No. ____________________

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee
v.
JASON DANIEL GANDY, Defendant-Appellant, Pro Se

USDC No. 4:12-CR-503-1

VERSION 13 - PROCEDURAL-INTEGRITY GATEWAY, DILIGENCE, AND DERIVATIVE-USE SUPPLEMENT

Purpose. Version 13 preserves Version 12 unchanged behind this supplement. It responds to the strongest jurisdictional and successive-petition objections by narrowing the threshold request. It does not contend that Fed. R. Crim. P. 52(b), standing alone, reopens a final criminal judgment. The first question is whether a constitutional contention previously presented was ever adjudicated on its merits and how DE 316 must be classified under the law governing Rule 60(b) and successive Section 2255 claims.

I. THE THRESHOLD QUESTION IS WHETHER THE CONTENTION ACTUALLY PRESENTED WAS ADJUDICATED

The threshold inquiry should begin with the primary record, not with the ultimate suppression remedy. The Court should compare **DE 287, DE 289, and DE 316**. DE 287 must establish what Gandy actually presented; DE 289 must establish what the district court actually characterized and decided; and DE 316 must be classified according to what it actually attacks.

Gonzalez v. Crosby, 545 U.S. 524, 531-36 (2005), distinguishes a new substantive habeas claim from a genuine attack on a defect in the integrity of the federal habeas proceeding. Webb v. Davis, 940 F.3d 892, 897-99 (5th Cir. 2019), recognizes that failure to consider claims actually presented can fall on the Rule 60(b) side of that line when the prior court did not reach their substance. Crutsinger v. Davis, 929 F.3d 259, 265-66 (5th Cir. 2019), likewise recognizes that a genuine procedural Rule 60(b) motion is not automatically successive.

Accordingly, Gandy asks the Court to identify the adjudication. If DE 289, or another prior order, actually decided the substance of the governmental-use/derivative-use contention presented in DE 287, that merits determination must be confronted. If no order did so, a procedural disposition should not be treated retrospectively as a merits adjudication that never occurred.

II. WILL v. LUMPKIN SUPPLIES THE LIMITING RULE

Gandy does not rely on Gonzalez or Webb to reopen a claim that was actually decided on the merits. Will v. Lumpkin, 978 F.3d 933 (5th Cir. 2020), supplies the limiting principle: a Rule 60(b) motion may attack a defect in the integrity of the habeas proceeding or a procedural ruling that precluded a merits determination, but a filing that attacks an actual prior merits resolution is subject to the successive-habeas rules. Thus, if the earlier court actually reached the same substantive contention, the Court should say where and how.

This distinction is especially important here because Version 12 identifies a potential mismatch in scope. DE 287 allegedly stated that an investigator was *using* Gandy's illegally obtained statements while K.V. was being interrogated, while DE 289 characterized the filing as alleging that Gandy's involuntary statements were 'used against him at trial.' Direct admission of Gandy's words and investigative use of information obtained from those words are not necessarily the same proposition. The exact handwritten language and the complete reasoning of DE 289 must control.

III. DE 316 MUST BE CLASSIFIED SENTENCE BY SENTENCE

DE 316 should not be treated as an independent source of appellate jurisdiction. Nor should its label control. Its procedural-integrity allegations should be separated from any substantive suppression, prejudice, or vacatur allegations. If a portion attacks an alleged failure to adjudicate a contention already presented, that portion should be analyzed under Gonzalez, Webb, Will, and controlling Fifth Circuit law. If another portion presents a new ground for relief from the conviction, the statutory restrictions governing second or successive Section 2255 motions control.

This supplement therefore does not ask the Court to evade 28 U.S.C. Sections 2244(b)(3) or 2255(h). It asks for accurate classification before merits consequences are imposed.

IV. FOURTEEN YEARS OF INCARCERATION: DILIGENCE, NOT AN INDEPENDENT SOURCE OF JURISDICTION

Gandy has been incarcerated for more than fourteen years. That fact does not create jurisdiction and does not itself establish entitlement to relief. But elapsed time likewise does not prove intentional abandonment. The relevant inquiry is what Gandy did during those years and what records were realistically available to him from federal prison.

The chronology already preserved in Versions 10-12 identifies repeated efforts to pursue suppression, obtain missing or sealed records, challenge counsel-withdrawal history, and secure judicial review: DE 34 and sealed DE 46; DE 89; Flood's August 8, 2014 note recording 'WIN MOTION FOR SUPPRESSION'; later record requests including DE 239 and DE 277; the January 2024 court-reporter correspondence concerning DE 98; the 2024 transcription of DE 141; Gandy's January 2025 handwritten request; the February 3, 2025 Fifth Circuit docketing letter; the April 2025 availability of DE 98; DE 287; and DE 316.

Ruiz v. Quarterman, 504 F.3d 523 (5th Cir. 2007), is relevant to the distinction between a litigant who sits on his rights and one whose efforts are directed at overcoming a procedural obstacle to merits review. Gandy invokes that principle narrowly. He does not claim that imprisonment excuses every deadline. He asks that diligence be measured from the documented chronology rather than inferred from the calendar alone.

If waiver is asserted, the record should identify the affirmative act constituting intentional relinquishment. United States v. Olano, 507 U.S. 725, 733 (1993), distinguishes waiver from forfeiture. Changes of counsel, inability to obtain records, failure of counsel to force a ruling, or the mere passage of time should not automatically be equated with Gandy's personal, knowing abandonment where the record contains evidence of continued pursuit.

V. THE MERITS FIREWALL

The interrogation, K.V., photograph, transport, Diaz, jail-call, and derivative-evidence facts are identified at this gateway stage **only to define the contention allegedly left unadjudicated**. They are not offered through Rule 60(b) as a new substantive basis for immediate vacatur.

That limitation is deliberate. The Court cannot decide whether an issue escaped adjudication without identifying the issue, but identification is not the same as deciding the issue. The threshold question is procedural classification. The suppression and derivative-use merits should be reached only through a lawful procedural vehicle.

VI. IF THE MERITS ARE LAWFULLY REACHED, THE GOVERNMENTAL-USE QUESTION REQUIRES A CAUSAL INQUIRY

If a court with jurisdiction reaches the underlying constitutional issue, the inquiry is not exhausted by showing that Gandy's challenged words were not themselves read to the jury. Silverthorne Lumber Co. v. United States, 251 U.S. 385 (1920); Nardone v. United States, 308 U.S. 338 (1939); Wong Sun v. United States, 371 U.S. 471, 487-88 (1963); Brown v. Illinois, 422 U.S. 590, 603-04 (1975); Murray v. United States, 487 U.S. 533, 537-42 (1988); and United States v. Ceccolini, 435 U.S. 268, 275-80 (1978), require attention to exploitation, causal connection, independent source, attenuation, and - for live witnesses - free will and the special attenuation concerns recognized in Ceccolini.

The testable sequence preserved in Version 12 is: the challenged July 20 interrogation; the alleged July 25 questioning during transport while represented; information allegedly obtained from Gandy; the July 26 questioning of K.V. using that information; later statements or investigative developments; and eventual prosecution evidence or testimony. The Government remains free to prove independent source, attenuation, inevitable discovery where legally applicable, or sufficient live-witness independence. Gandy asks that those questions be decided from the primary evidence rather than assumed.

VII. THE ABSENCE OF A DEVELOPED RECORD SHOULD NOT BE USED BOTH AS THE PROCEDURAL OMISSION AND AS THE REASON TO REFUSE INQUIRY

Version 12 does not ask allegations to substitute for proof. It identifies specific primary evidence capable of testing the asserted chain: interrogation recordings, transport records, agent notes, K.V. interview materials, Diaz materials, the disputed photograph evidence, the recorded jail call, and relevant trial testimony. United States v. Harrelson, 705 F.2d 733, 737 (5th Cir. 1983), requires sufficiently definite, specific, detailed, and nonconjectural allegations before an evidentiary hearing is warranted. The identified evidence is offered to permit that threshold to be evaluated on the actual record.

VIII. NARROW RELIEF

Gandy respectfully requests a sequence of relief that respects jurisdictional and AEDPA limits:

1. Determine whether the governmental-use/derivative-use contention actually presented in DE 287 received a substantive merits adjudication in DE 289 or elsewhere.

2. Classify DE 316 according to its actual substance, distinguishing procedural-integrity allegations from any substantive collateral claims.

3. If a genuine procedural-integrity component exists, permit that component to be addressed through the lawful procedural vehicle rather than treating it automatically as a successive merits claim.

4. Preserve the identified primary evidence while the procedural classification is resolved, to the extent the Court has authority to order preservation.

5. Only if a court with jurisdiction lawfully reaches the constitutional merits, determine voluntariness, waiver, governmental use, derivative causation, independent source, attenuation, live-witness independence, prejudice, and the remedy authorized by governing law.

Gandy does not ask this Court at the threshold to presume suppression, prejudice, structural error, or entitlement to vacatur. He asks first for accurate classification and a determination whether the constitutional contention was ever actually adjudicated.

IX. CORE QUESTION

This case initially asks neither whether Gandy's constitutional contention wins nor whether his conviction should be vacated. It asks the antecedent question whether that contention ever received the adjudication necessary for it to win or lose.

If the Government contends that it did, the record should identify the order, reasoning, and substantive determination. If it did not, procedural finality should not be substituted for a merits determination that never occurred.

X. VERSION 13 FILING CHECK

Before filing, counsel or a qualified legal reviewer should: (1) reproduce the exact DE 287 handwritten language with page citation; (2) reproduce the complete relevant DE 289 reasoning and page citation; (3) verify DE 316 sentence by sentence from the filed document; (4) identify the presently available procedural vehicle and any appellate deadline; (5) verify the current Fifth Circuit rules governing the proposed filing, service, certificates, typeface, page/word limits, and any certificate-of-appealability requirement; and (6) independently verify every case citation and record reference. This supplement should not represent disputed allegations as established facts.

VERSION 12 FOLLOWS UNCHANGED FOR RECORD AND VERSION PRESERVATION.

No. ____________________

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

**UNITED STATES OF AMERICA, Plaintiff-Appellee
v.
JASON DANIEL GANDY, Defendant-Appellant, Pro Se**

USDC No. 4:12-CR-503-1

VERSION 12 - JURISDICTIONAL GATEWAY, NONWAIVER, AND DERIVATIVE-USE SUPPLEMENT

Purpose. Version 12 preserves Version 11 unchanged behind this supplement. It narrows the argument in response to the strongest anticipated denial: even a serious unadjudicated constitutional issue cannot be reached through Rule 52(b) unless a lawful appellate or collateral procedural vehicle supplies jurisdiction. This supplement therefore does not claim that Rule 52(b) independently reopens a final judgment.

I. THE JURISDICTIONAL OBJECTION IS THE FIRST QUESTION

United States v. Olano, 507 U.S. 725, 731-37 (1993), describes Rule 52(b) as the limited authority of a court of appeals to correct forfeited error on appellate review. United States v. Frady, 456 U.S. 152, 163-66 (1982), likewise rejects use of the plain-error standard as a substitute for the more demanding rules governing collateral review. Version 12 therefore asks the Court to identify the lawful procedural vehicle before reaching the suppression merits.

If no pending appeal or authorized collateral proceeding presently supplies jurisdiction, the appropriate threshold disposition is a jurisdictional one. That conclusion should not be converted into a factual finding that Gandy intentionally waived suppression, that the broader use/exploitation contention was adjudicated, or that the identified derivative chain is meritless. Those are separate questions.

II. DE 287 -> DE 289: STATE THE PRIMARY-RECORD POINT NARROWLY

DE 287 is a three-page handwritten filing entered July 19, 2024. Its strongest primary-record language is not the Blevins phrase "fruit of poisonous practices," because that phrase appears in DE 287 while Gandy is discussing Judge Lynn Hughes's Blevins ruling. Version 12 does not represent that quotation as Gandy's own independent fruits allegation.

The stronger point is DE 287 page 1. Gandy alleged governmental use of his challenged statements beyond direct admission to a trial jury, including that an investigator was "using my illegally obtained statements" while K.V. was being interrogated and that the statements were used in connection with the July 25, 2012 bond proceeding. DE 289, by contrast, characterized the motion as alleging that Gandy's involuntary statements "were used against him at trial." The filing should therefore present a scope-of-claim question, not overstate DE 287 as a fully developed derivative-evidence pleading.

Direct admission, use during another person's interrogation, and derivative evidence are distinct propositions. The first asks whether Gandy's own words reached the jury. The second asks whether investigators deployed information obtained from Gandy while questioning K.V. The third asks whether that use produced later evidence, testimony, witnesses, or investigative leads and whether independent-source or attenuation principles defeat suppression. Version 12 relies on DE 287 to establish the second proposition and treats the third as requiring proof from the complete record.

III. GONZALEZ / WEBB IS CONDITIONAL, NOT A SUBSTITUTE FOR JURISDICTION

Gonzalez v. Crosby, 545 U.S. 524, 531-36 (2005), distinguishes a new substantive habeas claim from a genuine attack on a defect in the integrity of an earlier habeas proceeding. Webb v. Davis, 940 F.3d 892, 897-99 (5th Cir. 2019), is useful only if a claim actually presented was not substantively reached. An erroneous merits ruling is not transformed into a Rule 60(b) integrity defect merely because the movant disagrees with it.

Accordingly, the DE 287/DE 289 comparison is conditional: if DE 289 actually considered and rejected the broader use/exploitation allegation, there is no omitted-claim gateway on that basis. If DE 289 adjudicated only the narrower direct-trial-use proposition while DE 287 actually presented the broader governmental-use allegation, the classification question is materially different. Gonzalez and Webb do not themselves create Rule 52(b) jurisdiction.

IV. DE 316 MUST BE CLASSIFIED BY ITS OWN SUBSTANCE

DE 316 should not be used as an independent jurisdictional foundation. The later filing expressly invokes alleged defects in the integrity of the prior Section 2255 proceeding and failure to address derivative evidence, but it also contains merits-laden suppression and prejudice assertions. The proper inquiry is therefore sentence-by-sentence classification: procedural-integrity allegations, substantive merits allegations, and requested relief.

If DE 316 is genuinely procedural in whole or in part, the district court should classify it under Gonzalez and controlling Fifth Circuit law. If all or part is instead a successive Section 2255 claim, Version 12 does not request unauthorized merits adjudication. The applicable gatekeeping rules, including 28 U.S.C. Sections 2244(b)(3) and 2255(h), must control.

V. WAIVER CANNOT BE COLLAPSED INTO FORFEITURE

Olano makes the distinction decisive. Waiver is the intentional relinquishment or abandonment of a known right; forfeiture is failure to make a timely assertion. Mere forfeiture does not extinguish an error for Rule 52(b) purposes. The Fifth Circuit continues to recognize that waived errors and forfeited errors receive different treatment.

The record identified in Version 11 is inconsistent with an easy inference of intentional abandonment: DE 34 and sealed DE 46 raised suppression; DE 89 recorded counsel as still awaiting rulings; Flood's August 8, 2014 note recorded Gandy's objective as "WIN MOTION FOR SUPPRESSION"; DE 98 is offered to show Gandy wanted retained trial counsel to remain; and later filings and record requests document continued pursuit. If the Government asserts waiver, it should identify the affirmative act that constituted intentional relinquishment and explain why the contrary record does not defeat that characterization.

VI. THE DERIVATIVE-USE THEORY MUST BE PROVED AS A CAUSAL CHAIN

The answer that Gandy's own statements were not introduced at trial does not by itself answer whether investigators exploited information from those statements. But Version 12 does not presume derivative taint. It identifies a testable sequence: challenged July 20 interrogation; alleged July 25 questioning during transport while represented; information allegedly obtained from Gandy; July 26 questioning of K.V. using that information; subsequent statements or investigative developments; and eventual prosecution evidence or testimony.

Ceccolini strongly protects live-witness testimony but does not create an automatic live-witness exception. The factual inquiry includes free will, temporal distance, prior police knowledge, the causal role of the illegality, and attenuation. The recordings, transport records, agent notes, K.V. interview materials, Diaz materials, disputed photograph evidence, and recorded jail call are therefore relevant to determining what investigators knew independently and what changed after the challenged conduct.

VII. PREJUDICE MUST FOLLOW THE EVIDENCE, NOT AN ASSUMPTION

Under Olano, Gandy bears the ordinary burden of showing that a plain error affected substantial rights. Version 12 therefore avoids assuming that the alleged derivative evidence altered the outcome. The requested record development is directed to the missing factual links. If the record establishes that challenged information materially produced or shaped central evidence later used in the prosecution, the court can then assess prejudice. If the evidence instead establishes an independent source or sufficient attenuation, the derivative theory fails on the record rather than by labeling the witness 'live.'

VIII. NARROW REQUEST

Gandy respectfully requests that the Court first identify whether a presently lawful procedural vehicle permits consideration of the issues presented. If Rule 52(b) review is properly before the Court, he requests application of the ordinary plain-error framework to unwaived error. If Rule 60(b) classification is the proper threshold inquiry, he requests classification under Gonzalez and Fifth Circuit authority without treating a procedural-integrity allegation as an automatically successive merits claim. If a successive Section 2255 component exists, he requests treatment consistent with the statutory gatekeeping rules rather than unauthorized merits adjudication.

To the extent a court with jurisdiction reaches the suppression issue and determines that material factual disputes require findings, Gandy requests preservation of the identified primary evidence and a limited evidentiary hearing addressing voluntariness, waiver, derivative use, independent source, attenuation, and prejudice.

IX. VERSION 12 FILING CHECK

Before filing: (1) reproduce the exact surrounding handwritten language from DE 287 page 1; (2) reproduce DE 289's exact characterization and complete relevant reasoning with page citations; (3) verify DE 316's complete text, procedural status, and requested relief from the actual filing; (4) identify the presently open appeal, authorized collateral proceeding, or other jurisdictional vehicle; (5) verify the current Fifth Circuit filing, service, certificate, typeface, word-limit, and motion requirements; and (6) independently verify every authority and record citation. No unverified allegation should be presented as established fact.

VERSION 11 FOLLOWS UNCHANGED FOR RECORD AND VERSION PRESERVATION.

No. ____________________

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee
v.
JASON DANIEL GANDY, Defendant-Appellant, Pro Se

USDC No. 4:12-CR-503-1

VERSION 11 - JURISDICTION, PRESERVATION, WAIVER, AND DERIVATIVE-USE SUPPLEMENT

Purpose. This Version 11 supplement strengthens and narrows Version 10. It does not assert that Federal Rule of Criminal Procedure 52(b), standing alone, creates jurisdiction to reopen a final criminal judgment. It identifies the threshold procedural problem, preserves the record-based nonwaiver and diligence arguments, and requests only relief available through a lawful procedural vehicle. Version 10 follows this supplement unchanged so that the prior record and exhibits remain preserved.

I. THE THRESHOLD DEFECT MUST BE CONFRONTED, NOT EVADED

The principal vulnerability in a freestanding Rule 52(b) filing is jurisdictional and procedural. *United States v. Frady*, 456 U.S. 152, 163-66 (1982), explains that Rule 52(b) is a plain-error rule for direct appellate review, not an independent collateral remedy. The Fifth Circuit recently reiterated the point in an unpublished decision, *United States v. Martinez*, No. 25-40547, slip op. at 2 (5th Cir. Feb. 23, 2026): Rule 52(b) does not provide an independent basis for a collateral attack on a final judgment and recourse under the Rule is available on appeal. Version 11 therefore does not ask the Court to manufacture jurisdiction from Rule 52(b).

The filing instead asks the Court to identify the lawful procedural treatment of the record issues actually presented. If no appellate proceeding presently supplies jurisdiction for Rule 52(b) review, the Court should say so expressly without converting that threshold defect into a factual finding that Gandy intentionally abandoned suppression or that the derivative-use allegation was previously adjudicated on its merits.

II. DE #287 AND DE #289: THE PRIMARY DOCUMENT, NOT A PARAPHRASE, CONTROLS

Version 10 identifies a potentially dispositive record-comparison issue. DE #289 characterized DE #287 as alleging that Gandy's involuntary statements "were used against him at trial." Gandy's position is materially different: DE #287 itself allegedly asserted that investigators used his illegally obtained statements during K.V.'s interrogation. Before filing, the exact handwritten language, page number, and surrounding context from DE #287 should be placed beside DE #289 verbatim. If the primary document confirms that allegation, a ruling addressing direct use of Gandy's words at trial does not necessarily adjudicate a distinct allegation of derivative investigative use.

Gonzalez v. Crosby, 545 U.S. 524, 531-36 (2005), draws the line between a new substantive habeas claim and a genuine attack on a defect in the integrity of prior habeas proceedings. *Webb v. Davis*, 940 F.3d 892, 897-99 (5th Cir. 2019), recognized that failure to consider claims actually presented can fall on the Rule 60(b) side of that line when the prior court did not reach the substance of those claims. *Crutsinger v. Davis*, 929 F.3d 259, 265-66 (5th Cir. 2019), likewise recognized that a genuine Rule 60(b)(6) procedural motion is not automatically successive. These authorities do not create Rule 52(b) jurisdiction. Their limited relevance is classification: whether an allegation actually presented was omitted from adjudication.

III. THE RECORD DOES NOT SUPPORT AN EASY FINDING OF INTENTIONAL WAIVER

United States v. Olano, 507 U.S. 725, 733 (1993), distinguishes forfeiture from waiver: waiver is the intentional relinquishment or abandonment of a known right. Version 10 identifies affirmative record evidence inconsistent with intentional abandonment: DE #34 and sealed DE #46 raised suppression; DE #89 recorded counsel as still waiting for rulings; Flood's August 8, 2014 note identified Gandy's number-one objective as "WIN MOTION FOR SUPPRESSION"; DE #98 is offered to show that Gandy wanted retained trial counsel to remain; and later filings and record requests continued to pursue the issue.

The Government may argue that counsel made a strategic choice not to obtain a ruling. If so, the record should identify the affirmative act constituting intentional relinquishment and distinguish counsel's trial-use agreement, silence, turnover, or failure to force a ruling from Gandy's own documented objective. Version 11 does not assume that every failure to obtain a ruling is forfeiture rather than waiver; it argues that the characterization must be supported by the record.

IV. TIMELINESS: USE THE DOCUMENTED DILIGENCE CHRONOLOGY

Version 10 should retain its narrower timeliness position. It does not claim that structural error abolishes deadlines. It points to DE #239, DE #277, the January 8, 2024 court-reporter correspondence describing the April 27, 2017 DE #98 transcript as sealed and requiring a judicial order, the May 6, 2024 transcription of the DE #141 proceeding, the January 2025 handwritten request for DE #98, the February 3, 2025 Fifth Circuit docketing letter, and the April 2025 availability of DE #98. Those materials are relevant to whether delay was reasonable and whether Gandy continued pursuing records necessary to substantiate an existing allegation.

V. CECCOLINI DOES NOT CREATE A PER SE LIVE-WITNESS EXCEPTION

United States v. Ceccolini, 435 U.S. 268, 275-80 (1978), strongly protects live-witness testimony but does not make the label "live witness" dispositive. The attenuation inquiry examines, among other things, the witness's free will, the connection between the illegality and the testimony, temporal distance, prior police knowledge, and the role of the challenged conduct. Version 11 therefore narrows the K.V. theory to a testable causal sequence rather than asserting automatic suppression.

The asserted sequence is: July 20 interrogation of Gandy; July 25 transport and alleged additional questioning while represented; information allegedly obtained from Gandy; July 26 questioning of K.V. using that information; subsequent statements and investigative developments; and eventual trial evidence or testimony. The requested recordings, transportation logs, agent notes, interview materials, photograph evidence, Diaz materials, and jail-call recording are relevant because they can establish what investigators knew independently, what they learned from Gandy, what was communicated to K.V., and what changed afterward.

VI. PREJUDICE MUST ADDRESS DERIVATIVE USE, NOT ONLY DIRECT ADMISSION

A denial stating merely that Gandy's challenged statements were not themselves introduced at trial would not resolve the theory Version 10 presents. The asserted injury is that challenged interrogation information allegedly altered the investigation and helped produce or shape later evidence. That proposition must be proven; it cannot be presumed. But neither should independent source or attenuation be presumed where those are the disputed factual questions.

VII. NARROWED REQUEST FOR RELIEF

Gandy respectfully requests that the Court first determine whether a presently lawful appellate or collateral procedural vehicle permits consideration of the issues presented. He does not rely on Rule 52(b) itself as an independent source of jurisdiction. If Rule 52(b) review is properly before the Court, he requests application of the ordinary plain-error framework to unwaived error. If another procedural vehicle is required, he requests disposition consistent with governing law rather than a merits characterization unsupported by the primary record.

To the extent the Court has authority to do so, Gandy further requests preservation of the identified primary evidence while the procedural question is resolved. If a court with jurisdiction reaches the suppression issue and determines that material factual disputes require findings, Gandy requests the narrow remedy of an evidentiary hearing addressing voluntariness, waiver, derivative use, independent source, attenuation, and prejudice rather than appellate factfinding by assumption.

VIII. VERSION 11 FILING CHECK

Before filing: (1) insert the exact DE #287 handwritten language and pin cite; (2) verify DE #289's exact quotation and page; (3) verify the status and text of DE #316; (4) identify the currently open case or other jurisdictional vehicle, if any; (5) confirm the current Fifth Circuit motion, certificate, service, and page/word-limit requirements; and (6) independently verify every case citation and record reference. No filing should represent an unverified factual allegation as an established fact.

VERSION 10 FOLLOWS UNCHANGED FOR RECORD PRESERVATION.

No. ____________________

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JASON DANIEL GANDY,

Defendant-Appellant, Pro Se.

On Appeal from the United States District Court

for the Southern District of Texas

USDC No. 4:12-CR-503-1

APPELLANT JASON DANIEL GANDY'S PRO SE MOTION

FOR PLAIN-ERROR REVIEW UNDER FED. R. CRIM. P. 52(b)

INTRODUCTION

This motion asks the Court to confront a suppression issue that Gandy contends was raised, preserved, and never constitutionally resolved. DE #34 and sealed DE #46 placed suppression and voluntariness before the district court. Years later, DE #89 recorded retained counsel Dan Cogdell stating that the defense was still waiting for rulings on its motions. Charles Flood's handwritten notes dated August 8, 2014 (Exhibit K, p. 1) identify Gandy's number-one goal as “WIN MOTION FOR SUPPRESSION.” The same record reflects that Gandy wanted retained trial counsel to remain and that counsel changes occurred while the suppression issue remained unresolved. At the same time the suppression issue remained unresolved, Gandy was confined on suicide watch from March 12 through March 31, 2015, as documented by the custody and suicide-watch records in Exhibit I. Flood – the retained attorney who understood and was pursuing the unresolved suppression issue – was permitted to withdraw at this critical period. The timing matters: Gandy contends he was not abandoning suppression while in crisis; the lawyer who understood that issue was being allowed to leave while Gandy was confined on suicide watch.

I. A VOLUNTARINESS AND SUPPRESSION HEARING WAS REQUIRED

Jackson v. Denno, 378 U.S. 368 (1964), requires a fair hearing and reliable judicial determination when the voluntariness of a confession is properly put in issue. United States v. Renteria, 625 F.2d 1279, 1282-83 (5th Cir. 1980), addressed unresolved suppression motions together with the absence of a Jackson hearing and remanded for consideration of suppression and voluntariness. United States v. Iwegbu, 6 F.3d 272, 274 (5th Cir. 1993), states that when the evidence clearly raises a genuine question of voluntariness, the district court should conduct the required inquiry sua sponte. United States v. Guanespen-Portillo, 514 F.3d 393,

399-402 (5th Cir. 2008), recognizes the same Fifth Circuit rule in the plain-error setting. United States v. Kim L. Powe, 591 F.2d 833 (D.C. Cir. 1978), is persuasive authority concerning alerting circumstances and the trial judge's duty to inquire. Here, the asserted notice was stronger than in a case where defense counsel remained silent: suppression motions were actually filed. DE #34 and sealed DE #46 raised the issue, and DE #89 later documented that counsel was still awaiting rulings. The central question is why the suppression issue already placed before the district court through DE #34 and sealed DE #46 remained unresolved while the prosecution continued.

II. GANDY DID NOT AGREE THAT SUPPRESSION WAS “MOOT”

The fuller record directly answers the argument that the parties could simply agree that the statements or evidence would not be used and thereby eliminate the need to decide suppression. Flood's August 8, 2014 handwritten notes (Exhibit K, p. 1), later available through the December 6, 2021 proceeding at DE #262 and related exhibits DE #263-65, document Gandy's contemporaneous insistence that the suppression issue be litigated. That evidence is material to whether Gandy knowingly and intentionally relinquished the suppression issue. United States v. Olano, 507 U.S. 725 (1993), distinguishes forfeiture from waiver. Waiver requires intentional relinquishment or abandonment of a known right. Gandy contends the record shows the opposite: he wanted the suppression issue won and decided. A later lawyer's failure to insist on a ruling, a lawyer's agreement about trial use, or counsel turnover should not automatically be treated as Gandy's personal, knowing waiver. The distinction is especially important because the alleged problem was not limited to whether Gandy's own words were read to the jury. His theory is that the interrogation changed the investigation itself. If statements were used to redirect K.V.'s interrogation, obtain or exploit photographs, identify witnesses, influence family members, support charging, affect bond, or otherwise develop the prosecution, excluding the words themselves at trial would not answer whether derivative evidence was tainted.

III. THE JULY 20, 2012 INTERROGATIONS, K.V., AND THE CAUSAL

CHAIN Gandy states that he and K.V. were interrogated on July 20, 2012. He describes severe fatigue and asserts that he invoked counsel but questioning continued. The complete recordings are critical because they permit the reviewing court to determine what Gandy actually said, what agents learned, what K.V. said before agents used information obtained from Gandy, and how K.V.'s account changed afterward. Attorney Michael Levin's memorandum, identified as Exhibit V, analyzes the theory that information obtained from Gandy after an asserted Edwards violation was then communicated to K.V. and influenced K.V.'s decision to implicate Gandy. The memorandum recognizes that suppression of live-witness testimony is disfavored and requires careful attenuation analysis, but it identifies United States v. Ceccolini, 435 U.S. 268 (1978), United States v. Scios, 590 F.2d 956 (D.C. Cir. 1978), Wong Sun v. United States, 371 U.S. 471 (1963), and Brown

v. Illinois, 422 U.S. 590 (1975), as authorities requiring the causal chain to be

examined rather than assumed away. The trial record itself supplies reasons to examine that chain. In DE #190, Day 2 of trial, at approximately pages 109-111

(ROA 945-947), K.V. testified that he was trying to help Jason, did not want Jason to get in trouble, and "really liked Jason." When asked whether he was still trying to protect Gandy during a later CAC interview, K.V. answered that part of him was still trying to protect him. K.V. also described telling a private investigator that he felt bad about what happened and wanted his friend to get out. On Day 3, DE #192 at page 129, the prosecutor stated that the witnesses were present because they were under subpoena and "didn't want to be here"; at page 130 the prosecutor referred to K.V. as trying to protect the defendant. These statements are material to attenuation, voluntariness, credibility, and whether later testimony was produced or shaped by the challenged investigative process. The record also contains K.V.'s reported September 10, 2012 statements to investigator Bert Diaz. As reproduced in Gandy's Speedy Trial materials, K.V. stated in substance that police kept asking questions, that he told them what they wanted to hear so the questioning would stop, that not everything he told police really happened, and that Jason never abused him. K.V.'s mother likewise reportedly told Diaz that after K.V. returned to the United States he repeatedly told her Jason had done nothing wrong and police had forced him to make statements. Gandy asks that the original Diaz report, recordings, and any contemporaneous notes be reviewed rather than relying on paraphrase. Gandy further points to DE #190 at approximately pages 105-106 and 136. K.V. correctly referred to Customs when describing the United Kingdom passport incident, but then specifically referred to ICE – U.S. Immigration and Customs Enforcement. Gandy contends that the change in terminology is significant because immigration enforcement was a particular concern for K.V.'s family and therefore appears to have been on K.V.'s mind while testifying. Later, K.V. acknowledged that he was "cooperating" and expressed concern about possible "fallout." Gandy asks the Court to examine the complete recordings and government records to determine what K.V. meant by "fallout" and whether immigration concerns influenced his cooperation or testimony. Gandy also contends that K.V.'s mother was told that nude photographs of K.V. had been found on Gandy's computer and that Gandy previously had been banned from entering the United Kingdom. Gandy maintains both propositions were false. The constitutional significance, if the record confirms that government agents supplied materially false information, is not simply impeachment. Gandy contends such information could have altered K.V.'s and his family's perceptions, influenced subsequent statements, and become part of an investigative chain originating in evidence that should first have been tested at the unresolved suppression hearing. The Court should determine who supplied these assertions, when, and on what evidentiary basis. Additional investigative leads concern the person identified in K.V.'s trial testimony at approximately page 53 as "Jamie Van." Gandy states that investigators associated that person with Jamie Bam, Luke, and/or Lucas Montagne and with identifiers including "Lucasmontagne," "dlucasmontagnek30," "luke291443," and "jamiebamshortbus@gmail." Gandy

further states that in 2017 he personally located and positively identified the individual on a personal Facebook account, based on the investigators' work and Gandy's prior knowledge of him. Gandy recalls photographs showing the individual with very young-looking males who appeared from the photographs to be romantic partners. K.V.'s sworn trial testimony concerning sexual activity with the person identified as Jamie Van when K.V. was approximately fourteen should be compared with the identity and history of the person Gandy says he located in 2017. Gandy also believes the individual may have had a Homeland Security or other governmental connection. That possible connection requires independent verification from official records. Gandy does not ask this Court to presume that the individual identified in the record as Jamie Van/BAM/Luke committed a crime merely because K.V. later testified about serious conduct involving him. The point is the extraordinary investigative sequence and apparent disparity that the record should resolve. Gandy contends that, after the challenged July 20, 2012 interrogation, he was transported to his July 25 bond proceeding while represented by appointed counsel. Rather than ordinary prisoner transportation, Gandy states that Homeland Security agent Johnson—who had participated in the July 20 interrogation—rode armed in the front passenger seat of a Ford SUV with a notepad and pen while another woman drove. Gandy contends that information was obtained from him during that trip concerning K.V. and the individual later identified as Jamie Van/BAM/Luke. The timing is critical. Gandy contends that investigators confronted K.V. with that specific information the following day, July 26, 2012. According to Gandy, K.V. reluctantly acknowledged conduct predating his relationship with Gandy that was highly damaging to K.V.'s reputation, including receiving shoes in connection with sexual conduct involving the other individual. The July 25 and July 26 records and recordings therefore should be examined together to determine whether information obtained from represented Gandy supplied the factual lead used to elicit K.V.'s subsequent statements. K.V. later gave sworn trial testimony concerning serious conduct involving that other individual. Yet Gandy has not identified a resulting prosecution, conviction, or sex-offender registration arising from those allegations. That does not establish that the other individual committed a crime or received preferential treatment. It does, however, raise a concrete and answerable question: what investigation followed K.V.'s allegations, what did investigators conclude, and why was the information handled as it was? That question becomes especially significant if official records substantiate Gandy's separate belief that the other individual had a Homeland Security or governmental connection. Gandy requests verification rather than assumption. The relevant investigative files can establish whether such a connection existed and whether the individual was investigated, cleared, prosecuted, or otherwise dealt with. The comparison matters to Gandy's suppression claim. More than fourteen years after his arrest, Gandy contends that he still has not received the open suppression hearing necessary to determine what

information flowed from the challenged interrogations and what evidence resulted from it. The BAM evidence therefore is not offered to accuse a third party without adjudication. It is offered to demonstrate why the July 20, July 25, and July 26 investigative chain must finally be examined in an evidentiary proceeding rather than assumed harmless. The July 25 transport details and the asserted July 25-to-July 26 information flow are presented as Gandy’s firsthand account and a testable investigative sequence, not as independently established facts; the requested transportation logs, agent notes, recordings, and investigative files should determine whether that account is corroborated.

IV. THE BLUE-SHEET PHOTOGRAPH, THE RECORDED JAIL CALL,

AND DERIVATIVE USE K.V.'s first several recorded interrogations are especially important. Gandy contends that K.V. disputed the blue-sheet photograph, said Jason did not own blue sheets, said the person depicted was not K.V., and told investigators to search Jason's house and RV. The fuller materials further contend that an illegally obtained photograph was shown or used during K.V.'s questioning and was discussed with K.V.'s mother and family. For approximately five years, Gandy contends, that photograph formed part of the investigative chain affecting K.V., yet the jury was not permitted to evaluate the photograph or its effect on K.V.'s statements. DE #190 at page 111 / ROA 947 identifies another item that should be preserved and produced. When the prosecutor asked whether Gandy contacted K.V. after K.V. returned to the United States, K.V. testified that Gandy called him from jail. Defense counsel Buckley then requested "a limiting instruction as to the part of the testimony that relates to inadmissible material." Gandy now specifically requests preservation and production of the complete recorded jail telephone call. Gandy recalls explaining during that call how his own statements had been coerced and recalls K.V. responding, in substance, that what happened to him was "the same." The recording itself is the best evidence of what was said and should control over recollection. That call matters because it can be compared with K.V.'s interrogation recordings, the Diaz report, his mother's reported statements, and his trial testimony that he liked Gandy and was trying to protect him. The fact that K.V. accepted a jail call does not by itself resolve whether he was a victim or whether his testimony was voluntary. What matters here is the content of the recording and whether it corroborates or contradicts the government's account of how K.V.'s accusations developed. Gandy contends that this disparity is a direct consequence of the district court's failure to conduct the constitutionally required suppression hearing despite being alerted to the issue. See Waller v. Georgia, 467 U.S. 39 (1984); United States v. Kim L. Powe, 591 F.2d 833 (D.C. Cir. 1978). Had the required hearing occurred, the court would have been required to confront openly the photograph, the circumstances under which K.V. was shown it, the changes in K.V.'s account, the allegedly false information supplied to K.V.'s family, the recorded jail call, and whether later evidence was obtained by exploitation of the challenged interrogation. The derivative-evidence principle is

illustrated by United States v. Jonathan Patrick Blevins, No. 4:12-cr-00693, DE 53 (S.D. Tex. Aug. 12, 2014) (Hughes, J.). There, after finding a warrantless search and unwarned interrogation unconstitutional, Judge Lynn N. Hughes ordered suppression of evidence obtained by exploiting those violations and concluded that later-discovered evidence or statements resulting from the unlawful search or interrogation would likewise be suppressed. The opinion closes with the phrase "fruit of poisonous practices." Official opinion: GovInfo – United States v. Blevins, DE 53. Blevins does not eliminate the separate attenuation analysis required for live-witness testimony under Ceccolini. It does, however, underscore the basic proposition also reflected in Wong Sun, Brown, Scios, Murray, Nardone, and Silverthorne: a court must identify what the constitutional violation produced and determine whether later evidence resulted from exploitation of the illegality, an independent source, or sufficient attenuation. Gandy's contention is that this inquiry never occurred because DE #34 and sealed DE #46 remained unresolved while the investigation and prosecution continued. The strongest claimed causal chain is therefore concrete and testable: information obtained from Gandy during the challenged July 20 interrogation; use of that information in K.V.'s questioning; introduction of the disputed photograph and other information; statements made to K.V. or his family; changes or expansions in K.V.'s account; additional investigative leads; the recorded jail call; and eventual use of resulting evidence or testimony in the prosecution. If the record confirms that chain, Gandy contends the prejudice cannot be cured merely by saying that a particular statement or photograph was not itself shown to the jury. The Court should review the complete recordings and documentary record and determine what, if anything, became the fruit of those allegedly poisonous practices.

V. CHARLES FLOOD, SUICIDE WATCH, AND THE LOSS OF COUNSEL

WHO UNDERSTOOD SUPPRESSION The original materials treat Charles Flood's withdrawal as part of the suppression story, not as a separate complaint about lawyers. Flood had reviewed the July interrogations, and his contemporaneous notes document Gandy's stated objective concerning suppression. A September 12, 2014 email from Flood (Exhibit K, p. 3) discussed strategy and expressed concern that a transfer could reduce the likelihood that the suppression motion would receive proper consideration. The record further identifies a March 31, 2015 email from Flood to Julie Gandy (Exhibit K, p. 7), sent while Gandy was on suicide watch, stating that if Judge Rosenthal denied Flood's request to withdraw, Flood would continue to fight zealously as though he had never made the request. The supporting materials place Gandy on suicide watch from March 12 through March 31, 2015. Gandy contends that allowing a retained lawyer who understood the suppression issue to leave at that point was devastating to his ability to protect the unresolved motions and devastating to him personally. Matter of Wynn, 899 F.2d 644, 646 (5th Cir. 1990), addresses good cause for attorney withdrawal. United States v. Gonzalez-Lopez, 548 U.S. 140 (2006), holds that erroneous deprivation of counsel of choice is structural error. The motion does not assume that every attorney withdrawal is automatically structural. It asks the Court to examine the actual circumstances: Gandy's stated desire to retain paid trial counsel, the unresolved suppression motions, his mental condition at the time, the

absence of a knowing waiver, and the practical effect of replacing counsel who knew the suppression record.

VI. COGDELL, DEBORDE, DE #98, AND THE RECORD OF GANDY'S

WISHES The chronology continued. Dan Cogdell was retained in 2012, filed the suppression motions, and as late as DE #89 in December 2016 stated that the defense was still waiting for rulings. DE #98, the later-transcribed in-camera proceeding, is important because Gandy contends it records him telling the court that he had paid his lawyers for trial and did not want them to withdraw. The fuller record also states that Cogdell and Nicole DeBorde were nevertheless permitted to leave. That chronology matters to waiver. If Gandy wanted the lawyers to remain and wanted the suppression motion won, counsel turnover cannot fairly be treated, without further inquiry, as proof that he intentionally abandoned suppression. The Court should compare DE #98 with DE #141, where the district court later stated that the record seemed to indicate Gandy fired counsel. The Court should determine accurately who chose the counsel changes and whether those changes caused the unresolved constitutional issue to disappear without Gandy's informed consent.

VII. NEYLAND AND THE PRACTICAL CONSEQUENCE OF COUNSEL

TURNOVER The Neyland correspondence is relevant because it documents the transition in responsibility. Gandy's materials state that Dustan Neyland originally expected to serve in a secondary role and later became first chair after other attorneys left. Gandy contends Neyland lacked comparable federal trial experience and did not insist that the unresolved suppression and voluntariness questions receive the hearing Gandy had wanted for years. The legal point is not that inexperience by itself establishes constitutional error. It is that the court should not infer waiver from silence after a sequence in which the defendant wanted suppression litigated, counsel who understood the issue left, and replacement counsel did not renew or force a ruling. Under Olano and Johnson v. Zerbst, 304 U.S. 458 (1938), intentional relinquishment must be distinguished from rights lost through counsel action, forfeiture, or procedural breakdown.

VIII. STRUCTURAL ERROR AND EXHIBIT O

Exhibit O, the Zachary Henderson Missouri Law Review analysis, was cited in the fuller materials for a reason. It surveys structural error, waiver, forfeiture, and plain-error review. Arizona

v. Fulminante, 499 U.S. 279 (1991), distinguishes structural defects from ordinary trial errors.

Gonzalez-Lopez places erroneous deprivation of counsel of choice in the structural category. Weaver

v. Massachusetts, 582 U.S. 286 (2017), further explains structural-error doctrine. This motion does

not label every suppression mistake “structural.” Instead, the alleged errors must be separated and analyzed under the doctrine applicable to each. The absence of a constitutionally adequate voluntariness determination is evaluated under the suppression and plain-error authorities; any erroneous deprivation of counsel of choice under Gonzalez-Lopez; and any qualifying public-trial

violation under Waller v. Georgia, 467 U.S. 39 (1984). Johnson v. United States, 520 U.S. 461 (1997), makes clear that characterizing an error as structural does not remove a forfeited claim from Rule 52(b) on direct federal review. The significance of Exhibit O is therefore not that structural error automatically bypasses Rule 52(b), but that the Court must identify the right at issue, distinguish waiver from forfeiture, and apply the proper Rule 52(b) analysis without collapsing a qualifying structural defect into an ordinary harmless-error inquiry.

IX. THE HUMAN CONSEQUENCES ARE PART OF THE COUNSEL AND

PARTICIPATION RECORD The supporting materials document repeated periods of suicide watch and severe psychological deterioration during the years of pretrial detention. They also state that Gandy made a serious suicide attempt on July 20, 2018, during the trial period. Those facts are relevant here only insofar as the record shows his ability to participate in his defense, the consequences of counsel turnover, and the circumstances under which alleged forfeitures occurred. They should not be used as a substitute for the constitutional analysis. The hospital photograph in the exhibits is contemporaneous evidence of the severity of Gandy's psychological deterioration during the trial period. Gandy contends that this deterioration cannot be separated from the defense breakdown that preceded trial: retained counsel who understood and pursued suppression were gone, the suppression motions remained unresolved, and replacement counsel entered shortly before trial without the same history or preparation. Gandy further contends that replacement counsel had been on the case only approximately forty-nine days and, during trial, responded to concerns about his performance by telling Gandy, in substance, that he could sue him later for ineffective assistance. The hospital photograph is not an afterthought; Gandy offers it as contemporaneous evidence of what was happening to him while he was being required to proceed through trial under those circumstances. He contends that the combination of the unresolved suppression issue, repeated loss of retained counsel, last-minute replacement representation, and his acute psychological deterioration severely impaired his ability to participate meaningfully in his defense and to protect the constitutional claims he had repeatedly demanded be litigated. Those circumstances also bear directly on whether later silence or failure to object can fairly be characterized as a knowing and intentional waiver.

X. PREJUDICE: THE COURT MUST TRACE WHAT FLOWED FROM

THE UNRESOLVED SUPPRESSION ISSUE Rule 52(b)'s substantial-rights inquiry cannot be answered merely by saying the Government agreed not to introduce certain statements or objects directly. The relevant question is what the challenged interrogation and allegedly unlawful evidence produced. The fuller materials identify potential use in the bond proceeding, K.V.'s questioning, a disputed photograph, communications with K.V.'s family, investigative leads, media publicity, charging decisions, the plea process, trial evidence, the PSR, and psychological records. Each asserted use

should be tested against the record. The strongest claimed causal chain is: information obtained from Gandy; use of that information in K.V.'s interrogation; a changed or expanded accusation; use of the disputed photograph and other information with K.V. or his family; development of additional evidence or witnesses; and eventual use of the resulting evidence in the prosecution. If the record confirms that chain, the prejudice is not cured simply because a particular statement or photograph was not itself shown to the jury.

XI. RULE 52(b) ANALYSIS

First, Gandy alleges error because suppression and voluntariness were affirmatively raised but no constitutionally adequate hearing and reliable determination occurred. Second, he contends the error was plain under Jackson, Renteria, Iwegbu, Guanespen-Portillo, and related authority. Third, he contends substantial rights were affected because the unresolved interrogation issue allegedly altered the investigation and the evidence that reached trial. Fourth, if those propositions are established from the record, he asks the Court to exercise its discretion because allowing a prosecution to retain the benefits of an unresolved constitutional violation would seriously affect the fairness, integrity, or public reputation of judicial proceedings.

XII. ANTICIPATED GOVERNMENT ARGUMENTS AND GANDY'S RESPONSE TO EACH

1. THRESHOLD RULE 60(b)(6) TIMELINESS - THE RECORD-ACCESS CHRONOLOGY MUST BE CONSIDERED BEFORE TREATING DELAY AS DISPOSITIVE

DE #289 relied on delay as an independent reason for denying Rule 60(b)(6) relief. Gandy therefore addresses that ground first rather than assuming that the Gonzalez classification question alone resolves the matter. Rule 60(c)(1) requires a Rule 60(b)(6) motion to be filed within a reasonable time, and Fifth Circuit authority also requires extraordinary circumstances. The inquiry is circumstance-dependent; Gandy does not contend that the passage of years is irrelevant.

The material point is what the record shows about those years. Gandy contends that the documents needed to demonstrate the procedural problem were not available to him despite repeated efforts to obtain them. DE #239 and later record requests document continuing pursuit; DE #277 sought DE #98; the January 8, 2024 court-reporter correspondence stated that the April 27, 2017 transcript was sealed and required a judicial order for release; the July 9, 2018 proceeding reflected in DE #141 was not transcribed until May 6, 2024; and DE #98 did not become available until April 2025. In January 2025, before DE #98 became available, Gandy personally filed a handwritten notice again requesting the April 27, 2017 DE #98 proceeding, identified earlier requests including DE #239 and DE #285, and recorded a January 16, 2025 prison-mail date. On February 3, 2025, the Fifth Circuit confirmed that the resulting appeal had been docketed as No. 25-20032. That letter is evidence of continued pursuit, not a merits ruling.

Accordingly, the timeliness question should not be reduced to the calendar interval between the earlier habeas judgment and a later Rule 60(b) filing. The court should determine when Gandy could reasonably obtain the primary materials on which the asserted procedural defect depends, what steps he took to obtain them, and what he did after they became available. This chronology is offered to answer DE #289's independent delay ground; it does not itself establish entitlement to Rule 60(b)(6) relief.

2. PRESERVATION - DE #287 ITSELF MUST CONTROL WHETHER THE DERIVATIVE-USE THEORY WAS NEW

The successive-petition classification also turns on what DE #287 actually alleged, not on a later paraphrase of it. Gandy relies on DE #287 as having expressly alleged that investigators were using his illegally obtained statements during K.V.'s interrogation. Before filing, the exact handwritten words, page number, and surrounding language from DE #287 should be reproduced verbatim beside DE #289's exact characterization. If the primary document confirms that allegation, the derivative-use theory was present before DE #289 and cannot fairly be characterized as first appearing in DE #316. If the primary document does not confirm it, this argument should be removed rather than overstated.

3. PROCEDURAL VEHICLE / JURISDICTION - PRIOR RULE 60(b) PROCEEDINGS DO NOT ESTABLISH ADJUDICATION OF THE CLAIM ACTUALLY PRESENTED

The Government may correctly observe that Rule 52(b) is a standard of appellate review rather than a freestanding collateral remedy. United States v. Frady, 456 U.S. 152, 163-66 (1982); United States v. Olano, 507 U.S. 725, 731-37 (1993). Gandy therefore does not contend that Rule 52(b), standing alone, creates subject-matter jurisdiction or reopens a final criminal judgment. To the extent an appellate proceeding properly places the asserted errors before this Court, Rule 52(b) supplies the framework for unpreserved but unwaived error.

The prior Rule 60(b) history does not establish that the suppression/derivative-evidence issue was actually adjudicated. DE #289 characterized DE #287 as alleging that Gandy's allegedly involuntary statements "were used against him at trial" and that use of those statements violated due process. Gandy's later filing expressly disputed that characterization: his contention was that the fruits derived from the challenged statements were used, not merely that his own words were introduced at trial. That distinction matters because the constitutional inquiry into derivative evidence asks what the challenged interrogation produced and whether later evidence was obtained by exploitation, independent source, or sufficient attenuation.

Gonzalez v. Crosby, 545 U.S. 524, 531-36 (2005), distinguishes a successive substantive habeas claim from a Rule 60(b) attack on a defect in the integrity of the prior habeas proceeding. Webb v. Davis, 940 F.3d 892, 897-99 (5th Cir. 2019), specifically recognized the district court's failure to consider claims presented in a habeas application as the type of procedural defect that can fall on the Rule 60(b) side of that distinction. Crutsinger v. Davis, 929 F.3d 259, 265-66 (5th Cir. 2019), likewise held that a genuine procedural Rule 60(b)(6) motion was not a successive habeas petition and vacated the transfer order. These authorities are cited for that limited classification principle, not as an independent source of Rule 52(b) jurisdiction or as proof that Rule 60(b) relief must be granted.

The classification line must be kept narrow. Gonzalez and current Fifth Circuit authority treat a filing as successive when it adds a new ground for relief or attacks the prior merits resolution of a habeas claim. Webb is useful only if the asserted defect concerns a claim actually presented but not substantively reached. Version 10 therefore does not rely on Webb to relitigate a claim DE #289 actually decided; it relies on the primary-document comparison to determine whether a distinct, previously presented derivative-use allegation was omitted from adjudication.

Accordingly, if the Government contends that the derivative-evidence claim has already been adjudicated, it should identify the docket entry and language actually deciding that claim. Disposition of a materially different proposition does not by itself establish adjudication of the claim Gandy says he actually presented.

4. WAIVER / ABANDONMENT - THE RECORD SHOWS CONTINUED PURSUIT, NOT INTENTIONAL RELINQUISHMENT

Olano supplies the controlling distinction: forfeiture is failure to timely assert a right; waiver is the intentional relinquishment or abandonment of a known right. 507 U.S. at 733. Mere forfeiture does not extinguish an error for Rule 52(b) purposes. Johnson v. United States, 520 U.S. 461, 465-67 (1997).

The chronology is inconsistent with intentional abandonment. DE #34 and sealed DE #46 affirmatively raised suppression. DE #89 later recorded counsel as still waiting for rulings. Flood's August 8, 2014 notes identify Gandy's number-one objective as "WIN MOTION FOR SUPPRESSION." DE #98 is offered to show that Gandy wanted paid trial counsel to remain. Gandy later returned to the unresolved issue through DE #287; DE #289 addressed what Gandy contends was a materially different characterization of that claim; and on April 28, 2026, Gandy filed another Rule 60(b) motion at DE #316. DE #316 is offered here for the limited procedural point that Gandy continued seeking adjudication, not as an independent jurisdictional foundation.

The Government therefore should identify the affirmative act constituting intentional waiver, not merely point to the passage of time, changes of counsel, or the absence of a ruling. Renteria and Iwegbu further demonstrate why counsel silence does not automatically answer a clearly raised voluntariness problem. United States v. Renteria, 625 F.2d 1279, 1282-84 (5th Cir. 1980); United States v. Iwegbu, 6 F.3d 272, 274-76 (5th Cir. 1993).

5. CECCOLINI / LIVE-WITNESS TESTIMONY - ATTENUATION REQUIRES FACTUAL FINDINGS, NOT A PER SE EXCEPTION

The Government may rely on United States v. Ceccolini, 435 U.S. 268 (1978), because K.V. ultimately testified as a live witness. But Ceccolini did not establish an automatic rule that live-witness testimony is cleansed of any antecedent illegality. It examined the witness's exercise of free will, the role of the illegality in obtaining the testimony, temporal distance, whether tainted information was used in questioning, investigators' prior knowledge of the witness, and the purpose of the unlawful conduct. Id. at 275-80.

Gandy's asserted chronology therefore requires a fact-specific attenuation inquiry. He contends that information obtained during the challenged July 20 interrogation was carried forward and used in K.V.'s questioning; that Agent Johnson obtained additional information from represented Gandy during the July 25 transport; and that investigators confronted K.V. with that information on July 26. Those assertions must be tested against the transportation logs, recordings, agent notes, and investigative files. They should not be assumed true, but neither can attenuation be assumed merely because K.V. later became a live witness.

Wong Sun v. United States, 371 U.S. 471, 487-88 (1963), Brown v. Illinois, 422 U.S. 590, 603-04 (1975), and Murray v. United States, 487 U.S. 533, 537-42 (1988), reinforce the need to identify exploitation, intervening circumstances, independent source, and attenuation. The unresolved suppression record matters because without determining what investigators knew independently, what they obtained from Gandy, what they communicated to K.V., and what resulted, the court cannot perform the causal analysis Ceccolini requires.

6. OFFER OF PROOF / CAUSATION - THE CLAIM IDENTIFIES SPECIFIC, TESTABLE PRIMARY EVIDENCE

The Government may argue that causation is speculative. United States v. Harrelson, 705 F.2d 733, 737 (5th Cir. 1983), requires sufficiently definite, specific, detailed, and nonconjectural factual allegations to justify an evidentiary hearing. Gandy identifies the evidence by which his asserted chain can be tested: the July 20 recordings; the July 25 transport records and agent notes; K.V.'s July 26 and other recorded questioning; the disputed photograph; communications with K.V.'s family; the Diaz materials; the recorded jail call; and the later trial record. The request is not that allegations substitute for proof, but that the identified primary evidence be preserved, produced, compared, and judicially evaluated.

7. THIRD PRONG / PREJUDICE - THE COURT MUST TRACE THE ALLEGED DERIVATIVE CHAIN BEFORE ASSUMING INDEPENDENCE

Olano ordinarily requires prejudice affecting the outcome, and the defendant bears the burden. 507 U.S. at 734. United States v. Dominguez Benitez, 542 U.S. 74, 81-83 (2004), describes the ordinary inquiry in terms of a reasonable probability of a different result. Gandy does not ask the Court simply to presume prejudice.

His theory is that the unresolved interrogation issue changed the investigation itself and helped produce or shape central witness evidence. If the record establishes that information obtained through the challenged interrogation was used to develop K.V.'s accusations or other prosecution evidence, there is at least a concrete basis to determine whether resolving suppression and attenuation before trial could have changed the evidentiary presentation and outcome. The prejudice inquiry cannot begin by assuming the disputed evidence was independently obtained when independence is itself the unresolved factual question.

Renteria illustrates an appropriate appellate response where the record requires missing suppression and voluntariness determinations: remand for the district court to consider and rule on suppression and conduct the required hearing. 625 F.2d at 1283-84. Gandy therefore seeks a record-based determination rather than appellate factfinding by assumption.

8. FOURTH PRONG / DISCRETION - FAIRNESS, INTEGRITY, AND PUBLIC REPUTATION FAVOR CORRECTION OF A PROVEN, UNRESOLVED ERROR

Even when the first three requirements are met, correction remains discretionary. Olano, 507 U.S. at 735-37. But Olano also makes clear that fourth-prong relief is not limited to cases of actual innocence; an error may seriously affect the fairness, integrity, or public reputation of judicial proceedings independent of innocence. Johnson, 520 U.S. at 469-70; Rosales-Mireles v. United States, 585 U.S. 129, 139-42 (2018).

If the record establishes that suppression and voluntariness were affirmatively placed before the district court, that counsel later documented the absence of rulings, that Gandy continued attempting to obtain adjudication and the underlying records, and that derivative evidence may have been developed while the constitutional question remained unresolved, allowing the passage of time itself to become the reason the question can never be adjudicated would raise substantial fairness and institutional concerns.

The requested remedy is deliberately limited. Gandy does not ask this Court to decide disputed suppression facts in the first instance or automatically suppress K.V.'s testimony. He asks the Court, to the extent jurisdiction exists and Rule 52(b)'s requirements are satisfied, to preserve the primary evidence and remand for a constitutionally adequate hearing and findings concerning voluntariness, suppression, waiver, attenuation, derivative use, and prejudice. That permits the Government to litigate free will, independent source, attenuation, and causation on evidence rather than assumption.

XIII. RECORD PRESERVATION

Gandy respectfully requests preservation and production of the complete audiovisual recordings of his July 20, 2012 interrogation, K.V.'s interrogations, and the complete recorded jail telephone call between Gandy and K.V., including the earliest K.V. interviews in which the blue-sheet photograph was disputed. The recordings are primary evidence of sequence, wording, fatigue, invocation of counsel, what K.V. said before and after particular information was introduced, and whether later testimony or investigative steps were derivative.

XIV. YEARS OF EFFORTS TO OBTAIN THE RECORD

Gandy's inability to present this documentary record earlier was not for lack of trying. The newly documented January-February 2025 record is particularly probative: while DE #98 was still unavailable, Gandy personally filed a handwritten notice again requesting the April 27, 2017 DE #98 proceeding and identifying prior requests, and the Fifth Circuit then docketed the resulting appeal as No. 25-20032. He contends that beginning in 2019 he repeatedly sought the records needed to prove what had occurred in the suppression, counsel-withdrawal, and speedy-trial proceedings. DE #239, reproduced at Exhibit U, p. 2, documents earlier efforts to obtain the record; later correspondence also shows that Gandy's mother, Julie Gandy, sought the missing transcripts and records on his behalf. These efforts are important because they show that the later production of the transcripts was not the creation of a new claim after the fact, but the culmination of years of attempts to obtain the documents needed to prove an existing claim. The delay was extraordinary. The July 9, 2018 speedy-trial hearing reflected in DE #141 was not transcribed until May 6, 2024, despite Gandy's earlier requests. The April 27, 2017 in-camera proceeding reflected in DE #98 was even more important because it records Gandy stating that he had paid Cogdell and DeBorde for trial and wanted them to remain. Correspondence from the court reporter on January 8, 2024 (Exhibit T, p. 5) described that transcript as 'sealed EX PARTE' and stated that a judicial order was required for release. The record-access materials identify DE #239, DE #277, and Exhibit T as documenting efforts to obtain it. DE #98 was not finally available to Gandy until April 2025. Thus, from 2019 through 2024 and 2025, Gandy was trying to obtain the very documents that now corroborate central parts of what he had been saying: he wanted the suppression issue litigated; he wanted his retained trial lawyers to remain; and the later description that he had fired counsel must be tested against the actual DE #98 transcript. The timing matters to Rule 52(b), waiver, and fairness. A defendant should not be treated as having knowingly abandoned a constitutional claim when he spent years seeking the sealed or untranscribed records necessary to demonstrate it. The eventual production of DE #141 and DE #98 did not create these allegations; Gandy contends those records finally supplied documentary proof of allegations he had been attempting to substantiate for years. The chronology in Fifth Circuit DE #79, Exhibit C, Exhibit E (Reasons Law Professors Needed), DE #239/Exhibit U, and the later record-access materials shows continuing efforts rather than abandonment: January 27, March 24, May 23, and June 20, 2019: Gandy wrote Judge Rosenthal asking why Dan Cogdell, Nicole DeBorde, and Charles Flood had been permitted to withdraw. The June 20 letter was sent by certified mail on June 24, 2019 at 3:22 p.m., certified no. 7010-3090-0003-3369-2910. June 24, 2019 forward – Fifth Circuit DE #79 / Exhibit C: the appellate correspondence record documents Gandy's effort in Fifth Circuit case No. 18-20823. The fuller materials identify DE #79 as part of the Fifth Circuit's own record of his

attempts. February 3, 2021 – District Court DE #239 / Exhibit U: although the docket describes the filing simply as a 'Letter,' the submitted materials state that it raised the structural constitutional problems and sought records needed to establish them, including the missing DE #98 record. February 4, 2021: the Fifth Circuit sent correspondence addressed to Judge Rosenthal and copied Carmen Mitchell and Andrew Sand. Gandy relies on this as further proof that his concerns had reached both the appellate and district courts. January 5, 2024 – DE #277: Julie Gandy formally sought DE #98 on Jason's behalf. January 8, 2024 – Exhibit T, p. 5: court reporter Kathy Metzger wrote that the April 27, 2017 transcript was 'sealed EX PARTE' and that an order from the judge was required before it could be released. May 6, 2024: the July 9, 2018 speedy-trial hearing reflected in DE #141 was finally transcribed, years after Gandy had begun seeking the underlying record. March 31, 2025 – DE #302: the district court ruled on requests to unseal records. The submitted materials dispute the order's characterization of DE #98 as not filed under seal and contrast it with the court reporter's January 2024 email. April 21, 2025: DE #98, the April 27, 2017 in-camera proceeding, finally became available. Gandy contends that the transcript supplied documentary support for what he had maintained for years: that he had paid Cogdell and DeBorde for trial and wanted them to remain. This history forecloses any fair suggestion that Gandy slept on his rights. He repeatedly attempted to obtain and present the underlying record. Whether the repeated delays, docket characterizations, sealing practices, and treatment of his pro se requests resulted from deliberate conduct or institutional error, their practical effect was the same: the documents necessary to substantiate his constitutional claims remained unavailable to him for years. Once DE #141 and DE #98 finally became available, they supplied documentary support for assertions Gandy had been making long before he possessed the records necessary to prove them.

XV. SUBSEQUENT ATTEMPT TO PRESENT THIS MOTION

Gandy's continuing efforts did not end when DE #98 finally became available. On April 27, 2026, he submitted to this Court a 'Motion for Relief under Rule 52(b) and for Vacatur or Limited Remand.' The appellate docket reflects that no action was taken because Appeal No. 25-20032 had previously been closed for failure to pay the filing fee and that '[t]he default has not been remedied as of this date.' That procedural disposition should not be mistaken for abandonment of the constitutional claims or an adjudication of their merits. Gandy separately seeks appropriate relief concerning the closed appeal and filing-fee/IFP issue. He includes this history here solely to document continuing diligence and his repeated effort to obtain consideration of the underlying constitutional issues.

RELIEF REQUESTED

Gandy respectfully requests that the Court apply Rule 52(b)'s plain-error framework to the errors properly before it; review the complete suppression, interrogation, counsel-withdrawal, and derivative-evidence record; preserve the relevant recordings; and, to the extent the Court has jurisdiction and the Rule 52(b) requirements are satisfied, remand for a constitutionally adequate hearing and determination concerning voluntariness, suppression, waiver, and the admissibility or derivative use of evidence flowing from the July 20, 2012 interrogations. He further requests any relief required by controlling structural-error authority if the record establishes an erroneous deprivation of counsel of choice or another qualifying structural defect.

CONCLUSION

The record should not be reduced to the proposition that defense lawyers agreed certain evidence would not be used. Gandy's own documented objective

was to win the suppression motion. DE #34 and sealed DE #46 raised suppression; DE #89 shows counsel still awaiting rulings years later; Flood's handwritten notes document Gandy's objective; the counsel-withdrawal record bears on whether Gandy ever knowingly waived the issue; and the interrogation recordings permit the Court to trace whether the Government obtained derivative benefits from evidence it could not lawfully exploit. Those issues warrant examination on the actual record rather than resolution by an assumption of mootness.

CERTIFICATE OF INTERESTED PERSONS

To be completed before filing with all persons and entities required by Fifth Circuit Rule 28.2.1.

RULE 27.4 CONFERENCE STATEMENT

To be completed before filing to state whether counsel for the United States was contacted and whether the Government opposes the motion.

CERTIFICATE OF COMPLIANCE

This computer-produced motion uses a 14-point proportional typeface. The final filer should insert the exact word count and certify compliance with Federal Rules of Appellate Procedure 27(d) and 32 and any applicable Fifth Circuit requirements.

CERTIFICATE OF SERVICE

I certify that a copy of this motion was served on counsel for the United States in the manner required by Federal Rule of Appellate Procedure 25 on

______________________.

Respectfully submitted,

____

JASON DANIEL GANDY

Defendant-Appellant, Pro Se

SUPPLEMENTAL DILIGENCE RECORD - VERSION 10

The following two images are included to preserve the newly supplied primary record supporting the January-February 2025 diligence chronology. They are offered to show continued pursuit of access to DE #98 and the resulting appellate docketing, not to characterize the Fifth Circuit's docketing letter as a merits decision.

Supplemental Record Image 1 - January 2025 handwritten notice/request concerning DE #98

United States of America

V.

Jason Daniel Gandy

Criminal Action No. H-1

United States Courts
Southern District of Tex
FILED

JAN 29 2025

Nathan Ochsner, Clerk of Co

I Jason Gandy am giving Notice f

JDG Sent 1-19-25

I Want to Appeal Judge Rosenthals denial

Document Number: 293 Filed 1-9-25 that I g

the prison Mail on 1-16-25.

I'am also asking Judge Rosenthal to unsea

Hearing on 4-27-17 Docket Number 98.

I've also asked for this in DE#239, #28

Julie Gandy is on Record asking with power of

Attorney in DE#277. Please allow my m

to pay to have the part of that hearing whe

Rosenthal cleared the court room & Allowed Coadell

Supplemental Record Image 2 - February 3, 2025 Fifth Circuit Clerk letter, Appeal No. 25-20032

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

me
posted
Love you
Julie

February 03, 2025

-279
son Daniel Gandy
ford
Box 1000
d, WI 53952

No. 25-20032 USA v. Gandy
USDC No. 4:12-CR-503-1

ar Mr. Gandy,

have docketed the appeal as shown above, and ask you to use the
ase number above in future inquiries.

ilings in this court are governed strictly by the Federal Rules of **Appellate** Procedure. We cannot accept motions submitted under the Federal Rules of **Civil** Procedure. We can address only those documents the court directs you to file, or proper motions filed in support of the appeal. See Fed. R. App. P. and 5th Cir. R. 27 for guidance. We will not acknowledge or act upon documents not authorized by these rules.

All counsel who desire to appear in this case must electronically file a "Form for Appearance of Counsel" naming all parties represented within 14 days from this date, see Fed. R. App. P. 12(b) and 5th Cir. R. 12. This form is available on our website www.ca5.uscourts.gov. Failure to electronically file this form will result in removing your name from our docket. Pro se parties are not required to file appearance forms.

Attached is a copy of your unsigned notice of appeal. Initials are not accepted as a signature. Please sign and return within 30 days from the date of this letter. If you fail to return the signed notice of appeal within the 30-day period, we will dismiss your appeal without further notice.

ATTENTION ATTORNEYS: Attorneys are required to be a member of the Fifth Circuit Bar and to register for Electronic Case Filing. The "Application and Oath for Admission" form can be printed or downloaded from the Fifth Circuit's website, www.ca5.uscourts.gov. Information on Electronic Case Filing is available at www.ca5.uscourts.gov/cmecf/.