

**24-5918**

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**IN THE  
SUPREME COURT OF THE UNITED STATES**

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**RICKY KAMDEM-OUAFFO**

Petitioner

v.

BALCHEM CORPORATION, GIDEON OENGA (In Personal capacity and in capacity with Balchem Corporation), BOB MINIGER (In Personal capacity and in capacity with Balchem Corporation), RENEE McCOMB (In Personal capacity and in capacity with Balchem Corporation), THEODORE HARRIS(In Personal capacity and in capacity with Balchem Corporation), JOHN KUEHNER (In Personal capacity and in capacity with Balchem Corporation), TRAVIS LARSEN (In Personal capacity and in capacity with Balchem Corporation), MICHAEL SESTRICK(In Personal capacity and in capacity with Balchem Corporation)

Respondents

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**ON PETITION FOR A WRIT OF CERTIORARI TO  
THE US COURT OF APPEALS FOR THE SECOND CIRCUIT  
(CASES No. 23-455 AND 23-458)**

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**PETITION FOR REHEARING PURSUANT TO  
THE SUPREME COURT RULE 44(2)**

**Date:** 01/21/2025

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**IN THE**  
**SUPREME COURT OF THE UNITED STATES**  
**PETITION FOR REHEARING**

Upon the enclosed MANDATE issued by the US Court of Appeals for the Second Circuit on 01/08/2025 in *Lewis v. Crandall Et Al.*, Case No. 24-684-cv and holding that “Failure to seek District Court review of the Magistrate Judge's orders means no appellate review is available to him.” Petitioner respectfully prays that the Court rehears Section V(A)(2)(b) of his Petition with focus on a party’s right and opportunity to be heard on a timely filed Objection to a Magistrate Judge’s Order under the Fed. R. Civ. P. Rule 72(a). Petitioner had in fact sought “*District court review of the Magistrate Judge’s Orders*” docketed as 17-cv-02810-[ECF # 194], but without providing an opportunity to be heard, the courts below dismissed Petitioner’s complaint alleging that Petitioner failed to comply with the said Orders. The right and opportunity to be heard is the most basic requirement of the due process Clause and the deprivation of it is unconstitutional. Based upon the Second Circuit’s recent reading, interpretation, and application of the Fed. R. Civ. P. Rule 72(a), Petitioner’s prays for the narrowest Certiorari the court has in its power .

**I. GROUNDS OF THE PETITION FOR REHEARING**

In Section V(A)(2)(b) of the Petition, from pages 34 to 37, Petitioner argued that the Fed. R. Civ. P. Rule 72(a) provides a right and opportunity to be heard for a party

to a federal court case. The hearing is held first by a District Judge and subsequently by the US Court of Appeals as long as a party had filed a timely Objection to a Magistrate Judge's non-dispositive Orders. In fact, Petitioner's "QUESTION I" presented to the US Court of Appeals for the Second Circuit was as follows:

"Whether the District Court Violated Plaintiff-Appellant's Fifth Amendment Right To Due Process With Regard To Plaintiff-Appellant's [Dkt. No. 195] Statutory Objection Pursuant To The Fed. R. Civ. Proc. Rule 72(a) To The Magistrate Judge's [Dkt. No. 194] Order/Ruling." (See Appdx Vol. 2, p. 417).

However, in crafting its Opinion, the Court of Appeals did not read the Fifth Amendment nor did it read the Fed. R. Civ. Proc. Rule 72(a). But on 01/08/2025, just two days before the Supreme Court's conference for the instant Petition, the Second Circuit docketed a MANDATE on an Opinion it issued in the matter of *Lewis v. Crandall Et Al.*, Case No. 24-684-cv, in which it clearly articulated its current reading, interpretation, and application of the Fed. R. Civ. P. Rule 72(a) (See **APPENDIX A, MANDATE Issued on 01/08/2025**). The relevant portion of the Second Circuit's 01/08/2025 MANDATE stated the following:

"Magistrate Judge Wang issued orders granting several of the Defendants' requests to stay discovery pending the resolution of dispositive motions. Although Lewis principally challenges these stay orders on appeal, he did not seek review of them in the proceedings before the District Court. *See* Fed. R. Civ. P. 72(a) (providing that "[a] party may serve and file objections to [a magistrate judge's order on a non-dispositive matter] within 14 days after being served with a copy" and that "[a] party may not assign as error a defect in the order not timely objected to"). Failure to seek District Court review of the Magistrate Judge's orders means no appellate review is available to

him.” (See *Lewis v. Crandall Et Al.*, Case No. 24-684-cv, p. 3, **APPENDIX A, MANDATE, Attached to this Petition**).

In this Petition, “QUESTION I” was enlarged and restated as follows:

“Whether a federal court has Subject-Matter Jurisdiction under the Fed. R. Civ. P. Rule 6(b)(2) or any other federal law to “Order, Adjudge, Decree” or “Affirm” that a ten-months-after post-judgment motion pursuant to the Fed. R. Civ. P. Rule 60(b)(4) for “Relief from a Judgment or Order” is a “Motion to Alter or Amend a Judgment pursuant to the Fed. R. Civ. P. Rule 59(e), and whether in so doing the inferior courts deprived Petitioner’s fundamental constitutional rights.”

Petitioner formulated “QUESTION I” in this Petition with the understanding that it also encompassed the “QUESTION I” presented to the court of Appeals. And in light of the Second Circuit’s 01/08/2025 MANDATE in the Matter of *Lewis v. Crandall Et Al.*, Case No. 24-684-cv concerning its current reading, interpretation, and application of the Fed. R. Civ. Proc. Rule 72(a), Petitioner would like to request a rehearing limited to the due process of law component of “QUESTION I”. So, for the purpose of Rehearing, “QUESTION I” is restated as follows:

“Whether The Courts Below Deprived Petitioner’s Fifth Amendment Right To Due Process Of Law With Regard To Petitioner’s Right To Be Heard, First By The District Judge And Subsequently By The US Court Of Appeals On His 17-cv-02810-[Dkt. No. 195] Statutory Objection Pursuant To The Fed. R. Civ. Proc. Rule 72(a) To The Magistrate Judge’s 17-cv-02810-[Dkt. No. 194] Non-Dispositive Orders.”

In Summary, Petitioner submits to the Court that when the Fed. R. Civ. P. Rule 72(a) is read, interpreted, and applied in the way the Second Circuit did recently in the matter of *Lewis v. Crandall Et Al.*, Case No. 24-684-cv, it becomes crystal clear that the District Court’s Orders dismissing Petitioner’s Complaint and the Court of

Appeals' Affirmance of the same were "*VOID*" *ab initio* (See *United Student Aid Funds v. Espinosa* U.S. 559 U.S. 260 (2010)). They were Void *ab initio* because they were premised upon a violation of the Fed. R. Civ. P. Rule 72(a) in a manner that deprived Petitioner's right and opportunity to be heard on his 17-cv-02810-[Dkt. No. 195] Objection to the Magistrate Judge's 17-cv-02810-[Dkt. No. 194] non-dispositive Orders relied upon as ground for the dismissal of Petitioner's complaint.

## **II. FACTS RELEVANT TO THE PETITIONER'S RIGHT AND OPPORTUNITY TO BE HEARD UNDER THE FED. R. CIV. P. 72(a)**

The Statement of facts relevant to Petitioner's Constitutional right to be heard under the Fed. R. Civ. P. Rule 72(a) were set forth in the Petition at Section IV(B)(1)(c), pages 13 to 14. The following facts are resubmitted for Rehearing:

- 1) On 09/25/2020, Respondents filed 17-cv-02810-[ECF # 185] "*LETTER MOTION for Discovery regarding scheduling of Plaintiff's virtual deposition addressed to Magistrate Judge Paul E. Davison*" (See Appendix Vol. 4, p. 975, Docket Sheet).
- 2) On 10/01/2020, the Magistrate Judge issued an Order at 17-cv-02810-[ECF # 194] adjudicating the discovery motion filed by Respondents at 17-cv-02810-[ECF # 185] (See Appdx. Vol. 1, pp. 140 – 142 (Magistrate Judge's Order); and Vol. 4, pp. 1008 – 1010 (Respondents' Motion)).
- 3) On 10/12/2020, within 14 days' time limit of the Fed. R. Civ. P. Rule 72(a), Petitioner filed an Objection against the Magistrate Judge's 17-cv-02810-[ECF #

194] Discovery Orders and the Clerk docketed Petitioner's Rule 72(a) Objection on 10/13/2020 [See Appdx. Vol. 4, pp. 976 (Docket Sheet); 1012 – 1012 aka [ECF # 195] Rule 72(a) Objection)].

4) Three weeks later, more specifically on 11/02/2020, Respondents filed their 17-cv-02810-[ECF # 201 to 204] “MOTION for Sanctions *Defendants' Notice of Motion for Sanctions*” alleging that Petitioner had failed to comply with the Magistrate Judge's 10/01/2020 Orders (See Appdx. Vol. 4, pp. 976 (Docket Sheet); Documents Nos. 201 to 204).

5) On 03/23/2021, the District Court issued an Order dismissing petitioner's complaint as sanctions under the Fed. R. Civ. P. Rule 37(b and d) stating that Petitioner had failed to comply with Magistrate Judge's 7:17-cv-02810-[ECF # 194] Discovery Orders issued on 10/01/2020 (See Appdx. Vol. 1, pp. 165 – 176).

6) The parties do not dispute the fact that the Dismissal of Petitioner's complaint was premised solely upon Respondents' allegation that the timely filing by Petitioner of his 17-cv-02810-[ECF # 195] Objection to the Magistrate Judge's 17-cv-02810-[ECF # 194] Orders under Rule 72(a) was a failure to comply with Orders.

7) In fact the Respondents wrote the following in their Appellees' Brief:

“Plaintiff-Appellant's case (Plaintiff-Appellant will be hereinafter referred to as “Mr. Kamdem-Ouaffo”) was properly dismissed as a sanction under Fed. R. Civ Proc. 37(b)(2) because Mr. Kamdem-Ouaffo willfully refused to comply with and violated the United States Magistrate Judge Davison's October 1, 2020 Order. (PA- 93-95)” (See Respondents' Brief, 23-455-[Dkt No. 94, p. 9])



8) Respondents also stated the following in their Appellees' Brief: "*Rather the District Court dismissed Mr. Kamdem-Ouaffo's action solely based on his willful failure to comply with Court Orders.*" (See Respondents' Brief, 23-455-[Dkt No. 94, p. 36, ARGUMENT POINT II(B)]).

**III. REASONS FOR ALLOWING A NARROW CERTIORARI FOR THE PURPOSE OF REMOVING UNCONSTITUTIONAL ORDERS FROM THE FEDERAL COURTS AND ALLOWING THE SECOND CIRCUIT TO REOPEN THE APPEAL IN LIGHT OF ITS 01/08/2025 MANDATE**

**A. The US Court Of Appeals For The Second Circuit's 01/08/2025 MANDATE On The Reading, Interpretation, And Application Of The Fed. R. Civ. P. Rule 72(a) In The Matter Of *Lewis v. Crandall Et Al.*, Case No. 24-684-cv Independently Confirmed That The Dismissal Of Petitioner's Complaint Was Premised Upon A Violation And Deprivation Of Petitioner's Right And Opportunity To Be Heard Under The Fed. R. Civ. P. Rule 72(a), First By The District Judge And Subsequently By The Court Of Appeals On Petitioner's 17-cv-02810-[Dkt # 195] Objection To The Magistrate Judge's 17-cv-02810-[Dkt # 194] Orders**

It is Petitioner's understanding that in the matter of *Lewis v. Crandall Et Al.*, Case No. 24-684-cv, the Second Circuit's read and interpreted the Fed. R. Civ. P. Rule 72(a) as being the Mandatory procedure a party must comply with in order to secure and lock in the right and opportunity to be heard, first by a District Judge and subsequently by the US Court of Appeals on an Objection to a non-dispositive Order of a Magistrate Judge, and that a party's failure to timely Object under Rule 72(a) makes the Magistrate Judge's Order Final and unreviewable at a later date on Appeal. A party's compliance with the Mandate of the Fed. R. Civ. P. Rule 72(a) and thus the

party's preservation of the right and opportunity to be heard under Rule 72(a) is established through the formal filing of a timely Objection in the District court.

If then the Fed. R. Civ. P. Rule 72(a) is the Mandatory procedure a party must comply with in order to secure and lock in the right and opportunity to be heard, first by a District Judge and subsequently by the US Court of Appeals on a timely filed Objection to a non-dispositive Order of a Magistrate Judge, then the Court of Appeals cannot Affirm the Dismissal of Petitioner's complaint as sanction for non-compliance with regard to the Magistrate Judge's 17-cv-02810-[ECF # 194], nor can it Affirm the Denial of Petitioner's Motion pursuant to the Fed. R. Civ. P. Rule 60(b)(4) to vacate the dismissal Orders as void. The fact is that the record of the District Court shows that Petitioner had filed a timely Rule 72(a) Objection to the said Magistrate Judge's Orders and it had never been heard, neither by the District Court nor by the Court of Appeals. Petitioner filed his 17-cv-02810-[ECF # 195] Rule 72(a) Objection to the Magistrate Judge's 17-cv-02810-[ECF # 194] Orders on 10/12/2020, and the Defendants filed their 17-cv-02810-[ECF # 201 - 204] Motion for sanctions on 11/02/2020 alleging that Petitioner's timely filed Objection to the Magistrate Judge's 17-cv-02810-[ECF # 194] Orders demonstrated that Petitioner had failed to comply with the Magistrate Judge's Orders [See Appdx. Vol. 4, pp. 976 (Docket Sheet); Documents Nos. 201 to 204]. So, the only way the court of Appeals could affirm the Dismissal of Petitioner's Complaint and the Denial of Petitioner's

Rule 60(b)(4) Motion was to presume that Petitioner had no right to be heard under the Fed. R. Civ. P. Rule 72(a), notwithstanding Petitioner's timely filed Objection. But they were obviously wrong on the law and facts because the last provision of Rule 72(a) states that "*The district judge in the case must consider timely objections and modify or set aside any part of the order that is clearly erroneous or is contrary to law.*" Thus upon the filing of a timely Objection under the Fed. R. Civ. P. Rule 72(a), a party is waiting for the District Judge to provide some directions as to how the discovery issue raised in the Rule 72(a) Objection should be resolved and how the litigation should proceed.

However, no hearing was ever provided for Petitioner's 17-cv-02810-[ECF # 195] Rule 72(a) Objection, neither by the District Judge nor by the Court of Appeals although Petitioner has never stopped asking to be heard. Rather the District Court and subsequently the court of Appeals bypassed Petitioner's timely filed 17-cv-02810-[ECF # 195] Rule 72(a) Objection to provide a hearing only for Respondents' 17-cv-02810-[ECF # 201 – 204] Motion for sanctions which was filed three weeks after Petitioner's 17-cv-02810-[ECF # 195] Rule 72(a) Objection to the Magistrate Judge's 17-cv-02810-[ECF # 194] Orders. It follows that the dismissal of Petitioner's complaint as sanction with regard to the Magistrate Judge's 17-cv-02810-[ECF # 194] Orders was premised upon the deprivation of Petitioner's right and opportunity to be heard on his timely filed 17-cv-02810-[ECF # 195] Rule 72(a)

Objection to the Magistrate Judge's 17-cv-02810-[ECF # 194] Orders. Otherwise, based upon the Second Circuit's own recent reading, interpretation, and application of the Fed. R. Civ. P. Rule 72(a) as being the Mandatory procedure a party must comply with in order to secure and lock in the right to be heard, first by a District Judge and subsequently by the US Court of Appeals on a timely filed Objection to a non-dispositive Order of a Magistrate Judge, the filing of a Rule 72(a) Objection is a compliance with the Mandate of Fed. R. Civ. P. 72(a) instead of a willful failure to comply with a Magistrate Judge's Orders as presumed and assessed by the courts below in dismissing Petitioner's complaint. In fact, the Second Circuit stated in its 01/08/2025 Mandate that a party's "*Failure to seek District Court review of the Magistrate Judge's orders means no appellate review is available to him*" (See *Lewis v. Crandall, Supra*). The Second Circuit's 01/08/2025 MANDATE is that "*District Court Review*" occurs first, which is done on a timely Objection under Rule 72(a).

**B. In *United Student Aid Funds v. Espinosa* U.S. 559 U.S. 260 (2010), The Supreme Court Held That Rule 60(b)(4) applies "*In The Rare Instance Where A Judgment Is Premised ..On A Violation Of Due Process That Deprives A Party Of Notice Or The Opportunity To Be Heard*"**

The Fifth Amendment of the constitution provides the following:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor

shall private property be taken for public use, without just compensation.”

This Petition originated from the Decision of the Courts below Denying and Affirming the Denial of Petitioner’s Motion pursuant to the Fed. R. Civ. P. Rule 60(b)(4) for relief from Orders dismissing Petitioner’s complaint as sanctions. Petitioner argued in his Rule 60(b)(4) Motion that the Orders dismissing his complaint as sanctions under the Fed. R. Civ. P. Rule 37 on ground of non-compliance with regard to the Magistrate Judge’s 17-cv-02810-[ECF # 194] Orders were void in the eyes of the Fifth Amendment of the Constitution of the United States because they were premised upon the deprivation of Petitioner’s right to be heard under the Fed. R. Civ. P. Rule 72(a) on a timely filed Objection by Petitioner at 17-cv-02810-[ECF # 195]. Whereas the courts below rejected petitioner’s argument, the Second Circuit’s MANDATE issued on 01/08/2025 in the matter of *Lewis v. Crandall Et Al.*, Case No. 24-684-cv provided a reading, interpretation, and application of the Fed. R. Civ. P. Rule 72(a) as being the Mandatory procedure a party must comply with in order to secure and lock in the right to be heard, first by a District Judge and subsequently by the US Court of Appeals on a timely filed Objection to a non-dispositive Order of a Magistrate Judge. Thus, contrary to the theory that Petitioner’s Rule 72(a) Objection was in defiance and contempt of court, the filing of a Rule 72(a) Objection is a right exercised in compliance with “the

Mandate of Fed. R. Civ. P. 72(a) instead of a failure to comply with a Magistrate Judge's Orders as presumed by the courts below.

In *United Student Aid Funds v. Espinosa* U.S. 559 U.S. 260 (2010) the Supreme Court stated the following:

“Rule 60(b), however, provides an “exception to finality,” *Gonzalez v. Crosby*, 545 U.S. 524, 529, 125 S.Ct. 2641, 162 L.Ed.2d 480 (2005), that “allows a party to seek relief from a final judgment, and request reopening of his case, under a limited set of circumstances,” \*270 *id.*, at 528, 125 S.Ct. 2641. Specifically, Rule 60(b)(4) — the provision under which United brought this motion—authorizes the court to relieve a party from a final judgment if “the judgment is void.” \*1377 A void judgment is a legal ity. See Black's Law Dictionary 1822 (3d ed.1933); see also *id.*, at 1709 (9th ed.2009). Although the term “void” describes a result, .....

Instead, Rule 60(b)(4) applies only in the rare instance where a judgment is premised either on a certain type of jurisdictional error or on a violation of due process that deprives a party of notice or the opportunity to be heard. See ...); *Stoll v. Gottlieb*, 305 U.S. 165, 171–172, 59 S.Ct. 134, 83 L.Ed. 104 (1938).” *Id* at 270-271..

In light of the US Court of Appeals for the Second Circuit's 01/08/2025 MANDATE, reading, interpretation, and application of the Fed. R. Civ. P. Rule 72(a) to *Lewis v. Crandall Et Al.*, Case No. 24-684-cv, the answer to Petitioner's "QUESTION I" as presented to the US Court of Appeals and resubmitted above regarding whether the courts below deprived Petitioner's Fifth Amendment right to be heard under the Fed. R. Civ. P. Rule 72(a) on his timely filed 17-cv-02810-[ECF # 195] Rule 72(a) Objection to the Magistrate Judge's Magistrate Judge's 17-cv-02810-[ECF # 194] Orders is "Yes!" Surely, it cannot be that the Supreme Court of



the United States is going to allow a federal court under its direct supervision to be telling people that when they do not use the Fed. R. Civ. P. Rule 72(a), it is also a waiver of their right to be heard in a subsequent Appeal, and yet, when Petitioner complies with the Mandate and uses Rule 72(a) as Required, the court turns around and dismisses Petitioner's Complaint as sanctions for having complied with the mandate of Rule 72(a). Such an arbitrary and capricious way of administering the law is not consistent with the Constitution of the United States and should be an additional reason for the Court to issue a favorable Decision on this Petition for Rehearing in order to safeguard the fundamental constitutional right to be heard, especially for *pro se* and pauper litigants who are already at disadvantage in court proceedings against adversaries who are represented by a team of lawyers.

The record of the District Court does not contain any document showing that the District Judge provided any hearing for Petitioner's timely filed 17-cv-02810-[ECF # 195] Rule 72(a) Objection to the Magistrate Judge's Magistrate Judge's 17-cv-02810-[ECF # 194] Orders, nor did the court of Appeals do so although Petitioner's "QUESTION I" presented on Appeal was about Petitioner's right to be heard under the Fed. R. Civ. P. Rule 72(a). The record of the District Court shows that following the timely filing by Petitioner of his 17-cv-02810-[ECF # 195] Rule 72(a) Objection to the Magistrate Judge's Magistrate Judge's 17-cv-02810-[ECF # 194] Orders, the Respondents filed their 17-cv-02810-[ECF # 201 - 204] Motion

three weeks later alleging that the Petitioner's timely filed 17-cv-02810-[ECF # 195] Rule 72(a) Objection to the Magistrate Judge's 17-cv-02810-[ECF # 194] Orders was evidence that Petitioner refused to comply with court Orders.

However, the Second Circuit's ruling in *Lewis v. Crandall, Supra*, is that a party who wishes to secure and lock in the right and opportunity to be heard on non-dispositive Orders of the Magistrate Judge, first by a District Judge and subsequently by the US Court of Appeals under the Fed. R. Civ. P. Rule 72(a), must first "*Seek District Court review*", which in reality simply means filing a formal Objection under Rule 72(a). And that the failure to file a timely Objection results in a waiver of the right to be heard by the District Judge and by the Court of Appeals. Thus, even if Petitioner had filed his 17-cv-02810-[ECF # 195] Rule 72(a) Objection to the Magistrate Judge's 17-cv-02810-[ECF # 194] Orders simply for the tactical purpose of preserving his right to be heard at a later date by the court of Appeals on a controversial discovery issue, Petitioner's filing would have been justified and lawful in light of the Second Circuit's recent reading, interpretation, and application of the Fed. R. Civ. P. Rule 72(a) as being "use it within 14 days" or "lose it forever." ***Thus, the Orders dismissing Petitioner's complaint are unconstitutional and void.***

This being said, it should be noted that Petitioner had indeed complied with every step of the Magistrate Judge's 17-cv-02810-[ECF # 194] Orders for testing the Respondents' virtual deposition platform. But a dispute arose during the testing



when it was found that Respondents' virtual deposition Platform would not be able to remotely display Respondents' evidentiary Exhibits on Petitioner's device. Petitioner himself suggested to Respondents' attorneys to take his deposition orally without entering any evidence through the Platform given the fact that Petitioner was not going to be able to read their Exhibits on his device. But they absolutely refused to do so. A further complication to the issue was that throughout the ten months of the discovery phase of the litigation, Respondents did not produce any document to Petitioner. So, what was the Petitioner going to do under such circumstances but appealing to the District Judge for a resolution under the Fed. R. Civ. P. Rule 72(a)? Therefore, the Petitioner's 17-cv-02810-[ECF # 195] Rule 72(a) Objection was not only a strategic move for the purpose of securing and locking in the right to be heard in a subsequent Appeal, although it would have been absolutely lawful to do so, but it was primarily for the purpose of securing and locking in Petitioner's right to be heard by the District Judge and subsequently by the Court of Appeals on the issue of the defects of Respondents' virtual deposition platform which the Magistrate had Ordered to be tested and which upon testing was found to be defective in not being able to remotely display readable Exhibits onto Petitioner's device.

#### **IV. CONCLUSION AND REQUEST FOR RELIEF**

Based upon the Second Circuit's 01/08/2025 MANDATE holding that *"Failure to seek District Court review of the Magistrate Judge's orders means no*

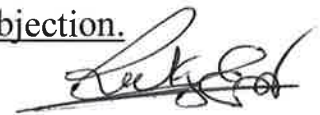
*appellate review is available to him*” (See *Lewis v. Crandall, Supra*), it is clear that Petitioner had the right to “*Object to*” and “*seek review of the Magistrate Judge’s Orders*” and was Required to do so because Petitioner actually had an Objection for which he needed to preserve his right to be heard by the court of Appeals at later date. Rule 72(a) also requires that “*The district judge in the case must consider timely objections.*” Thus, the Dismissal of Petitioner’s complaint as sanctions without first providing a hearing for Petitioner’s timely filed Objection to the Magistrate Judge’s [ECF # 194] Orders was premised upon the deprivation of Petitioner’s right and opportunity to be heard by the courts below. The Orders Dismissing Petitioner’s complaint were unconstitutional and void *ab initio*.

Accordingly, the Petitioner prays that it may be pleasing to each Justice to allow the narrowest Certiorari in the context of the necessity to summarily remove unconstitutional Orders from the federal Courts, along with an Order remanding the case to the Second Circuit for further proceedings Not inconsistent with its own 01/08/2025 MANDATE (See *Lewis v. Crandall, Supra*). In addition, this Petition originated from Petitioner’s Rule 60(b)(4) Motion for Relief from void court Orders. Therefore, there is no other proceeding left unless the Supreme Court Orders it.

Respectfully submitted with a final prayer that an opportunity to be heard be provided for Petitioner’s 17-cv-02810-[ECF # 195] Rule 72(a) Objection.

**Date:** 01/21/2025

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**V. APPENDIX A: MANDATE, US Court of Appeals for the Second Circuit  
in the Matter of *Lewis v. Crandall Et Al*, Case No. 24-684-cv, Issued on  
01/08/2025**

# MANDATE

24-684-cv  
Lewis v. Steward

## UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

### SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 18<sup>th</sup> day of December, two thousand twenty-four.

PRESENT: RAYMOND J. LOHIER, JR.,  
JOSEPH F. BIANCO,  
ALISON J. NATHAN,  
*Circuit Judges.*

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BERNARD LEWIS,

*Plaintiff-Appellant,*

v.

No. 24-684-cv

ROBERT CRANDALL, WILLIAM  
SINGLER, RESOLUTION  
MANAGEMENT, LLC, MARK H.  
STEIN, ESQ., ERIN CAPITAL  
MANAGEMENT, LLC, NORTH  
AMERICAN PROCESSING  
SERVING, LLC.,

MANDATE ISSUED ON 01/08/2025

*Defendants-Appellees,*

LEGAL SERVICING, LLC,  
ANNEMARIE E. STEWARD, ESQ.,  
ROBERT T. VAN DE MARK,  
RODNEY A. GIOVE, ESQ.,  
JPMORGAN CHASE BANK N.A.,

*Defendants.\**

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FOR APPELLANT: Bernard Lewis, *pro se*, Bronx,  
NY

FOR APPELLEE MARK STEIN: David D. MacKnight, Lacy  
Katzen LLP, Rochester, NY

Appeal from a judgment of the United States District Court for the  
Southern District of New York (Paul A. Engelmayer, *Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED,  
AND DECREED that the judgment of the District Court is AFFIRMED.

Bernard Lewis appeals from a judgment of the United States District Court  
for the Southern District of New York (Engelmayer, *J.*), dismissing his federal  
racketeering, Fair Debt Collection Practices Act, and New York state law claims.  
We assume the parties' familiarity with the underlying facts and the record of

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\* The Clerk of Court is directed to amend the caption as set forth above.

prior proceedings, to which we refer only as necessary to explain our decision to affirm.

Magistrate Judge Wang issued orders granting several of the Defendants' requests to stay discovery pending the resolution of dispositive motions.

Although Lewis principally challenges these stay orders on appeal, he did not seek review of them in the proceedings before the District Court. *See* Fed. R. Civ. P. 72(a) (providing that "[a] party may serve and file objections to [a magistrate judge's order on a nondispositive matter] within 14 days after being served with a copy" and that "[a] party may not assign as error a defect in the order not timely objected to"). Failure to seek District Court review of the Magistrate Judge's orders means no appellate review is available to him. *See Caidor v. Onondaga County*, 517 F.3d 601, 605 (2d Cir. 2008). Moreover, even if Lewis had timely objected to the stay orders, his challenge would be meritless. *See Willis v. Amerada Hess Corp.*, 379 F.3d 32, 41 (2d Cir. 2004).

Ultimately, the District Court either dismissed Lewis's claims or granted the Defendants' motion for judgment on the pleadings. *See generally Lewis v. Legal Servicing, LLC*, No. 19-CV-8085, 2020 WL 7390233 (S.D.N.Y. Aug. 18, 2020), *report and recommendation adopted sub nom. Lewis v. Steward*, 2020 WL 6801920

(S.D.N.Y. Nov. 19, 2020) (dismissing claims against Chase); *Lewis v. Legal Servicing, LLC*, No. 19-CV-8085, 2022 WL 2531817 (S.D.N.Y. Mar. 15, 2022), *report and recommendation adopted sub nom. Lewis v. Steward*, 2022 WL 4592641 (S.D.N.Y. Sept. 30, 2022) (granting judgment on the pleadings to Defendants associated with Legal Servicing, LLC); *Lewis v. Stein*, No. 19-CV-8085, 2024 WL 448853 (S.D.N.Y. Feb. 5, 2024) (granting judgment on the pleadings in favor of Defendant Stein and the remaining, non-appearing Defendants).

We have considered each of Lewis's remaining arguments. To the extent Lewis has not forfeited his challenges before the District Court or abandoned them on appeal, *see Green v. Dep't of Educ. of N.Y.C.*, 16 F.4th 1070, 1074 (2d Cir. 2021) (explaining that issues not briefed on appeal are abandoned), we conclude that they are without merit. For the foregoing reasons, the judgment of the District Court is AFFIRMED.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court

A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit

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