

26-5820

ORIGINAL

No. 26-_____

IN THE SUPREME COURT OF THE UNITED STATES

FREDERICK LUEHRING III, *Petitioner*,

METROPOLITAN STATE HOSPITAL, (Terminated on: 01/07/2022) EUNMEE LEE,

MAYBEL MAMLAGNIT, In Their Personal/Individual Capacities, et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF

APPEALS FOR THE NINTH CIRCUIT PETITION FOR A WRIT OF CERTIORARI

FREDERICK LUEHRING III Petitioner, Pro Se, c/o 550 W. Rancho Vista BLVD., Ste.

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FILED

AUG 11 2026

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTIONS PRESENTED

1. Whether a district court's refusal to accept written deposition answers under Fed. R. Civ. P. 31(a)(1), and its imposition of testimony-preclusion sanctions on a pro se litigant who was out of town and lacked videoconference technology, constitutes a departure from the accepted and usual course of judicial proceedings warranting this Court's supervisory power under Rule 10(a).
2. Whether testimony-preclusion sanctions imposed without a finding of willfulness, bad faith, or flagrant misconduct, and without first considering less drastic alternatives, violate the Due Process Clause of the Fifth Amendment.
3. Whether a pro se litigant's offer to provide written deposition answers, when the opposing party already possesses the identical information through interrogatories, requests for admission, and requests for production, constitutes "substantial justification" under Fed. R. Civ. P. 37(d)(3), precluding sanctions for failure to appear at an oral deposition.
4. Whether the Ninth Circuit's rigid application of the final-judgment rule under 28 U.S.C. § 1291 to magistrate judge discovery orders that effectively terminate a pro se litigant's right to present evidence and oppose summary judgment creates a jurisdictional gap that denies litigants any meaningful appellate review in violation of due process.

LIST OF PARTIES

1).EUNMEE LEE,In Here Personal/Individual Capacity;

2).MAYBEL MANLAGNIT,In Her Personal/Individual Capacit;

NOTE:METROPOLITAN STATE HOSPITAL Was Terminated As A Party

On:01/07/2022.

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OPINIONS BELOW

The order of the United States Court of Appeals for the Ninth Circuit dismissing petitioner's appeal for lack of jurisdiction (App. A) is not published. The underlying order of the United States District Court for the Central District of California granting in part respondents' motion for sanctions (App. C) is unpublished. The district court's order denying petitioner's motion for a protective order (App. D) is unpublished. The district court's order granting summary judgment (App. E) is unpublished.

JURISDICTION

The United States Court of Appeals for the Ninth Circuit entered its order dismissing petitioner's appeal on May 28, 2026. The judgment became final when the mandate issued on June 22, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitution, Amendment V (Due Process Clause)

No person shall be . . . deprived of life, liberty, or property, without due process of law

28 U.S.C. § 636(b)(1)(A)

[A] judge may designate a magistrate judge to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action. A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law.

28 U.S.C. § 1254(1)

Cases in the courts of appeals may be reviewed by the Supreme Court by . . . writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

28 U.S.C. § 1291

The courts of appeals . . . shall have jurisdiction of appeals from all final decisions of the district courts of the United States

Federal Rule of Civil Procedure 26(b)(2)(C)

When Required. On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or (iii) the proposed discovery is outside the scope permitted by Rule 26(b)(1).

Federal Rule of Civil Procedure 26(c)

A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending. The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense . . .

Federal Rule of Civil Procedure 30 governs depositions by oral examination.

Federal Rule of Civil Procedure 31(a)(1) provides that a party may, by written questions, depose any person, including a party, without leave of court except as provided in Rule 31(a)(2).

Federal Rule of Civil Procedure 37(a) governs motions to compel discovery.

Federal Rule of Civil Procedure 37(b) governs sanctions for failure to comply with a court order.

Federal Rule of Civil Procedure 37(d)(3) provides that sanctions may be imposed for a party's failure to appear for a deposition, but that the failure may be excused if the motion was based on substantial justification or other circumstances make an award of expenses unjust.

STATEMENT OF THE CASE

This case arises from a civil rights action filed by petitioner, proceeding pro se, under 42 U.S.C. § 1983 and related state laws. During discovery, a dispute arose regarding petitioner's deposition. On January 30, 2026, a magistrate judge in the Central District of California issued an order compelling petitioner to appear for a video or in-person deposition by that date.

At the time, petitioner was residing in Hawaii. He informed respondents that he lacked the technological capability to participate in a video deposition, as he relied on public library computers that did not have the necessary audio-video hardware or software. He further stated that he could not afford to travel to Los Angeles for an in-person deposition.

As a reasonable alternative, petitioner offered to provide sworn answers to written deposition questions pursuant to Federal Rule of Civil Procedure 31(a)(1). Respondents refused this offer and insisted on an oral deposition. It is undisputed that, by this time, respondents had already obtained extensive written discovery from petitioner, including his sworn answers to interrogatories, responses to requests for admission, and all documents sought in their requests for production.(Document No. 115 Filed:12/17/2025)

After petitioner was unable to appear for the oral deposition as ordered, respondents moved for sanctions. On April 9, 2026, the magistrate judge granted the motion in part. The court imposed a sanction that conditionally precluded petitioner "from submitting any sworn testimony (by declaration or otherwise) in connection with any opposition to a motion for summary judgment." (App. B).

Petitioner filed a motion for a protective order, explaining his circumstances and renewing his offer to provide written answers. On April 21, 2026, the magistrate judge denied this motion as “untimely and moot” in light of the prior sanctions order. (App. B).

Petitioner filed a timely notice of appeal to the United States Court of Appeals for the Ninth Circuit, challenging the underlying discovery and sanctions orders that led to the dismissal of his case. On May 28, 2026, the Ninth Circuit dismissed the appeal for lack of jurisdiction.

The court held that the magistrate judge’s sanctions order was not a “final, appealable order” under 28 U.S.C. § 1291. (App. A). This petition followed.

REASONS FOR GRANTING THE WRIT

This case presents a recurring and critical issue for pro se litigants: whether the procedural framework of discovery, sanctions, and appellate jurisdiction can combine to strip a litigant of his day in court without meaningful review. Here, the district court refused a reasonable and statutorily permitted discovery alternative, imposed a case-terminating sanction without finding willful misconduct, and denied a protective order as moot. The court of appeals then determined it lacked jurisdiction to review any of these decisions because the dispositive order was issued by a magistrate judge. This sequence created a procedural black hole from which petitioner’s case could not escape.

This Court’s intervention is necessary to clarify the due process limits on discovery sanctions, to reinforce the proportionality principles embedded in the Federal Rules, and to address the jurisdictional gap that leaves pro se litigants without a remedy when a series of non-final orders collectively results in the dismissal of their case. The lower courts’ actions represent a “departure from the accepted and usual course of judicial proceedings” that calls for this Court’s supervisory power. Sup. Ct. R. 10(a).

I. The District Court's Refusal to Accept Written Answers and Imposition of Sanctions Constitutes a Departure from the Accepted and Usual Course of Judicial Proceedings

Under Rule 10(a) of this Court, certiorari may be granted when a lower court has "so far departed from the accepted and usual course of judicial proceedings . . . as to call for an exercise of this Court's supervisory power." The proceedings below meet this high standard. The district court ignored a valid discovery method provided by the Federal Rules, imposed a disproportionate penalty, and disregarded the undue burden placed on a pro se litigant. Federal Rule of Civil Procedure 31(a)(1) expressly permits depositions by written questions. This tool is particularly suited for situations where the cost and burden of an oral deposition outweigh its utility. Here, petitioner, a pro se litigant in Hawaii, faced a court order to appear for a deposition in Los Angeles or by video, a technology he did not possess. His offer to provide sworn written answers was a practical, cost-effective, and procedurally valid solution.

Respondents' refusal to accept this offer was unreasonable, and the court's endorsement of that refusal was a departure from the essential requirements of law. Courts must take "reasonable steps to avoid imposing undue burden or expense on a person subject to [discovery]." *MetroPCS Wireless, Inc. v. State*, 120 So. 3d 1271, 1273 (Fla. Dist. Ct. App. 2013). Rule 26(b)(2)(C) requires a court to limit discovery that is "unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive." The court here did the opposite, compelling the most burdensome method when a less burdensome one was available and when the information sought was already in respondents' possession through prior discovery.

In *Shockey v. Huhtamaki, Inc.*, 280 F.R.D. 598 (D. Kan. 2012), the court granted a protective order allowing depositions by videoconference, recognizing that requiring plaintiffs to travel for in-person depositions would impose undue financial hardship. In *Federal Trade*

Commission v. Nudge LLC, No. 1:19-cv-00084-TC, 2020 WL 6825741, at *2 (D. Utah Nov. 20, 2020), the court found a written deposition to be an “adequate and less burdensome means” and held that the party seeking an oral deposition must demonstrate it is “essential.” Respondents here made no such showing. The court’s failure to enforce the principles of proportionality under Rule 26(c) and its refusal to permit a valid discovery method under Rule 31 constitute a fundamental departure from normal judicial proceedings that warrants this Court’s review.

II. The Sanctions Violated Due Process

The Fifth Amendment’s Due Process Clause requires that any deprivation of property—including a legal cause of action—be preceded by fundamentally fair procedures. The testimony-preclusion sanction imposed here was the functional equivalent of dismissal, yet it was ordered without the procedural safeguards required for such a drastic remedy.

First, severe, case-terminating sanctions are reserved for the most egregious misconduct and require a finding of willfulness, bad faith, or fault. In *Sharon Bonds v. District of Columbia*, 93 F.3d 801, 808 (D.C. Cir. 1996), the court held that a severe sanction that denies a party a trial on the merits “must be supported by a finding of flagrant or egregious misconduct.”

Likewise, in *Generation Capital I, LLC v. Fliss (In re Fliss)*, 586 B.R. 21, 27 (Bankr. E.D. Ill. 2018), the court described dismissal as a “‘harsh remedy that should be reserved for the most egregious situations,’ where there is evidence of willfulness, bad faith, or fault.”

Here, the magistrate judge made no such finding. Petitioner did not willfully defy a court order; he explained his inability to comply due to his location and lack of resources and proposed a reasonable, lawful alternative. His conduct did not rise to the level of “contumacious” behavior required to justify a sanction that effectively ended his case. See *Sole Energy Co. v. Hodges*, 128 Cal. App. 4th 199, 208 (2005) (holding that due process is

violated when terminating sanctions are imposed without adequate notice and for conduct that is not willful).

Second, due process requires a court to consider less drastic sanctions before imposing a penalty that is tantamount to dismissal. *Hill v. Tevogt*, 293 Neb. 439, 452, 878 N.W.2d 358, 367 (2016) (finding abuse of discretion where the court's order "did not consider less drastic sanctions" before excluding critical evidence). The court could have ordered respondents to propound written questions, ordered respondents to pay for petitioner's travel, or imposed a monetary sanction. Instead, it chose the most severe option available short of outright dismissal.

Finally, the sanctions order short-circuited the proper procedure under the Federal Rules.

When a party fails to answer a deposition question, the first step is a motion to compel under Rule 37(a). Only upon violation of a compel order may sanctions under Rule 37(b) be considered. See *Jackson v. Powell*, No. 2:19-CV-13, 2021 WL 276709, at *2 (W.D. Mich. Jan. 27, 2021). Here, the court jumped directly to a severe sanction for failure to appear, ignoring petitioner's attempt to comply through an alternative method. This disregard for the tiered enforcement mechanism of Rule 37, combined with the lack of a finding of bad faith, violated petitioner's due process rights.

III. Petitioner Had Substantial Justification Under Rule 37(d)(3)

Federal Rule of Civil Procedure 37(d)(3) excuses a failure to appear for a deposition if the failure was "substantially justified." The undisputed facts of petitioner's circumstances—his residence in Hawaii, his reliance on public library computers without audio-video capability, and the significant time zone difference—provided substantial justification for his inability to attend an oral deposition in Los Angeles or by video.

Courts have long recognized that logistical and financial hardship can constitute "extenuating circumstances" that justify a failure to appear. In *Ross v. True Temper Corp.*, 11 F.R.D. 307,

308 (N.D. Ohio 1951), the court refused to dismiss a case where the plaintiff failed to travel for a deposition due to his physical condition and lack of funds, holding that there was “no showing of unexplained, willful and deliberate disregard of court process.” More recently, in *Henry v. Komarovsky*, No. C22-5489-TLF, 2023 WL 5530182 (W.D. Wash. Aug. 28, 2023), the court granted a protective order allowing a remote deposition for an unemployed plaintiff, finding that his financial situation was a “legitimate reason” to avoid costly travel.

Petitioner’s justification was particularly compelling because he did not simply fail to act; he proactively offered a reasonable alternative that would have provided respondents with the discovery they sought. His offer to provide sworn written answers under Rule 31 demonstrated his willingness to comply with his discovery obligations, not a willful disregard for them. When a party’s refusal to answer is based on a valid legal ground, the refusal is substantially justified, and sanctions are an abuse of discretion. *See Imposition of Sanctions in Alt v. Cline*, 224 Wis. 2d 72, 99, 589 N.W.2d 21, 32 (1999).

Furthermore, the futility of the deposition provides additional justification. Respondents already possessed petitioner’s sworn statements on all relevant issues through interrogatories and other discovery. Compelling an oral deposition in these circumstances served no purpose other than to harass and impose a burden on a pro se litigant with limited resources. The court’s failure to recognize these justifications before imposing case-terminating sanctions was contrary to the text and purpose of Rule 37(d)(3).

IV. The Ninth Circuit’s Jurisdictional Dismissal Creates an Intolerable Gap in Appellate Review

The final issue demanding this Court’s attention is the procedural trap that ensnared petitioner. The Ninth Circuit dismissed his appeal, correctly noting that a magistrate judge’s non-dispositive discovery order under 28 U.S.C. § 636(b)(1)(A) is not a “final decision” appealable under 28 U.S.C. § 1291. While this rule is sound in isolation, its rigid application

in this context creates a jurisdictional anomaly that violates the principles of due process by denying any meaningful appellate review.

The magistrate judge's sanctions order was technically "non-dispositive." However, in the context of this case, it was unequivocally case-terminating. By precluding petitioner from submitting any sworn testimony, the order made it impossible for him to oppose summary judgment. The subsequent grant of summary judgment was not a separate, intervening decision on the merits; it was the inevitable and direct consequence of the sanctions order. The district judge's final order merely formalized the outcome that the magistrate judge's order had already dictated.

When a series of non-final orders, issued by a magistrate judge, leads directly and inexorably to a final judgment, due process requires that an appellate court have jurisdiction to review the predicate orders. To hold otherwise allows the final-judgment rule to be used as a shield, insulating dispositive discovery rulings from any appellate scrutiny. This creates a trap for unwary litigants, particularly those proceeding pro se, who may not understand the need to object to the magistrate's order before the district judge to preserve the issue for a later appeal of the final judgment.

This Court should grant certiorari to clarify when and how a magistrate judge's sanctions order, though styled as non-dispositive, becomes reviewable. The Court should hold that when such an order effectively decides the outcome of a case by precluding a party from presenting evidence on a dispositive motion, it merges into the final judgment and is subject to appellate review. Without such a clarification, the combination of Rule 37, § 636, and § 1291 will continue to operate as a tool to dismiss meritorious cases on procedural grounds without any possibility of appellate correction.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,


/s/ Frederick Luehring III **FREDERICK LUEHRING III** *Petitioner, Pro Se*

Dated: ~~August 2026~~ 7/24/2026

APPENDIX

Appendix A: Order of the United States Court of Appeals for the Ninth Circuit, Case No. 26-2706 (May 28, 2026), and Mandate (June 22, 2026)

Appendix B: Order Granting in Part Defendants' Motion for Sanctions of the United States District Court for the Central District of California, Case No. 2:21-cv-03879-GW-SK (April 9 2026)

Appendix C: Order Denying Plaintiff's Motion for Protective Order of the United States District Court for the Central District of California, Case No. 2:21-cv-03879-GW-SK (April 21, 2026)

Appendix D: Notice of Change of Attorney Business or Contact Information of the United States District Court for the Central District of California, Case No. 2:21-cv-03879-GW-SK (Document 137.March 4,2026)