CASE NO. 22-11406

In The United States Court of Appeals For The Eleventh Circuit

District Court No. 0:21-cv-61182-AHS

AARON MOHANLAL,

Plaintiff-Appellant,

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Defendant-Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

PETITION FOR REHEARING *EN BANC*

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CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

The following trial judges, attorneys, persons, associations of persons, firms, partnerships or corporations that have an interest in the outcome of this appeal, including subsidiaries, conglomerates, affiliates, parent corporations, any publicly held corporation that owns 10% or more of the appellant or are other identifiable legal entities related to appellant:

Aaron Mohanlal
Ricky D. Dixon, Secretary, Florida Department of Corrections
Raj Singhal, Southern District of Florida

CERTIFICATION OF COUNSEL

I express a belief, based on a reasoned and studied professional judgment, that this appeal involves one or more questions of exceptional importance:

(1) Whether this circuit should strengthen its weak two factor test for abuse of discretion when considering dismissals pursuant to Rule 41(b) because that test conflicts with the more rigorous approach taken by other circuits that employ multi-factor tests, especially in cases where the dismissal is with prejudice.

(2) Whether the more forgiving excusable neglect standard announced in *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380 (1993) should apply to page limit violations that lead to Rule 41(b) dismissals with prejudice instead of the harsh *Betty K Agencies, Ltd. v. M/V Monada*, 432 F.3d 1333 (11th Cir. 2005) standard.

I express a belief, based on a reasoned and studied professional judgment, that the panel decision is contrary to the following decision(s) of the Supreme Court of the United States or the precedents of this circuit and that consideration by the full court is necessary to secure and maintain uniformity of decisions in this court: *Benjamin v. Sec'y for Dep't of Corr.*, 151 F. App'x 869 (11th Cir. 2005) and *Lazo v. Sec'y, Fla. Dep't of Corr.*, No. 21-11779, 2022 U.S. App. LEXIS 25818, 2022 WL 4241672 (11th Cir. Sept. 15, 2022).

/s/ Joel B. Rothman
JOEL B. ROTHMAN

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I. STATEMENT OF THE ISSUES

(1) Whether this circuit should strengthen its weak two factor test for abuse of discretion when considering dismissals pursuant to Rule 41(b) because that test conflicts with the more rigorous approach taken by other circuits that employ multi-factor tests, especially in cases where the dismissal is final.

(2) Whether the more forgiving excusable neglect standard announced in *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380 (1993) should apply to page limit violations that lead to Rule 41(b) dismissals with prejudice instead of the harsh *Betty K Agencies, Ltd. v. M/V Monada*, 432 F.3d 1333 (11th Cir. 2005) standard.

(3) Whether the decisions in this court in *Benjamin v. Sec'y for Dep't of Corr.*, 151 F. App'x 869 (11th Cir. 2005) and *Lazo v. Sec'y, Fla. Dep't of Corr.*, No. 21-11779, 2022 U.S. App. LEXIS 25818, 2022 WL 4241672 (11th Cir. Sept. 15, 2022) conflict with the decision of the panel.

II. STATEMENT OF THE COURSE OF PROCEEDINGS AND DISPOSITION OF THE CASE

Aaron Mohanlal's timely filed petition for *habeas corpus* was dismissed irrevocably below by a district court that *invented* an artificial twenty-page limit for petitions found *nowhere* in the statute, the 2254 Rules, the Federal Rules of Civil Procedure, or the Local Rules. The twenty-page limit failed to take into account the fact that Form AO 241—the standard form "Petition for Relief From a Conviction

or Sentence By a Person in State Custody (Petition Under 28 U.S.C. § 2254 for a Writ of Habeas Corpus)"—is already *sixteen pages long* without adding any additional pages. The district court crafted its twenty-page limit for petitions from whole cloth. Other district courts have done the same[1] resulting in Rule 41(b) procedural dismissals based upon technical violations by unschooled incarcerated *pro se* litigants.

Mohanlal is serving a forty-three year and nine-month sentence. A Broward County jury found Mohanlal—an art teacher with no prior criminal record—guilty of molesting a student who reported the events six months after the student graduated. The molestation allegedly occurred during class while Mohanlal was teaching forty students. Among other mistakes[2], Mohanlal's incompetent counsel never interviewed, subpoenaed, or called any students as alibi witnesses in Mohanlal's defense.[3]

The panel affirmed because the district court "was within its discretion to dismiss the petition for failure to comply with its clear orders to comply with *the 20-page limit."* Panel Op. at 3. But there is no such "20-page limit" rule. The

[1] See *Spencer v Dixon*, Case No. 21-CV-61121, 2022 U.S. Dist. LEXIS 236632; 2022 WL 18457190 (S.D. Fla. Dec. 16, 2022).

[2] See *Mohanlal v. State*, 162 So. 3d 1043 (Fla. 4th DCA 2015).

[3] Mohanlal's petitions maintain his innocence.

"rule" came from the district court's own *unrestricted inherent authority* to issue whatever orders it believed necessary to manage its docket—and then punish any disobedience thereof—no matter how disconnected those orders might be from the requirements of § 2254, the 2254 Rules, the Federal Rules of Civil Procedure, or the Local Rules.

III. STATEMENT OF THE NECESSARY FACTS

a. Why Mohanlal Could Not Make Twenty Claims Fit the District Court's Twenty Page Limit

The district court's first order dismissed Mohanlal's first petition (55 pages) and denied Mohanlal's simultaneous motion to enlarge page limits. Appx. Tabs 1 (Petition), 3 (Motion), 5 (Order). This first order was the first time[4] the district court told Mohanlal of the court's personal rule that "looks to [Local Rule 7.1(c)(2)'s twenty-page limit] as a guide when exercising its inherent authority to impose page limits." Appx. Tab 5.

The district court's second order dismissed Mohanlal's second petition (42 pages) and denied Mohanlal's second motion for excess pages. Appx. Tabs 6 (Motion), 7 (Petition), 9 (Order). The district court ordered Mohanlal to file his petition

[4] According to the Panel, Mohanlal invited the district court to demand he comply with the nonexistent page limit restriction by expressing familiarity with the rule. Panel Op. at 4 ("Each of Mohanlal's petitions was accompanied by a motion requesting a change to the page limit, suggesting Mohanlal was aware of the rule when he filed his first petition.") The Panel's logic followed to its natural conclusion cannot be squared with *Lazo*.

"on this District's form for § 2254 actions and filled out completely," which guaranteed that the result would be at least sixteen pages even before Mohanlal heeded the warning on the form.[5]

The district court's order on appeal dismissed Mohanlal's third petition (31 pages) and denied Mohanlal's third motion for excess pages. Appx. Tabs 10 (Motion), 15 (Petition), 16 (Order). The district court never considered Mohanlal's explanations why he needed more than twenty pages as evidence of his good faith. The district court simply counted the pages and rejected the petitions.

b. The Panel Decision Affirming the Harshest Sanction: Dismissal with Prejudice

The panel opinion affirmed the district court's dismissal with prejudice. Applying the test in *Betty K Agencies, Ltd. v. M/V Monada*, 432 F.3d 1333, 1337 (11th Cir. 2005), an admiralty case, the panel found no abuse because even though there is no twenty-page limit rule for petitions in the local rules, "[e]ach of Mohanlal's petitions was accompanied by a motion requesting a change to the page limit,

[5] The warning reads:

> **CAUTION: You must include in this petition all the grounds for relief from the conviction or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.**

suggesting Mohanlal was aware of the rule."[6] Panel Op. at 4. According to the Panel, when Mohanlal "continued to ignore the district court's explicit orders to follow the rule in each successive filing" despite being "warned [] several times that his petition needed to comply with the court's orders setting out the page limit," Mohanlal crossed the line into Rule 41(b)'s "fails…to comply with…a court order" danger zone subjecting his last petition to dismissal.

The Panel determined that Mohanlal acted willfully because "the number of warnings and final chances given to Mohanlal, coupled with the clarity of the court's instructions, show Mohanlal willfully failed to comply with court orders and that dismissal with prejudice was a proper sanction." Panel Op. at 5. The Panel conceded that the district court never "expressly" considered whether a lesser sanction than final and permanent dismissal of Mohanlal's one shot at federal *habeas corpus* relief would have been sufficient. Panel Op. at 5. But, the Panel reasoned, "the district court gave several warnings to Mohanlal, and the only action left at its disposal[7], after he repeatedly and willfully failed to file a proper petition, was dismissal." Panel Op. at 5-6.

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[6] But see *Lazo v. Sec'y, Dep't of Corr.*, No. 21-11779, 2022 WL 4241672, 2022 U.S. App. LEXIS 25818 *8 (11th Cir. Sept. 15, 2022) (Rule 7.1(c)(2) "does not expressly apply to habeas petitions").

[7] This was a puzzling conclusion for the panel to reach. So many less severe options come to mind like simply refusing to consider pages twenty-one through the end of the petition.

The Panel's interpretation of Mohanlal's actions as willful cannot be reconciled with the facts. Mohanlal sought permission to file a petition of appropriate length to state his claims. Mohanlal asked for leave to do something he had every right to do and that was not prohibited by the rules.

Instead of willfulness, "contumacious disregard for court rules" can support dismissal with prejudice. *Betty K Agencies*, 432 F.3d at 1335. But Mohanlal was not contumacious. Contumacious conduct is "the stubborn resistance to authority." *McNeal v. Papasan*, 842 F.2d 787, 792 (5th Cir. 1988), quoting *John v. Louisiana*, 828 F.2d 1129, 1131-32 (5th Cir. 1987). Mohanlal's conduct was exasperating perhaps, but never contumacious.

IV. ARGUMENT AND AUTHORITIES WHY REHEARING EN BANC IS NECESSARY

a. Panel Rehearing En Banc is Necessary to Consider the Conflict Between This Circuit's Undisciplined Approach to Abuse of Discretion When Reviewing Final Dismissals Pursuant to Rule 41(b), and the More Rigorous Approach Taken by Other Circuits

The test for abuse of discretion employed by the Panel when it reviewed the Rule 41(b) dismissal of Mohanlal's petition for *habeas corpus*—and the test this Circuit applies to Rule 41(b) dismissals in all contexts—conflicts with the authoritative decisions of at least eight other United States Courts of Appeal. Most other circuits apply a more rigorous test.

This court's uncabined standard for abuse of discretion when reviewing Rule

41(b) dismissals should be reexamined *en banc*. This circuit's rule is subjective, weak, malleable, subject to abuse, and provides no guidance to district courts. A district court's "inherent powers" are not unlimited; they are "governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991). This power "must be exercised with restraint and discretion" and used "to fashion an appropriate sanction for conduct which abuses the judicial process." *Id.* at 44-45. A court may exercise this power "to sanction the willful disobedience of a court order, and to sanction a party who has acted in bad faith, vexatiously, wantonly, or for oppressive reasons." *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 382 (2013) (citing *Chambers*, 501 U.S. at 45-46).

The key to unlocking a court's inherent power is a finding of subjective bad faith. *Purchasing Power, LLC v. Bluestem Brands, Inc.*, 851 F.3d 1218, 1223 (11th Cir. 2017). Evidence of recklessness alone won't suffice. *Id.* at 1225. A pro se litigant's repeated disobedience of a district court's order combined with genuine efforts to comply and repeated pleas for understanding, and requests for relief from an unreachable standard, does not subjective bad faith make. The worst you can call it is reckless. But "[r]eckless conduct alone is not enough." *Meyer v. Gwinnett Cty. Police Dep't*, No. 21-12851, 2022 WL 2439590, 2022 U.S. App. LEXIS

18399, at *24-25 (11th Cir. July 5, 2022).

Applying these principles, almost every other federal circuit has adopted a multi-part test applicable to Rule 41(b) dismissals that appropriately cabin the district court's discretion while leaving the district court free to control its docket within certain parameters. These are the tests[8] applied:

First Circuit: The "important considerations" that are "commonly mentioned" include (1) "the severity of the violation," (2) "the legitimacy of the party's excuse," (3) "repetition of violations," (4) "the deliberateness *vel non* of the misconduct," (5) "mitigating excuses," (6) "prejudice to the other side and to the operations of the court," and (7) "the adequacy of lesser sanctions." *Robson v. Hallenbeck*, 81 F.3d 1, 2-3 (1st Cir. 1996). "There is also a procedural dimension…Ordinarily, the plaintiff is given an opportunity to explain [his noncompliance] or argue for a lesser penalty." *Id*.

Second Circuit: "[T]he correctness of a Rule 41(b) dismissal is determined in light of five factors. They are: (1) the duration of the plaintiff's failure to comply with the court order, (2) whether plaintiff was on notice that failure to comply would result in dismissal, (3) whether the defendants are likely to be prejudiced by further delay in the proceedings, (4) a balancing of the court's interest in managing its docket with the plaintiff's interest in receiving a fair chance to be heard, and (5)

[8] Quotes cleaned up, numbering added, and internal citations omitted.

whether the judge has adequately considered a sanction less drastic than dismissal." *Lucas v. Miles*, 84 F.3d 532, 535 (2d Cir. 1996).

Third Circuit: "In exercising our appellate function to determine whether the trial court has abused its discretion in dismissing [pursuant to Rule 41(b)] . . . we will be guided by the manner in which the trial court balanced the following factors . . . : (1) the extent of the party's personal responsibility; (2) the prejudice to the adversary caused by the failure to meet scheduling orders and respond to discovery; (3) a history of dilatoriness; (4) whether the conduct of the party or the attorney was willful or in bad faith; (5) the effectiveness of sanctions other than dismissal, which entails an analysis of alternative sanctions; and (6) the meritoriousness of the claim or defense." *Poulis v. State Farm Fire & Cas. Co.*, 747 F.2d 863, 868 (3d Cir. 1984).

Fourth Circuit: Recognizing the severity of dismissal as a sanction, we have required "that the trial court consider four factors before dismissing a case [under Rule 41(b)]: (1) the plaintiff's degree of personal responsibility; (2) the amount of prejudice caused the defendant; (3) the presence of a drawn out history of deliberately proceeding in a dilatory fashion; and (4) the effectiveness of sanctions less drastic than dismissal." *Hillig v. C.I.R.*, 916 F.2d 171, 174 (4th Cir. 1990).

Fifth Circuit: "[I]n most cases where we have affirmed a dismissal with

prejudice, we have found at least one of three aggravating factors: (1) delay caused by [the] plaintiff himself and not his attorney; (2) actual prejudice to the defendant; or (3) delay caused by intentional conduct." *Campbell v. Wilkinson*, 988 F.3d 798, 802 (5th Cir. 2021). In addition, "[w]e will affirm dismissals with prejudice for failure to prosecute only when (1) there is a clear record of delay or contumacious conduct by the plaintiff, and (2) the district court has expressly determined that lesser sanctions would not prompt diligent prosecution, or the record shows that the district court employed lesser sanctions that proved to be futile." *Campbell v. Wilkinson*, 988 F.3d 798 (5th Cir. 2021).

Eighth Circuit: "Because dismissal with prejudice is an extreme sanction, it should be used only in cases (1) of willful disobedience of a court order, or (2) where a litigant exhibits a pattern of intentional delay. A district court should (3) weigh its need to advance its burdened docket against the consequence of irrevocably extinguishing the litigant's claim and (4) consider whether a less severe sanction could remedy the effect of the litigant's transgressions on the court and the resulting prejudice to the opposing party. Those criteria, however, are not a rigid four-prong test. Rather, the propriety of an involuntary dismissal ultimately depends on the facts of each case, which we review to determine whether the trial court exercised sound discretion." *Hutchins v. A. G. Edwards & Sons*, 116 F.3d 1256, 1260 (8th Cir. 1997).

Ninth Circuit: "Courts are to weigh five factors in deciding whether to dismiss a case for failure to comply with a court order: (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." *Allen v. Bayer Corp. (In re: Phenylpropanolamine (PPA) Prods. Liab. Litig.)*, 460 F.3d 1217, 1226 (9th Cir. 2006).

Tenth Circuit: "Before choosing dismissal as a just sanction, a court should ordinarily consider a number of factors, including: (1) the degree of actual prejudice to the defendant; (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. These factors do not constitute a rigid test; rather, they represent criteria for the district court to consider prior to imposing dismissal as a sanction. The court should ordinarily evaluate these factors on the record." *Ehrenhaus v. Reynolds*, 965 F.2d 916, 921 (10th Cir. 1992).

These factors are "not a series of conditions precedent before the judge can do anything," but a "way for a district judge to think about what to do." *Valley Eng'rs Inc. v. Elec. Eng'g Co.*, 158 F.3d 1051, 1057 (9th Cir. 1998). The district court below was not thinking about what to do with Mohanlal's *habeas* case when

he dismissed it; the district court was thinking about clearing his docket. The district court should have been required to balance the brutality of final dismissal against the severity of Mohanlal's violation, the gravity of Mohanlal's mistake, or the legitimacy of Mohanlal's excuse for non-compliance.

b. Rehearing En Banc is Necessary to Determine Whether the Excusable Neglect Standard Should Apply to Page Limit Violations

A litigant's rights should not be deprived based on that litigant's (or his attorney's) excusable failure to meet page limits. The term "excusable neglect" should be interpreted flexibly to apply here. *See Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 389 (1993).

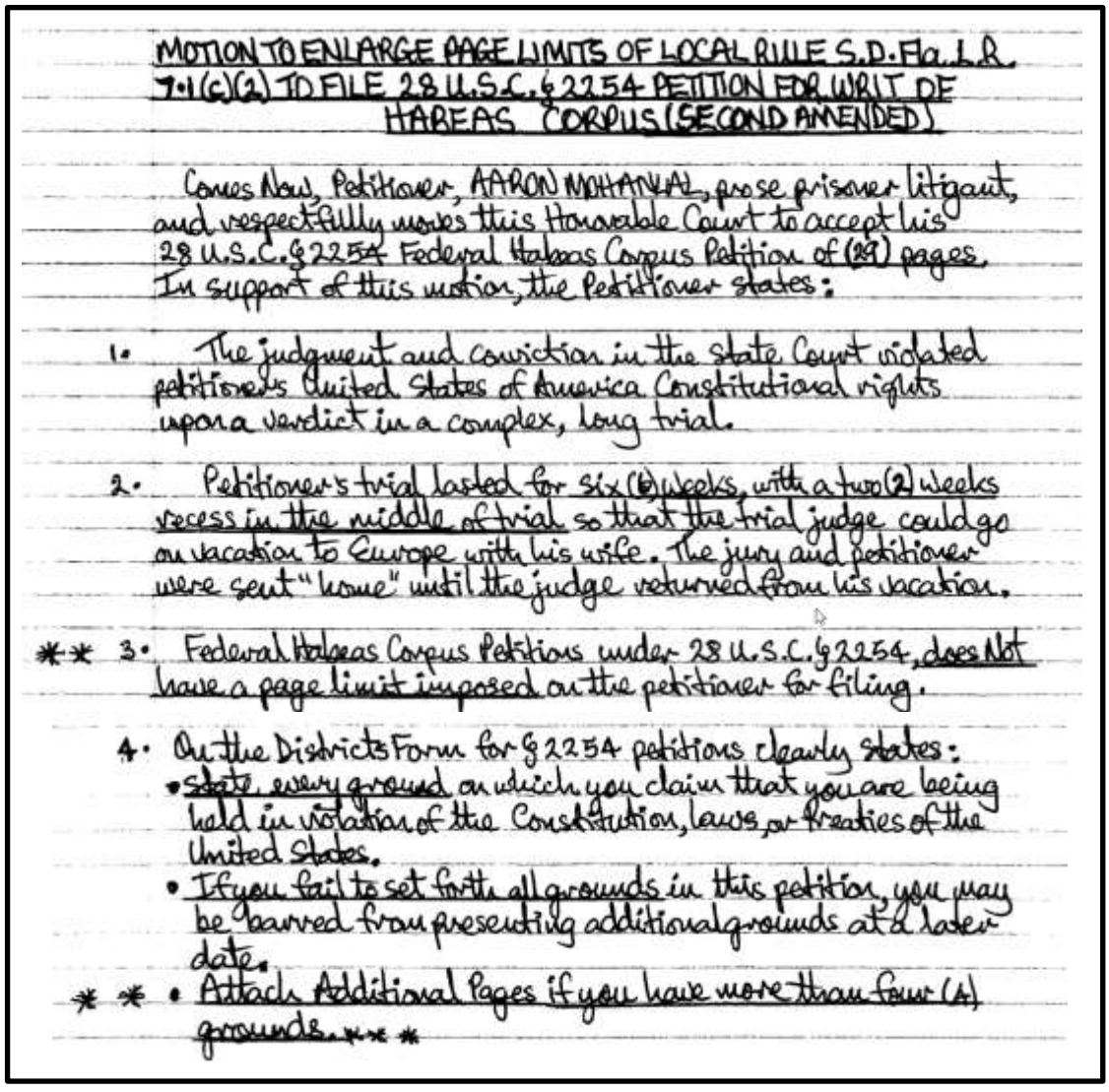
"The excusable neglect standard applies where the need for the extension was caused by something within the movant's control." *Goncalves v. Sec'y, Dep't of Corr.*, 745 F. App'x 151, 151 (11th Cir. 2018) citing *Pioneer*, 507 U.S. at 395. The determination of excusable neglect "is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission." *Pioneer*, 507 U.S. at 394. Four factors determine whether the neglect is excusable: (1) the danger of prejudice to the nonmoving party; (2) the length of the delay and its potential impact on judicial proceedings; (3) the reason for the delay, including whether it was within the movant's reasonable control; and (4) whether the movant acted in good faith. *Goncalves,* 745 Fed. Appx. at 152 citing *Pioneer,* 507 U.S. at 395.

In *Goncalves*, this Court remanded the district court's denial of the *pro se* petitioner's motion to extend the time to file a notice of appeal from the order denying his 28 U.S.C. § 2254 petition for a writ of habeas corpus because the district court abused its discretion when it failed to consider and apply the correct legal standard announced in *Pioneer*. This Court has applied *Pioneer* more broadly to other contexts. See *Cheney v. Anchor Glass Container Corp.*, 71 F.3d 848 (11th Cir. 1996) (district court abused its discretion when it failed to analyze whether a failure to timely demand a trial *de novo* constitutes excusable neglect within the meaning of Fed. R. Civ. P. 60(b) using the *Pioneer* factors); *Safari Programs, Inc. v. CollectA Int'l Ltd.*, 686 F. App'x 737, 744 (11th Cir. 2017) (reversing and vacating for failure to apply *Pioneer* test where the district court failed to set aside a final default judgment based on excusable neglect where the judgment was entered without holding an evidentiary hearing to determine damages and injunctive relief); *Reis v. Comm'r of Soc. Sec.*, 710 F. App'x 828, 830 (11th Cir. 2017) (dismissal without prejudice under Rule 4(m) reversed and remanded for consideration of the *Pioneer* factors where the district court failed to consider the impact of the running of the statute of limitations). Other circuits have applied the *Pioneer* test for abuse of discretion to situations analogous to Mohanlal's. See, e.g., *Benitez-Garcia v. Gonzalez-Vega*, 468 F.3d 1, 7 (1st Cir. 2006) (reversing dismissal of plaintiff's civil rights action as a sanction for missing deadlines where "the district court

never considered plaintiffs' explanations for why their failures should be excused").

Pioneer should be applied to extensions of page limits, not just time. Mohanlal's motions for leave for extension of page limits accompanied by shorter and shorter petitions should have been evaluated as excusable neglect.

Mohanlal explained his conundrum to the district court:



MOTION TO ENLARGE PAGE LIMITS OF LOCAL RULE S.D. Fla. L.R. 7.1(c)(2) TO FILE 28 U.S.C. § 2254 PETITION FOR WRIT OF HABEAS CORPUS (SECOND AMENDED)

Comes Now, Petitioner, AARON MOHANLAL, pro se prisoner litigant, and respectfully moves this Honorable Court to accept his 28 U.S.C. § 2254 Federal Habeas Corpus Petition of (29) pages. In support of this motion, the Petitioner states:

1. The judgment and conviction in the state Court violated petitioner's United States of America Constitutional rights upon a verdict in a complex, long trial.

2. Petitioner's trial lasted for six (6) weeks, with a two (2) weeks recess in the middle of trial so that the trial judge could go on vacation to Europe with his wife. The jury and petitioner were sent "home" until the judge returned from his vacation.

** 3. Federal Habeas Corpus Petitions under 28 U.S.C. § 2254, does Not have a page limit imposed on the petitioner for filing.

4. On the Districts Form for § 2254 petitions clearly states:
- State every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States.
- If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.
** - Attach Additional Pages if you have more than four (4) grounds. ** *

The consideration of Mohanlal's third petition would have had no negative

impact on the proceedings, but the district court never considered Mohanlal's motions or the equities. Mohanlal was caught between the constraints of the requirements in § 2254 and the § 2254 form, but the district ignored his pleas. Mohanlal should have been excused for his inability to reduce the page count of his petitions. Considerations of excusable neglect would have led to the correct result.

c. Rehearing En Banc is Necessary to Resolve the Conflict Between the Panel's Decision and This Court's Decisions in *Benjamin v. Sec'y for Dep't of Corr*. and *Lazo v. Sec'y, Fla. Dep't of Corr*.

Important interests in allowing a state prisoner's habeas corpus petition to be considered on the merits defeat procedural hurdles and ministerial mistakes. *Slack v. McDaniel*, 529 U.S. 473, 477 (2000). That is why this Court "established that the standards governing the sufficiency of habeas corpus petitions are less stringent when the petition is drafted pro se and without the aid of counsel." *Williams v. Griswald*, 743 F.2d 1533, 1542 (11th Cir.1984). It is also why this Court has "never wavered from the rule that courts should construe a habeas petition filed pro se more liberally than one drawn up by an attorney." *Gunn v. Newsome*, 881 F.2d 949, 961 (11th Cir. 1989).

In *Benjamin v. Sec'y for Dep't of Corr.*, 151 F. App'x 869 (11th Cir. 2005) and *Lazo v. Sec'y, Fla. Dep't of Corr.*, No. 21-11779, 2022 U.S. App. LEXIS 25818, 2022 WL 4241672 (11th Cir. Sept. 15, 2022), this court reversed and remanded Rule 41(b) dismissals of *pro se* prisoners habeas petitions on procedural

grounds where the *pro se* petitioners violated the Southern District of Florida's ambiguous page length rule. Those dismissals are indistinguishable from Mohanlal's case. In both *Benjamin* and *Lazo*, this Court found abuse of discretion.

In both cases the *pro se* petitioners were accused by the district court of failing to set forth their supporting facts and claims in a "brief" and "concise" fashion. In *Benjamin*, the district court complained about a petition that was "rambling, disjointed, and confusing," even though it complied in all other respects with § 2254 Rule 2(c). *Benjamin*, 151 F. App'x at 872. In *Lazo*, the "the petition was unclear and contained 'vague, conclusory, and rambling allegations' and combined multiple claim in single headings." *Lazo*, 2022 WL 4241672, at *2. The district court rejected Lazo's "arguments concerning his limited English proficiency and ability to understand the court's prior orders" as "unpersuasive," *id.*, not unlike the district court's complaints below about Mohanlal's "cramped writing and extraneous pages" in which "[h]e raises over 20 claims some of which include multiple sub claims. For example, claim 5 has 9 separate sub claims." Appx. Tab 16.

In all three cases the *pro se* petitioners were constrained by sixteen page preprinted § 2254 form to "(1) include all grounds on which they sought relief, and (2) allege facts in support of each ground asserted." Yet the panel here and the district court failed to discern that the imposition of a twenty-page limit on top of a form that is already sixteen pages adds up to a *thirty-six (36) page petition*.

The petition in *Lazo* was thirty-four (34) pages long and this Court reversed the dismissal for exceeding the district court's twenty-page limit as an abuse of discretion. The petition in *Benjamin* attached nine additional pages of facts supporting Benjamin's claim of insufficient evidence, and fourteen additional pages of facts supporting his ineffective assistance claim, and this Court reversed that dismissal too. This Court previously ruled on the merits of a "335-page habeas petition…that was more like a treatise" filed by counsel, *Provenzano v. Singletary*, 148 F.3d 1327, 1328 n.1 (11th Cir. 1998), and an 86-page petition filed by counsel, *Chavez v. Sec'y Fla. Dep't of Corr.*, 647 F.3d 1057, 1059 (11th Cir. 2011), yet Mohanlal's thirty-one page petition was denied review on the merits.

V. CONCLUSION

Rehearing *en banc* should be granted, and on rehearing the district court's order dismissing Mohanlal's corrected second amended petition should be vacated and remanded.

DATED: June 21, 2023

Respectfully submitted,

/s/ Joel B. Rothman

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that the foregoing Petition for Rehearing *En Banc* complies with the type-volume limitation of the Federal Rules of Appellate Procedure and this Court's Rules and contains fewer than 3,900 words. This brief contains 3,882 words, excluding the parts of the petition exempted by Fed. R. App. P. 32(f).

The undersigned further certifies that this Petition for Rehearing *En Banc* complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this petition has been prepared in a proportionally spaced typeface using Microsoft Word Version 2016 in 14 point font.

/s/ Joel B. Rothman
Counsel for Appellant

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on June 21, 2023, I caused this Petition for Rehearing *En Banc* to be filed electronically with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to all registered CM/ECF users who have filed appearances in this cause.

/s/ Joel B. Rothman
JOEL B. ROTHMAN

PANEL DECISION

[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 22-11406

Non-Argument Calendar

AARON MOHANLAL,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 0:21-cv-61182-AHS

Before WILSON, LUCK, and BLACK, Circuit Judges.

PER CURIAM:

Aaron Mohanlal, a Florida prisoner represented by counsel on appeal, appeals the district court's dismissal with prejudice of his *pro se* 28 U.S.C. § 2254 petition for writ of habeas corpus. Mohanlal contends the district court erred when it dismissed his petition because the local rule regarding page limits was inapplicable to his habeas petition and the court improperly considered his petition given his status as a *pro se* litigant. After review,[1] we affirm the district court.

I. BACKGROUND

Mohanlal's first § 2254 petition was 52 pages long. In ordering Mohanlal to file an amended petition, the district court informed Mohanlal the petition "significantly exceeds this District's 20-page limit for motions and legal memoranda,"[2] and cautioned Mohanlal the "failure to comply with this Order **will result in**

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[1] The appropriate standard of review is abuse of discretion, not *de novo* as Mohanlal contends, as Mohanlal's appeal stems from his petition's dismissal for failure to comply with court rules. *Zocaras v. Castro*, 465 F.3d 479, 483 (11th Cir. 2006) (reviewing for an abuse of discretion a district court's dismissal for failure to comply with rules of court).

[2] Local Rule 7.1(c)(2) for the Southern District of Florida provides motions and legal memoranda filed with the court shall not exceed 20 pages without leave of the court. S.D. Fla. Local Rule 7.1(c)(2).

dismissal of this case, and that no further amendments will be permitted." (Emphasis in original). Mohanlal's amended petition was 42 pages long, which the district court again stated "significantly exceeds this District's 20-page limit for motions and legal memoranda." The district court explained, "Petitioner completely ignored the Court's Order and has resubmitted another lengthy Petition with cramped writing and extraneous pages inserted throughout." In ordering Mohanlal to file a second amended petition, the district court once again cautioned Mohanlal that the "failure to comply with this Order **will result in dismissal of this case**, and that no further amendments will be permitted." (Emphasis in original). Despite these warnings, Mohanlal's second amended petition was 31 pages long. The district court dismissed with prejudice for failure to comply with the Court's orders, stating Mohanlal had "received sufficient notice of the Court's authority to dismiss for failure to comply with court orders," and that "[n]everthless, Petitioner is unwilling to comply with the Court's Orders."

II. DISCUSSION

The district did not abuse its discretion when it dismissed Mohanlal's second amended petition with prejudice. The court was within its discretion to dismiss the petition for failure to comply with its clear orders to comply with the 20-page limit. *See* Fed. R. Civ. P. 41(b) (providing a district court may dismiss a claim if the plaintiff fails to comply with a court order); *Betty K Agencies, Ltd. v. M/V Monada*, 432 F.3d 1333, 1337 (11th Cir. 2005) (stating a

district court may dismiss a claim *sua sponte* based on its inherent power to manage its docket).

Each of Mohanlal's petitions was accompanied by a motion requesting a change to the page limit, suggesting Mohanlal was aware of the rule when he filed his first petition and continued to ignore the district court's explicit orders to follow the rule in each successive filing. The district court warned Mohanlal several times that his petition needed to comply with the court's orders setting out the page limit, or his petition would be dismissed. *See Moon v. Newsome*, 863 F.2d 835, 837 (11th Cir. 1989) ("While dismissal is an extraordinary remedy, dismissal upon disregard of an order, especially where the litigant has been forewarned, generally is not an abuse of discretion.").

Even after he received multiple orders directing him not to exceed the page limit, Mohanlal continued to file amended petitions that were far over the page limit. Mohanlal's *pro se* status did not excuse him from complying with the court's orders directing him to follow the local rules for the length of court filings. *See Albra v. Advan, Inc.*, 490 F.3d 826, 829 (11th Cir. 2007) (stating *pro se* litigants are required to comply with applicable procedural rules). Despite Mohanlal's argument on appeal that the Southern District's Local Rules were inapplicable to his petition, the district court ultimately dismissed the petition because Mohanlal repeatedly did not follow the page limit rule after he was ordered to do so, not because of the rule itself, which was within the court's inherent power to manage its docket. Fed. R. Civ. P. 41(b); *Moon*,

863 F.2d at 837; *see also Procup v. Strickland*, 792 F.2d 1069, 1073-74 (11th Cir. 1986) (*en banc*) (recognizing "[f]ederal courts have both the inherent power and the constitutional obligation to protect their jurisdiction from conduct which impairs their ability to carry out Article III functions" and courts have "a responsibility to prevent single litigants from unnecessarily encroaching on the judicial machinery needed by others").

A district court abuses its discretion when it *sua sponte* dismisses a civil action with prejudice where (1) the court fails to make a finding the plaintiff acted willfully or that a lesser sanction would not have sufficed, and (2) nothing in the record supports a finding that the plaintiff acted willfully or that a lesser sanction would not have sufficed. *Betty K Agencies*, 432 F.3d at 1338-42. While the district court did not expressly find other sanctions were not sufficient, the number of warnings and final chances given to Mohanlal, coupled with the clarity of the court's instructions, show Mohanlal willfully failed to comply with court orders and that dismissal with prejudice was a proper sanction. *See id.* While we have remanded cases in which there has been no finding on the efficacy of sanctions less severe than dismissal, we have also affirmed dismissals under Rule 41(b) when the record supported an implicit finding that any lesser sanctions would not serve the interests of justice. *Mingo v. Sugar Cane Growers Co-op of Fla.*, 864 F.2d 101, 102-03 (11th Cir. 1989); *Goforth v. Owens*, 766 F.2d 1533, 1535 (11th Cir. 1985). While dismissal with prejudice is a severe sanction, the record shows the district court gave several warnings to Mohanlal, and the

only action left at its disposal, after he repeatedly and willfully failed to file a proper petition, was dismissal. *See Goforth*, 766 F.2d at 1535. Accordingly, we affirm.[3]

AFFIRMED.

[3] To the extent Mohanlal requests in his brief that we take judicial notice of his criminal proceedings, his request is DENIED because those proceedings are not relevant to the district court's analysis and dismissal of the petition.