

In The
United States Court of Appeals
For The Fourth Circuit

UNITED STATES OF AMERICA,

Petitioner

v.

BRIAN DAVID HILL,

Respondent.

**ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE MIDDLE DISTRICT OF NORTH
CAROLINA AT GREENSBORO**

PETITION FOR REHEARING OR REHEARING EN BANC



**Brian David Hill – Ally of Qanon
Founder of USWGO Alternative News
310 Forest Street, Apt. 2
Martinsville, Virginia 24112
(276) 790-3505**



Pro Se Appellant

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JusticeForUSWGO.NL/Pardon**

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I. INTRODUCTION AND RULE 35(b)(1) STATEMENT

In the undersigned Appellant (“Appellant”) Brian David Hill’s judgment, the following situation exists: (1) a material factual, legal matter, or Constitutional matter was overlooked in the decision and (2) this proceeding involves one or more questions of exceptional importance.

Specifically, the material factual or legal matter which was overlooked and the question of exceptional importance is whether or not Appellant had demonstrated that there was “a substantial showing of the denial of a constitutional right”. That is in regards to whether the Panel had erred in affirming the U.S. District Court’s (“District Court”) decision in “denying multiple pro se motions seeking sanctions against the Government, to vacate his criminal judgment and revocation judgment, and to grant his 28 U.S.C. § 2255 motion.” Appellant believes this error contradicts with Local-Civil-Rule 7.3 “MOTION PRACTICE”, paragraph (k) “Failure to File and Serve Motion Papers” of the Middle District of North Carolina, deprived Appellant of Due Process of Law by the Panel’s decision, and contradicts the Court’s inherit right to vacate fraudulent begotten judgments when such fraud is proven and is uncontested by the offending party. Fraud on the court by the prosecutor in a criminal case is an entitlement to relief by the victimized party as the facts demonstrates facts of actual innocence as **there is no reason for any attorney of the**

United States to actually engage in any deception, lies, and fraud against a criminal defendant if the prosecution's case was full of truth and merit, it has a lack of truth and merit no matter the substantial issues of facts/claims brought of a cause by an officer of the court. The panel ruled in their unpublished opinion on April 27, 2021 (Appeal Dkt. 6), that “*We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. United States v. Hill, No. 1:13-cr-00435-TDS-1 (M.D.N.C. Nov. 17, 2020).*” That decision is erroneous as the INFORMAL OPENING BRIEF (Appeal Dkt. 4) of Appellant, the Local Rule and the record demonstrates that there is a constitutional or legal issue that the Panel erred and overlooked in dismissing the appeal. Therefore, Appellant seeks en banc review so that the Panel's decision can be reconsidered within the framework set forth by the U.S. Supreme Court as well as the somewhat conflicted case law from the Fourth Circuit, this Court, regarding Fraud Upon the Court cases.

If this Court can reconsider its Panel's decision to dismiss the Appeal and affirming the District Court's decision on November 17, 2020, then the District Court can and should grant all uncontested Motions as a matter of Law under the Local Rules of the Middle District of North Carolina (“M.D.N.C.”), and even conduct an evidentiary hearing along with a discovery period in regards to any or all proven factual allegations of an Assistant U.S. Attorney's Fraud on the court regarding fraud/deceit perpetuated by the government prosecuting attorney of the criminal case who had prosecuted Appellant from the very beginning in November 2013, where Appellant was charged after he was framed with child pornography and gave a false

confession and therefore the proven frauds on the District Court and uncontested allegations of fraud against the Assistant U.S. Attorney who prosecuted all Supervised Release Violation charges and the original charge of Possession of Child Pornography should be relieved and remedied under "equity of treatment". Equity means "justice according to natural law or right" or "the quality of being fair and impartial." It would be insane to allow a District Court to bar and prevent any or all relief requested in uncontested and well-evidenced Motions asking for Sanctions and vacatur of fraudulent begotten judgments to restore the integrity, credibility, rationale, and fairness of the District Court in the Middle District of North Carolina, as fraud threatens or endangers the integrity, rationale, Due Process, and credibility of the Federal Courts and of their records as records cannot be believed if proven that the District Court is pushing out lies as facts, pushing lies as credible decisions. Fraud should be challenged at any time in any Court when such fraud is discovered by the Court or the discovery of fraud upon its record by an officer of the court is brought to the Court's attention.

II. SUMMARY OF THE ARGUMENT

This Court should find that the Panel erred in failing to find that the District Court erred as a matter of law or abused discretion in denying all Motions for Sanctions and/or Motions asking to vacate fraudulent begotten judgments as a matter of law filed within the 2255 case when 2255 cases are opened under both the Criminal/Civil Rules. See Rule 12 of "RULES GOVERNING SECTION 2255 PROCEEDINGS FOR THE UNITED STATES DISTRICT COURTS", and Local

Civil-Rule 7.3 “MOTION PRACTICE”, paragraph (k). Relief requested by Appellant before the Panel was obtainable as a matter of law, it is the law. It is the District Court’s Local Law, and any uncontested motions are normally granted without further notice. Those motions should have been granted. As a matter of law; relief should be afforded to Appellant.

This Court should find that the panel erred in failing to find that the District Court erred as a matter of law or abused discretion in denying the multiple uncontested motions asking for sanctions and relief from Appellees in regards to the fraudulent begotten judgments when local rule and the inherit powers of all Federal District Courts make it clear that Appellant was entitled to relief requested in each and every uncontested motion for sanctions as a matter of law.

This Court should find that the panel erred in failing to find that the District Court erred or abused discretion in failing to recognize or refusing to recognize any and all cumulative evidence concerning Appellee’s fraud upon the court including but not limited to Affidavits or Declarations, Exhibits, and any other tangible evidence when it clearly comports with the Federal Rules of Evidence and was never disregarded as such.

This Court should find that the panel erred in failing to find that the District Court erred or abused discretion in denying Appellant’s Motion for Sanctions and to Vacate Judgment in Plaintiff's/Respondent's Favor (Dkt. #199), when there was no evidence that Appellant ever threatened United States Probation Officer Kristy L. Burton, judgment was based upon unfounded claims and bias or prejudice by

the perjury of Kristy L. Burton an officer of the Court.

This Court should find that the panel should have extended and/or modified existing law to hold that the District Court abused its discretion in deciding that Appellant's only avenue for relief is through 28 U.S. Code § 2255 when those Motions for Sanctions were filed in a 2255 case that is governed by Civil and Criminal Rules.

This Court should find that the panel should have extended and/or modified existing law to hold that the District Court erred or abused discretion by denying all Motions for Sanctions when a criminal case does not bar a District Court from entertaining Motions to challenge fraud, ask to vacate fraudulent begotten judgments, and sanction the culpable officer of the court pursuant to 28 U.S.C. § 1651 and the inherit powers of a Court. This Court should adopt the Sixth Circuit standard for "fraud on the court".

III. ARGUMENT

- i. This Court should find that the panel erred in failing to find that the District Court erred as a matter of law in denying multiple pro se motions seeking sanctions against the Government, to vacate his criminal judgment and revocation judgment, and to grant his 28 U.S.C. § 2255 motion. The law was overlooked, the very law brought up in the Informal Appeal Brief (Appeal Dkt. #4, INFORMAL OPENING BRIEF).**

The panel erred with its unpublished opinion finding "We have reviewed

the record and find no reversible error” (citations reformatted, period omitted) when they decreed that the appeal was over the “district court’s order denying multiple pro se motions seeking sanctions against the Government, to vacate his criminal judgment and revocation judgment, and to grant his 28 U.S.C. § 2255 motion.”

First of all, the Motions for Sanctions that the Panel of this Court of Appeals refers to are:

1. Document #199, Filed October 9, 2019: Motion for Sanctions and to Vacate Judgment in Plaintiff's/Respondent's Favor" "Motion and Brief/Memorandum of Law in Support of Requesting the Honorable Court in this case Vacate Fraudulent Begotten Judgment or Judgments" filed by BRIAN DAVID HILL. Response to Motion due by 10/25/2019.

2. Document #217, Filed November 8, 2019: Request that the U.S. District Court Vacate Fraudulent Begotten Judgment, Vacate the Frauds upon the Court against Brian David Hill", filed by BRIAN DAVID HILL re: 199 Motion. Response to Motion due by 12/2/2019.

3. Document #206, Filed October 6, 2019: Petitioner's Second Motion for Sanctions and to Vacate Judgment that was in Plaintiff's/Respondent's Favor; Motion and Brief/Memorandum of Law in support of Requesting the Honorable Court in this case Vacate Fraudulent begotten Judgment or Judgments" filed by BRIAN DAVID HILL. Response to Motion due by 11/5/2019.

4. Document #222, Filed November 21, 2019: Petitioner's third Motion for

Sanctions, Motion for Default Judgment in 2255 case and to Vacate Judgment that was in Plaintiff/Respondent's favor" filed by BRIAN DAVID HILL.

5. Document #264, Filed November 4, 2020: Motion to Grant Four Pending uncontested Motions" filed by BRIAN DAVID HILL. Response to Motion due by 11/25/2020.

Five of those motions were all denied at one time. Each one had a lot of Exhibits and evidence, and arguments as to why each and every one of them should have been granted.

The Panel should have realized that they had overlooked Appellant's arguments in his INFORMAL OPENING BRIEF in which **Appellant was entitled to relief as a matter of law and therefore constitutes reversible error that the Panel should have ordered and remanded back to the District Court.**

See Table of Authorities under Page 8, Appeal Document #4, and find the entry "Local Rule of Civil Procedure, Middle District of North Carolina, Rule 37" and pages "17, 19, 20, 21, 22, 26" (citations omitted and reformatted). The Authority had a spelling error. It was Rule 7.3, not 37. Pages cite the correct Rule, just the Table of Authorities had a spelling mistake.

The Appeal Brief did cite the proper Local Law/Rules governing Civil Cases, Local Rules apply in Federal case proceedings. There are Local Civil Rules and Local Criminal Rules. Federal Section 2255 Cases are governed under both Criminal and Civil Rules.

**CITATION: RULES GOVERNING SECTION 2255 PROCEEDINGS
FOR THE UNITED STATES DISTRICT COURTS**

Rule 12. Applicability of the Federal Rules of
Civil Procedure and the Federal Rules of Criminal
Procedure.

The Federal Rules of Civil Procedure, to the
extent that they are not inconsistent with any statutory
provisions or these rules, may be applied to a
proceeding under these rules.

So, the Local-Civil-Rule of the M.D.N.C. 7.3, it applies to Motions filed in 2255 cases. The Clerk of the District Court even followed the Local-Rules enforcement and procedures.

If you check the Docket Entries of the Motions for Sanctions, they have a 21-day response “due by” date set by the Clerk, and that was the Clerk enforcing Local Civil Rule 7.3. Document #199 had “Response to Motion due by 10/25/2019.” Document #206 had “Response to Motion due by 11/5/2019.” Document #217 had “Response to Motion due by 12/2/2019”. None of the five foregoing denied motions were ever contested and none of them were responded to in the District Court record. They were uncontested motions. Uncontested motions should be normally granted as a matter of law. There was reversible error.

Page 25 of the INFORMAL OPENING BRIEF (“IOB”), had cited paragraphs of the “LR 7.3 MOTION PRACTICE: MIDDLE DISTRICT OF NORTH CAROLINA”. It said the Local-Civil-Rule has a deadline stipulation that “The respondent, if opposing a motion, shall file a response, including brief, within 21

days after service of the motion”, that deadline of LR 7.3 was enforced by the Clerk who entered Appellants motions asking for Sanctions and vacating fraudulent begotten judgments. The Clerk enforced that rule’s stipulations by making sure to enter a “Response due by” date area for each Document number of a qualifying Motion.

Page 26 of the IOB quoted that entire Local Rule saying “**If a respondent fails to file a response within the time required by this rule, the motion will be considered and decided as an uncontested motion, and ordinarily will be granted** without further notice.” (citation reformatted)

That means the District Court erred/erred in making a decision denying any and all uncontested motions when a paragraph of that very Court’s Local Rule said “ordinarily will be granted without further notice.” That is their law, their rule, and became Local Rule by their own acceptable legal process for making Rules for the District Court as Local Rules enforceable as a matter of law. That alone should have even required reversal of the District Court’s final judgment by the Panel. The District Court violated its own Local Rule by not following nor enforcing its own legally binding Local Rule that was created by the Rule Making Committee of the M.D.N.C.. Court rules have the force of law. See research article: <https://libraryguides.law.marquette.edu/c.php?g=318621>, “Court Rules Research Guide: Home”, “Getting Started: Court Rules”, Eckstein Law Library, Marquette University Law School. Local Rules have the force of law in each respective Federal Judicial District Region. The Local Court Rules only apply to the local Federal

Courts and have no enforcement outside of the Court processes. The motions do have to be under enforcement of the Court's local rules.

The same District Court enforces that rule on Appellant, see Document #142 "Roseboro Letter regarding 141 Motion to Dismiss as to defendant BRIAN DAVID HILL." It said "Therefore, your failure to respond or, if appropriate, to file counter affidavits or evidence in rebuttal within the allowed time may cause the court to conclude that the respondent's contentions are undisputed. As a result, the **court may dismiss your suit or render judgment against you.**" (citation reformatted).

So, if Appellant had not responded to Appellee's Motion to Dismiss the court would consider their Motion to be uncontested, undisputed, and will grant that motion causing Appellant's 2255 case to be dismissed or render judgment against Appellant. Look closely at the Roseboro Letter, it said "Any response or counter affidavits or other **responsive material to a Motion to Dismiss must be filed within 21 days from the date of service** of the respondent's motion upon you." So even that letter enforced the Local-Civil-Rule 7.3(k), (paragraph (f) and (e)). So, if Appellant doesn't respond to Appellee's Motion or contentions, judgment would be rendered against Appellant. However, the District Court erroneously considered Appellant's motions to be entirely meritless for Appellant's Motions and contentions that were undisputed and uncontested. That is a deprivation and sheer violation of the **Amendment V to the United States Constitution, Due Process clause** to unequally enforce Local-Rule 7.3 on Appellant or any counsel he has for his civil/criminal 2255 case for Motion Practice but not enforce that same Rule and its

stipulations on the Government Counsel. The Government is not absolute. Due Process as well as the Constitution of Law and legality requires that the Law apply to everybody equally. Equal protections under the Law. The Local Court-Rules don't have any stipulation stating that U.S. Attorneys/Assistants don't have to follow those rules and don't have to comply with those rules, that only the criminal defendants and civil litigants have to follow the Court Rules and are enforced upon them but not the Counsel of the United States. See article from Western Journal: Exclusive from Gen. Flynn: As Biden Pushes Founders' America to the Brink, Americans Must 'Revisit the Original Plan' <https://www.westernjournal.com/exclusive-gen-flynn-biden-pushes-founders-america-brink-americans-must-revisit-original-plan/> It said “Along with other framers of our nation’s Constitution, **Madison argued for dividing federal power among the three branches of our government — legislative, executive, and judicial.**” It also said from a Constitutional perspective of a well-bred military General Michael Thomas Flynn, that “And what is even less understood is why the Founders adopted a structure that they knew would result in conflict among the branches. In truth, **the constitutional structure was designed not to enhance the efficiency of the government** but to **impede the exercise of raw governmental power and to protect the liberty of the people.**”

District Court and Federal Appellate Courts have forgotten that the **U.S. Attorneys are not GODS, they shouldn't have absolute power over a criminal defendant.** We have laws and limitations on Government power, and Courts should be limiting Government to both a Constitutional and legal confines. The District

Court had not done any of that from 2013, all the way to 2020 in the criminal case of Appellant Brian David Hill, former news reporter of USWGO Alternative News.

Uncontested Motions show the Government defrauding the Court, the Government had lied time and time again, been proven wrong, the Appellant has proven his actual innocence and his false confession to possession of child pornography. The U.S. Attorney Assistant never contested Documents #199, #206, #217, #222, none of the fraud upon the court reasoned Motions for Sanctions by Appellant were ever contested by the officer of the Court. They were undisputed. The Government should not continue holding erroneous fraudulent Supervised Release Violations and fraudulent criminal conviction against Appellant. That is such a blatant and illegal miscarriage of justice by the District Court giving the U.S. Government unlimited power to keep imprisoning Brian David Hill the Appellant over and over again on erroneous and unfounded allegations. Keep shifting the burden of proof to Appellant to try and prove his innocence while the District Court Judge ignores all proof, material witnesses, and anything and everything not favorable to the Government.

Why is the District Court denying any and every motion asking for any relief of a wrongful judgment? Could the District Court be blackmailed or coerced as Attorney L. Lin Wood of Georgia had recently released a statement on January, 2021, claiming that judges and politicians were being placed in a situation at gunpoint being ordered to rape and murder children in front of a video camera and the blackmail tapes were created forcing politicians and judges to do whatever the

blackmailer wanted. He can be contacted at address: L Lin Wood PC, 663 Greenview Avenue NE, Atlanta, GA 30305. Phone: (404) 983-3284. The District Court is supposed to hold Government accountable, hold Government to the exact same laws, Court Rules, and Legal Procedures as that of any other attorney and of that of the citizenry. Allowing the Government and its attorneys to go unchecked by our Courts breeds corruption, criminal behavior and activities, and allowing the Attorneys to lie about the citizens and place the citizens at entire losses of life, liberty, and the pursuit of happiness when Due Process of Law cannot be afforded.

Even if the Panel cannot simply rely on Local Rule 7.3 as justification to reverse the final judgment or order, they could order and remand that the District Court conduct an evidentiary hearing over all claims, evidence, affidavits, briefs for every Motion that was denied asking for sanctions and requesting relief by judgments being undone on the basis of fraud.

This issue of blackout that is brought up as I have been aware of this issue since January of 2021, by Attorney L. Lin Wood's public statements from Twitter Tweets my family made photocopies of. The issue that Federal/State Judges may be blackmailed and set up into this by our Intelligence Agencies with child rape and murder to control them and hold our judiciary hostage and hold our democracy hostage to secret criminal forces through usage of pedophilia and blackmail. That would explain why things are broken in the state/federal legal systems. I hope that the District Court judges are not being blackmailed by child rape and murder videotapes as Attorney L. Lin Wood suggested. Appellant may call for the Judicial

Council to investigate L. Lin Wood's claims to subpoena and determine if any Judges involved in Appellant's cases were ever being blackmailed with child rape and murder videotapes by the Intelligence Agencies. If that is true than it further demonstrates total deprivation and violation of Due Process of Law and a multitude of frauds upon the court by usage of blackmail against the Judiciary by corrupt elements of the United States of America Government. **Disclaimer: Appellant is not the source of such information; L. Lin Wood should be subpoenaed if this court so inquires. Ask him about who may be blackmailed in the District Court and how that may be relevant to Appellant's cases and always losing every case.**

- ii. **This Court should find that the Panel misinterpreted or overlooked the fact that Fraud on the Court is a serious issue and should have ordered and remanded the issue for further evidentiary proceedings, asking the accused, and finding any further evidentiary facts and evidence to justify whether relief may be appropriate.**

Respectfully, this Court should find that the Panel made errors of judgment by overlooking the fact that Appellant brought up serious allegations of fraud by an officer of the court, Assistant U.S. Attorney Anand Prakash Ramaswamy, and with a lot of Exhibits, affidavits, case law, evidence and compelling arguments, the District Court should have further inquired and further developed on whether the issues had enough merit to justify the request for relief in each uncontested Motion for Sanctions.

While the case law on this point is somewhat conflicted over the issues

concerning a valid Motion when cognizable as a “fraud upon the court” under Rule 60(b)(6), there is support for this proposition in the Fourth Circuit:

Courts and authorities agree that “fraud upon the court” must be narrowly construed so that this “otherwise nebulous concept” does not “overwhelm the specific provision of 60(b)(3) and its time limitation and thereby subvert the balance of equities contained in the Rule.” *Great Coastal Express, Inc. v. International Bhd. of Teamsters*, 675 F.2d 1349, 1356 (4th Cir.1982) (citing numerous cases). Because the power to vacate a judgment for fraud upon the court is so free from procedural limitations, it “is limited to fraud that ‘seriously’ affects the integrity of the normal process of adjudication,” 12 James Wm. Moore et al., *Moore's Federal Practice* ¶ 60.21[4] [a] (3d ed. 1999). For example, fraud upon the court includes fraud by bribing a judge, or tampering with a jury, or fraud by an officer of the court, including an attorney. See *id.* ¶ 60.21[4][a], [b].

This Court should find that the Panel made errors by simply not rectifying conflicting issues in the Fourth Circuit regarding “fraud upon the court” and set the case law standard in the Fourth Circuit regarding future fraud upon the court claims by any criminal defendants or civil litigants in 2255 cases. Appellant recommends standard of *Thompson v. Bell*, 373 F.3d 688 (6th Cir. 2004), quoting *Demjanjuk v. Petrovsky*, 10 F.3d 338, 356 (6th Cir. 1993).

IV. CONCLUSION

For the reasons stated above, the Appellant urges this Court to grant his petition for rehearing/rehearing en banc, vacate and/or modify the panel’s opinion

and judgment entered April 27, 2021, re-review over Appellant's Informal Brief filed on December 7, 2020, and vacate the final judgment denying five Motions entered on November 17, 2020.

Respectfully Submitted,
Dated: MAY 6, 2021

BRIAN DAVID HILL
Pro Se

Brian D. Hill
Signed

Brian D. Hill

Brian David Hill – Ally of Qanon
Founder of USWGO Alternative
News
310 Forest Street, Apt. 2
Martinsville, Virginia 24112
(276) 790-3505
Pro Se Appellant

U.S.W.G.O.



CERTIFICATE OF COMPLIANCE

1. This brief complies with type-volume limits because, excluding the parts of the document exempted by Fed. R. App. P. 32(f) (cover page, disclosure statement, table of contents, table of citations, statement regarding oral argument, signature block, certificates of counsel, addendum, attachments):

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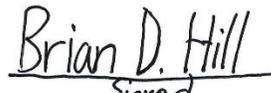
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Dated: May 6, 2021


Signed

Brian D. Hill



Brian David Hill – Ally of Qanon
Founder of USWGO Alternative
News
310 Forest Street, Apt. 2
Martinsville, Virginia 24112
(276) 790-3505

Pro Se Appellant

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this 6th day of May, 2021, I caused this Petition for Rehearing or Rehearing En Banc to be filed with the Clerk of the Court by mailing the foregoing (Certified Mail tracking no. 9402-8368-9523-2917-0081-72) with the Clerk of the Court then request that pursuant to 28 U.S.C. §1915(d) that the Clerk of the Court move to electronically file the foregoing using the CM/ECF system, which will send notice of such filing to the following registered CM/ECF users:

Anand P. Ramaswamy
OFFICE OF THE U.S. ATTORNEY
101 South Edgewater Street, 4th Floor
Greensboro, North Carolina 27401
(336) 333-5351
Anand.Ramaswamy@usdoj.gov

Counsel for Appellee

Angela Hewlett Miller
U.S. Attorney Office
101 South Edgeworth Street, 4th
Floor, Greensboro, NC 27401
(336) 333-5351
angela.miller@usdoj.gov

Counsel for Appellee

John M. Alsup
U.S. Attorney Office
101 South Edgeworth Street, 4th
Floor, Greensboro, NC 27401
(336) 333-5351
john.alsup@usdoj.gov

Counsel for Appellee

Brian D. Hill
Signed

Brian D. Hill

U.S.W.G.O.



Brian David Hill – Ally of Qanon
Founder of USWGO Alternative
News

310 Forest Street, Apt. 2
Martinsville, Virginia 24112
(276) 790-3505

Pro Se Appellant