

No.

IN THE

SUPREME COURT OF THE UNITED STATES

Reginald Mack

— PETITIONER

vs.

United States

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for The Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

PETITION FOR REHEARING

Reginald (NMN) Mack

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Hampton, VA 23664

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DECLARATION OF MERITORIOUS CLAIM

I, Reginald Mack, being duly sworn (or under penalty of perjury pursuant to 28 U.S.C. § 1746), hereby state:

- I am the Petitioner in the above-captioned matter.
- I have reviewed the facts and the applicable law pertaining to my Petition for Rehearing of the Order Denying Petition for a Writ of Certiorari.
- I believe in good faith that the legal and factual claims presented in my Petition are meritorious and not frivolous.
- The grounds for rehearing or "granting certiorari" set forth in my Petition are based on spoliation of evidence, "a clear conflict among the circuit courts on a matter of significant federal law," or "intervening circumstances of substantial and controlling effect as explained therein". I am not seeking review or rehearing for purposes of delay or harassment.

I declare under penalty of perjury that the foregoing is true and correct. (28 U.S.C. §

1746) Executed on this 20th day of June, 2025, at [Hampton, VA].

Reginald Mack

County/City of Newport News
Commonwealth of Virginia
The foregoing instrument was subscribed and
sworn before me this 20th day of June, 2025
by Reginald Mack
(name of person signing acknowledgement)
Reginald Mack
Jillian Lynn Wagner, Notary Public No. 7947391
My Commission Expires 12/31/25

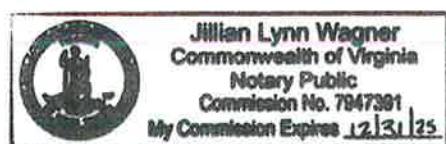


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PETITION FOR REHEARING

Petitioner Reginald Mack, respectfully petitions for rehearing of this Court's May 27, 2025, Order denying his petition for a writ of certiorari.

REASONS FOR GRANTING REHEARING

This Court's Rule 44.2 authorizes a petition for rehearing based on "intervening circumstances of a substantial . . . effect." On June 28, 2024 the United States Supreme Court ruled in *Fischer v. United States* concerning the interpretation of a federal obstruction statute, 18 U.S.C. § 1512(c) (2). Chief Justice Roberts, writing for the majority, emphasized that § 1512(c) (2) should be read in conjunction with the preceding subsection, § 1512(c) (1), which specifically deals with tampering with records and documents. This contextual reading led the Court to conclude that "otherwise obstructs" in (c) (2) should be limited to actions that affect the integrity or availability of evidence. *Emerald Point, LLC v. Hawkins*, 294 Va. 544, 808 S.E.2d 384 (2017), the opinion of the Court was delivered by Senior Justice Lawrence L. Koontz, Jr. That decision constitutes an "intervening circumstance[] of a substantial . . . effect," because it provides an additional and independent justification for this Court's review.

Spoliation

When a complaint has been filed, the duty to preserve is unquestionably imposed on parties. The filing of the complaint provides the parties with express notice that documents that are relevant to that litigation must be preserved, simply by virtue of the fact that litigation has commenced. Once pleadings are filed, it is presumed that because parties have been given notice of the issues to be litigated, it is within reason that the parties are, or ought to be, aware of what information and what sorts of documents may be categorized as relevant at later stages of the litigation, and most notably, during discovery. Beyond the obvious situation where a party is put on notice to preserve potential evidence by the initiation of litigation through the filing of a complaint, it is well established that "[t]he duty to preserve evidence is triggered when an organization reasonably anticipates litigation. "Courts have held that reasonable anticipation of litigation is

based on the occurrence of "significant signs of imminent litigation prior to the filing of a complaint" and have only imposed a duty to preserve evidence on a party "when the signs are clear." This duty is assessed by the relevance of potential evidence in light of the foreseeability of potential litigation, from the perspective of a reasonable person. In this case the Defendant was made aware of the spoliation during discovery and through multiple motions. The prejudice expressed by the lower courts to turn a blind eye to the defendants claims of spoliation went unanswered and instead of sanctions each of the courts judged in favor of the party that committed spoliation.

Spoliation attempts to undermine the fabric of the integrity of the judicial process. Spoliation is considered a serious form of misconduct and discovery abuse that threatens the fairness and efficiency of the legal system as a whole.

" The concept of the "duty to preserve" is founded on the idea that parties to litigation are required to preserve documents or the other materials that may be requested as potential evidence during the discovery process. See *Beil v. Lakewood Eng'g & Mfg. Co.* 15 F.3d 546, 522 (6th Cir. 1994);

There are factors prescribed in the lower courts for determining spoliation that were omitted in the case of *Mack v. the United States*. None of these factors of spoliation were considered when the assertion was raised during discovery and several motions. The factors for determining spoliation are Intent and relevance. The defendant had a duty to preserve all evidence in its current state in the interest of justice and without this preservation of evidence whether through negligence or bad faith the action prevents the plaintiff from having a fair trial.

Constitutionality

Constitutionally through the Fifth and Fourteenth Amendments to the US Constitution guarantee the right to due process, which generally requires the government to respect all legal rights a person is entitled to before depriving them of life, liberty, or property. Spoliation, or the destruction or significant alteration of evidence, can be a violation of due process rights,

particularly in legal proceedings where the evidence is relevant to a party's claims or defense.

Considering the relationship of Due Process and Spoliation on a Constitutional Basis, the Fifth Amendment applies to the federal government, and the Fourteenth Amendment applies to state governments, both prohibiting the deprivation of life, liberty, or property without due process of law.

Procedurally Due Process ensures fair procedures are followed in legal proceedings, including providing notice of a claim or charge, and an opportunity to be heard. The Utilitarian Due Process protects fundamental rights from governmental interference, regardless of the procedures used. The Impact of Spoliation can undermine a party's ability to present their case effectively, potentially violating their right to a fair trial or hearing.

As it relates to legal proceedings both sides of the table have an innate responsibility to preserve evidence when litigation is reasonably anticipated and any effort or attempts made to alter or destroy evidence undermines the due process allowed under the Constitution. There is reasonable and acceptable behavior in anticipation and during litigation to preserve evidence. One can only and safely assume that the Defendant altered or destroyed evidence during discovery. Mr. Mack's case hinges greatly on an entanglement of records with at least FIVE other known Reginald Mack's that have led to continuous harm to date through the negligent mishandling of the Veterans' medical records, treatments, and personal information for over 30 years.

FEDERAL RULES OF CIVIL PROCEDURE

Governmental actors violate due process when they frustrate the fairness of proceedings, such as when a prosecutor fails to disclose evidence to a criminal defendant that suggests they may be innocent of the crime, or when a judge is biased against a criminal defendant or a party in a civil action.

Government Destruction of Evidence: When the government is responsible for spoliation in a criminal case, especially if it's done in bad faith and the evidence could be favorable to the defendant, it can raise due process concerns and potentially lead to a "Trombetta motion" challenging the charges based on the destruction of potentially exculpatory evidence.

Hindrance to a Fair Trial: By destroying or altering evidence, spoliation can prejudice a party's ability to present their case

Spoliation, or the destruction or alteration of evidence, can significantly undermine legal proceedings. While there isn't a specific individual "right" in the sense of a guaranteed constitutional right that is solely violated by spoliation, it can certainly impact a party's rights in various ways within a legal context.

Here's how spoliation can affect a person's rights within the legal system:

Interfering with the right to discovery and a fair defense: Destroying relevant evidence can prevent a party from properly investigating a case, gathering crucial facts, and formulating a strong defense or claim. This can be seen as undermining the principles of fair competition and access to justice.

Preventing a truthful and accurate determination of facts: When evidence is lost or destroyed, it hinders the ability of the court to make informed decisions based on all the relevant information. This can lead to an inaccurate assessment of the facts and potentially an unfair outcome. effectively, which can potentially implicate the right to a fair trial, a broader protection under the Constitution.

FEDERAL RULES OF CIVIL PROCEDURE (FRCP) 37(a) (4) Evasive or Incomplete Disclosure, Answer, or Response. For purposes of this subdivision (a), an evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, answer, or respond.

Rule 37(e) primarily addresses spoliation of electronically stored information (ESI). Courts may still rely on their inherent authority to

sanction parties for spoliation when Rule 37(e) does not apply, such as when ESI is altered but not completely lost.

Supreme Court Rulings

Federal Rules of Civil Procedure: The Supreme Court plays a crucial role in overseeing the Federal Rules of Civil Procedure, including Rule 37(e), which specifically addresses the loss of electronically stored information (ESI).

Inherent Power of Courts: The Supreme Court has recognized the inherent power of federal courts to manage their own affairs and impose sanctions to ensure the integrity of the judicial process, which can be applied to address spoliation.

Adverse Inference Instructions: The Court has addressed the use of adverse inference instructions, where a jury may be instructed to infer that lost or destroyed evidence would have been unfavorable to the spoliating party.

Intent and Prejudice: The Supreme Court has clarified the role of intent and prejudice in determining the appropriate sanctions for spoliation, particularly under Rule 37(e).

Illustrative Case: *Chambers v. NASCO, Inc.*: In this case, the Supreme Court affirmed the inherent power of courts to impose sanctions for various litigation abuses, including bad-faith conduct, even when procedural rules may not explicitly cover the misconduct.

Important Considerations

State vs. Federal Law: Spoliation laws can vary significantly between states and federal courts.

Type of Evidence: Different rules and standards may apply depending on whether the evidence is physical or electronically stored information (ESI).

Evolving Technology: The rapid advancement of technology constantly poses new challenges for evidence preservation and discovery, and courts

continue to adapt their interpretations and applications of spoliation principles.

Virginia law on spoliation of evidence:

Emerald Point, LLC v. Hawkins:

The court held that a party requesting a spoliation instruction (allowing the jury to assume destroyed evidence was unfavorable) must present evidence of intentional loss or destruction of evidence. Negligent destruction of evidence, while potentially sanctionable, does not automatically trigger a spoliation inference. The determination of whether spoliation occurred is highly fact-specific and requires a consideration of the totality of the circumstances. The court reversed the lower court's decision because it failed to find that the landlord acted in bad faith when disposing of the furnace.

Virginia Code § 8.01-379.2:1:

This statute outlines a party's duty to preserve evidence in reasonably foreseeable litigation.

Preservation of Evidence:

Parties have a duty to preserve evidence that may be relevant to a lawsuit.

Relevance:

Evidence must be relevant to the claims or defenses in the litigation to be considered in a spoliation analysis.

Culpable State of Mind:

Many courts, including Virginia courts, look for a culpable state of mind (intentional or reckless destruction) when determining whether to impose spoliation sanctions.

Remedies:

If spoliation is found, courts can impose various remedies, including adverse inference instructions, monetary sanctions, or even dismissal of claims.

In summary, Virginia law emphasizes that spoliation sanctions, including adverse inference instructions, should be reserved for cases involving intentional or reckless destruction of evidence, not simply negligent destruction. However, the duty to preserve evidence is still in place, and parties should take reasonable steps to preserve relevant evidence to avoid potential sanctions.

Civil Cases

In civil cases, particularly medical malpractice, spoliation of evidence can lead to significant legal repercussions. While some jurisdictions recognize a separate tort for spoliation, others address it through sanctions within the existing lawsuit. The central issue is the intentional or negligent destruction or concealment of evidence relevant to a case, potentially prejudicing the opposing party.

Altered or Destroyed Records:

Hospitals or doctors destroying or altering medical records to conceal errors or negligence.

Example Case:

In California, the case of *Cedars-Sinai Medical Center v. Superior Court* (1998) highlights the complexities of spoliation. The court disapproved of a separate tort for first-party spoliation when the spoliation was or should have been discovered before the end of the underlying litigation. However, the possibility of sanctions and spoliation inferences remains.

“Spoliation” of evidence occurs when someone with an obligation to preserve evidence with regard to a legal claim neglects to do so or intentionally fails to do so. Such a failure to preserve evidence can take place by destruction of the evidence, damage to the evidence, or losing the evidence. When spoliation occurs, the party responsible may be held

accountable in court through a variety of different sanctions. Those sanctions vary greatly from state to state. In 1984, California was the first state to recognize the tort of spoliation. *Smith v. Superior Ct.*, 151 Cal. App.3d 491, 198, Cal. Rptr. 829, 831 (Cal. 1984). However, the majority of jurisdictions that have subsequently examined the issue have declined to create or recognize such a tort. Only Alabama, Alaska, Florida, Indiana, Kansas, Louisiana, Montana, New Mexico, Ohio, and West Virginia have explicitly recognized some form of an independent tort action for spoliation. California overruled its precedent and declined to recognize first-party or third-party claims for spoliation. *Temple Cnty. Hosp. v. Superior Ct.*, 20 Cal.4th 464, 84 Cal. Rptr.2d 852, 976 P.2d 223, 233 (Cal. 1999); *Cedars-Sinai Med. Center v. Superior Ct.*, 18 Cal.4th 1, 74 Cal. Rptr.2d 248, 954 P.2d 511, 521 (Cal. 1998). Generally, those states that have recognized or created the tort of spoliation in some form, limit such an action to third-party spoliation of evidence related to pending or actual litigation. First-party spoliation claims are those claims for destruction or alteration of evidence brought against parties to underlying litigation. Conversely, third-party spoliation claims are those destruction or alteration of evidence claims against non-parties to underlying litigation. Moreover, most of these states generally hold that a third-party spoliator must have had a duty to preserve the evidence before liability can attach. The majority of states that have examined this issue have preferred to remedy spoliation of evidence and the resulting damage to a party's case or defense, through sanctions or by giving adverse inference instructions to juries. Sanctions can include the dismissal of claims or defenses, preclusion of evidence, and the granting of summary judgment for the innocent party. The following is a compendium of decisions for the states that have examined the issue of spoliation. It should be remembered that, if a matter is pending in federal court, federal evidentiary rules, rather than state spoliation laws, may be applied. *King v. Ill. Cent. R.R.*, 337 F.3d 550 (5th Cir. 2003). A district court has discretion to admit evidence of spoliation and to instruct the jury on adverse inferences. *United States v. Wise*, 221 F.3d 140 (5th Cir. 2000) (citing *Higgins v. Martin Marietta Corp.*, 752 F.2d 492 (10th Cir. 1985)). The adverse inference to be drawn from destruction of records is predicated on

bad conduct of the defendant. The circumstances of the act must manifest bad faith. Mere negligence is not enough, because it does not sustain an inference of consciousness of a weak case. *Vick v. Tex. Emp't Comm'n*, 514 F.2d 734 (5th Cir. 1975). Therefore, one must show that the party alleged to have destroyed evidence acted in "bad faith" in order to establish entitlement to an adverse inference. A court will require even more compelling evidence of bad faith when asked to apply the more severe sanction of dismissal or summary judgment. *Stahl v. Wal-Mart Stores, Inc.*, 47 F. Supp.2d 783 (S.D. Miss. 1998).

In summary, while there may not be a standalone "spoliation of rights" claim in every jurisdiction, spoliation can have significant consequences for a person's ability to participate effectively and fairly in a legal proceeding, effectively impinging upon their right to a just and equitable legal outcome.

CONCLUSION

For the foregoing reasons, and those stated in the petition for a writ of certiorari, the Court should grant rehearing, hold the petition based on the Court's decision in *Fischer v. United States*, and then grant the petition and review the judgment.

June 17, 2025

Respectfully submitted,

CERTIFICATE OF COUNSEL

Pursuant to Rule 44.2, I, Reginald Mack, represented Pro Se, hereby certify that the petition for rehearing is restricted to the grounds specified in Rule 44.2. I further certify that the petition for rehearing is presented in good faith and not for delay.

June 20, 2025

Reginald Mack
Reginald Mack

