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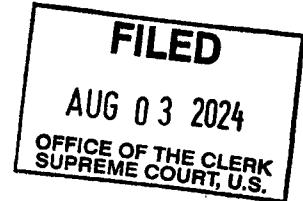
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ORIGINAL

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IN THE  
SUPREME COURT OF THE UNITED STATES

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DERRICK LEON HILLS,

*Petitioner,*

vs.

RICHARD ROBLE, et al,

*Respondents.*

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**PETITION FOR WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT**

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**QUESTION PRESENTED**

When the United States had not shown by clear, concise and adequate evidence that Petitioner acted in bad faith when he appeared at his deposition via Zoom, was it proper for the relief sought under his Federal Rule of Civil Procedure 60(b) motion to be denied?

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## **PETITION FOR WRIT OF CERTIORARI**

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### **OPINION BELOW**

The opinion of the Court of Appeals is unpublished. In said order that denied Petitioner's appeal entered on January 11, 2024, the Court of Appeals affirmed the ruling of the district court that found that the relief Petitioner sought under Fed. R. Civ. P. 60(b) was properly withheld on the sole ground that Petitioner acted in bad faith when he appeared at his deposition.

### **JURISDICTION**

The jurisdiction of the Court is invoked under 28. U.S.C. 1254 and U. S. Sup. Ct. Rule 22. The order of the Court of Appeals sought to be reviewed was filed on January 11, 2024 and the amended order denying Petitioner's petition for an en banc rehearing was entered on May 6, 2024.

### **STATEMENT OF THE CASE**

In 2014, Petitioner was held as a federal prisoner at the Federal Correctional Institution in Loretto, Pennsylvania after being sentenced to 46 months after allegedly being convicted of five counts of criminal contempt pursuant to 18 U. S. C. 401(3). United States v. Hills, E.D. Mich. Case 2:12-cv-12254-SFC-LJM ECF. Petitioner's motion for relief pursuant to federal rule of civil procedure 60(b) details with particularity that Petitioner was sentenced to 46 months imprisonment without being charged with a crime, that Petitioner was prosecuted by Richard Roble who by his own admission had no affiliation to any United States Attorney's Office, and that Petitioner's home was invaded by a federal fugitive apprehension team that shot and killed Petitioner's dog without just cause after forcibly entering Petitioner's home without a search warrant, without knowing that Petitioner was inside his home, and absent any exigent circumstances. Case 2:15-cv-12148-DML-EAS ECF No. 74, PageID.733 Filed 02/21/23 Page 1 of 22. Collectively, these actions are the substance of Petitioner's Bivens lawsuit. The district court dismissed the underlying case by concluding that Petitioner had refused to comply with his discovery obligations and failed or refused to comply with other orders of the Court. Case 2:15-cv-12148-DML-EAS ECF No. 76, PageID.777. It is this alleged improper behavior on the part of Petitioner that gave rise to Petitioner being accused of acting in bad faith when he appeared at his deposition and precisely why Petitioner was denied relief under Fed. R. Civ. P. 60(b). The Court of Appeals upheld said denial although there was no substantive evidence that Petitioner acted in bad faith, implicitly or explicitly.

## **REASONS FOR GRANTING THE WRIT**

### **I.**

**THE COURT SHOULD GRANT THE WRIT BECAUSE  
PETITIONER SUFFERED EGREGIOUSLY AT THE HAND  
OF A FEDERAL DISTRICT JUDGE WHO ACTED WITHOUT JURSDICTION  
HANDED BY A GRAND JURY NOR OTHERWISE AND BY THE GOVERNMENT  
WHEN HE WAS DEPRIVED OF HIS LIBERTY FOR SEVERAL  
YEARS WITHOUT THE INVOLVEMENT OF A GRAND JURY,  
WITHOUT ANY CHARGING INSTRUMENT, WITHOUT AN ARRAIGNMENT,  
AND WITHOUT THE INVOLVEMENT OF A PROPERLY APPOINTED  
SPECIAL ASSISTANT UNITED STATES ATTORNEY. THE DENIAL  
OF RELIEF UNDER FEDERAL RULE OF CIVIL PROCEDURE 60(b)  
IS THE FINAL INDIGNITY THAT COULD DEPRIVE PETITIONER  
YET AGAIN, OF DUE PROCESS.**

### **SUMMARY OF THE ARGUMENT**

The record of the district court proceedings do not support the district court's findings that Petitioner had not established good grounds for relief from the judgment of dismissal, that Petitioner had not identified any substantive mistake of fact or law in the lower court's ruling to dismiss Petitioner's lawsuit, and that Petitioner had refused to comply with his discovery obligations and had failed or refused to comply with other orders of the district court because there were no other orders.

### **ARGUMENT**

The Appellate Court has on numerous occasions given clear direction as to when a matter should or should not be dismissed. "Although a pattern of egregious conduct certainly may justify dismissal as a discovery sanction, such a finding is neither a necessary nor a sufficient prerequisite. Instead, courts weigh four factors taken together:

- (1) Whether the party's failure to cooperate in discovery is due to willingness, bad

faith, or fault; (2) whether the adversary was prejudiced by the dismissed party's failure to cooperate in discovery; (3) whether the dismissed party was warned that failure to cooperate would lead to dismissal; and (4) whether less drastic sanctions were imposed or considered before dismissal was ordered.

Mager v. Wisconsin Cent. LTD., 924 F.3d 831, 837 (6<sup>th</sup> Cir. 2019) (quoting United States v. Reyes, 307 F.3d 451, 458 (6<sup>th</sup> Cir. 2002)). In matters where Fed. R. Civ. P. 37 has been violated, sanctions must be progressive. This position has support: "although there was good cause to impose sanctions, the district court should have imposed a lesser sanction before resorting to dismissal." Wu v. T.W. Wang, Inc., 420 F.3d 641, 644-45 (2005). Petitioner was never sanctioned prior to dismissal of his case.

Petitioner concedes that he did not appear at his deposition until being compelled to do so by the magistrate judge's order and that when Petitioner did appear, he did so via Zoom while driving a semi-tractor truck which was legal to do so as authorized by MCL 257.602(b)(3) of the Michigan vehicle code because his cell phone was mounted and not in his hand. Case 2:15-cv-12148-DML-EAS ECF No. 55, PageID.561. At the deposition, Petitioner, who is not a lawyer and who has never attended law school, believing that he had a right to, refused to answer questions posed by a government attorney because Appellant deemed the line of questioning to be irrelevant to the lawsuit. In Mager v. Wisconsin Cent. LTD., 924 F.3d 831, 837 (6<sup>th</sup> Cir. 2019) the Court delineated what comprised acting in bad faith. In Mager the plaintiff "repeatedly declined to answer relevant questions about his medical condition, his medications, and how [his] injury occurred" and the court of appeals found that the plaintiff's actions were "deliberate and calculated to circumvent the order requiring him to submit to an

interview as part of the IME." Id. At 838. The court therefore found that the first factor favored dismissal because the conduct was the sort that was motivated by an intent to thwart judicial proceedings "or at least [demonstrated] a reckless disregard for the effect of that conduct on the proceedings." Id. At 839-40. Petitioner not only declined to answer questions that he believed to be irrelevant, Petitioner also did not refuse to answer those questions under an order requiring him to submit to an interview as was the circumstance in Mager. Therefore, Petitioner's conduct is incomparable to that of the plaintiff's in Mager, and thus cannot be reasonably construed as intending to thwart judicial proceedings or to at least demonstrate a reckless disregard for the effect of that conduct on the proceedings. While Petitioner may have been at fault due to ignorance and not being an attorney when he declined to answers those questions, Petitioner did not do so in bad faith and did not possess the requisite intent inherent in such bad faith actions.

With regard to being prejudiced, Petitioner's adversary in the lower court was not prejudiced because the record does not show that Petitioner failed to significantly cooperate in discovery and the government was not prejudiced. Petitioner complied with the only discovery order that was issued, that being the aforementioned magistrate judge's order.

Next Petitioner concedes that the magistrate judge warned Petitioner that "The Court thus ORDERS Hills to appear for his deposition on December 16, 2021, at 10:00 a.m. by Zoom. If he fails to appear or otherwise violates the discovery rules, his case may be dismissed under Rule 37 or the Court's inherent authority." [ECF No. 53]. However, the record does not show that Petitioner failed to appear at the deposition nor does it identify any discovery rule that Petitioner violated.

The record does not indicate that less drastic sanctions were imposed or considered before

dismissal was ordered and less drastic sanctions were not imposed nor considered.

Fed. R. Civ. P. 60(b)(1) states that the court may relieve a party or its legal representative from a final judgment, order, or proceeding for ... mistake. Petitioner in his motion for relief pursuant to federal rule of civil procedure 60(b) identified nine mistakes that the district court made when it dismissed Petitioner's case, chief of which, being when the district court concluded that Petitioner should not have received a sanction short of dismissal. Case 2:15-cv-12148-DML-EAS ECF No. 74, PageID.733

Lastly, the Court should take note that the district court in its denial order erroneously determined that "his failure or refusal to comply with other orders of the Court" was not factual because save the magistrate's order, there were no other orders. The district court record supports this fact.

## CONCLUSION

### **THE PETITION SHOULD BE GRANTED**

Respectfully Submitted,



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