

March 07, 2003

John Gregory Lambros
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OFFICE OF THE CLERK
Supreme Court of the United States
One First Street, N.E.
Washington, D.C. 20543-0001
U.S. Certified Mail No. 7001-0320-0005-1597-7063

RE: LAMBROS vs. USA, Case No. 02-7346 - MOTION TO JUSTICE CHARENCE THOMAS

Dear Clerk:

Attached please find for filing and delivery to Justice Thomas a copy of "MOTION TO THE HONORABLE SUPREME COURT JUSTICE CLARENCE THOMAS, AS CIRCUIT JUSTICE, TO SUSPEND A PREVIOUS ORDER OF THE SUPREME COURT DENYING CERTIORARI, PENDING ACTION ON THE PETITIONER'S PETITION FOR REHEARING."

PROOF OF SERVICE to this Court and the Office of the Solicitor General is located following page 7 within the above-entitled enclosed motion.

Thank you in advance for your continued assistance in this matter.

Sincerely,



John Gregory Lambros

c:
Office of the Solicitor General, U.S. Department of Justice, Room 5614, 950 Pennsylvania Ave., N.W., Washington, D.C. 20530-0001. Attn: Michael Chertoff, Assistant Attorney General.

File

1.
Ex
file

IN THE SUPREME COURT OF THE UNITED STATES

JOHN GREGORY LAMBROS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MOTION TO THE HONORABLE SUPREME COURT JUSTICE
CLARENCE THOMAS, AS CIRCUIT JUSTICE, TO SUSPEND
A PREVIOUS ORDER OF THE SUPREME COURT DENYING
CERTIORARI, PENDING ACTION ON THE PETITIONER'S
PETITION FOR REHEARING.

JOHN GREGORY LAMBROS, Pro Se
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P.O. Box 1000
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QUESTION PRESENTED

DID THE EIGHTH CIRCUIT ERR IN HOLDING, IN SQUARE CONFLICT WITH DECISIONS OF THIS COURT AND OTHER CIRCUITS, THAT EVERY FEDERAL RULE OF CIVIL PROCEDURE 60(b)(6) MOTION CONSTITUTES PROHIBITED "SECOND OR SUCCESSIVE" HABEAS PETITION AS A MATTER OF LAW? **

** Note: On April 22, 2002, this Court granted certiorari to review the above question in ABU-ALI ABDUR'RAHMAN vs. RICKY BELL, WARDEN, No. 01-9094:

- (1) Did Sixth Circuit err in holding, in square conflict with decisions of this court and other circuits, that every Fed.R.Civ.P. 60(b) motion constitutes prohibited "second or successive" habeas petition as matter of law?

On December 10, 2002, this Court, Per Curiam, dismissed ABU-ALI ABDUR'RAHMAN vs. RICKY BELL, WARDEN, No. 01-9094, stating "The writ of certiorari is dismissed as improvidently granted." JUSTICE STEVENS, dissenting, stating:

The Court's decision to dismiss the writ of certiorari as improvidently granted presumably is motivated, at least in part, by the view that the jurisdictional issues presented by this case do not admit of an easy resolution. I do not share that view. Moreover, I believe we have an obligation to provide needed clarification concerning an important issue that has generated confusion among the federal courts, namely, the availability of Federal Rule of Civil Procedure 60(b) motions to challenge the integrity of final orders entered in habeas corpus proceedings. I therefore respectfully dissent from the Court's disposition of the case."

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OPINION BELOW

The decision of the court of appeals is unpublished, but is reported
at 40 Fed. Appx. 316.

JURISDICTION

The judgment of the court of appeals was entered on July 1, 2002. A
petition for rehearing was denied on August 22, 2002. The petition for a writ

of certiorari was filed on November 1, 2002. The Solicitor General responded in brief for the United States in opposition on January 13, 2003. Petitioner Lambros' response brief to the United States was filed on January 30, 2003 and received by the Clerk on February 10, 2003. On February 13, 2003, Clerk Christopher W. Vasil for William K. Suter returned petitioner's reply brief, as it exceeded the fifteen (15) page limitation set out in Rule 33.2(b). **APPENDIX B.** On February 19, 2003, Petitioner received Clerk Vasil's letter dated February 13, 2003 with petitioner's reply brief. On February 20, 2003, petitioner wrote Clerk Vasil as to receipt of his February 13, 2003 letter and petitioner's intent to eliminate paragraphs within his reply brief and have same back in the mail to this court by February 25 or 26, 2003. **APPENDIX C.** Petitioner finished the revisions of his reply brief, as to Rule 33.2(b), on February 22, 2003 and filed same from the United States Penitentiary Leavenworth mailroom on February 25, 2003. **APPENDIX D.** On February 24, 2003, this court entered the order denying petitioner's writ of certiorari. **APPENDIX A.** This court's jurisdiction is invoked under 28 U.S.C. § 1254 and Rule 23 of this Court. See, RICHMOND vs. ARIZONA, 434 US 1323, 54 L.Ed. 2d 34 (1977) ("A motion for rehearing of an order denying certiorari does not automatically suspend the order during the Term, unlike a petition for rehearing after full consideration of the case on the merits. The petitioner must apply to an individual Justice for a suspension of the order denying certiorari." Id. at 37) (emphasis added).

STATEMENT

Petitioner LAMBROS, Pro Se, is requesting the Honorable United States Supreme Court Justice CLARENCE THOMAS, as circuit justice for the Eighth Circuit, to suspend this court's February 24, 2003, DENIAL of petitioner's writ of certiorari, pending action on petitioner's petition for rehearing. See, RICHMOND, 54 L.Ed.2d at 34 (1977).

JOHN GREGORY LAMBROS, declares under the penalty of perjury:

1. I am the Petitioner in the above-entitled action. I make this declaration in opposition to this court's February 24, 2003, denial of petitioner's writ of certiorari.

2. Petitioner has reviewed the annotation as to "STAY OR INJUNCTION-INDIVIDUAL JUSTICE" at 24 L.Ed.2d 925 (1970), as to Considerations Affecting Grant Or Vacation Of Stay Or Injunction By Individual Justice Of Supreme Court by Jerald J. Director, J.D., and believes the following particular factors exist in allowing the suspension of this courts February 24, 2003 ORDER:

a. Likelihood of review by full Supreme Court. The question petitioner presented to the court met at least four (4) members of the Supreme Court's approval as of sufficient substance to warrant argument to determine thier merit on April 22, 2002, in ABU-ALI ABDUR'RAHMAN vs. RICKY BELL, WARDEN, No. 01-9094, 154 L.Ed.2d 501 (December 10, 2002). Justice STEVENS, dissenting, stated that "The Court's decision to dismiss the writ of certiorari as improvidently granted presumably is motivated, at least in part, by the view that the jurisdictional issues presented by this case do not admit of an easy resolution. I do not share that view." Id. at 501. It appears that the Sixth Circuit did not have jurisdiction to review ABDUR'RAHMAN case. Petitioner Lambros presented the same question to this court as ABDUR'RAMAN and differed only by a difference in circuits, his being the Sixth, and petitioner's was the Eighth, and by "(6)." In other words, he cited Rule 60(b), while petitioner cited Rule 60(b)(6). The substantive difference in the context of the instant matter is negligible.

b. Justice STEVENS stated in his dissent in ABDUR'RAMAN:

"Moreover, I believe we have an obligation to provide needed clarification concerning an important issue that has generated confusion among the federal courts, namely, the availability of Federal Rule of Civil Procedure 60(b) motions to challenge the integrity of final orders entered in habeas corpus proceedings." Id. at 501

"Whether one ultimately agrees or disagrees with that submission, it had sufficient arguable merit to persuade at least four Members of this Court to grant certiorari petition." Id. at 506.

c. Injury to be suffered from the denial of stay; balancing of equities. Petitioner believes "irreparable injury," or "irreparable harm," or the like, or simply "balancing of the equities," exist in this action as to the violations of Title 28 U.S.C.A. §§ 455(a) and 455(b)(3) by Judge Renner and Magistrate Judge Franklin Linwood Noel. This court stated in LILJEBERG vs. HEALTH SERVICES CORP., 486 US 847, 864, 100 L.Ed.2d 855, 875 (1988):

"We conclude that in determining whether a judgment should be vacated for violation of § 455(a), it is appropriate to consider the risk of injustice to the parties in the particular case, the risk that the denial of relief will produce injustice in other cases, and the risk of undermining the public's confidence in the judicial process. We must continuously bear in mind that "to perform its high function in the best way 'justice must satisfy the appearance of justice.'" Id. at 875.

d. Importance of question raised. This court and Justice STEVENS in his dissent in ABDUR'RAMAN have illustrated the importance in addressing the question petitioner presents. Justice BLACK in ODEN vs. BRITTAIN, 396 US 120, 24 L.Ed.2d 32 (1969), as Circuit Justice, pointed out that since the problem was substantial and there was room for disagreement, he would deny the application without prejudice to the rights of the applicants to request relief from other members of the Supreme Court. Petitioner would greatly appreciate Justice STEVENS joint signature in this requested action.

e. Conflict among courts. This petitioner has illustrated the current conflict among the courts and this Court's ruling in LILJEBERG, 100 L.Ed.2d at 856, "(3) Rule 60(b)(6) relief from final judgment is neither categorically available nor categorically unavailable for all violations of § 455." Also see, RODRIGUEZ vs. MITCHELL, 252 F.3d 191 (2nd Cir. 2001)(clearly a criminal case allowing a motion under Rule 60(b) to vacate judgment denying habeas, stating it is not equivalent of second or successive habeas petition.); THOMPSON vs. CALDERSON, 151 F.3d 918, 920 & n.3 (9th Cir. 1998)(en banc)(recognizing that

"bright line rule equating all Rule 60(b) motions with successive habeas petitions would be improper" and citing, as "but one example," situation in which "State's misconduct prevented the defendant from testing potentially exculpatory evidence which might provide the information necessary to assert a factual predicate for a successive petition ... [and] [t]hus ... it would be unfair and incongruent to treat RULE 60(b)(3) motion as functionally equivalent to a successive petition"); U.S. vs. MacDONALD, 1998 U.S. App. LEXIS 22073, at *7 - *9 (4th Cir. Sept. 8, 1998) (per curiam)(recognizing practice of treating Rule 60(b) motions as successive petitions BUT SPECIFICALLY EXEMPTING RULE 60(b)(6) MOTIONS "asserting that a prior petition had been denied based on fraud, unless the grounds for fraud themselves should have been raised in an earlier proceeding"; "the Government cites no case, before or after the AEDPA, in which a defendant's claims of fraud upon the court under RULE 60(b)(6) were found to be barred under the abuse of the writ doctrine"). The Fifth Circuit quoted MacDONALD in FIERRO vs. JOHNSON, 197 F.3d 147, 151 n.6 (5th Cir. 1999)("actions alleging fraud upon the court ... attack the validity of a prior judgment, based on the theory that 'a decision produced by fraud on the court is not in essence a decision at all and NEVER BECAME FINAL.' Id...(quoting 11 Wright and Miller, Federal Practice and Procedure §2870 at 409 (1995)(reserving question whether circuit's general rule treating Rule 60 motions as successive petitions should be deemed inapplicable when motion is based on allegation of fraud upon court). (emphasis added).

3. Petitioner Lambros has attached copy of his revised REPLY BRIEF to the government, APPENDIX D, as it was mailed/filed from Leavenworth Penitentiary on February 25, 2003 and this Court issued an ORDER denying petitioner's writ of certiorari on February 24, 2003. Petitioner believes the Clerk will return his REPLY BRIEF due to this Court's February 25, 2003, ORDER. Therefore, not allowing review of same.

ARGUMENT

4. Petitioner Lambros suggest the following new reasons why this Court's initial decision to deny certiorari was wrong:

a. Petitioner incorporates paragraphs 1 thru 3, as herein stated.

b. Petitioner incorporates his February 22, 2003, filed February 25, 2003, REPLY BRIEF to the Government's Brief in Opposition. **APPENDIX D.** The government's brief in opposition offers misstatement of fact and law and bears on the issue presented by petitioner. Petitioner has an obligation to this Court to point out misstatements made by the government.

c. Petitioner has met the mandatory requirements of Title 28 USC §455(a) concerning the APPEARANCE OF BIAS OR PREJUDICE, by reasonable persons knowing all of the facts and circumstances, as required in LITEKY vs. U.S., 510 US 540, 548, 127 L.Ed.2d 474 (1994); SAO PAULO STATE OF THE FEDERATIVE REPUBLIC OF BRAZIL vs. AMERICAN TOBACCO CO, INC., 535 US 229, 152 L.Ed.2d 346 (2002); and LILJEBERG, by offering a list of sixty-seven (67) citizens of the United States of America, AFTER reviewing and identifying the facts within this action, to conclude that an objective observer has questioned Judge Renner's impartiality toward Petitioner Lambros on February 10, 1997 and all proceedings thereafter, where Judge Renner was the responsible U.S. Attorney who investigated, signed indictments in criminal actions and prosecuted petitioner in 1975 and 1976. All sixty-seven (67) citizen have signed a petition as to same. Please see, **APPENDIX D**, Pages nine (9) and ten (10).

CONCLUSION

5. The failure of the federal district court and the Eighth Circuit Court of Appeals to consider the merits and hold an evidentiary hearing for the purpose of deciding issues of fact as to petitioner's claims of Title 28 USCA §§

455(a) and 455(b)(3) by Judge Renner and Magistrate Judge Noel under the construction and application of Rule 60(b)(6) of the Federal Rules of Civil Procedure, under the standards in LILJEBERG, was the result of the Court's misunderstanding of this Court's holding in LILJEBERG, "[R]elief from final judgment 'for any other reason,' pursuant to Rule 60(b)(6) of the Federal Rules of Civil Procedure, is neither categorically available nor categorically unavailable for ALL VIOLATIONS OF 28 USCA §455, which defines the circumstances that mandate the disqualification of federal judges; in determining whether a judgment should be vacated for a violation of §455." (emphasis added), and the application of Rule 60(b)(6).

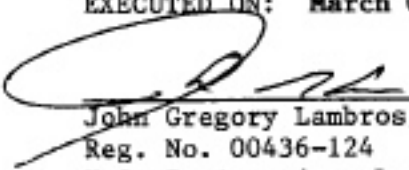
6. The Eighth Circuit's current position that "EVERY RULE 60(b)(6) and RULE 60(b) MOTION IS THE FUNCTIONAL EQUIVALENT OF A SECOND PETITION FOR A WRIT HABEAS CORPUS" must be clarified by this court, as it is also generating confusion among the circuits. See, BOLDER vs. ARMONTROUT, 983 F.2d 98, 99 (8th Cir. 1993) and BLAIR vs. ARMONTROUT, 976 F.2d 1130, 1134 (8th Cir. 1992).

7. Petitioner Lambros is requesting the Honorable United States Supreme Court Justice CLARENCE THOMAS, as circuit justice for the Eighth Circuit, to suspend this courts February 24, 2003, denial of petitioner's writ of certiorari, pending action on petitioner's petition for rehearing, as to the question:

"DID THE EIGHTH CIRCUIT ERR IN HOLDING, IN SQUARE CONFLICT WITH DECISIONS OF THIS COURT AND OTHER CIRCUITS, THAT EVERY FEDERAL RULE OF CIVIL PROCEDURE 60(b)(6) MOTION CONSTITUTES PROHIBITED "SECOND OR SUCCESSIVE" HABEAS PETITION AS A MATTER OF LAW?"

8. I, JOHN GREGORY LAMBROS, declare under the penalty of perjury that the foregoing is true and correct. Title 28 U.S.C.A. § 1746.

EXECUTED ON: March 07, 2003


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IN THE SUPREME COURT OF THE UNITED STATES

JOHN GREGORY LAMBROS, Petitioner,

vs.

UNITED STATES OF AMERICA

PROOF OF SERVICE

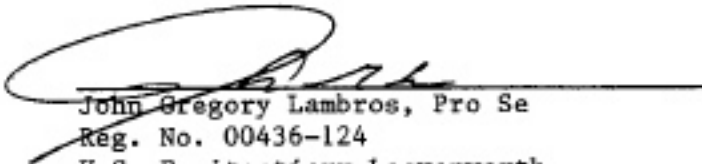
I, JOHN GREGORY LAMBROS, do swear or declare that on this date, **MARCH 07, 2003**, as required by Supreme Court Rule 29 I have served the enclosed "MOTION TO THE HONORABLE SUPREME COURT JUSTICE CLARENCE THOMAS, AS CIRCUIT JUSTICE, TO SUSPEND A PREVIOUS ORDER OF THE SUPREME COURT DENYING CERTIORARI, PENDING ACTION ON THE PETITIONER'S PETITION FOR REHEARING," on each party to the above proceeding or that party's counsel, containing the above documents in the United States Mail properly addressed to each of them with first-class postage prepaid.

The names and addresses of those served are as follows:

1. Office of the Clerk, Supreme Court of the United States, One First Street, N.E., Washington, D.C. 20543-0001; U.S. Certified Mail No. 7001-0320-0005-1597-7063
2. Michael Chertoff, Assistant Attorney General, Office of the Solicitor General, U.S. Department of Justice, Room 5614, 950 Pennsylvania Ave., N.W., Washington, D.C. 20530-0001

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED ON: **March 07, 2003**


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INDEX TO APPENDICES

- APPENDIX A:** February 24, 2003, ORDER from United States Supreme Court Clerk W.K. Suter as to the denial of Petitioner Lambros' writ of certiorari in this action.
- APPENDIX B:** February 13, 2003, letter from Supreme Court of the United States Clerk Suter, by Christopher W. Vasil to Petitioner Lambros.
- APPENDIX C:** February 20, 2003, letter from Petitioner Lambros to Supreme Court of the United States Clerk Christopher W. Vasil.
- APPENDIX D:** February 22, 2003, filed February 25, 2003, "Petitioner Lambros' RESPONSE BRIEF to Brief For United States in Opposition, Dated January 13, 2003."