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

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Case No. 24-1005

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**Nathan Young,** Petitioner

**v.**

**BURTON W. WIAND,** as Receiver,

**Respondent.**

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From the United States Court of Appeals for the Ninth Circuit

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# OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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*Burton W. Wiand, Receiver,* 114 Turner St., Clearwater, FL 33756, 727-235-6769, Burt@BurtonWWiandPA.com

## QUESTIONS PRESENTED

Does this standard discovery dispute about compliance with a subpoena issued under Federal Rule of Civil Procedure 45 raise a conflict between lower courts or an important federal question worthy of this Court's attention?

Can the owner of a single member LLC resist a subpoena issued to his company without retaining counsel in violation of local rules and precedent because the subpoena calls for the production of documents held by the company in which the owner claims a personal interest?

## LIST OF PARTIES

The caption contains the names of all parties.

## CORPORATE DISCLOSURE STATEMENT

Oasis International Group, Ltd., Oasis Management, LLC, and Satellite Holdings Company have no parent corporations, and no publicly held corporation owns 10 percent or more of their stock.

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## OPINIONS BELOW

Petitioner includes the relevant opinions from the District of Idaho and the United States Court of Appeals for the Ninth Circuit in his Appendix. *See also Wiand v. Intermountain Precious Metals LLC*, No. 1:24-MC-00086-AKB, 2024 WL 3677334, at *1 (D. Idaho Aug. 5, 2024), *dismissed,* No. 24-5506, 2024 WL 5479633 (9th Cir. Dec. 17, 2024).

## JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Rule 45 of the Federal Rules of Civil Procedure. Petitioner lists the Fifth

Amendment to the United States Constitution and 28 U.S.C. § 754, but those provisions are not relevant to this subpoena dispute.

## STATEMENT OF THE CASE & SUMMARY OF ARGUMENT

This is a run-of-the-mill subpoena dispute governed by Federal Rule of Civil Procedure 45. Many months ago, the Receiver served Intermountain Precious Metals ("**IPM**") with a subpoena seeking documents related to a possible "recovery scam" arising from the enforcement action underlying this dispute. IPM received funds from the victims of the scam, and the Receiver is tracing those funds pursuant to his Court-ordered mandate.

IPM refused to comply with the subpoena. It also failed to serve any written objections or a privilege log, as

required by Rule 45. To enforce the subpoena, the Receiver filed a motion for an order to show cause in the District of Idaho – *i.e.*, where IPM is located and where compliance with the subpoena was required.

Nathan Young appeared and attempted to represent IPM *pro se*. Although he was and is not a party to this dispute, he also attempted to assert his own interests in the responsive documents and to claim protection under the Fifth Amendment to the United States Constitution. In the District of Idaho (and elsewhere), corporations must be represented by counsel. The District Court gave Young several opportunities to retain counsel for IPM, but he failed to do so.

The District Court ultimately granted the Receiver's motion for an order to show cause, held IPM in contempt, and awarded sanctions to the

Receiver. Young appealed to the Ninth Circuit, which dismissed his appeal because he is not a party to this dispute and because IPM was not and still is not represented by counsel. This Court should deny the Petition because Young and/or IPM raise nothing more than a standard discovery dispute over compliance with a Rule 45 subpoena. Young's Fifth Amendment rights are a red herring, and 28 U.S.C. § 754 has nothing to do with this matter.

## ARGUMENT

Burton W. Wiand, the Court-appointed Receiver for Oasis International Group, Limited; Oasis Management, LLC; and Satellite Holdings Company, et al. (collectively, the "**Receiver**" and the "**Receivership Entities**"), pursuant to the order of the District Court for the Middle District of Florida (the "**Receivership Court**"), dated July 11, 2019 (the "**Consolidated Order**"), in the matter *Commodity Futures Trading Commission v. Oasis International Group, Limited, et al.*, Case No. 8:19-CV-886-T-33SPF (M.D. Fla.) (the "**Receivership Action**") respectfully asks this Court to deny the petition for writ of *certiorari* (the "**Petition**") filed by Nathan Young ("**Young**"), purportedly as the sole member of Intermountain Precious Metals LLC. The Petition is frivolous,

and the Receiver intends to seek sanctions, including "damages" and "costs," pursuant to the pertinent Supreme Court Rules.

**Young Lacks Standing to Challenge the Subpoena**

Young admits that "IPM, as a limited liability corporation, must be represented by counsel and cannot proceed *pro se*," but he claims this well-established rule[1] does not apply to him

[1] "A corporation must be represented by counsel." *Reading Int'l, Inc. v. Malulani Grp., Ltd.*, 814 F.3d 1046, 1053 (9th Cir. 2016); *D-Beam Ltd. P'ship v. Roller Derby Skates, Inc.*, 366 F.3d 972, 973-74 (9th Cir. 2004) ("It is a longstanding rule that corporations and other unincorporated associations must appear in court through an attorney."); *United States v. High Country Broad. Co., Inc.,* 3 F.3d 1244, 1245 (9th Cir. 1993) (holding that corporation's president and sole

due to "the unique circumstances of this case." *See* Pet. at 6. Specifically, Young claims the "equities" favor his standing to challenge the IPM subpoena because he participated in the underlying litigation and because he purportedly faces the threat of criminal prosecution. *Id.* at 6-7. Young's argument is frivolous because there is nothing unique about this Petition or his circumstances. Indeed, this Petition raises a standard dispute about the enforceability of a subpoena to a third-party document custodian, which is apparently a single-member limited liability corporation. "The LLC does not escape this rule [requiring counsel] merely because [Young] is its managing member." *In re*

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shareholder could not make "an end run" around the counsel requirement by intervening *pro se* rather than retaining counsel to represent the corporation).

*69 N. Franklin Tpk., LLC*, 693 F. App'x 141, 144 (3d Cir. 2017) (affirming dismissal of appeal); *Harris v. City of Clearlake*, No. 18-15373, 2018 WL 4203427, at *1 (9th Cir. July 17, 2018) (dismissing appellant from appeal "for failure to obtain counsel" pursuant to 9th Cir. R. 42-1).

**The Petition Fails to Raise an Important and Recurring Question**

Young claims this dispute raises three important, recurring questions: "*First,* whether a receiver has subpoena power where the originating receivership case under which the subpoena has issued, is closed; *second,* whether a receiver has subpoena power where the receiver claims no receivership property in the sister State into which the subpoena is directed; *third,* whether a receiver may infringe the Fifth

Amendment rights of a nonparty LLC with only one member-shareholder where the receiver's subpoena to the nonparty LLC of another State requests personal emails and phone messages." Pet. at 8. As explained below, Young's arguments are frivolous.

Young's first argument that the "originating receivership case" is "closed" is misleading because the Receivership Action is, in fact, ongoing, and the Receivership Court has not vacated or otherwise terminated the Consolidated Order. As such, the Receiver's subpoena powers are intact. *See* RA Doc. 177 § II.8.H. (authorizing Receiver to "issue subpoenas or letters rogatory to compel testimony of persons or production of records, consistent with the Federal Rules of Civil Procedure, except for the provisions of Fed. R. Civ. P. 26(d)(l), concerning any subject matter within the powers and duties granted by this

[o]rder"). The Receivership Court only administratively closed the underlying enforcement action for internal case management purposes after the plaintiff agency obtained judgments against all of the defendants. A review of the docket in the Receivership Action demonstrates that the Receiver's work could continue for several years. *See, e.g.,* RA Doc. 855 (Receiver's Twenty-Third Interim Report); *see also Rosetto v. Murphy*, No. 16-81342-CIV, 2017 WL 2833453, at *4 (S.D. Fla. June 30, 2017), *aff'd*, 733 F. App'x 517 (11th Cir. 2018) ("[C]ontrary to the ordinary sense of the word, it is not unusual for a case to continue long after it is closed."). In any event, the district courts' administrative management of their dockets is hardly an important and recurring issue worthy of this Court's attention.

Second, the existence of Receivership property in the District of

Idaho is irrelevant. As explained multiple times at multiple levels of the federal judiciary, the Receiver is not proceeding under 28 U.S.C. § 754 but rather Federal Rule of Civil Procedure 45. Like any other litigant, the Receiver is entitled to discover documents from nonparties under Rule 45 without the need to show property (aside from the documents at issue) in the federal district where the subpoena target is located.

Third, many of Young's arguments are based on his purported Fifth Amendment right to protect IPM's documents, but "[a]n individual [corporate custodian] cannot assert his personal privilege in order to defeat a subpoena for corporate records, even if the records contain information

incriminating him."[2] *In re Grand Jury Subpoenas Dated June 27, 1991*, 772 F. Supp. 326, 329 (N.D. Tex. 1991) (emphasis added) (citing *Bellis*, 417 U.S. at 88-89; *United States v. White*, 322 U.S. 694, 699 (1944)); *see also Braswell*, 487 U.S. at 109-10 (holding that custodians of corporate documents have no act of production privilege under Fifth Amendment regarding corporate documents).

[2] At minimum, Fed. R. Civ. P. 45(e)(2) requires the production of a privilege log. Despite receiving notice and an opportunity to be heard – the hallmarks of procedural due process – IPM has made no attempt to create a privilege log or to otherwise comply with the requirements of Rule 45(e)(2).

## Young Fails to Raise a Question of Fundamental Legal Significance

Young's attempt to articulate a question of fundamental legal significance confuses three unrelated issues. First, Young appears to argue that *Braswell* does not apply to single-member limited liability corporations, but he fails to cite a case supporting that self-serving conclusion much less a circuit split worthy of this Court's attention.

Second, Young claims the "question presented here has fundamental legal significance because it concerns the separations of the powers of our general government." Pet. at 11. Specifically, Young claims the Receiver, as an arm of the Receivership Court, is a judicial agent, but in issuing the IPM subpoena, he is acting as a "prosecutor" or "criminal investigator," which is a

function of the Executive Branch. *See id.* at 11-12. Again, Young's argument is fabricated – the Receiver, of course, is not a prosecutor, and he has never sought to arrest Young. Any suggestion to the contrary is frivolous. While the Receiver has reported Young's misconduct (along with that of several others) to the United States Attorney's Office for the Middle District of Florida, that report only illustrates and reinforces the appropriate separation of powers. The Receiver is a witness with respect to any actions that office might take against Young and/or IPM – not a prosecutor.

Third, Young argues the subpoena is overbroad because it purportedly calls for the production of his personal documents, but neither Young nor IPM have ever sought a protective order or submitted objections to the IPM subpoena pursuant to the procedures set

forth in Rule 45. As such, all objections to the IPM subpoena, including its purported overbreadth, have been permanently waived.

## The District Court Has Jurisdiction under Rule 45; Section 754 is Irrelevant

Young argues the District Court erred in taking jurisdiction over the IPM subpoena under 28 U.S.C. § 754 (Pet. at 13-15), but that statute has no relevance whatsoever to this dispute or attempted appeal.[3] The Receiver's subpoena powers

[3] Briefly, 28 U.S.C. §§ 754 & 1692 grant receivers complete jurisdiction and control of receivership property located in different federal districts provided they comply with certain prerequisites. Those statutes also authorize receivers to affect nationwide service of process on anyone in possession of such property. Together, the provisions allow receivers to centralize disputes

are derived from and set forth in the Consolidated Order. *See* RA Doc. 177 § II.8.H. The Receiver (through counsel) issued the IPM subpoena pursuant to the Consolidated Order and Federal Rule of Civil Procedure 45 – not 28 U.S.C. §§ 754 & 1692. A subpoena may be served at any place within the United States pursuant to Rule 45(b)(2). There is thus no reason to invoke 28 U.S.C. § 1692's grant of nationwide service of process or 28 U.S.C. § 754's grant of exclusive jurisdiction and control over Receivership property in the appointing court. Notably, the Receiver is not even

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about receivership property before the appointing court – here, the United States District Court for the Middle District of Florida. Of course, the Receiver is not proceeding in Florida under these statutes but in Idaho under Rule 45 – *i.e.*, where subpoena compliance is required.

seeking the return of any Receivership property from IPM (at this time); he is merely seeking to hold IPM in contempt of court and to compel the production of relevant documents, which relief the Idaho District Court expressly had the power to grant pursuant to Rule 45(g). *See* Fed. R. Civ. P. 45(g) ("The court for the district where compliance is required … may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it."). Put simply, 28 U.S.C. §§ 754 & 1692 are not relevant to any questions before this Court.

**The "Circuit Split" is Fabricated**

Young claims there is a "circuit split" as to whether a receiver's reappointment can restart Section 754's 10-day clock (Pet. at 15-16), but that argument is both fabricated and

frivolous. As an initial matter, the Receiver never sought reappointment to issue to the IPM subpoena (and the Receivership Court did not, in fact, reappoint him) because Section 754 and reappointment have nothing to do with subpoenas issued under Rule 45. The entire factual premise of this Petition is fabricated. Young's argument is also frivolous because, even if the parties' dispute implicated Section 754 (and it does not), there is no circuit split. All circuits that have considered the issue have held that a district court may reappoint a receiver to restart Section 754's 10-day clock. These arguments are yet further examples of Young's vexatious, dilatory, and bad-faith litigation tactics, which call strongly for the imposition of sanctions and against the weighing of any relevant equities in Young's favor.

## CONCLUSION

For the foregoing reasons, the Court should deny the Petition.

Respectfully submitted,

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