the pending trial date in this matter, and it is proceeding with the assurances of counsel for defendants that the current briefing schedule is "reasonable" in light of this trial date. Under these circumstances, this court concludes that it should continue its current course unless and until it receives some indication from the Supreme Court that it should do otherwise. Defendants' motion to continue will therefore be denied.

Having ruled on defendants' motion, this court believes that it needs to set the record straight regarding the nature of the holding it made in this case, since the cert petition in this case mischaracterizes it. The petition asserts that this court found the *Hope v. Pelzer*, 536 U.S. 730, 122 S. Ct. 2508 (2002) "obvious case" exception applicable to this case based upon the county's general obligations to ensure that it is not wrongfully imprisoning a suspect. [Petition at 9-10]. That is not the case. This court made clear that it was applying *Hope* based upon its conclusion that fact issues existed regarding whether Huffman and Scott had deliberately lied in their Sheriff's Diligence Declaration in order to deprive Harris of his due process rights.

This court discussed the Sheriff's Diligence Declaration extensively in its summary judgment order, but it will briefly review it here. This Declaration involved a certification by defendants Huffman and Scott to a court seeking to grant Harris his due process rights on a jail assault charge that "[a]fter diligent search and inquiry, I have been unable to find the within named Stephen Jesse Harris in my county." *Harris v. Clay Cnty., Mississippi*, 2021 WL 2004111, *6 (N.D. Miss. May 19, 2021). This was a rather astonishing representation, considering that Harris was, at the time, a high-profile inmate in defendants' jail.

As noted by the Fifth Circuit in its opinion:

> A few days after Harris should have been released, Huffman and Scott signed the declaration testifying that Harris was not in the jail (this in a relatively small county with approximately 20,000 citizens and roughly 100 inmates at a given time). That lie allows a factfinder to infer that Huffman and Scott were covering something up—that they knew there was no longer any basis to hold Harris.

Harris v. Clay Cnty., Mississippi, 47 F.4th 271, 278 (5th Cir. 2022). The Fifth Circuit thus characterized the Declaration as a "lie," and, applying the same deferential factual standard of review as the appellate court, this court emphasized this lie in holding that *Hope*'s "obvious case" exception applied.

Specifically, this court wrote that:

> While plaintiff's submissions on the "clearly established" prong thus leave a good deal to be desired,

> it should be emphasized that *Tolan* makes clear that the facts must be considered in the light most favorable to plaintiff on summary judgment, even as to this stringent prong. **In this case, that means that this court must consider the law as it relates to a (presumed) knowing and deliberate lie by Huffman and Scott in submitting the Sheriff's Diligence Declaration, in order to deprive him of his due process rights under *Jackson***. Considering the facts of this case, this court regards it as a proper one for the application of the "obvious case" exception to the "clearly established law" prong, which was first recognized by the U.S. Supreme Court in *Hope v. Pelzer*, 536 U.S. 730, 122 S. Ct. 2508, 153 L. Ed. 2d 666 (2002).

Harris, 2021 WL 2004111 at *23.

Thus, this court held that it was "obvious" under *Hope* that defendants could not lie to a court regarding their knowledge of Harris' whereabouts in order to deprive him of his due process rights, and it still believes that to be the case today. *Id.* at 20-21. In so stating, this court emphasizes that the crucial question under *Hope* is whether the unlawful nature of a defendant's conduct should have been "obvious" to him, even absent case law "clearly establishing" such. In this vein, this court submits that, just as it should have been obvious to the defendants in *Hope* that they could not lawfully tie prisoners to a "hitching post," even absent prior case law so establishing, *Hope*, 536 U.S. at 730, it should have been obvious to the defendants in this case that they could not lie to a court regarding their knowledge of Harris' whereabouts, in

order to prevent him from receiving his due process rights. Having, in the passage quoted above, clearly explained its basis for applying *Hope* in the sentence prior to doing so, this court did not deem it necessary to elaborate any further upon why it would have been "obviously" unlawful for defendants to lie to a court in order to deprive Harris of his due process rights. This order will not insult the intelligence of its readers by attempting to "walk them through it" now, since it is, in fact, an obvious point.

In explaining how such a lie might have assisted Huffman and Scott in keeping Harris unlawfully incarcerated, this court wrote in its summary judgment order that:

> [T]he fact that both defendants sought to use the capias on the assault charge to justify plaintiff's lengthy incarceration in their jail tends to support his theory as to why they would have had an incentive to lie regarding this matter. It appears to this court that if Huffman and/or Scott wished to use the prison assault charge to justify plaintiff's indefinite incarceration, then it might assist them in doing so if this charge lingered unresolved for a lengthy period of time. This appears to be exactly what happened, since the parties seem to agree that the assault charge was never resolved one way or the other. Moreover, the fact that, many years later, Huffman and Scott cited the assault capias in their depositions as justification for plaintiff's lengthy incarceration, while Allgood himself did not, arguably dovetails nicely with plaintiff's theory that they were seeking to use the

> lingering assault charge as a pretext for continuing to hold him.

Harris, 2021 WL 2004111 at *21.

With regard to the final sentence, this court notes that counsel for the prosecutor Allgood e-mailed it on March 6, 2021, with other counsel cc:ed,[1] to emphasize her client's testimony that "Harris was detained pursuant to the 2006 capias issued in conjunction with Harris's original indictment for the October 8, 2005, crimes, as well as the chancery court order from the commitment proceeding which was dismissed." This clarification was in response to an e-mail from plaintiff's counsel, with other counsel cc:ed, in which he explained to this court how the Sheriff's Diligence Declaration came to light relatively late in discovery, writing that:

> During Huffman's deposition he was adamant that he was permitted to hold Mr. Harris on the basis of this [jail assault] indictment, which was also confusingly raised at the time by Allgood. It was at that point we discovered that there had been a declaration of diligence signed by both Huffman and Scott that they could not find Harris to serve him with the capias, which was obviously untrue.

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[1] This e-mail is not part of the record in this case, but this court is certain that counsel for both sides have a copy of it in their email folders.

[May 6, 2021 e-mail from counsel for plaintiff]. This court interpreted the e-mail from counsel for the prosecutor as an attempt to distance her client from the attempts by Huffman and Scott to use the prison assault indictment as a justification for holding Harris, thus making it clear that defendants were "on their own" in making this argument. In the court's view, the fact that defendants cite a different reason for holding Harris than the prosecutor quite arguably, by itself, casts doubt upon their position that they were simply following his direction in this case.

This court reiterates that, in its order, the Fifth Circuit characterized the Sheriff's Diligence Declaration as a "lie" which "allows a factfinder to infer that [they] were covering something up," *id.* at 278, but it did not appear to know quite what to make of this rather odd piece of evidence. Indeed, the Fifth Circuit did not cite the Declaration as a basis for applying *Hope*, but this court believes that this is because the appellate court had not made extensive efforts to inquire regarding this issue and did not fully grasp how it might fit into efforts by Huffman and Scott to violate plaintiff's constitutional rights. Indeed, the e-mails quoted above were sent as part of this court's concerted efforts to get to the bottom of this late-breaking evidence in this case, including by making, through its staff, e-mail inquiries of counsel. These efforts make it all the more concerning for this court to read defendants' cert petition and to see no mention of the Declaration as a basis for its denial of qualified immunity. As quoted above, this court cited the Declaration issue in the *sentence prior* to holding that *Hope* applied, and it devoted the first few *pages* of its discussion of the liability of the county defendants to

the Declaration. *Id*. at 19-22. It is accordingly difficult to see how it could have been overlooked as even one basis for this court's denial of qualified immunity.

In light of the foregoing, this court must emphasize (once again) its view that the Sheriff's Diligence Declaration can reasonably be regarded by jurors as a deliberate lie which was told by defendants to a court attempting to grant Harris his due process rights, in order to manufacture a basis to keep him unlawfully incarcerated in their jail. As quoted previously, the Fifth Circuit observed that "a few days after Harris should have been released, Huffman and Scott signed the declaration," *id*. at 278, and this timing is certainly consistent with plaintiff's theory that it was a deliberate lie told by county officers who were scrambling for some pretext to keep plaintiff in jail. In the court's view, the fact that such a lie may have been motivated by a well-intentioned desire to protect the public does not change the fact that it would have been an obvious constitutional violation under *Hope*. Of course, this flies in the face of defendants' central factual argument in this case, namely that they were acting in good faith based upon decisions of judges and prosecutors. Two separate courts have now concluded that fact issues exist regarding whether a knowing lie was told by defendants in this context, and yet, in their cert petition, they offer nothing more than conclusory denials of any wrongdoing, in a single footnote to their brief. [Footnote 3 to cert petition].

This court notes that, as they did in their summary judgment briefing, defendants attempt, in this footnote in their Supreme Court brief, to cast doubt upon the notion that Harris was being "hidden" from "the

courts." This court addressed this argument in its summary judgment order, where it wrote that:

> Even if this court is to assume that plaintiff was not, strictly speaking, being "hidden" from the circuit court, it still can envision a very realistic scenario in which the County defendants were seeking to "drag out" the prison assault charge in order to use its lingering and unresolved status as a pretext for plaintiff's lengthy incarceration in their jail. In so stating, this court knows very well that judges are dependent upon parties to move cases along, and it is very possible for cases to fall between the cracks if they fail to do so. This is true even if a party involved is not actually being "hidden" from the court.

Harris, 2021 WL 2004111 at *21.

These considerations aside, defendants' proof that *some* courts may have been aware of Harris' location in ruling upon *some* matters is, in the court's view, a red herring, since its strong suspicion is that defendants specifically sought to keep him from receiving due process with regard to the *prison assault charges* so that they could use those charges as a pretext to continue to hold him. The timing of the Sheriff's Diligence Declaration, as well as the fact that defendants later sought, with no support from the prosecutor, to use the unresolved status of the assault charges as justification for continuing to hold Harris strengthens this court's suspicions in this regard even further.

In the court's view, the Sheriff's Diligence Declaration clearly creates fact issues as to whether defendants were seeking to "hide" Harris from one particular

court, on one particular day, and there is, obviously, no rule of law which gives them "one free hide" of an inmate from a court seeking to grant him his due process rights. Thus, while this court can certainly understand why defendants would wish to de-emphasize the importance of the Sheriff's Diligence Declaration in their briefing, it takes this opportunity to emphasize that unresolved facts issues in this context were, and are, the basis for its conclusion that the *Hope* exception should apply in this case. Any suggestion to the contrary in defendants' Supreme Court briefing is simply incorrect.

In its summary judgment order, this court noted its belief that, following the dismissal of the civil commitment proceedings, the County had viable options at its disposal short of releasing Harris onto the streets. In particular, this court noted its belief that:

> [T]here are steps which the County could have very realistically taken in this case which would, at least in its mind, have insulated it from potential liability. . . . [T]he County's attorney could have contacted the circuit and chancery court judges involved in the impasse and raised concerns that plaintiff's constitutional rights were being violated by his indefinite incarceration with no apparent prospects of either a trial or civil commitment proceedings being held. This court strongly suspects that, if the County had taken this action, then this would have been sufficient to get things moving in circuit and/or chancery court. If that proved not to be the case, however, then the County could have filed an emergency appeal to the Mississippi Supreme Court seeking to order

> one of the courts involved to take action in this matter. Even if, for whatever reason, neither of these steps were sufficient to resolve this matter and plaintiff remained in jail, then this court would be hard pressed to place the blame upon the County in this matter.

Id. at *22–23.

In their cert petition, defendants maintain that, in so attempting to offer suggestions to counties faced with similar situations in the future, this court was stating its basis for concluding that *Hope* applies in this case. *Id*. at 9-10. In reality, nowhere did this court indicate that it was "obvious" that the County should have taken these steps, and it does not believe that to be the case. To the contrary, in suggesting steps which the County "could have very realistically taken . . . which would, at least in its mind, have insulated it from potential liability," this court used very cautious language and did not even attempt to describe an "obvious" course of action under *Hope*. Indeed, at no point in its order did this court maintain that it was obvious what defendants *should have* done in this case, merely that it was obvious what they *should not* have done, namely lie to a court in order to manufacture a pretext to keep Harris in jail. It is difficult to understand how defendants could have harbored genuine confusion in this regard, but, to the extent that this confusion may have existed, this court trusts that it has now been dispelled.

Having made the nature of its ruling clear, the court wishes to reiterate that it does have considerable sympathy for the predicament faced by the county

officers in this case, who were, very likely, motivated by a desire to protect the public. In their cert petition, defendants selectively quote this court's words of sympathy in this regard, while conveniently omitting its stated belief that there are very serious fact issues regarding whether they took totally unacceptable and unconstitutional actions in a misguided attempt to protect that public. This court therefore reiterates now that, no matter how guilty and dangerous defendants may have regarded Harris as being, they could not have reasonably believed that they had the right to lie to a court in order to place him in a legal "black hole" in their jail for years. This court notes that, if such was defendants' intent, then they had considerable success, since it was media attention, rather than judicial intervention, which appears to have been the precipitating factor in Harris' release from jail. Indeed, it seems entirely possible that, absent such media attention, Harris would still find himself in jail today, with no finding that he was guilty of the murders in this case. This is, needless to say, completely unacceptable in the eyes of any responsible judiciary.

As a final point, this court wishes to make clear that, in issuing this order, it is not taking a position regarding whether defendants' cert petition should be granted or denied. That is, obviously, for the Supreme Court to decide. Rather, this court merely believes that, in seeking Supreme Court review, defendants should fully and accurately confront the actual record in this case, warts and all. Otherwise, we are all just players in a shell game, rather than agents searching for the truth. This court accordingly requests that a

copy of this order be filed as an exhibit on the Supreme Court's docket, so that the Court may have a more accurate picture of the nature of the proceedings below.

In light of the forgoing, defendants' motion to continue is denied.

This, the 17th day of January, 2023.

/s/ Michael P. Mills
U.S. DISTRICT COURT
NORTHERN DISTRICT
OF MISSISSIPPI