APPENDIX A

The district court's August 20, 2025, judgment, denying Petitioner Rule 60(b)(4) relief.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DAVID D. RICHARDSON,

Plaintiff,

v.

UNITED STATES OF AMERICA, and HILLARY BOLLMAN,

Defendants.

CIVIL ACTION
NO. 23-CV-2015

ORDER

AND NOW, this 20th day of August 2025, upon consideration of pro se Plaintiff's Motion to Appoint Counsel (Doc. No. 106), "Motion to Restore Case to Docket" (Doc. No. 107), "Motion to Vacate Void Judgment under FRCP 60(B)(4)" (Doc. No. 108) and Plaintiff's Second "Motion to Vacate Void Judgment under FRCP 60(b)(4)" (Doc. No. 109), it is **ORDERED** that the Motion to Appoint Counsel (Doc. No. 106), Motion to Restore Case to Docket (Doc. No. 107) and Motions to Vacate (Doc. Nos. 108, 109) are **DENIED**.[1]

[1] Pro se Plaintiff David Richardson ("Plaintiff") brought this case against the United States of America and Dr. Hillary Bollman, alleging that Dr. Bollman threatened Plaintiff when he was a patient at the Veterans Affairs ("VA") Medical Center in Philadelphia, Pennsylvania. (Doc. No. 1 at 3.) Plaintiff amended his Complaint several times, and his Fourth Amended Complaint alleged claims for negligent infliction of emotional distress ("NIED") and medical malpractice.

On August 4, 2024, the Court granted Defendants' Motion to Dismiss with prejudice. (Doc. No. 101.) On September 23, 2024, Plaintiff filed a Notice of Appeal to the Third Circuit Court of Appeals. (Doc. No. 103.) On May 2, 2025, the Third Circuit affirmed this Court's Opinion and Order Granting Defendants' Motion to Dismiss. (See Civ. No. 24-808, Doc. No. 15.) On May 23, 2025, Plaintiff filed a Petition for Rehearing En Banc with the Third Circuit (Civ. No. 24-808 at Doc. No. 20), which was denied. (Civ. No. 24-808 at Doc. No. 28.)

Before the Court now are four (4) motions filed by Plaintiff: (1) Motion to Appoint Counsel, (2) and (3) two different Motions to Vacate Judgment under FRCP 60(B)(4), and (4) "Motion to Restore Case to Docket and to Proceed on the NIED Claim Following Vacatur of the Void Judgment." (Doc. Nos. 106-109.)

First, in the Motion to Appoint Counsel (Doc. No. 106), Plaintiff requests that the Court appoint counsel to file a "motion to void judgment under (FRCP) 60(b)(4), based upon insufficient service of process and lack of personal jurisdiction under (FRCP) 12(b)(5)." (Doc. No. 106 at 2.)

Next, Plaintiff filed two pro se Motions to Vacate Judgment pursuant to Federal Rule of Civil Procedure 60(b)(4). (Doc. Nos. 108, 109.) In the first Motion, Plaintiff argues that "the Court erred by addressing the merits [of Defendant's Motion to Dismiss] before dismissing the complaint with prejudice pursuant to Rule 12(b)(5)." (Doc. No. 108 at 2-3.) In the second Motion, he argues that "dismissal is void because the Court applied incorrect legal standards regarding the existence of [a] duty and breach, thereby extinguishing Plaintiff's federally conferred statutory cause of action without due process of law." (Doc. No. 109 at 1.)

Finally, in his Motion to Restore, Plaintiff seeks to have his case reopened so that he may pursue his NIED claim. (Doc. No. 107.) Each of these Motions will be discussed in turn.

A. Plaintiff's Motion to Appoint Counsel will be Denied

First, the Court will deny Plaintiff's Motion to Appoint Counsel (Doc. No. 106). When determining whether to appoint counsel, a court should "assess whether the [plaintiff's] case has some arguable merit in fact and law." Montgomery v. Pinchak, 294 F.3d 492, 498-99 (3d Cir. 2002). If the court finds merit, it must then consider several factors (the "Tabron factors") identified by the Third Circuit, including: (1) the plaintiff's ability to present his own case; (2) the difficulty of the particular legal issues; (3) the degree to which factual investigation will be necessary and the ability of the defendant to pursue investigation; (4) the plaintiff's capacity to retain counsel on his or her own behalf; (5) the extent to which a case is likely to turn on credibility determinations; and (6) whether the case will require testimony from expert witnesses. Id. at 499 (citing Tabron v. Grace, 6 F.3d 147, 155-57 (3d Cir. 1993)).

Here, Plaintiff's claim fails at the initial inquiry because he has not shown that his claim has merit in fact and law. The Court has already granted Defendants' Motion to Dismiss, which was affirmed by the Third Circuit. (See supra.) Thus, his "Motion to Appoint Counsel in order to file a Rule 60(b) motion" (Doc. No. 106) will be denied.

B. Plaintiff's Motions to Vacate will be Denied

Next, Plaintiff filed two pro se Motions to Vacate the Court's Opinion granting Defendants' Motion to Dismiss. (Doc. Nos. 108, 109.) In the first Motion, Plaintiff argues that this Court should not have addressed the merits of Defendants' Motion to Dismiss because it also dismissed the case on the ground that Plaintiff did not serve Defendants under Federal Rule of Civil Procedure 12(b)(5). (Doc. No. 108 at 6-7.)

In the Opinion granting Defendants' Motion to Dismiss, the Court found that dismissal was appropriate on three separate grounds: (1) the Court did not have subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1) over Plaintiff's claim under the Federal Tort

Claims Act ("FTCA") against Defendant Dr. Bollman because the United States is the only proper party in a FTCA claim; (2) Plaintiff failed to state a claim for negligent infliction of emotional distress ("NIED") pursuant to Federal Rule of Civil Procedure 12(b)(6); and (3) Plaintiff's Fourth Amended Complaint was improperly served on the United States in violation of Federal Rule of Civil Procedure 12(b)(5). (See generally Doc. No. 101.) The Court also found that leave to amend Plaintiff's Fourth Amended Complaint would be futile because he was already granted leave to amend several times and the factual allegations in both the initial Complaint and the Fourth Amended Complaint were nearly identical. (Id. at 21.)

Now Plaintiff seems to argue that because the Court dismissed the Fourth Amended Complaint on procedural grounds, that is, failure to adequately serve the United States, and also on the merits due to the insufficiency of the NIED claim, the Court erred in deciding the NIED claim on the merits when it should have only been dismissed because of the procedural violation. (Doc. No. 108.) For this reason, Plaintiff wishes to serve again the Fourth Amended Complaint on Defendant.

But as noted in the Opinion granting Defendants' Motion to Dismiss, "[u]pon determining that process has not been properly served on a defendant, district courts possess broad discretion to either dismiss the plaintiff's complaint for failure to effect service or to simply quash service of process." Umbenhauer v. Woog, 969 F.2d 25. 30 (3d Cir. 1992); (see also Doc. No. 101 at 23.) Here, the Court dismissed the Fourth Amended Complaint in part for failure to effect service. And the Court also found that dismissal in this case was proper at the motion to dismiss stage because Plaintiff failed to establish the elements of a negligent infliction of emotional distress claim. (See Doc. No. 11-20, 23-24.) Both issues can be addressed on a motion to dismiss. Therefore, to allow Plaintiff the opportunity again to serve the United States with the Fourth Amended Complaint would be futile. Thus, Plaintiff's first Motion to Vacate (Doc. No. 108) will be denied.

In his second Motion to Vacate, Plaintiff avers that the Court erred in denying Plaintiff's NIED claim under the test set forth in Bilt-Rite Contractors, Inc. v. The Architectural Studio, 866 A.2d 270 (Pa. 2005) to determine whether a duty existed. (Doc. No. 109.) Instead, he contends that because a special relationship existed, that is, between a doctor and patient, there was "no need to conduct a separate inquiry to whether to impose a duty." (Id. at 3.) But, for the reasons explained in the Opinion Granting Defendant's Motion to Dismiss, not all communication between a doctor and patient creates an automatic duty of care to purport a NIED claim. (See Doc. No. 101 at 13.) And the Court applied the five-factor test set forth in Bilt-Rite to determine whether a duty existed between Plaintiff and Dr. Bollman and found that four out of the five factors weighed against imposing a duty of care. (See id. at 13-16.) And again, the Court's Opinion was affirmed by the Third Circuit. (Doc. No. 105.) Therefore, Plaintiff's assertions are meritless, and his second Motion to Vacate (Doc. No. 109) will be denied.

C. Plaintiff's Motion to Restore will be Denied

Finally, Plaintiff filed a "Motion to Restore Case to Docket and to Proceed on the NIED Claim Following Vacatur of Judgment." (Doc. No. 107.) In the Motion, Plaintiff states the following:

BY THE COURT:

/s/ Joel H. Slomsky
JOEL H. SLOMSKY, J.

> On August 5, 2024, this Court entered judgment dismissing Plaintiff's NIED claim with prejudice pursuant to FRCP 12(b)(5). However, prior thereto, the Court conducted a merits review of Plaintiff's NIED claim and dismissed said claim with prejudice pursuant to FRCP 12(b)(6). Plaintiff subsequently challenged said judgment as being void pursuant to FRCP 60(b)(4) due to the Court's lack of personal jurisdiction where service of process was insufficient. The Court subsequently granted Plaintiff's motion under Rule 60(b)(4) and vacated the prior judgment on the ground that it was void. Plaintiff now moves to clarify that, following vacatur, the case remains pending and the parties are restored to the procedural posture they occupied prior to the entry of the void judgment.

(Doc. No. 107 at 1-2 (emphasis added).)

However, neither this Court, nor the Third Circuit, vacated the Court's Opinion Granting Defendants' Motion to Dismiss. Rather, the Third Circuit affirmed the Opinion and Order of this Court. (See Doc. No. 105; see also No. 24-2808, Doc. No. 29-1 ("ORDERED and ADJUDGED by this Court that the judgment of the District Court entered August 5, 2024 be and the same hereby is affirmed.") (dated May 2, 2025).) And for the reasons stated supra, the Court will not vacate the Opinion Granting Defendants' Motion to Dismiss.

Therefore, Plaintiff's Motion for Appointment of Counsel (Doc. No. 106), Motion to Restore (Doc. No. 107) and Motions to Vacate (Doc. Nos. 108, 109) will be denied.

APPENDIX B

The Third Circuit Court of Appeals May 19, 2026, affirmance of the district court's judgment.

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 25-2771

DAVID D. RICHARDSON,
Appellant

v.

UNITED STATES OF AMERICA, HILLERY BOLLMAN

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 2:23-cv-02015)
District Judge: Honorable Joel H. Slomsky

Submitted Pursuant to Third Circuit LAR 34.1(a)
May 15, 2026
Before: BIBAS, CHUNG, and BOVE, *Circuit Judges*

(Opinion filed: May 19, 2026)

OPINION*

PER CURIAM

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* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

David D. Richardson, proceeding pro se, appeals from an order denying his motion to void a previous judgment pursuant to Federal Rule of Civil Procedure 60(b)(4). We will affirm.

Richardson proceeded with a fourth amended complaint under the Federal Tort Claims Act against the United States related to his stay at the United States Veteran's Affairs Medical Center in Philadelphia. The United States filed a motion to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(5), and 12(b)(6). The District Court granted that motion, holding that Richardson failed to state a claim, that there was insufficient process on the United States, and that any further amendment would be futile. Richardson timely appealed. This Court summarily affirmed. *See Richardson v. United States*, C.A. No. 24-2808, 2025 WL 1275771 (3d Cir. May 2, 2005) (not precedential).

Thereafter, Richardson filed several motions in the District Court, one of which is the subject of this appeal. On July 14, 2025, Richardson filed a Rule 60(b)(4) motion arguing that because the United States was not properly served, the District Court lacked personal jurisdiction over the United States, so its dismissal of his fourth amended complaint was void.[1]

The District Court denied the motion concluding that it had broad discretion to dismiss the fourth amended complaint in part for failure to effect service on the United

[1] Richardson filed a separate Rule 60(b)(4) motion in the District Court that is not the subject of this appeal.

States. It further noted that it had also dismissed the fourth amended complaint on the merits. This appeal followed.

We have jurisdiction under 28 U.S.C. § 1291. Our review of the denial of a Rule 60(b)(4) motion is plenary. *See Page v. Schweiker*, 786 F.2d 150, 152 (3d Cir. 1986).

We agree with the District Court that Richardson's Rule 60(b)(4) motion was meritless. "[A] motion under Rule 60(b)(4) is not a substitute for a timely appeal." *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 271 (2010). But that is precisely what Richardson sought to do. He disclaimed any challenge sounding in due process and failed to demonstrate that this is an "exceptional case" warranting Rule 60(b)(4) relief. *Id.*

Accordingly, we will affirm.

APPENDIX C

The Third Circuit Court of Appeals June 30, 2026, denial of reconsideration *en banc*.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 25-2771

DAVID D. RICHARDSON,
Appellant

v.

UNITED STATES OF AMERICA; HILLERY BOLLMAN

(District Court No. 2:23-cv-02015)

SUR PETITION FOR REHEARING

Present: CHAGARES, *Chief Judge*, HARDIMAN, SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, FREEMAN, MONTGOMERY-REEVES, CHUNG, BOVE, and MASCOTT, *Circuit Judges*

The petition for rehearing filed by Appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/ Cindy K. Chung
Circuit Judge

Date: June 30, 2026
CJG/cc: David D. Richardson
Alfred J. Vogt, Esq.