

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA §

v. § Criminal No. 4:12-cr-00503

JASON DANIEL GANDY § Civil No. 4:21-cv-00662

MOTION FOR LEAVE TO FILE CONSOLIDATED AMENDED RULE 60(b)(6)
MOTION, AND CONSOLIDATED AMENDED MOTION SUPERSEDING DE
316

Jason Daniel Gandy respectfully requests leave to file the following consolidated amended Rule 60(b)(6) motion in place of DE 316. DE 316 was filed April 28, 2026 and, according to the docket presently available to Gandy, remains undecided. This amendment narrows the requested relief, incorporates DE 316-1 as supporting material, removes freestanding criminal-merits requests, and identifies separately any matter that would require authorization under 28 U.S.C. § 2255(h). Because no response or ruling on DE 316 appears on the available docket, amendment will simplify rather than prejudice the proceedings.

CONSOLIDATED AMENDED RULE 60(b)(6) MOTION

I. PRECISE RELIEF REQUESTED

1. Gandy asks the Court to reopen the civil judgment in No. 4:21-cv-00662 only to remedy a defect in the integrity of the federal collateral process: DE 289 disposed of DE 287 by addressing whether Gandy's own statements were introduced against him at trial, while DE 287 alleged the materially different proposition that investigators used information obtained from Gandy to question K.V. and develop derivative witnesses and evidence.

2. Gandy does not ask this Rule 60 court to suppress evidence, decide innocence, or vacate the criminal judgment on a new substantive ground. *Gonzalez v. Crosby*, 545 U.S. 524, 530-36 (2005), permits a Rule 60 motion challenging a nonmerits defect in federal habeas proceedings but treats a new attack on the conviction as successive. See also *Webb v. Davis*, 940 F.3d 892, 897-99 (5th Cir. 2019); *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).

3. If the Court concludes that any sentence asserts a new habeas ground, Gandy requests that the Court sever that sentence, permit its withdrawal, or transfer only that discrete matter under 28 U.S.C. § 1631. A merits-related sentence should not erase the independent procedural-integrity claim. See *United States v. Fulton*, 780 F.3d 683, 686-88 (5th Cir. 2015).

II. THE VERIFIABLE DE 287/DE 289 SCOPE MISMATCH

4. DE 287, filed July 19, 2024, alleged that investigators were “using my illegally obtained statements” while questioning K.V. and identified investigative use connected to the bond proceedings. DE 289, entered August 27, 2024, characterized the contention as whether Gandy’s statements were used “against him at trial.”

5. Direct admission of a defendant’s words and investigative or derivative use of information are different propositions. A finding that Gandy’s words were not introduced does not answer whether investigators exploited the information to obtain or shape testimony and evidence. See *United States v. Ceccolini*, 435 U.S. 268, 276-80 (1978) (requiring a causation and attenuation inquiry for live-witness evidence).

6. Gandy does not argue that an incorrect merits decision is automatically a Rule 60 defect. He asks the Court to identify where DE 289 adjudicated the governmental-use allegation actually made in DE 287. If it did, the Court can identify the language. If it did not, the defect is nonadjudication or material misclassification, not disagreement with a merits decision.

III. DE 46 AND DE 98 CONFIRM WHY THE OMITTED DISTINCTION MATTERED

7. Counsel filed DE 46 on November 26, 2013, requesting suppression and a hearing. DE 46 stated that the airport inspection “uncovered no images characteristic of child pornography” and that K.V.’s reference to “pornography” did not identify illegal child pornography. DE 46 challenged the use of Gandy’s custodial statement to supply probable cause and a nexus for later warrants.

8. DE 89 recorded retained counsel stating that the defense was “still waiting on a response to our motions.” No open, adversarial merits ruling on DE 46 has been located during the approximately four years before the April 27, 2017 proceeding recorded in DE 98.

9. DE 98 is the transcript of the closed April 27, 2017 proceeding concerning withdrawal of retained counsel. Gandy opposed withdrawal and stated that he wanted Dan Cogdell and Nicole DeBorde to remain for trial. The Court stated, in substance, that no suppression motion remained to be pursued after the government represented it would not use certain evidence. The transcript does not identify a public adversarial hearing, written findings, or the exact evidence covered by the representation.

10. These materials are not submitted for a new suppression ruling. They establish the procedural setting in which the distinction between direct use and investigative use became critical, and they explain why DE 287 cannot accurately be reduced to whether Gandy's own words were played or quoted at trial.

IV. LATER ACCESS, DILIGENCE, AND EXTRAORDINARY CIRCUMSTANCES

11. Julie Gandy ordered the April 27, 2017 transcript in January 2024. The sealed transcript was not created and docketed until April 21, 2025. Gandy did not personally receive and review DE 98 until approximately June or July 2025.

Before then, he could hear his mother's description but could not inspect the transcript himself.

12. Attorney Michael Levin's June 2025 memorandum was the first formal attorney analysis available to Gandy and his family connecting the suppression record, counsel withdrawal, and structural consequences. It is offered to establish access, diligence, and the chronology of professional record evaluation—not as a new attorney opinion that itself proves a merits claim.

13. DE 316 followed on April 28, 2026, within approximately ten months of Gandy's personal receipt of DE 98. Earlier efforts are documented by DE 239 during the COVID period, DE 285, DE 287, the January 2025 motion to unseal, the March 2025 transcript order, and DE 315's request for interview evidence and a ruling.

14. Gandy's mental-health history is relevant to the equitable chronology, not offered as an automatic excuse. Counsel sought withdrawal while Gandy was on suicide watch; serious illness, prison restrictions, returned mail, and lack of access to sealed primary materials impeded his ability to investigate. The record nevertheless shows continuing attempts by Gandy and his family.

15. The extraordinary circumstance is cumulative: an unresolved suppression record; counsel turnover while Gandy was acutely ill; a closed proceeding that materially differs from the later description that Gandy fired counsel; prolonged inability to inspect DE 98; and a collateral order that answered a narrower question than DE 287 presented. See *Buck v. Davis*, 580 U.S. 100, 123-26 (2017) (Rule 60(b)(6) requires consideration of the full equitable setting).

V. THE COMPUTER RECORD IS STATED ACCURATELY

16. Agent Jeffrey Chappell testified that he believed images found in the Acer's temporary internet cache were child pornography. This motion does not claim otherwise.

17. On cross-examination, Buckley described the photographs as images that "could be described as photographs from a nudist colony," and Chappell answered, "That is correct," before discussing their internet source. DE 192 at 3-57 to 3-58. Chappell also admitted that three people had used the computer and that he lacked personal knowledge of who entered particular commands, whether Gandy knew

the laptop was in K.V.'s possession, and who performed specific activity. DE 192 at 3-53 to 3-57.

18. DE 46's airport-inspection statement, Chappell's later forensic opinion, the lawful alternative description accepted on cross, and the inability to identify the user are distinct facts. Their importance here is that the suppressed-record and derivative-use contentions could not fairly be evaluated by addressing only whether Gandy's words were admitted at trial.

VI. COUNSEL HISTORY AND NONABANDONMENT

19. The record does not show that Gandy knowingly abandoned the suppression issue. Gandy opposed retained counsel's withdrawal in DE 98. Flood's March 31, 2015 email stated that, if withdrawal were denied, he would continue to fight zealously as though he had never requested withdrawal. Dallas Craig Hughes later prepared § 2255 material reflecting suppression concerns and provided it to Brandon Sample, but Sample's filed § 2255 did not present that theory.

20. Because the theory was not included in the original § 2255 motion, Rule 60 cannot be used to obtain its first merits adjudication. The history is relevant only to

diligence, notice, lack of knowing abandonment, and why DE 287 later raised governmental use.

VII. RECUSAL AND REASSIGNMENT

21. Gandy requests recusal under 28 U.S.C. § 455(a). The request does not rest merely on adverse rulings. The motion asks the assigned judge to determine whether her own descriptions of DE 98, counsel withdrawal, DE 285, DE 287, and DE 289 accurately reflected the underlying filings and whether her handling of DE 46 left a reviewable disposition.

22. A reasonable observer knowing the full record could question impartiality where the decision-maker must adjudicate the accuracy and legal effect of her own disputed record descriptions. See *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 860-65 (1988). If recusal is denied, Gandy requests a separate reasoned ruling preserving the issue for review.

VIII. RELIEF

Gandy respectfully asks the Court to:

- A. grant leave and treat this consolidated motion as superseding DE 316 while incorporating DE 316-1;
- B. classify the motion claim by claim under Gonzalez and Fifth Circuit authority;
- C. adjudicate whether DE 289 addressed the broader governmental-use contention in DE 287;
- D. identify the docket disposition of DE 46 and the scope of the government representation referenced in DE 98;
- E. reopen the civil judgment only as necessary to adjudicate the qualifying procedural defect;
- F. recuse and reassign the matter under 28 U.S.C. § 455(a), or issue a separate reasoned recusal ruling;
- G. sever, permit withdrawal of, or transfer only any discrete successive portion;
and
- H. preserve DE 46, DE 98, associated sealed orders, audio if any, and the complete unredacted record.

Respectfully submitted,

/s/ Jason Daniel Gandy

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Pro Se Movant

Dated: September ___, 2026

CERTIFICATE OF SERVICE

I certify under penalty of perjury that on September ___, 2026, I deposited this motion in the institution's internal legal-mail system, first-class postage prepaid, addressed to the Clerk of the United States District Court for the Southern District of Texas and to counsel for the United States.

/s/ Jason Daniel Gandy

Jason Daniel Gandy