

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

UNITED STATES OF AMERICA v. JASON DANIEL GANDY

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

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF DE 316,

MOTION FOR RECUSAL, AND JURISDICTIONAL ALTERNATIVE

Jason Daniel Gandy respectfully supplements DE 316 without withdrawing, shortening, replacing, or abandoning any argument or exhibit already submitted. DE 316 and DE 316-1 are incorporated in full. This Version 5 preserves Version 4, candidly identifies the successive-petition boundary, and confines DE 79, DE 239, the Dallas Craig Hughes materials supplied to Brandon Sample, and the COVID-era record to purposes Rule 60(b) may lawfully consider: classification, notice, diligence, nonabandonment, causation of delay, extraordinary circumstances, recusal, and preservation. It does not ask the Court to use those materials to decide a new suppression claim on the merits.

I. THE COURT MUST CLASSIFY THE FILING CLAIM BY CLAIM BEFORE REACHING CRIMINAL

MERITS

Rule 60(b) may provide relief from the civil judgment resolving a § 2255 proceeding; it does not independently reopen the criminal judgment. *Gonzalez v. Crosby*, 545 U.S. 524, 530–36 (2005). A motion is a true Rule 60(b) motion when it attacks a nonmerits defect in the integrity of the federal collateral proceeding. It is successive when it asserts a new basis for relief from the conviction or attacks a prior merits resolution. *Id.* at 531–32; *In re Edwards*, 865 F.3d 197, 203–04 (5th Cir. 2017); *United States v. Robinson*, 915 F.3d 344, 346–48 (5th Cir. 2019);

Webb v. Davis, 940 F.3d 892, 897–99 (5th Cir. 2019); Will v. Lumpkin, 978 F.3d 933, 936–40 (5th Cir. 2020).

The genuine Rule 60(b) component does not ask for a ruling that the statements or alleged fruits must be suppressed. It attacks the process used to dispose of the collateral filing: DE 287 alleged governmental and derivative use of information obtained from Gandy, while DE 289 answered only whether Gandy’s own statements were introduced “against him at trial.” The requested determination is whether the Court adjudicated the contention DE 287 actually presented or disposed of a materially narrower contention. Background facts identify that mismatch; they are not independent habeas claims merely because they show why the distinction mattered.

Gandy recognizes the limiting point. Dallas Craig Hughes’s proposed § 2255 material was not filed in the original § 2255 case, and Brandon Sample’s 2021 motion did not present the suppression theory Gandy asked him to present. Those facts cannot transform the unfiled suppression merits theory into a claim omitted from the original § 2255 judgment. Gandy therefore does not ask this Court, through Rule 60(b), to decide that unfiled theory or vacate the conviction on it. The Hughes–Sample history is offered only to rebut abandonment and unexplained-delay characterizations and to explain why the later filing contained the governmental-use contention.

If any sentence in DE 316 or this supplement is understood to assert a new substantive ground, Gandy requests severance or leave to withdraw only that portion. Alternatively, the Court should transfer only the successive portion to the Fifth Circuit under 28 U.S.C. § 1631 for the authorization procedure in 28 U.S.C. §§ 2244(b)(3) and 2255(h), without allowing a merits-related sentence to erase the independent procedural challenge. See *United States v. Fulton*, 780 F.3d 683, 686–88 (5th Cir. 2015).

II. DE 287 AND DE 289 PRESENT A VERIFIABLE NONADJUDICATION QUESTION

DE 287 did not merely claim that Gandy's words were introduced at trial. It alleged that investigators were "using my illegally obtained statements" while questioning K.V. and identified use connected with the bond proceedings. DE 289 characterized the contention as whether Gandy's involuntary statements were used "against him at trial." Direct admission of a defendant's words, investigative use of information while questioning another person, and derivative use of resulting evidence are different propositions.

Gandy does not contend that an adverse merits decision becomes a procedural defect merely because it was wrong. He asks the Court to identify where DE 289 decided the broader governmental-use contention. If DE 289 decided it, the Court may say so and identify the language. If it did not, the defect is nonadjudication, not disagreement with a merits ruling. Webb recognizes that a filing alleging failure to adjudicate a contention can be a true Rule 60(b) motion, while Edwards and Robinson foreclose using that label to obtain a second merits determination. This motion stays on the Webb side of that line by requesting adjudication of the scope mismatch only.

III. THE FOUR-YEAR SUPPRESSION VACUUM IS CENTRAL TO THE EQUITABLE SETTING

The suppression issue was placed before the Court through DE 34 and sealed DE 46. DE 89 records retained counsel Dan Cogdell stating that the defense was "still waiting on a response to our motions." The issue then remained without a merits ruling for approximately four years while the prosecution continued, counsel changed, and information allegedly obtained from Gandy was used in the investigation. This chronology is not offered as a freestanding suppression claim under Rule 60(b). It explains why the direct-use/derivative-use distinction in DE 287 was neither invented after conviction nor immaterial to the integrity inquiry.

Jackson v. Denno requires a reliable judicial determination of voluntariness when the issue is genuinely raised. 378 U.S. 368, 376–77, 391–95 (1964). The Fifth Circuit recognizes the required inquiry when the evidence clearly raises voluntariness. United States v. Iwegbu, 6 F.3d 272, 274–75 (5th Cir. 1993); United States v. Guanespen-Portillo, 514 F.3d 393, 399–402 (5th Cir. 2008). United States v. Renteria addressed unresolved suppression motions and the absence of the required determination and remanded for suppression proceedings. 625 F.2d 1279, 1282–83 (5th Cir. 1980). United States v. Kim L. Powe similarly recognizes an independent duty to inquire when sufficiently alerted. 591 F.2d 833, 841–43 (D.C. Cir. 1978). These authorities show why accurately identifying what DE 287 alleged was consequential; they do not ask this Rule 60(b) Court to decide suppression now.

IV. ADDITIONAL RECORD-INTEGRITY COMPARISONS

A. DE 141 versus DE 98: counsel did not simply leave because Gandy fired them

DE 141 states that “the record seems to indicate that he fired them.” The later-obtained DE 98 transcript records materially different facts: Gandy opposed withdrawal, stated that he wanted retained counsel Dan Cogdell and Nicole DeBorde to remain for trial, and the Court permitted withdrawal. This comparison is offered to show why primary-record access matters to accurate collateral classification, not to obtain counsel-of-choice relief through Rule 60(b).

B. DE 285: substance extended beyond a property label

DE 285 was treated or docketed as a request for return of property. The filing also sought access to DE 98 and investigation into the use and consequences of allegedly unlawfully obtained statements. The complete filing should be compared with the label used to dispose of it. This reinforces the procedural concern that broader requests were repeatedly reduced to narrower descriptions.

C. DE 98 and the unresolved use distinction

A merely Miranda-defective but voluntary statement may sometimes be used for impeachment. *Harris v. New York*, 401 U.S. 222, 225–26 (1971). An involuntary statement may not be used for any purpose. *Mincey v. Arizona*, 437 U.S. 385, 397–98 (1978). Whether information obtained from Gandy led to or shaped K.V.’s later statements presents a separate causation and attenuation inquiry; it is not resolved merely by saying Gandy’s words were not admitted at trial. See *United States v. Ceccolini*, 435 U.S. 268, 276–80 (1978). Again, this legal distinction identifies the scope of DE 287; its ultimate merits are reserved for a vehicle possessing jurisdiction.

V. TIMELINESS MUST BE MEASURED AGAINST THE PROCEDURAL BASIS AND THE COMPLETE EQUITABLE RECORD

Rule 60(c)(1) requires a Rule 60(b)(6) motion within a reasonable time. The one-year ceiling for Rule 60(b)(1)–(3) does not govern subsection (6), but subsection (6) requires extraordinary circumstances assessed from the full equitable setting. Fed. R. Civ. P. 60(b)(6), 60(c)(1); *Gonzalez*, 545 U.S. at 535–38; *Buck v. Davis*, 580 U.S. 100, 123–26 (2017).

DE 289 measured delay principally from the criminal judgment and concluded that approximately six years was unreasonable. That starting point does not answer the procedural chronology. DE 287 was filed July 19, 2024 while Gandy still lacked the April 27, 2017 DE 98 transcript. DE 239 documents pursuit during the COVID period. The transcript was created and docketed in April 2025; Gandy reports actual receipt approximately June or July 2025. DE 316 followed April 28, 2026. Reasonableness should be assessed from actual access to the record that permitted the comparison, together with earlier documented attempts to obtain it—not solely from the date of criminal judgment.

The extraordinary circumstance is cumulative: a pretrial suppression motion left without a merits ruling for approximately four years; DE 89's documented request for a response; counsel changes; COVID-era restrictions; repeated efforts reflected in DE 79, DE 239, DE 285, and related correspondence; prolonged lack of access to DE 98; and a later collateral disposition that answered a materially narrower contention. The Court may reject the requested relief after weighing that record, but it should not omit the record from the timeliness analysis.

VI. THE HUGHES-SAMPLE HISTORY EXPLAINS DILIGENCE; IT DOES NOT CREATE A NEW RULE

60(b) MERITS CLAIM

Dallas Craig Hughes prepared proposed § 2255 material reflecting the suppression and record-integrity issues Gandy wanted presented. Exhibit H and related correspondence reflect that the Hughes work and requests concerning DE 98 were supplied to Brandon Sample. Sample rejected that proposed work and filed the 2021 § 2255 motion without the suppression theory, while Gandy lacked DE 98 and faced the COVID-era communication and access restrictions documented in DE 239 and DE 316-1. The Hughes draft was never filed or adjudicated.

That history has two legally different consequences. First, because the theory was not filed in the original § 2255 proceeding, Rule 60(b) cannot be used to obtain a first merits decision on it. Second, the same history remains relevant to the equitable questions of notice, diligence, nonabandonment, and causation of delay. Gandy does not assert postconviction counsel's performance as a freestanding constitutional claim and does not depend on a constitutional right to effective § 2255 counsel. See 28 U.S.C. § 2254(i); *Martinez v. Ryan*, 566 U.S. 1, 16–17 (2012).

**VII. MATERIAL THAT MAY NOT BE USED TO DECIDE SUPPRESSION STILL MUST BE ADDRESSED
FOR ITS LIMITED PROCEDURAL PURPOSES**

The Court may conclude that DE 79, DE 239, the Hughes draft, Exhibit H, correspondence with Sample, or related notice materials cannot be considered to decide suppression, attenuation, or innocence in this Rule 60(b) proceeding. Gandy expressly agrees that those merits questions require a jurisdictionally proper vehicle. But exclusion from the suppression merits does not make the same material irrelevant to classification, notice, diligence, preservation, nonabandonment, causation of delay, extraordinary circumstances, § 455(a), or creation of a reviewable record.

DE 79 placed suppression-related and structural concerns before the Fifth Circuit in Direct Appeal No. 18-20823, with accompanying material reflecting notice to the district judge. DE 239 placed the suppression and DE 98 access problem before the district court during COVID. The Hughes materials delivered to Sample document continued effort to present the issue. These records do not prove that any court accepted the legal theory; silence is not a merits ruling. They instead rebut any assertion that the issue was newly invented or knowingly abandoned.

If the Court declines to consider a document, Gandy requests identification of the document, the rule supporting exclusion, and whether it remains cognizable for timeliness, equitable circumstances, § 455(a), or preservation. A reasoned ruling is needed so a reviewing court can distinguish refusal to reach criminal merits from refusal to acknowledge procedural notice.

VIII. ANTICIPATED SUCCESSIVE-PETITION OBJECTIONS DO NOT JUSTIFY WHOLESAL

DISMISSAL

The Government may rely on Edwards and Robinson to argue that any requested adjudication would supply a second opportunity to obtain relief from the conviction. That objection would be correct as to a request for suppression, a new derivative-evidence ruling, or vacatur of the criminal judgment. It does not answer the narrower request to determine whether DE 289 accurately classified and adjudicated what DE 287 said. The Court should state separately: (1) which paragraphs are true Rule 60(b) allegations; (2) which, if any, assert habeas merits; and (3) the disposition of each category.

Nor should the separate § 2255(h)(1) application based on newly discovered innocence evidence be used to reclassify this entire filing. Its existence confirms that Gandy is using the authorization procedure for substantive claims. This supplement requests only that the Rule 60(b) procedural component not be erased by proximity to those separate merits issues.

IX. IMPARTIAL REVIEW IS NECESSARY TO PRESERVE THE APPEARANCE OF JUSTICE

Gandy respectfully requests recusal under 28 U.S.C. § 455(a) and reassignment of this collateral matter. The request does not rest on adverse rulings alone. See *Liteky v. United States*, 510 U.S. 540, 555–56 (1994). It rests on the unusual posture in which the assigned judge would decide whether her own handling of the suppression motion, record descriptions, and access decisions narrowed or misstated DE 79, DE 98, DE 141, DE 239, DE 285, DE 287, and DE 289.

Section 455(a) asks whether a reasonable person, knowing all the circumstances, would question impartiality. *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 860–65 (1988), confirms that Rule 60(b)(6) may protect the integrity and appearance of the judicial process when § 455(a) is implicated. The request does not presume misconduct or dictate a

merits result. It seeks review by a judge who bears no responsibility for the disputed descriptions, sealing and delayed access, or the four-year suppression vacuum.

If recusal is denied, Gandy requests a reasoned order addressing § 455(a) separately from Rule 60(b) classification. If the Fifth Circuit later remands, he requests reassignment under 28 U.S.C. § 2106 and the court of appeals' supervisory authority. See *Johnson v. Sawyer*, 120 F.3d 1307, 1333–34 (5th Cir. 1997) (en banc); *United States v. Winters*, 174 F.3d 478, 487 (5th Cir. 1999).

X. JURISDICTIONAL ALTERNATIVE AND RELIEF REQUESTED

A true Rule 60(b) motion is filed in the district court that entered the civil § 2255 judgment; advance Fifth Circuit authorization is not required for the procedural component. A new substantive § 2255 claim, however, requires authorization. Gandy therefore requests that the Court: (1) accept this supplement without treating DE 316 or DE 316-1 as withdrawn; (2) recuse under § 455(a) and reassign the matter; (3) classify the filing claim by claim under *Gonzalez*, *Edwards*, *Robinson*, *Webb*, and *Will*; (4) adjudicate the genuine procedural-integrity component; (5) consider DE 79, DE 239, the *Hughes–Sample* materials, Exhibit H, and related notice materials at least for the limited procedural and equitable purposes stated above; (6) issue a reasoned ruling identifying any excluded material and the purpose for which it is excluded; (7) permit focused briefing concerning the DE 287/DE 289 scope comparison and the DE 98/DE 141/DE 285 record; and (8) if a discrete portion is successive, sever it, permit its withdrawal, or transfer only that portion under § 1631 without dismissing the independent Rule 60(b) component.

Respectfully submitted,

/s/ Jason Daniel Gandy

Jason Daniel Gandy, Reg. No. 73006-279

Institution and mailing address: _____

Pro se Movant

Date: _____

CERTIFICATE OF SERVICE

I certify that on _____, I placed this filing in the institution's legal-mail system, with first-class postage prepaid, for filing with the Clerk of the United States District Court for the Southern District of Texas and service on counsel for the United States.

/s/ Jason Daniel Gandy