May 17, 2005

John Gregory Lambros
Reg. No. 00436-124
U.S. Penitentiary Leavenworth
P.O. Box 1000
Leavenworth, Kansas 66048-1000

**CLERK**
Supreme Court of the United States
Washington, D.C. 20543
**U.S. CERTIFIED MAIL NO. 7003-3110-0005-5772-2472**

Dear Clerk:

Attached for **FILING** is one (1) original of the following documents:

1. MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS;

2. AFFIDAVIT AND DECLARATION IN SUPPORT OF THE MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS;

3. PETITION FOR A WRIT OF CERTIORARI;

4. PROOF OF SERVICE.

Please note that I am an inmate confined in an institution and not represented by counsel.

Thank you in advance for your consideration in this matter.

Sincerely,

John Gregory Lambros, Pro Se

**CERTIFICATE OF SERVICE**

I declare under the penalty of perjury that a true and correct copy of the above listed documents/motions was mailed within a stamped addressed envelope from the U.S.P. Leavenworth Mailroom on this 17th **DAY OF MAY, 2005,** to:

1. Clerk, Supreme Court of the U.S., as addressed above;
2. Office of the Solicitor General, U.S. Department of Justice, Room 5614, 950 Pennsylvania Avenue, N.W., Washington, DC 20530-0001.

John Gregory Lambros, Pro Se

CASE No. 04-1070

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IN THE SUPREME COURT OF

THE UNITED STATES

October Term, 2005

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JOHN GREGORY LAMBROS

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

---

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

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# PETITION FOR A WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

### I.

**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) MOTION CONSTITUTES A PROHIBITED "SECOND OR SUCCESSIVE" HABEAS PETITION WHEN REQUESTING RELIEF DUE TO A CHANGE IN THE LAW? ****

### II.

**DID THE EIGHTH CIRUCIT ERR IN HOLDING, IN SQUARE CONFLICT WITH DECISIONS OF THIS COURT AND OTHER CIRCUITS, THAT EVERY FEDERAL RULE OF CIVIL PROCEDURE 60(b)(1), (b)(5), AND (b)(6) MOTION CONSTITUTES A PROHIBITED "SECOND OR SUCCESSIVE" HABEAS PETITION AS A MATTER OF LAW WHEN USED TO CURE PROCEDURAL VIOLATIONS OF TITLE 28 U.S.C.A. §§ 455(a) AND 455(b)(3) IN AN EARLIER PROCEEDING - HERE, A PROCEEDING THAT RAISE QUESTIONS ABOUT THAT PROCEEDING'S INTEGRITY? ****

** **NOTE:** On January 14, 2005, this Court granted certiorari to review the following question in GONZALEZ vs. CROSBY, No. 04-6432 and conducted a hearing on April 25, 2005:

> (1) Did court of appeals err in holding that every Rule 60(b) motion (other than for fraud under (b)(3)) constitutes prohibited "second or successive" petition as matter of law, in square conflict with decisions of the court and other circuits?

## LIST OF PARTIES

[xx] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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5.

## INDEX TO APPENDICES

## TABLE OF AUTHORITIES CITED

**TABLE OF STATUTES:**



**FEDERAL RULES OF CIVIL PROCEDURE:**

**FEDERAL RULES OF CRIMINAL PROCEDURE:**



**UNITED STATES SENTENCING GUIDELINES (U.S.S.G.):**



**PUBLICATIONS:**



**UNITED STATES SENATE:**

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

## OPINIONS BELOW

[XXX] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix **A** to the petition and is **Appendix A is the April 13, 2005, denial of Certificate of appealability and appeal.**

[ ] reported at _____; or,

[XXX] has been designated for publication but is not yet reported; or, **(Eighth Circuit No. 04-1559)**

[ ] is unpublished.

The opinion of the United States district court appears at Appendix **B, C, D** to the petition and is **Appendix B is February 20, 2004 DENIAL OF COA. Appendix C is November 6, 2003, DENIAL of Fed. R. Civ. P. 59(e). Appendix D is October 23, 2003, DENIAL OF Fed.R.Civ. P. 60(b) Motion.**

[ ] reported at _____; or,

[ ] has been designated for publication but is not yet reported; or,

[XXX] is unpublished. **District of Minnesota, Criminal No. 4-89-82(5)(DSD) and Civil No. 99-28(DSD)**

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

## JURISDICTION

[xxx] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was **April 13, 2005.**

[xxx] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts:**

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).



12.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Title 28 U.S.C.A. § 455(a) and § 455(b)(3) and Federal Rule of Civil Procedure 60(b) - Sections One (1), Five (5), and Six (6).

CONSTITUTIONAL LAW: Due process requires that Petitioner Lambros be sentenced by an impartial judge. CHAPMAN vs. CALIFORNIA, 17 L.Ed.2d 705, 710, n.8 (1967). Quoting, TUMEY vs. OHIO, 273 US 510, 71 L.Ed. 749 (1927). ("... there are some constitutional rights so basic to a fair trial that their infraction can never be treated as harmless error." Id. at 710).

The preclusion of a possibility for relief under Rule 60(b) in which the judge's impartiality "might reasonably be questioned" amounts to a denial of due process and an unconstitutional suspension of the writ. LILJEBERG vs. HEALTH SERVICES CORP., 486 US 847, 100 L.Ed.2d 855, 108 S.Ct. 2194 (1988)(Held: "(3) Rule 60(b)(6) relief from a final judgment is neither categorically available nor categorically unavailable for all violations of § 455;")

## STATEMENT OF THE CASE

1. The underlying focus of this case challenges the integrity of the federal district court at Petitioner LAMBROS' (hereinafter Movant) resentencing and does not challenge the constitutionality of Movant's underlying conviction.

2. From 1969 thru 1977, Robert G. Renner held the position of U.S. Attorney in Minnesota, during which time he indicted and prosecuted Movant Lambros on three (3) criminal proceedings, as per his statutory duty, Title 28 U.S.C. §547, as other attorneys within his office are only assistants, 28 U.S.C. §§ 542 and 543. See, U.S. vs. ARNPRIESTER, 37 F.3d 466, 467 (9th Cir. 1994). U.S. Attorney Renner personally signed two (2) of the indictments against Movant Lambros.

3. On March 24, 1976, U.S. Attorney Renner indicted Movant Lambros in Criminal File No. CR-3-76-17 for violations of Title 18 U.S.C. Sections 111 and 114. Movant Lambros was illegally indicted and sentenced on June 21, 1976, as the crime did not occur on federal property. U.S. Attorney Renner falsified documents to the U.S. Court of Appeals for the Eighth Circuit, stating that Movant Lambros was indicted and plead guilty to violations of Title 18 U.S.C. 111 and 1114, not 114 as stated in the indictment. See, U.S. vs. LAMBROS, 614 F.2d 179, 180 (8th Cir. 1980). U.S. Attorney Renner used illegal indictment CR-3-76-17 to leverage a negotiated plea of guilty from Movant Lambros on unrelated charges. See, U.S. vs. LAMBROS, 544 F.2d 962 (8th Cir. 1976).

4. Movant Lambros was indicted in May 1989 of multiple counts stemming from an alleged cocaine conspiracy, U.S. vs. LAMBROS, Criminal File No. 4-89-82(5), District of Minnesota.

5. Movant Lambros was arrested in May 1991 and convicted of all four counts in January 1993. Movant Lambros received concurrent sentences on life without parole on Count I, ten years each on Counts II and III, and thirty years on Count IV. Senior District Court Judge Diana E. Murphy sentenced Lambros.

6. On September 8, 1995, the United States Court of Appeals for the Eighth Circuit vacated and remanded on Count I, the life sentence without parole. See, U.S. vs. LAMBROS, 65 F.3d 698 (8th Cir. 1995).

7. On February 10, 1997, the now Honorable Robert G. Renner RESENTENCED Movant Lambros, as per the order of the Eighth Circuit, to an **ENHANCED SENTENCE** based on the three (3) criminal indictments he indicted Movant Lambros on in 1975 and 1976, including ILLEGAL INDICTMENT CR-3-76-17.

8. On or about April 24, 2001, Petitioner Lambros filed his "MOTION TO VACATE ALL JUDGMENTS AND ORDERS BY UNITED STATES DISTRICT COURT JUDGE ROBERT G. RENNER **PURSUANT TO RULE 60(b)(6)** OF THE FEDERAL RULES OF CIVIL PROCEDURE FOR **VIOLATIONS OF TITLE 28 U.S.C.A. § 455,**" as per the direction of LILJEBERG vs. HEALTH SERVICES CORP., 486 U.S. 847, 100 L.Ed.2d 855, 108 S.Ct. 2194 (1988) (Rule **60(b)(6)** relief from final judgment is neither categorically available nor categorically unavailable for all violations of **§ 455** ..... a court, in making such a determination, must continuously bear in mind that, in order to perform its function in the best way, JUSTICE MUST SATISFY THE APPEARANCE OF JUSTICE; ....) LILJEBERG, 100 L.Ed.2d at 856-857. (emphasis added)

9. On March 08, 2002, Judge Doty, ORDERED, that Petitioner Lambros' **RULE 60(b)(6)** be treated as a petition pursuant to 28 U.S.C. § 2255:

> "Although petitioner purports to bring this motion under Rule 60(b)(6) of the Federal Rules of Civil Procedure, the court concludes **THAT IT MUST BE TREATED AS A PETITION PURSUANT TO 28 U.S.C. § 2255** since Lambros is attempting to collaterally attack his conviction and sentence. See, BOLDER vs. ARMONTROUT, 983 F.2d 98, 99 (8th Cir. 1993); BLAIR vs. ARMONTROUT, 976 F.2d 1130, 1134 (8th Cir. 1992)." (emphasis added)

See, March 08, 2002, ORDER, Judge Doty, Page 3, **APPENDIX I.**

10. Judge Doty erred within his March 08, 2002, ORDER, as he believed that BOLDER and BLAIR stated that every Fed.R.Civ.P. 60(b) Motion conststituted a prohibited "Second or Successive" habeas petition as matter of law within the

Eighth Circuit.

11. On April 22, 2002, the United States Supreme Court GRANTED CERTIORARI on ABDUR'RAHMAN vs. BELL, Warden, #01-9094, limited to Questions 1 and 2:

> (1) Did the 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? (emphasis added)
>
> (2) Does court of appeals abuse its discretion in refusing to permit consideration of vital intervening legal development when failure to do so precludes habeas petitioner from ever receiving any adjudication of his claim on merits?

12. On May 29, 2002, Judge Doty ORDERED that Petitioner Lambros' request for a CERTIFICATE OF APPEALABILITY (COA) regarding the court's lack of jurisdiction over Petitioner Lambros' motion pursuant to **Rule 60(b)(6)**, which the court construed as a successive section 2255 motion, be denied. Judge Doty was REQUIRED BY LAW TO GRANT PETITIONER LAMBROS' CERTIFICATE OF APPEALABITY, as other higher courts (See paragraph 11) had reached conflicting views suffice to require the certification of an appeal. See, LYNCE vs. MATHIS, 117 S.Ct. 891, 893 (1997) (although district court and court of appeals denied certificate of probable cause to appeal based on insubstantiality of claim under circuit precedent, Supreme Court grants CERTIORARI based on conflicting decision of different circuits (thus, implicitly, certifying appealability), and, upon review, grants habeas corpus relief). See also, FEDERAL HABEAS CORPUS PRACTICE AND PROCEDURE, Fourth Edition 2001, by Randy Hertz and James S. Lieman, Professors of Law, who state, "Among other identifiable reasons for granting a certificate are the following: (Pages 1590 & 1591)

> (1) The United States Supreme Court has **GRANTED CERTIORARI TO REVIEW A 'SIMILAR' QUESTION IN ANOTHER CASE.** (emphasis added)

(FootNote 66 on Page 1590 offers a listing of cases to support the above) See, **APPENDIX H** (May 29, 2002, ORDER).

13. I believe it is important to note that the Second Circuit Court of Appeals believed that the Eighth Circuit's position when considering Rule 60(b) motions motions to vacate a judgment was that EVERY 60(b) motion **MUST** be treated as a second or successive habeas petiton. See, RODRIGUEZ vs. MITCHELL, 252 F.3d 191, 200 FootNote 2 (2nd Cir. 2001)("BLAIR vs. ARMONTROUT, 976 F.2d 1130, 1134 (8th Cir. 1992)(holding that a '**Rule 60(b)(6) motion** [i]s the functional equivalent of a second petition for a writ of habeas corpus'").

14. On or about June 11, 2002, Petitioner Lambros filed his MOTION FOR ISSUANCE OF CERTIFICATE OF APPEALABILITY BY THE EIGHTH CIRCUIT COURT OF APPEALS. Petitioner Lambros informed the Eighth Circuit as to the April 22, 2002, United States Supreme Court's grant of certiorari on the very same question Petitioner Lambros was denied on within the District Court, "that every Fed.R.Civ.P. 60(b) motion constitutes a prohibited 'second or successive' habeas petition as matter of law." See, ABDUR'RAHMAN vs. BELL, Warden, #01-9094.

15. On July 1, 2002, the Eighth Circuit, affirmed the judgment of the district court stating:

> "John Gregory Lambros appeals the district court's denial of his motion under Federal Rule of Civil Procedure **60(b)(6).** For the reasons stated by the district court, the judgment is affirmed. See 8th Cir.R. 47B." (emphasis added)

See, **APPENDIX G.** It is important to keep in mind that the Eighth Circuit denied Petitioner's " ... **60(b)(6).** For the REASONS STATED BY THE DISTRICT COURT, ..." (emphasis added) Please review paragraphs nine (9), ten (10), eleven (11), and twelve (12) in this section.

16. On August 22, 2002, the United States Court of Appeals for the Eighth Circuit issued an ORDER denying Petitioner Lambros' Petition for Rehearing and for Rehearing En Banc. See, **APPENDIX F.**

17. On or about November 01, 2002, Petitioner Lambros filed his PETITION FOR A WRIT OF CERTIORARI, No. 02-7346, and presented the following

question to this court:

> "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?"

18. FINAL JUDGMENT HAD NOT BEEN ENTERED IN PETITIONER LAMBROS' CRIMINAL ACTION: Please note that FINAL JUDGMENT had not been entered and the case was still pending in the United States Supreme Court as to the Honorable Robert G. Renner's RESENTENCING of Petitioner Lambros on February 10, 1997. The following facts exist:

a. February 1, 2001, the Eighth Circuit Court of Appeals DENIED Petitioner Lambros' "PETITION FOR REHEARING" in Appeal No.'s 99-2768 and 99-2880;

b. Petitioner Lambros' April 13, 2001, filed April 24, 2001, "MOTION TO VACATE ALL JUDGMENTS AND ORDERS BY DISTRICT COURT JUDGE ROBERT G. RENNER PURSUANT TO RULE 60(b)(6) OF THE FEDERAL RULES OF CIVIL PROCEDURE FOR VIOLATIONS OF TITLE 28 U.S.C.A. **SECTION 455;**"

c. May 02, 2001, Petitioner Lambros' court appointed attorney, Maureen Williams, submitted Petitioner Lambros' WRIT OF CERTIORARI to this court raising issues as to the RESENTENCING OF PETITIONER LAMBROS ON FEBRUARY 10, 1997. This Court denied same on June 04, 2001, in LAMBROS vs. USA, No. 00-9751.

d. Petitioner Lambros filed his **RULE 60(b)(6) MOTION BEFORE FINAL JUDGMENT WAS ENTERED IN HIS CRIMINAL ACTION.**

e. In LILJEBERG vs. HEALTH SERVICES CORP., 100 L.Ed.2d 855 (1988), the basis for the **SECTION 455(a)** claim was discovered ten (10) months **AFTER** the district court judgment had been affirmed on appeal and the litigation terminated. Petitioner moved pursuant to Fed.R.Civ.P. 60(b)(6) in LILJEBERG.

f. This court held, "... that appellate leave was not required before a Federal Court could reopen a case which had been reviewed on appeal in order for the District Court to entertain a motion under Rule 60(b)." See, STANDARD

OIL COMPANY OF CALIFORNIA vs. U.S., 429 US 17, 50 L.Ed.2d 21, 97 S.Ct. 31 (1976). Also, LSLJ PARTNERSHIP vs. FRITO-LAY, INC., 920 F.2d 476 (7th Cir. 1990)(...holding that a district court could entertain a Rule 60(b) motion without leave from the Supreme Court. Id. at 478).

19. On December 10, 2002, the Supreme Court **DISMISSED** the writ of certiorari as "IMPROVIDENTLY GRANTED," in ABDUR'RAHMAN vs. BELL, 154 L.Ed.2d 501 (2002). Justice STEVEN offered his opinion as to the DISTINCTION BETWEEN a **Rule 60(b) MOTION** and a "second or successive" habeas corpus petition:

> "In sum, a 'second or successive' habeas corpus petition, like all habeas corpus petitions, is meant to remedy constitutional violations (albeit ones which arise out of facts discovered or laws evolved after an initial habeas corpus proceeding), while a **RULE 60(b) MOTION** is designed to **CURE PROCEDURAL VIOLATIONS IN AN EARLIER PROCEEDING** - here, a habeas corpus proceeding - that raise questions about the proceeding's integrity." (emphasis added)

See, ABDUR'RAHMAN vs. BELL, 154 L.Ed.2d 501, 505 (2002).

20. On February 24, 2003, the U.S. Supreme Court DENIED Petitioner Lambros' writ of certiorari. See, **APPENDIX E.** (February 24, 2003, LAMBROS vs. USA, No. 02-7346 and 154 L.Ed.2d 1032 (2003)).

21. On May 20, 2003, Petitioner Lambros filed with the District Court for the District of Minnesota, in this action, Civil No. 99-28(DSD), Criminal No. 4-89-82(5), a "MOTION TO VACATE JUDGMENT DUE TO INTERVENING CHANGE IN CONTROLLING LAW UNDER ANY ONE OF THREE SEPARATE SUBSECTIONS OF FEDERAL RULES OF CIVIL PROCEDURE 60(b) - SECTIONS ONE (1), FIVE (5), AND SIX (6)." The underlying argument to this motion was the assumption that MILLER-EL vs. COCKRELL, 154 L.Ed.2d 931 (February 25, 2003) AMOUNTED TO AN INTERVENING CHANGE IN CONTROLLING LAW. Please note that the U.S. Supreme Court issued the final order for denial of REHEARING on **April 21, 2003,** in LAMBROS vs. USA, File No. 02-7346. Therefore, MILLER-EL vs. COCKRELL was ruled on **BEFORE** final judgment was issued in this action by the Supreme Court and retroactivity is not an issue in this action. BRADLEY vs. RICHMOND SCHOOL

BOARD, 416 U.S. 696, 714; 40 L.Ed.2d 476, 489-490 (1974)(Court has duty to apply supervening rule of law despite its prior decisions to the contrary when the new legal rule is valid and applicable to the issues of the case.); THE SCHOONER PEGGY, 5 U.S. (1 Cranch) 103, 2 L.Ed. 49 (1801)(a court will apply the new rule even if it was announced while the case is on appeal.). The Eighth Circuit and other courts have stated "A CHANGE IN THE LAW CAN IN APPROPRIATE CIRCUMSTANCES BE THE BASIS FOR **RULE 60(b) RELIEF**." (emphasis added) See, BENSON vs. ARMONTROUT, 767 F.2d 454, 455 (8th Cir. 1985); COX vs. WYRICK, 873 F.2d 200, Head Note 1, (8th Cir. 1989); BEN HUR CONST. CO. vs. GOODWIN, 116 F.R.D. 281, affirmed, 855 F.2d 859 (8th Cir. 1988)(Decisions of the Supreme Court of the U.S. or U.S. Court of Appeals may provide extraordinary circumstances for granting relief from judgment under **RULE 60(b)(6) DUE TO CHANGE IN LAW**). (emphasis added).

22. As stated above, Petitioner Lambros May 20, 2003 RULE 60(b) Motion was due to this Court's CLARIFICATION of the standards to be used by the district court and the appeal courts' when issuing a CERTIFICATE OF APPEALABILTIY (COA). See, MILLER-EL vs. COCKRELL, 154 L.Ed.2d 931 (February 25, 2003):

> "Distict Court **DID NOT** give full consideration to the substantial evidence petitioner put forth in support of the prima facie case. Instead, it accepted without question the state court's evaluation of the demeanor of the prosecutor and jurors in petitioner's trial. The Court of Appeals evaluated Miller-El's application for a COA in the same way. ..... THIS WAS TOO DEMANDING A STANDARD ON MORE THAN ONE LEVEL. .... As we have said, a COA determination is a separate proceeding, on distinct from the underlying merits. ... In this case, the statistical evidence **ALONE** raises some debate as to whether the prosecution acted with a race-based reason when striking prospective jurors." Id. at 953. (emphasis added)
>
> "The COA inquiry asks only if the District Court's decision was DEBATABLE." Id. at 957. (emphasis added)

23. Both the District Court and the Eighth Circuit Court of Appeals used the incorrect and/or too demanding of standard in evaluating Petitioner Lambros' Certificate of Appealability (COA), as the following identifiable reasons guaranteed Petitioner Lambros a COA, that was not granted:

a. The United States Supreme Court had granted certiorari to review a "similar" question in another case;

b. The Supreme Court or the relevant circuit court had identified the question as open, unresolved, or a matter of disagreement amoung different circuit courts;

c. At least one Supreme Court Justice, expressing view not rejected by a majority, has found merit in the claim.

See, FEDERAL HABEAS CORPUS PRACTICE AND PROCEDURE, Fourth Edition 2001, By Randy Hertz and James S. Liemen, Professors of Law, Pages 1590 thru 1593.

24. On October 23, 2003, the District Court denied Petitoner Lambros' Rule 60(b) motion filed on May 20, 2003, stating:

> "Defendant [Lambros'] contends that, based on the grant of certiorari in ABDUR'RAHMAN, his appeal of the dismissal of the Rule 60(b) motion presented an issue that was debatable among reasonable jurists and therefore was deserving of a COA. That argument fails, however, because the United States Supreme Court subsequently dismissed the writ of certiorari in ABDUR'RAHMAN as improvidently granted. See, ABDUR' RAHMAN vs. BELL, 537 U.S. 88, 89 (2002) reh'g denied, 123 S.Ct. 594 (2003)."

See, **APPENDIX D**, Page 4.

> "Defendant's appeal of the court's dismissal of the Rule 60(b) motion was unsuccessful. ... Defendant now asserts that the decision of the Court of Appeals was imfirm because this court denied his motion for a COA. As the United States Supreme Court recently held, absent a COA, 'court of appeals lack jurisdiction to rule on the merits of appeals from habeas petitioners.' See MILLER-EL vs. COCKERALL, 123 S.Ct. 1029, 1039 (2003). On that basis, defendant [Lambros] seeks to bring his purported Rule 60(b) motion back before the Court of Appeals, where it has already been found wanting.
>
> It is clear from defendant's [Lambros] previous appeal that his action cannot succeed. ... While a COA is a jurisdictional prerequisite to an appeal from the denial of a habeas petition, the Court of Appeals considered defendant's motion as a Rule 60(b) action when it affirmed the district court's dismissal. **THUS, A CERTIFICATE OF APPEALABILITY WAS NOT REQUIRED TO CONFER JURISDICTION UPON THE COURT OF APPEALS.**" (emphasis added)

See, **APPENDIX D**, Pages 5 and 6.

25. A review of the District Court's October 23, 2003, ORDER clearly proves the court did not state that MILLER-EL was not a new and controlling law that was contrary to the court's dismissal of Petitioner Lambros' Rule 60(b) motion. In fact, the court does not even address how MILLER-EL was used correctly when applied to Petitioner Lambros' Rule 60(b) motion. As this court will understand from the Eighth Circuit Court of Appeals ruling in this action, the District Court was incorrect when it stated:

> "Thus, a certificate of Appealability **WAS NOT REQUIRED** to confer jurisdiction upon the Court of Appeals." (emphasis added)(**APPENDIX D**, Page 6)

The Eighth Circuit clearly stated in its' April 13, 2005, ORDER:

> "This court has implicitly recognized in published opinions that the certificate requirement applies to an appeal from the **DENIAL OF A RULE 60(b) MOTION** seeking to reopen a habeas case." (emphasis added)

See, **APPENDIX A**, Page 3.

26. On October 30, 2003, Petitioner Lambros filed a MOTION TO ALTER OR AMENDJUDGMENT OF THIS COURT'S ORDER DATED OCTOBER 23, 2003, PURSUANT TO **RULE 59(e)** OF THE FEDERAL RULES OF CIVIL PROCEDURE.

27. On November 06, 2003, the District Court DENIED Petitioner Lambros' RULE 59(e). See, **APPENDIX C.** Of interest the court stated:

a. Therefore, Rule 59(e) is not the appropriate means by which to challenge the Court's order denying defendant's Rule 60(b) motion. See, Page 2. (Eighth Circuit ruled that this is not correct in **APPENDIX A)**

b. Finally, the court finds defendant's argument that the court of appeals lack jurisdiction to review the denial of a Rule 60(b) motion prior to the issuance of a certificate of appealability ("COA") to be unsupported by the law of the Eighth Circuit. See, Page 2. (Eighth Circuit ruled that this is not correct in **APPENDIX A)**

28. On November 25, 2003, Petitioner Lambros filed a Notice of Appeal

and a Motion for Issuance of Certificate of Appealability with the District Court. Petitioner raised the following issue: "Whether the District Court abused its discretion by not giving full consideration and full disclosure of grounds for disqualification on the record (hearing) to Movant Lambros' claims for violations of Title 28 U.S.C.A. §§§ 455(a), 455(b)(3), and 455(e), as required under the intervening standard and change in controlling law for issuance of Certificate of Appealability. See, MILLER-EL vs. COCKRELL, 154 L.Ed.2d 931 (February 25, 2003)."

29. On February 20, 2004, Filed on February 23, 2004, the District Court DENIED Petitioner Lambros' request for a certificate of appealability (COA). See, **APPENDIX B.** Facts stated by the court that are incorrect, as proved by the Eighth Circuit's April 13, 2005 ORDER:

a. "Alternatively, if this series of motions does not constitute a collateral attack on the sentence pursuant to § 2255, a COA is unnecessary and defendant's request would be denied as moot. ..., that case does not hold that a COA is a prerequisite to an appeal from the denial of a Rule 60(b) motion." Id. at 5.

b. "Defendant's claims have already been considered by the court of appeals." Id. at 5 This is not true, as a Certificate of Appealability has never been issued in this action, therefore, the Eighth Cirucit never had jurisdiction to rule on the merits. See, MILLER-EL vs. COCKRELL, 154 L.Ed.2d 931, 949 (2003)("As a result, until a COA has been issued federal courts of appeals LACK JURISDICTION TO RULE ON THE MERITS of appeals from habeas petitioners.")(emphasis added)

30. On March 16, 2004, Petitioner Lambros filed with the Eighth Circuit Court of Appeals his "MOTION FOR ISSUANCE OF CERTIFICATE OF APPEALABILTY BY THE EIGHTH CIRCUIT COURT OF APPEALS. Important facts presented to the Court included:

a. District Court errored in holding MILLER-EL did not amount to an intervening change in controlling law;

b. Petitioner Lambros should of been given the opportunity to develop a 'Full ... record of the basis for disqualification' in accordance with §455(e), as per the holdings of the Eighth Circuit. See, MORGAN vs. CLARKE, 296 F.3d 638, 648 (8th Cir. 2002).

c. Petitioner Lambros' ISSUE ONE: "Whether the District court Abused Its Discretion By Not Giving Full Consideration And Full Disclosure Of The Grounds For Disqualification On The Record (Hearing) To Movant Lambros' Claim For Violations Of Title 28 U.S.C.A. §§§ 455(a), 455(b)(3), and 455(e), As Required Under The Intervening Standard and Change In Controlling Law for Issuance of Certicate Of Appealability (COA). See, MILLER-EL vs. COCKRELL, 154 L.Ed.2d 931 (Feb. 25, 2003)."

31. On April 13, 2005, the Eighth Circuit Court of Appeals, Case No. 04-1559, DENIED Petitioner's Certificate of Appealability. See, **APPENDIX A.** (Published Opinion) **PLEASE NOTE:** Petitioner Lambros is very confused as to the Eighth Circuits' understanding of the facts in this action, as it stated incorrectly:

a. "In that previous Rule 60(b) motion, Lambros challenged the 1997 denial of his 28 U.S.C. §2255 motion attacking his drug conviction." This is not correct, as Petitioner only challenged the integrity of the RESENTENCING, not his convictions. Id. at 1.

b. "In 2001, Lambros filed a Rule 60(b) motion to vacate all of the previous judgments of the district court related to the denial of habeas relief." This is not true, as Petitioner only asked for judgments rendered by Judge Renner to be vacated, not convictions. Id. at 2.

32. Petitioner Lambros prepares to file this writ of certiorari.

## REASONS FOR GRANTING THE PETITION

### ARGUMENT

I. 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) MOTION CONSTITUTES A PROHIBITED "SECOND OR SUCCESSIVE" HABEAS PETITION WHEN REQUESTING RELIEF DUE TO A CHANGE IN THE LAW? **

II. 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)(1), (b)(5), AND (b)(6) MOTION CONSTITUTES A PROHIBITED "SECOND OR SUCCESSIVE" HABEAS PETITION AS A MATTER OF LAW WHEN USED TO CURE PROCEDURAL VIOLATIONS OF TITLE 28 U.S.C.A. §§ 455(a) AND 455(b)(3) IN AN EARLIER PROCEEDING - HERE, A PROCEEDING THAT RAISE QUESTIONS ABOUT THAT PROCEEDING'S INTEGRITY? **

The record establishes the following facts, discovered only after the resentencing of Petitioner Lambros, about Honorable Robert G. Renner, U.S. District Court Judge, District of Minnesota and Honorable Franklin Linwood Noel, U.S. Magistrate Judge, District of Minnesota concealment of information as to there past employment as acting United States Attorney for the District of Minnesota an

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** **Note:** On January 14, 2005, this Court granted certiorari to review the following question in GONZALEZ vs. CROSBY, No. 04-6432 and scheduled hearings on April 25, 2005:

(1) Did court of appeals err in holding that every Rule 60(b) motion (other than for fraud under (b)(3)) constitutes prohibited "second or successive" petition as matter of law, in square conflict with decisions of the court and other circuits?

Assistant United States Attorney for the District of Minnesota, respectively, in the prosecution of Petitioner Lambros and later presiding over such case as Judge and Magistrate. This Court held " ... Judges must act to protect the very appearance of impartiality.' . . . Under it a judge has a continuing duty to recuse before, during, or in some circumstances, after a proceeding, if the judge concludes that sufficient factual grounds exist to cause an objective observer reasonably to question the judge's impartiality. See, LILJEBERG vs. HEALTH SERVICES CORP., 486 US 847, 861, 108 S.Ct. 2194, 2203, 100 L.Ed.2d 855, 873 (1988); U.S. vs. COOLEY, 1 F.3d 985, 992 (10th Cir. 1993); KENDRICK vs. CARLSON, 995 F.2d 1440, 1444 (8th Cir. 1993) "There is general agreement that a United States Attorney serves as counsel to the government in all prosecutions brought in his district while he is in office and that he therefore is prohibited from later presiding over such cases as a judge." (emphasis added); U.S. vs. ARNPRIESTER, 37 F.3d 466, 467 (9th Cir. 1994)("The statutory duty of each United States Attorney within his district is to 'prosecute for all offenses against the United States.' 28 U.S.C. §547 . . . other attorneys are only his assistants, 28 U.S.C. § 542 and § 543.")("Judge should have recused himself from prosecution, where he was responsible United States Attorney at time of investigation which led to defendant's indictment, as his impartiality might reasonably have been questioned, and he had served in government employment as counsel in connection with indictment. 28 U.S.C. § 455(a),(b)(3)." Id. at 466.)(emphasis added).

1. Judge Renner knew very well from the outset - as he resentenced Petitioner Lambros on February 10, 1997 to an ENHANCED SENTENCE - that he indicted and signed two of the three criminal indictments in 1975 and 1976 that resulted in convictions against Petitioner, in which Petitioner was challenging during resentencing, as detainers had been lodged by the United States Parole Commission on same:

a. CR-3-75-128, Judgment entered June 21, 1975;

b. CR-3-76-17, Judgment entered June 21, 1976;

c. CR-3-76-54, Judgment entered March 07, 1977.

Judge Renner held the position of United States Attorney for Minneapolist/St. Paul, Minnesota from 1969 thru 1977.

2. Judge Renner knew very well from the outset - as he resentenced Petitioner Lambros on February 10, 1997 to an ENHANCED SENTENCE - that he indicted, convicted, and falsified court documents to the Eighth Circuit Court of Appeals in Criminal File No. CR-3-76-17 for violations of Title 18 U.S.C. Sections 111 and 114. Petitioner was illegally indicted and sentenced on June 21, 1976, as the crime DID NOT occur on federal property. Judge Renner FALSIFIED documents to the U.S. Court of Appeals for the Eighth Circuit, stating that Petitioner was indicted and plead guilty to violations of Title 18 U.S.C. 111 and 1114, not 114 as stated in the indictment. See, U.S. vs. LAMBROS, 614 F.2d 179, 180 (8th Cir. 1980).

3. Judge Renner, as U.S. Attorney Renner, used illegal indictment CR-3-76-17 to leverage a negotiated plea of guilty from Petitioner Lambros on unrelated charges. See, U.S. vs. LAMBROS, 544 F.2d 962 (8th Cir. 1976).

4. Franklin Linwood Noel, Federal Chief Magistrate Judge for the District of Minnesota, acted as an Assistant United States Attorney within the United States Attorneys Office for the District of Minnesota in Minneapolis from 1983 thru 1989. See, WHO'S WHO IN THE MIDWEST, 2000-2001 Ed., Page 435.

5. Petitioner Lambros was indicted on May 17, 1989, in this action by the United States Grand Jury, District of Minnesota, Criminal File No. 4-89-82(05), as to a conspiracy from on or about the 1st day of January, 1983, to on or about the 27th day of February, 1988. Therefore, all investigations and Grand Jury Hearings where held between 1983 thru 1989 by the MINNEAPOLIS OFFICE of the U.S. Attorney's Office for the District of Minnesota, as to the indictment of Petitioner Lambros.

6. By ORDER dated October 30, 1992, Magistrate Judge Franklin

Linwood Noel judged Petitioner competent to stand trial after conducting a hearing and/or hearings.

7. On February 10, 1997, Judge Renner resentenced Petitioner, as per the order of the Eighth circuit Court of Appeals. See, U.S. vs. LAMBROS, 65 F.3d 698 (8th Cir. 1995). During resentencing Judge Renner referred to the ORDER dated October 30, 1992, by Magistrate Judge Franklin Noel. See, Page 1 and 6 of transcript dated February 10, 1997, RESENTENCING.

8. Judge Renner reviewed and applied criminal indictments and judgments, CR-3-75-128; CR-3-76-17; and CR-3-76-54, as stated within Petitioner's Presentence Investigation Report, to enhance/increase Petitioner Lambros' sentence during resentencing on February 10, 1997. As this Court knows, "Due process requires, however, that the defendant be sentenced on reliable information ..... As an added protection to ensure fair sentencing procedure, Fed.R.Crim.P. 32(c)(3)(D) provides: 'If the ... defendant ... allege[s] any factual inaccuracy in the Presentence Investigation Report ..., the court shall, as to each matter controverted, make (i) a finding as to the allegation, or (ii) a determination that no such finding is necessary because the matter controverted will not be taken into account in sentencing.'" Petitioner Lambros challenged his prior convictions at resentencing on February 10, 1997. See, U.S. vs. MANOTAS-MEJIA, 824 F.2d 360, 368 (5th Cir. 1987). This is undeniable.

9. Petitioner Lambros is a career offender. Judge Renner was allowed to make individualized considerations as to petitioner's prior convictions that Judge Renner, as United States Attorney Renner, prosecuted Petitioner on. The Eighth Circuit allowed Judge Renner to depart downward under the United States Sentencing Guidelines § 4A1.3 after reviewing the historical facts of Petitioner's prior convictions, including age when offenses committed, assessment of seriousness of crimes, etc. U.S. vs. SENIOR, 935 F.2d 149 (8th Cir. 1991)(Overstatement of seriousness of defendant's criminal history was a circumstance unusual enough to warrant departure from guideline range and imposition of statutory minimum sentence

of ten years for conspiracy to distribute cocaine and possessing it with intent to distribute. U.S.S.G. § 4A1.3, p.s., 18 U.S.C.A.App., SENIOR, at 149, Head Note 2.) Also see, U.S. vs. BROWN, 903 F.2d 540 (8th Cir. 1990)(Guidelines provide court with authority to depart downward in sentencing career offender under § 4A1.3, where defendant's conduct is exaggerated by his criminal history score.)

10. § 5H1.8 of the United States Sentencing Guideline (USSG) states "A defendant's criminal history is relevant in determing the appropriate sentence." Thus, again Judge Renner used Petitioner's criminal indictment and judgments he prosecuted Petitioner Lambros on at the February 10, 1997 resentencing.

11. Last but not least, Judge Renner ruled on Petitioner's Title 28 U.S.C. § 2255's which contained issues involving Petitioner's prior convictions. The same prior convictions Judge Renner as United States Attorney Renner indicted and convicted Petitioner on.

**THE EIGHTH CIRCUIT CLOSED THE DOOR TO AN ADJUDICATION OF THE MERITS FOR VIOLATIONS OF TITLE 28 U.S.C.A. §§ 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 STANDARD ESTABLISHED IN LILJEBERG vs. HEALTH SERVICES CORP., 486 US 847 (1998).**

12. The Eighth Circuit closed the door to the merits. It accepted respondent's argument that "a Rule 60(b)(6) motion is the equivalent of a successive habeas corpus petition." See, APPENDIX G; APPENDIX I; BOLDER vs. ARMONTROUT, 983 F.2d 98, 99 (8th Cir. 1993); BLAIR vs. ARMONTROUT, 976 F.2d 1130, 1134 (8th Cir. 1992).

13. The Eighth Circuit also closed the door to Petitioner when the panel overlooked or misapprehended the proper standard of review for a Certificate of Appealability (COA) when this court has already granted certiorari

in other cases raising the same constitutional question, indicating that the constitutional question the certificate applicant has presented is "substantial." See, LYNCE vs. MATHIS, 117 S.Ct. 891, 893 (1997)(although district court and court of appeals denied certificate of probable cause to appeal based on insubstantiality of claim under circuit precedent, Supreme Court grants CERTIORARI based on conflicting decisions of different circuits (thus, implicitly, certifying appealability), and, upon review, grants habeas corpus relief). See also, FEDERAL HABEAS PRACTICE AND PROCEDURE, Fourth Edition 2001, by Randy Hertz and James S. Liebman, Professors of Law, who state, "Among other identifiable reasons for granting a certificate are the following: (Pages 1590 & 1591):

> (1) The United States Supreme Court has granted certiorari to review a 'similar' question in another case.

**RULE 60(b)(6) RELIEF FROM FINAL JUDGMENT IS AVAILABLE FOR VIOLATIONS OF TITLE 28 U.S.C.A. § 455:**

14. On certiorari, this court held in LILJEBERG vs. HEALTH SERVICES CORP., 486 US 847, 100 L.Ed.2d 855, 108 S.Ct. 2194 (1988), "that (1) under §455(a), recusal of a federal judge is required - even though the judge lacks actual knowledge of the facts indicating the judge's interest or bias in the case - if a reasonable person, knowing all the circumstances, would expect that the judge would have such actual knowledge; (2) even though the trustee judge, due to a temporary lapse of memory, did not have actual knowledge of the university's interest at the time he entered judgment, the judge should have known of his fiduciary interest in the dispute, and there was ample basis in the record to support a conclusion that the judge violated § 455(a) at the time he heard the case and entered judgment, because an objective observer would have questioned the judge's impartiality; (3) Rule 60(b)(6) relief from a final judgment is neither categorically available nor categorically unavailable for all

violations of § 455; (4) in determining whether a judgment should be vacated for a violation of § 455, it is appropriate to consider (a) the risk of injustice to the parties in the particular case, (b) the risk that the denial of relief will produce injustice in other cases, and (c) the risk of undermining the public's confidence in the judicial process; (5) a court, in making such a determination, must continuously bear in mind that, in order to perform its function in the best way, justice must satisfy the appearance of justice; and (6) under the standards in holding 3-5 above, extraordinary circumstances existed which were sufficient, under Rule 60(b)(6), to justify vacating the judgment on § 455(a) grounds." (emphasis added)

**PETITIONER WAS ENTITLED TO CONSIDERATION OF HIS NOW-DEMONSTRATABLE TITLE 28 U.S.C.A. §§ 455(a) AND 455(b)(3) CLAIMS UNDER Fed.R.Civ.P. 60(b)(6):**

15. Rule 60(b) is the modern embodiment of the federal courts' inherent authority under Article III of the Constitution to exercise "power over [their] own judgment" (UNITED STATES vs. OHIO POWER CO., 353 U.S. 98, 99 (1957)(per curiam)), including the power to correct those judgments. As such, the Rule "does not provide a new remedy at all," but rather is "simply the recitation of pre-existing judicial power." PLAUT vs. SPENDTHRIFT FARM, 514 U.S. 211, 234-35 (1995).

16. This immemorial judicial power is traditionally flexible and sufficiently resilient to take account of unforeseen contingencies. "In simple English," the Rule "vests power in courts adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice." KLAPROTT vs. U.S., 335 U.S. 601, 614-15 (1949). As this Court recently confirmed, the Rule "reflects and confirms the courts' own inherent and discretionary power, 'firmly established in English practice long before the foundation of our Republic,' to set aside a judgment whose enforcement would work inequity.'"

PLAUT, 514 U.S. at 233-34 (quoting HAZEL-ATLAS GLASS CO. vs. HARTFORD-EMPIRE CO., 322 U.S. 238, 244 (1944)). See also LILJEBERG vs. HEALTH SERVICES ACQUISITION CORP., 486 U.S. 847, 863-64 (1988).

17. Rule 60(b)(6) applies in habeas cases. The habeas jurisdiction is essentially an equity forum (see, e.g., SCHLUP vs. DELO, 513 U.S. 298, 319 (1995); GOMEZ vs. U.S. DISTRICT COURT, 503 U.S. 653, 653-54 (1992)), and it is inconceivable that courts exercising such jurisdiction would not have the inherent power traditionally possessed by all other courts to correct their own judgments to avert injustice. Nothing in the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA")(or any other habeas statute enacted by Congress) restricts the district courts' authority to apply Rule 60(b)(6). Instead, when enacting AEDPA, Congress crafted specific restrictions on the presentation of "successive" habeas applications, which are not applicable to Petitioner Lambros' case.[fn. 1] In addition, this Court has limited the retroactive application of supervening judicial decisions by the doctrine of TEAGUE vs. LANE, 489 U.S. 288 (1989), which provides that "new constitutional rules of criminal procedure will not be applicable to those cases which have become final before the new rules are announced" (Id. at 310). This Court has accordingly stated that it is the TEAGUE doctrine that constrains the application of Rule 60(b) in habeas cases. AGOSTINI vs. FELTON, 521 U.S. 203, 239 (1997)("Intervening developments in the law by themselves rarely constitute the extraordinary circumstances required for relief under Rule 60(b)(6), the only remaining avenue for relief on this basis from judgment lacking any prospective component. See, 12 J. Moore et al.,

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fn. 1: Indeed, because Rule 60(b) embodies the federal courts' inherent power under the Constitution to correct erroneous and inequitable judgments, the suggestion that Congress implicitly restricted the power in habeas cases would raise a substantial constitutional question. Under the doctrine of constitutional avoidance (see, e.g., INS vs. ST. CYR, 533 U.S. 289, 299-304 (2001); VT. AGENCY OF NAT. RES. vs. U.S. ex rel. STEVENS, 529 U.S. 765, 787 (2000)), AEDPA could not properly be construed as imposing such a restriction in the absence of an explicit and clear statement to that effect. And of course AEDPA contains no such thing.

Moore's Federal Practice § 60.48[5][b], p. 60-181 (3rd Ed. 1997)(collecting cases)")(emphasis added). Cf. BROWDER vs. DIRECTOR, 434 U.S. 257 (1978)(expressly holding that Fed.R.Civ.P. 52 and 59 apply on habeas and suggesting that Rule 60(b) applies as well).

18. Nor is habeas a forum in which judgments are uniquely immune from subsequent correction. To the contrary, it is a "familiar principle that res judicata is inapplicable in habeas proceedings," for "[a]t common law, the denial by a court or judge of an application for habeas corpus was not res judicata." SANDERS vs. U.S., 373 U.S. 1, 7-8 (1963)(collecting cases). Except to the extent expressly provided by Congress and this Court's jurisprudence, "[c]onventional notions of finality of litigation" do not constrain the writ. Id. at 8. This Court's decisions accordingly "preclude application of strict rules of res judicata" in habeas (SCHLUP, 513 U.S. at 319) and instead embrace rules having the necessary flexibility to "accommodate[] both the systemic interests in finality, comity and conservation of judicial resources, and the overriding individual interest in doing justice in the 'extraordinary cases'" (id. at 322).

19. Thus, although Rule 60(b)(6) may not be applied so as to circumvent the restrictions on successive applications or the TEAGUE doctrine, the Rule indisputably applies in habeas. That has been the conclusion of this Court, "Section 455 does not, on its own, authorize the reopening of closed litigation. However, as respondent and the Court of Appeals recognized, Federal Rule of Civil Procedure 60(b) provides a procedure whereby, in appropriate cases, a party may be relieved of a final judgment. In particular, Rule 60(b)(6), upon which respondent relies, grants federal courts broad authority to relieve a party from final judgment 'upon such terms as are just,' provided that the motion is made within a reasonable time and is not premised on one of the grounds for relief enumerated in clauses (b)(1) through (b)(5). The Rule does not particularize the factors that justify relief, but we have previously noted that it provides

courts with authority 'adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice,' . . .while also cautioning that it should only be applied in 'extraordinary circumstances,'... Rule 60(b)(6) relief is accordingly neither categorically available nor categorically unavailable for all § 455(a) violations." LILJEBERG, 486 U.S. 847, 863-64. See also, RODRIGUEZ vs. MITCHELL, 252 F.3d 191, 200 (2nd Cir. 2001)(Rule 60(b) motion to vacate a judgment denying habeas is not a second petition under § 2244(b)). Petitioner Lambros' Rule 60(b)(6) motion was for violations of 28 U.S.C.A. §§ 455(a) and 455(b)(3).

20. The Eighth Circuit's holding in petitioner's case, that every Rule 60(b)(6) motion challenging a violation of Title 28 U.S.C. § 455(a) and § 455(b)(3) must be treated as a prohibited "second or successive" habeas petition as a matter of law, means that no motion for relief from a habeas judgment can ever be granted, even though the judgment was entered in violation of Title 28 U.S.C. § 455(a) and § 455(b)(3), under the standard established in LILJEBERG vs. HEALTH SERVICES CORP., 486 US 847 (1988), that invokes the traditional power of courts in the Anglo-American tradition "to vacate judgments whenever such action is appropriate to accomplish justice." KLAPROTT vs. U.S., 335 U.S. 601, 615 (1949).

**PETITIONER LAMBORS' CASE IS TRULY EXTRAORDINARY:**

21. Petitioner Lambros' case truly is extraordinary. Not only are the inequities exceptional, but the circumstances - a Federal Judge and Federal Chief Magistrate Judge should have recused themselves from prosecution of Petitioner Lambros, where the Judge was responsible United States Attorney at time of investigation which led to Petitioner's illegal indictment on past criminal offenses, in which Petitioner challenged before the Judge, and the Judge used the illegal criminal charges to enhance Petitioner's sentence. Also, the Federal

Chief Magistrate Judge acted as an Assistant United States Attorney within the same District of Minnesota Minneapolis office from 1983 thru 1989, the same years Petitioner's conspiracy took place, from on or about the 1st day of January, 1983, to on or about the 27th day of February, 1988, thatindicted Petitioner in Criminal File no. 4-89-82(05) - will rarely recur.

22. Accordingly, this is not a case in which a federal habeas applicant seeks to reopen a decision on the merits of any of his claims or even to reopen a procedural ruling on the basis of some supervening decision by this Court that requires close reading and analysis to collate with previous decisions by this Court. To the contrary, violations of Title 28 U.S.c.A. § 455(s) which mandates the disqualification of federal judges from acting in any proceeding in which the judge's impartiality "might reasonably be questioned" and Title 28 U.S.C.A. § 455(b)(3) which mandates the disqualification of federal judges from acting in any proceeding "Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy," provides the rare kind of clear guidance from this Court's decision in LILJEBERG that completely obviates the need for complex or protracted federal litigation.

23. This case presents additional extraordinary circumstances that generally are absent when a party invokes Title 28 U.S.C.A. § 455 as a basis for relief under Rule 60(b0(6), falsification of court records by an United States Attorney who concealed same as a United States Federal Judge in hearings he held. In combination, these circumstances justify relief under even the most stringent standard of what "is appropriate to accomplish justice." KLAPROTT, 335 U.S. at 616; LILJEBERG, 486 U.S. at 864.

24. This Court applied and granted "extraordinary circumstances" in LILJEBERG in vacating judgment under Rule 60(b)(6) for a violation of § 455(a), stating "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.'" LILJEBERG, 486 U.S. at 864, ("The very purpose of § 455(a) is to promote confidence in the judiciary by avoiding even the appearance of impropiety whenever possible. See S. Rep No. 93-419, at 5; HR Rep. No. 93-1453, at 5. Thus, it is critically important in a case of this kind to identify the facts that might reasonably cause an objective observer to question Judge Collins' impartiality. There are at least four such facts. . . ." Id. at 865).

25 Judge Renner can not state that he lacked knowledge of his personal involvement as United States Attorney in the investigation, grand jury process, indictment, and sentencing of Petitioner Lambros, as Judge Renner personally signed two (2) of the three indictments against Petitioner Lambros when he was a U.S. Attorney:

a. CR-3-75-128, filed on February 23, 1976; and

b. CR-3-76-17, filed on March 24, 1976.

**CONCLUSION**

26. From the time Petitioner's court appointed civil attorney's, Briggs and Morgan, Minneapolis, Minnesota, in a legal malpractice action against attorneys that represented Petitioner during his original trial in this action, discovered (February 21, 2001) the unethical, illegal, and unconstitutional machinations that United States Senior District Judge Robert G. Renner used to resentence Petitioner Lambros, Petitioner Lambros has brought these violations of due process to the attention of the federal courts and Honorable Charles E. Grassley, United States Senator and member of the "Committee on the Judiciary"

in compliance with the rules of postconviction procedure of the court system.

27. The failure of the federal district court and the court of appeals for the Eighth Circuit to apply the correct standard in this action as to Petitioner Lambros' request for:

a. CERTIFICATE OF APPEALABILITY (COA);

b. Rule 60(b) use to cure procedural violations of Title 28 U.S.C.A. § 455(a) AND § 455(b)(3);

c. Rule 60(b) use to request relief due to a change in law; has never allowed for a ruling of the merits of Petitioner's claims of Title 28 U.S.C.A. §§ 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 standard established in LILJEBERG was the result of the court's misunderstanding of this court's holding in LILJEBERG and the application of Rule 60(b)(6). There remains time to rectify the consequences of the misunderstanding before they become fatal in undermining the public's confidence in the judicial process, as "justice must satisfy the appearance of justice." LILJEBERG, 486 US at 864. This Court should instruct the courts below to do so.

Executed on: May 12, 2005

Respectfully submitted,

John Gregory Lambros, Pro Se
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Leavenworth, Kansas 66048-1000
Web site: www.brazilboycott.org

No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

**October Term, 2005**

**JOHN GREGORY LAMBROS** — PETITIONER
(Your Name)

VS.

**UNITED STATES OF AMERICA** — RESPONDENT(S)

## PROOF OF SERVICE

I, **John Gregory Lambros**, do swear or declare that on this date, **May 17,** 20**05**, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

**OFFICE OF THE SOLICITOR GENERAL**
**U.S. DEPARTMENT OF JUSTICE, Room 5614**
**950 Pennsylvania Avenue, N.W.**
**Washington, DC 20530-0001**

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

Executed on **May 17,** 20**05**

(Signature)

**John Gregory Lambros**

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## INDEX TO APPENDICES



**A P P E N D I X**

# United States Court of Appeals
## FOR THE EIGHTH CIRCUIT

No. 04-1559

| | | |
|---|---|---|
| United States of America, | * | |
| | * | |
| Appellee, | * | |
| | * | Appeal from the United States |
| v. | * | District Court for the |
| | * | District of Minnesota |
| John Gregory Lambros, | * | |
| | * | [TO BE PUBLISHED] |
| Appellant. | * | |

Submitted: June 30, 2004
Filed: April 13, 2005

Before BYE, McMILLIAN, and MELLOY, Circuit Judges.

PER CURIAM.

Federal prisoner John Gregory Lambros appeals the district court's[1] order denying his Fed. R. Civ. P. 59(e) motion to alter or amend the district court's order denying his Fed. R. Civ. P. 60(b) challenge to the denial of a previous Rule 60(b) motion. In that previous Rule 60(b) motion, Lambros challenged the 1997 denial of his 28 U.S.C. § 2255 motion attacking his drug convictions. For the reasons stated below, we dismiss the appeal.

[1]The Honorable David S. Doty, United States District Judge for the District of Minnesota.

In 1993, a jury convicted Lambros of four cocaine-related offenses, including a conspiracy count. On appeal, this court vacated the sentence on the conspiracy count, remanded for resentencing on that count, and affirmed the conviction in all other respects. See United States v. Lambros, 65 F.3d 698 (8th Cir. 1995), cert. denied, 516 U.S. 1082 (1996). On remand, Lambros filed multiple new trial motions pursuant to Fed. R. Crim. P. 33. The district court treated the new trial motions as a single § 2255 motion and denied all the claims. Lambros appealed the 360-month prison term to which he was resentenced. This court affirmed. See United States v. Lambros, No. 97-1553, 1997 WL 538013 (8th Cir. Sept. 2, 1997) (unpublished per curiam), cert. denied, 522 U.S. 1065 (1998). Two subsequent § 2255 motions filed by Lambros were dismissed by the district court because this court had not authorized their filing. See 28 U.S.C. §§ 2255 and 2244.

In 2001, Lambros filed a Rule 60(b) motion to vacate all of the previous judgments of the district court related to the denial of habeas relief. Construing the motion as a successive application for § 2255 relief, the district court denied relief because Lambros had not received authorization to file another § 2255 motion. This court affirmed. See United States v. Lambros, 40 Fed. Appx. 316 (8th Cir. 2002) (unpublished per curiam), cert. denied, 537 U.S. 1195 (2003).

Lambros filed a Rule 60(b) motion asking the district court to vacate its 2001 order denying his first Rule 60(b) motion. He argued that the court had improperly construed that previous motion as a successive § 2255 application. The district court denied the second Rule 60(b) motion, and Lambros then filed a Rule 59(e) motion to alter or amend the judgment. The district court denied the Rule 59(e) motion, and Lambros filed the present appeal.

Initially, we note that our appellate jurisdiction depends in part on whether a petitioner needs a certificate of appealability to appeal the denial of a Rule 60(b) motion in a habeas proceeding. See United States v. Vargas, 393 F.3d 172, 174 (D.C.

Cir. 2004). Of course, a certificate is required to appeal from "the final order in a proceeding under section 2255." 28 U.S.C. § 2253(c)(1)(B). Further, an order denying a Rule 60(b) motion is a final order for purposes of appeal. Mohammed v. Sullivan, 866 F.2d 258, 260 (8th Cir. 1989).

This court has implicitly recognized in published opinions that the certificate requirement applies to an appeal from the denial of a Rule 60(b) motion seeking to reopen a habeas case. See Jones v. Roper, 311 F.3d 923, 924 (8th Cir. 2002) (per curiam) (concluding district court's grant of certificate of appealability placed merits of appeal before appellate court), cert. denied, 537 U.S. 1040 (2002); Zeitvogel v. Bowersox, 103 F.3d 56 (8th Cir. 1996) (per curiam) (published order denying certificate in appeal from denial of Rule 60(b) motion seeking relief from order denying habeas petition), cert. denied, 519 U.S. 1036 (1996). Our decision in Zeitvogel has been cited by other circuit courts for the proposition that this circuit interprets § 2253(c)(1) to require a certificate in Rule 60(b) cases. See Vargas, 393 F.3d at 174; Reid v. Angelone, 369 F.3d 363, 369 n.2 (4th Cir. 2004); Kellogg v. Strack, 269 F.3d 100, 103 (2d Cir. 2001), cert. denied, 535 U.S. 932 (2002). Finally, the weight of authority from other circuits favors requiring a certificate in these cases. See Vargas, 393 F.3d at 174 (holding that certificate is required to appeal denial of Rule 60(b) motion challenging denial of habeas application and stating that eight circuit courts (including Eighth Circuit) are in accord on this issue).

It is well-established that inmates may not bypass the authorization requirement of 28 U.S.C. § 2244(b)(3) for filing a second or successive § 2254 or § 2255 action by purporting to invoke some other procedure. United States v. Patton, 309 F.3d 1093 (8th Cir. 2002) (per curiam) (collecting cases); see also Boyd v. United States, 304 F.3d 813, 814 (8th Cir. 2002) (per curiam) (if Rule 60(b) motion is actually successive habeas petition, court should dismiss it for failure to obtain authorization from court of appeals, or in its discretion, transfer motion to court of appeals). Likewise, the certificate requirement under 28 U.S.C. § 2253(c)(1) may not be

circumvented through creative pleading. A certificate of appealability is required to appeal the denial of any motion that effectively or ultimately seeks habeas corpus or § 2255 relief.

Because Lambros's Rule 59(e) motion, just like his previous Rule 60(b) motions, sought ultimately to resurrect the denial of his earlier § 2255 motion, we hold that a certificate of appealability is required for the present appeal. A certificate may issue if Lambros has made a substantial showing of the denial of a constitutional right. See 28 U.S.C. § 2253(c)(2) (certificate standard); Garrett v. United States, 211 F.3d 1075, 1077 (8th Cir.) (per curiam) ("substantial showing" required for certificate is showing that issues are debatable among reasonable jurists, court could resolve issues differently, or issues deserve further proceedings), cert. denied, 531 U.S. 908 (2000).

When Lambros filed multiple new trial motions, after our limited remand for resentencing following his conviction, the district court correctly treated those new trial motions as seeking § 2255 postconviction relief. His subsequent Rule 60(b) motions and his most recent Rule 59(e) motion were, in reality, efforts to file successive motions for postconviction relief. Those motions were properly denied because Lambros did not have authorization from this court. Therefore, Lambros has not made a substantial showing of any error, much less constitutional error.

Accordingly, we deny a certificate of appealability and dismiss the appeal.

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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. 4-89-82(5)(DSD/FLN)
Civil No. 99-28(DSD)

United States of America,

Plaintiff,

v. **ORDER**

John Gregory Lambros,

Defendant.

This matter is before the court upon defendant's request for a Certificate of Appealability ("COA"). For the following reasons, defendant's request is denied.

**BACKGROUND**

On January 15, 1993, defendant was convicted by jury trial of various drug-trafficking offenses.[1] On January 27, 1994, he was sentenced to a term of life imprisonment on count 1 of the indictment, along with concurrent terms of 120 and 360 months on the other counts of conviction. On October 5, 1995, the United States Court of Appeals for the Eighth Circuit vacated the judgment with respect to count 1, affirmed the judgment on all other counts and remanded to the district court for re-sentencing on count 1.

[1] The trial was conducted before the Honorable Diana E. Murphy, United States District Judge.

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**APPENDIX B.**

See United States v. Lambros, 65 F.3d 698, 700 (8th Cir. 1995). On February 10, 1997, defendant was re-sentenced by Senior United States District Judge Robert G. Renner to a term of 360 months imprisonment on count 1.[2] Defendant subsequently filed various motions to vacate the judgment and repeatedly sought relief from the sentence pursuant to 28 U.S.C. § 2255.[3]

On April 24, 2001, defendant filed a motion to vacate all judgments and orders issued by Judge Robert G. Renner pursuant to Fed. R. Civ. P. 60(b)(6). On March 8, 2002, this court dismissed that motion after construing it as an impermissible successive § 2255 motion. (Order of Mar. 8, 2002.) Defendant requested a COA of the dismissal of the purported Rule 60(b) motion. The court denied the request because defendant had not shown that "the issues deserve[d] further proceedings." (Order of May 29, 2002.) Defendant appealed the denial of the Rule 60 motion and COA, and the court of appeals affirmed. See United States v. Lambros, 40 Fed. Appx. 316, 2002 WL 1402099 (8th Cir. July 1, 2002), cert. denied, 537 U.S. 1135 (2003).

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[2] The case was reassigned to Judge Renner following Judge Murphy's appointment to the United States Court of Appeals for the Eighth Circuit in 1994.

[3] Defendant's first collateral attack purportedly sought relief pursuant to Fed. R. Crim. P. 33, but was construed as a § 2255 motion. Defendant's second attempt was denied both as a successive § 2255 motion and as lacking merit. Defendant's third attempt was denied for lack of jurisdiction, because defendant had failed to obtain permission from the court of appeals to file a successive habeas petition, as required by 28 U.S.C. § 2255.



45.

**APPENDIX B.**

Defendant then moved to vacate the judgment denying his Rule 60(b) motion due to alleged intervening changes in the law. That motion was denied as lacking merit. (Order of Oct. 23, 2003.) Defendant challenged that order by bringing a motion to alter or amend judgment pursuant Fed. R. Civ. P. 59. The court denied the motion because Rule 59 is inapplicable to judgments other than "the original judgment in [the] case." (Order of Nov. 6, 2003, citing Fed. R. Civ. P. 59(e) advisory committee's note.) Defendant now requests a COA pursuant to 28 U.S.C. § 2253.

**DISCUSSION**

To be eligible for a COA, an applicant must make a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); Tiedeman v. Benson, 122 F.3d 518, 522 (8th Cir. 1997). The substantial showing requirement under § 2253 is a more stringent standard than the good faith and non-frivolous standard applied to applications to proceed in forma pauperis. See Kramer v. Kemna, 21 F.3d 305, 307 (8th Cir. 1994) ("[g]ood faith and lack of frivolousness, without more, do not serve as sufficient bases for issuance of a certificate"). Instead, the applicant must show that the issues to be raised on appeal are "debatable among reasonable jurists," that different courts "could resolve the issues differently," or that the issues otherwise "deserve further proceedings." Flieger v. Delo, 16 F.3d 878, 882-83 (8th Cir.)



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**APPENDIX B.**

(citing Lozado v. Deeds, 498 U.S. 430, 432 (1991) (per curiam)), cert. denied, 513 U.S. 946 (1994); Cox v. Norris, 133 F.3d 565, 569 (8th Cir. 1997), cert. denied, 525 U.S. 834 (1998).[4] When a district court grants a COA, it is "inform[ing] the Court of Appeals that the [applicant] presents a colorable issue worthy of an appeal." Kruger v. Erickson, 77 F.3d 1071, 1073 (8th Cir. 1996) (per curiam).

There are several reasons why defendant's request must be denied. First, defendant now acknowledges that the past two cycles of Rule 60(b) and related motions were in fact disguised successive § 2255 motions. Defendant states that he "moves this Honorable Court pursuant to 28 U.S.C. § 2253(c)(1) which requires a Certificate of Appealability (COA) before an appeal may be taken from 'the final order in a habeas corpus proceeding.'"[5] (Def.'s Mem. Supp. Mot. COA at 1.) That admission is fatal, because this

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[4] Lozado, Kemna and Flieger describe the showing necessary to obtain a certificate of probable cause, as was required under § 2253 before its amendment in 1996. At that time, Congress replaced the certificate of probable cause requirement with the current certificate of appealability requirement. Nonetheless, "[t]he same substantive standard governs the issuance of the pre-Act certificate of probable cause and the post-Act certificate of appealability." Ramsey v. Bowersox, 149 F.3d 749, 759 (8th Cir. 1998).

[5] Defendant must necessarily be proceeding under 28 U.S.C. § 2253(c)(1)(B), because subsection (A) applies only to habeas actions arising out of State court process. See 28 U.S.C. § 2253 (c)(1)(A) & (B). Defendant is not challenging state action. Subsection (B) requires a COA only when an appeal is taken from "the final order in a proceeding under section 2255." Id. (emphasis added).



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**APPENDIX B.**

court lacks jurisdiction over successive § 2255 motions brought without prior authorization from the circuit court. See 28 U.S.C. § 2255; Nims v. Ault, 251 F.3d 698, 706 (8th Cir. 2001) (Bye, J., dissenting); Boykin v. Unites States, 2000 WL 1610732, at *1 (8th Cir. 2000). It is undisputed that defendant has previously moved pursuant to § 2255 and that he has not obtained authorization from the circuit court for the current round of collateral attacks. Alternatively, if this series of motions does not constitute a collateral attack on the sentence pursuant to § 2255, a COA is unnecessary and defendant's request would be denied as moot. Defendant again cites Zeitvogel for the proposition that a COA must be obtained in order to appeal the denial of a Rule 60 motion. See Zeitvogel v. Bowersox, 103 F.3d 57, 57 (8th Cir. 1996). As the court discussed in its previous order, that case does not hold that a COA is a prerequisite to an appeal from the denial of a Rule 60(b) motion. (Order of Nov. 6, 2003 at 2 n.2.)

Second, if the motions in question did not constitute an unauthorized successive § 2255 motion and a COA was for some reason required, the request would nonetheless be denied. Defendant's claims have already been considered by the court of appeals. It is not within the province of this court to review, or to authorize review of, matters decided by that body. See 28 U.S.C. § 1331; Baker v. Riss & Co., 444 F.2d 257, 259 (8th Cir. 1971) (noting limited jurisdiction of the federal courts).





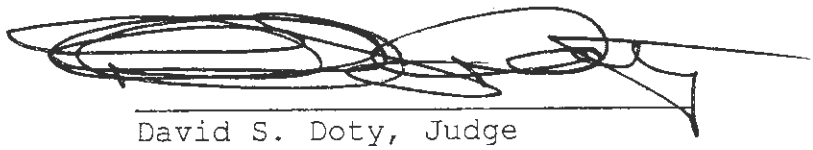
**APPENDIX B.**

Finally, for the reasons stated in the court's orders of March 8, 2002, May 23, 2002, October 23, 2003 and November 6, 2003, defendant has not made a "substantial showing of the denial of a constitutional right" or presented an issue about which "'reasonable jurists could debate.'" 28 U.S.C. § 2253(c)(2); Miller-El v. Cockrell, 537 U.S. 322, 336 (2003) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)).

**CONCLUSION**

For reasons stated, **IT IS HEREBY ORDERED** that defendant's application for a Certificate of Appealability is denied.

Dated: February 20, 2004



David S. Doty, Judge
United States District Court



49.

**APPENDIX B.**

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. 4-89-82(5)(DSD/FLN)
Civil No. 99-28(DSD)

United States of America,

Plaintiff,

v. **ORDER**

John Gregory Lambros,

Defendant.

This matter is before the court upon defendant's motion pursuant to Fed. R. Civ. P. 59(e) to alter or amend the court's order of October 23, 2003, in which it denied defendant's motion to vacate a previous order on the basis of an intervening change of law. For the following reasons, the motion is denied.

Defendant's motion is premised on his belief that the United States Court of Appeals for the Eighth Circuit lacked jurisdiction over his prior Rule 60(b) motion in the absence of a certificate of appealability. However, challenges to the jurisdiction of the court of appeals are not within the province of the district court. See 28 U.S.C. § 1331 (conferring limited jurisdiction upon the district courts); Baker v. Riss & Co., 444 F.2d 257, 259 (8th Cir. 1971) ("[f]ederal courts have only such jurisdiction as is conferred upon them by Congress.").

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**APPENDIX C.**

FILED
Richard D. Sletten, CLERK
Judgment Ent'd.
Deputy Clerk's Initials

Further, Rule 59(e) "deals only with alteration or amendment of the original judgment in a case...." See Fed. R. Civ. P. 59(e) Advisory Committee Notes, 1946 Amendment, Note to Subdivision (e). Therefore, Rule 59(e) is not the appropriate means by which to challenge the court's order denying defendant's Rule 60(b) motion.[1]

Finally, the court finds defendant's argument that the court of appeals lacks jurisdiction to review the denial of a Rule 60(b) motion prior to the issuance of a certificate of appealability ("COA") to be unsupported by the law of the Eighth Circuit.[2]

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[1] Because the "original judgment in the case" is the judgment of conviction, defendant's motion could arguably be construed as yet another successive § 2255 motion brought without circuit court approval. See e.g., Morales v. United States, 304 F.3d 764, 767 (8th Cir. 2002) (construing motion pursuant to 5 U.S.C. § 702 as successive § 2255 motion); Blair v. Armontrout, 976 F.2d 1130, 1134 (8th Cir. 1992) (construing Rule 60 motion as successive § 2255 motion). As such, the motion would necessarily be subject to summary dismissal. See 28 U.S.C. § 2255. In that case, it would also fail because Rule 59 is a civil rule with no application to judgments in criminal cases. However, because defendant's Rule 59(e) motion appears to attack only the court's order of October 23, 2003, denying Rule 60(b) relief, the court will not construe the motion as a successive § 2255 motion.

[2] Defendant's reliance on Zeitvogel is misplaced. See Zeitvogel v. Bowersox, 103 F.3d 56, 57 (8th Cir. 1996). That case does not hold that a COA is a jurisdictional prerequisite to an appeal of the denial of a Rule 60(b) motion. It does, however, show that when a request for a COA is directed to the court of appeals, that court will consider the merits of the underlying motion and the district court's reasons for denying the motion, as the Eighth Circuit did in the present case. See id.



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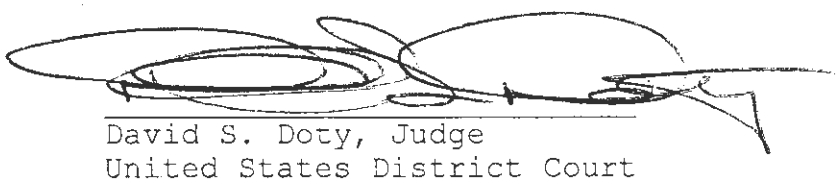
**APPENDIX C.**

Accordingly, **IT IS HEREBY ORDERED** that defendant's Rule 59(e) motion to alter or amend the judgment is denied.

Dated: November 6, 2003



David S. Doty, Judge
United States District Court



**APPENDIX C.**

52.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. 4-89-82(5)(DSD/FLN)
Civil No. 99-28(DSD)

United States of America,

Plaintiff,

v. **ORDER**

John Gregory Lambros,

Defendant.

This matter is before the court upon the motion of defendant John Gregory Lambros to vacate a judgment due to intervening change in controlling law. After a review of the file, record and proceedings in the matter and for the reasons stated, defendant's motion is denied.

**BACKGROUND**

On January 15, 1993, defendant was convicted by jury trial of various drug-trafficking offenses.[1] On January 27, 1994, he was sentenced to a term of life imprisonment on count 1 of the indictment, along with concurrent terms of 120 and 360 months on the other counts of conviction. On October 5, 1995, the United States Court of Appeals for the Eighth Circuit vacated the judgment

[1] The trial was conducted before the Honorable Diana E. Murphy, United States District Judge.

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OCT 23 2003

FILED
Richard D. Sletten, CLERK
Judgment Ent'd.
Deputy Clerk's Initials

**APPENDIX D.**

with respect to count 1, affirmed the judgment on all other counts and remanded to the district court for re-sentencing on count 1. See United States v. Lambros, 65 F.3d 698, 700 (8th Cir. 1995). On February 10, 1997, defendant was re-sentenced by Senior United States District Judge Robert G. Renner to a term of 360 months imprisonment on count 1.[2] Defendant subsequently filed various motions to vacate the judgment on count 1 and on several occasions unsuccessfully sought relief from the sentence pursuant to 28 U.S.C. § 2255.[3]

On April 24, 2001, defendant filed a motion to vacate all judgments and orders by Judge Robert G. Renner pursuant to Fed. R. Civ. P. 60(b)(6). On March 8, 2002, this court dismissed defendant's Rule 60(b) action and related motions after construing the action as an impermissible successive § 2255 motion. (Order of March 8, 2002.) Defendant then moved for a certificate of appealability ("COA") of the dismissal of the purported Rule 60(b) motion. The court denied the motion for a COA, finding that defendant failed to demonstrate that "the issues deserve[d] further

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[2] The case was reassigned to Judge Renner following Judge Murphy's appointment to the United States Court of Appeals for the Eighth Circuit in 1994.

[3] Defendant's first collateral attack purportedly to sought relief pursuant to Fed. R. Crim. P. 33, but was construed as a § 2255 motion. Defendant's second attempt was denied both as a successive § 2255 motion and as lacking merit. Defendant's third attempt was denied for lack of jurisdiction, because defendant had failed to obtain permission from the Court of Appeals to file a successive habeas petition, as required by 28 U.S.C. § 2255.



**APPENDIX D.**

54.

proceedings." (Order of May 29, 2002.) Defendant appealed the denial of the Rule 60 motion and COA and the Court of Appeals affirmed in an unpublished opinion "[f]or the reasons stated by the district court." See United States v. Lambros, 40 Fed. Appx. 316, 2002 WL 1402099 (8th Cir. July 1, 2002) cert. denied.

Defendant now apparently moves the court to vacate its judgment denying his Rule 60(b) motion due to alleged intervening changes in the law. However, in the concluding section of defendant's memorandum in support of the motion, he states, "[m]ovant is only requesting this court ... grant Movant Lambros a certificate of appealability." Because the court finds no basis in law for either form of relief, defendant's motion is denied.

**DISCUSSION**

Although it not entirely clear from defendant's memoranda, it appears his argument is twofold. First, he contends that the court improperly dismissed his Rule 60(b) motion after construing it as a successive § 2255 motion. Second, he asserts that the court improperly denied his motion for a COA and in so doing, deprived the Court of Appeals of jurisdiction over his appeal.

Defendant notes that district courts in the Eighth Circuit, as in most other circuits, have long construed Rule 60 motions filed after unsuccessful § 2255 motions as impermissible successive § 2255 motions. See Blair v. Armontrout, 976 F.2d 1130, 1134 (8th



55.

**APPENDIX D.**

Cir. 1992); see also Rodriquez v. Mitchell, 252 F.3d 191, 199-200 (2nd Cir. 2001) (citing cases from the 4th, 5th, 6th, 7th, 8th, 9th, 10th and 11th circuits following that practice). Defendant points out that one month after this court dismissed his Rule 60 motion, the United States Supreme Court granted certiorari to consider whether district courts may dismiss Rule 60 motions as successive § 2255 motions as a matter of course. See Abdur'Rahman v. Bell, 535 U.S. 1016, 1016 (2002). Approximately one month after certiorari was granted in Abdur'Rahman, this court denied defendant's motion for a COA on the denial of his Rule 60(b) motion.

Defendant contends that, based on the grant of certiorari in Abdur'Rahman, his appeal of the dismissal of the Rule 60(b) motion presented an issue that was debatable among reasonable jurists and therefore was deserving of a COA. That argument fails, however, because the United States Supreme Court subsequently dismissed the writ of certiorari in Abdur'Rahman as improvidently granted. See Abdur'Rahman v. Bell, 537 U.S. 88, 89 (2002) reh'g denied, 123 S. Ct. 594 (2003).

Defendant also cites Boyd v. United States, 304 F.3d 813 (8th Cir. 2002) cert. denied, 123 S. Ct. 1642 (2003), as new and controlling law that is contrary to the court's dismissal of his Rule 60(b) motion. In Boyd, the Eighth Circuit set out a "uniform procedure" for district courts "dealing with purported Rule 60(b) motions following the dismissal of habeas petitions." Id. at 814.



**APPENDIX D.**

5 6

The district court is "encouraged" to file the purported Rule 60(b) motion "and then conduct[] a brief initial inquiry to determine whether the allegations in the Rule 60(b) motion in fact amount to a second or successive collateral attack under ... 28 U.S.C. § 2255." Id. If the court construes the action as a successive § 2255 motion, it may either dismiss the action or transfer it to the Court of Appeals. See id.

The court's dismissal of defendant's purported Rule 60(b) motion predated Boyd by approximately four months. (Order of March 8, 2002.) Nonetheless, the court followed the procedure set forth in Boyd by permitting the motion to be filed and conducting a limited initial review from which it concluded the motion was a successive habeas action. (Order of March 8, 2002.) Based on that determination, the action was dismissed. (Id.) The court finds that nothing in Boyd would require a different result.

Defendant's appeal of the court's dismissal of the Rule 60(b) motion was unsuccessful. See United States v. Lambros, 40 Fed. Appx. 316, 2002 WL 1402099 (8th Cir. July 1, 2002) cert. denied, 123 S. Ct. 1255. Defendant now asserts that the decision of the Court of Appeals was infirm because this court denied his motion for a COA. As the United States Supreme Court recently held, absent a COA, "courts of appeals lack jurisdiction to rule on the merits of appeals from habeas petitioners." See Miller-El v. Cockerell, 123 S. Ct. 1029, 1039 (2003). On that basis, defendant seeks to bring



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**APPENDIX D.**

his purported Rule 60(b) motion back before the Court of Appeals, where it has already been found wanting.

It is clear from defendant's previous appeal that his action cannot succeed. See Lambros, 2002 WL 1402099, at *1. While a COA is a jurisdictional prerequisite to an appeal from the denial of a habeas petition, the Court of Appeals considered defendant's motion as a Rule 60(b) action when it affirmed the district court's dismissal. See id. (stating "Lambros appeals the district court's denial of his motion under Federal Rule of Civil Procedure 60(b)(6)"). Thus, a certificate of appealability was not required to confer jurisdiction upon the Court of Appeals. Moreover, the Eighth Circuit cited the reasons stated by this court as the basis of its affirming opinion. See id. Among those reasons was the court's finding that the motion was without merit. (Order of March 8, 2002, n. 2.)

In short, if defendant's previous motion was a proper Rule 60(b) motion, the Court of Appeals had jurisdiction to affirm the dismissal without a COA. If it was instead a disguised successive habeas petition, it necessarily failed for want of permission from the Court of Appeals.[4] See 28 U.S.C. § 2255. Because the court

[4] 28 U.S.C. § 2255 states, "[a] second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals...."

finds no intervening change of law requiring it to vacate its dismissal of defendant's purported Rule 60(b) motion or its denial of defendant's motion for COA, the present motion is denied.

**CONCLUSION**

Accordingly, **IT IS HEREBY ORDERED** that:

1. Defendant's motion to vacate judgment due to intervening change in controlling law [Doc. No. 261] is denied.

2. Defendant's motion offering clarification of facts, record and evidence [Doc. No. 267] is denied as moot.

Dated: October 23, 2003

David S. Doty, Judge
United States District Court



**APPENDIX D.**

59.

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

February 24, 2003

Mr. John G. Lambros
Reg. No. 00436-124
P.O. Box 1000
Leavenworth, KS 66048-1000

Re: John G. Lambros
v. United States
No. 02-7346

Dear Mr. Lambros:

The Court today entered the following order in the above entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

William K. Suter

William K. Suter, Clerk

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**APPENDIX E.**

# UNITED STATES COURT OF APPEALS

## FOR THE EIGHTH CIRCUIT

No. 02-2026

| | | |
|---|---|---|
| United States of America, | * | |
| | * | |
| Appellee, | * | |
| | * | Order Denying Petition for |
| v. | * | Rehearing and for Rehearing |
| | * | En Banc |
| John Gregory Lambros, | * | |
| | * | |
| Appellant. | * | |

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

(5128-010199)

August 22, 2002

Order Entered at the Direction of the Court:

Michael E. Gans

Clerk, U.S. Court of Appeals, Eighth Circuit

61.

**APPENDIX F.**

# United States Court of Appeals
## FOR THE EIGHTH CIRCUIT

No. 02-2026

| | | |
|---|---|---|
| United States of America, | * | |
| | * | |
| Appellee, | * | |
| | * | Appeal from the United States |
| v. | * | District Court for the |
| | * | District of Minnesota. |
| John Gregory Lambros, | * | [UNPUBLISHED] |
| | * | |
| Appellant. | * | |

Submitted: June 25, 2002

Filed: July 1, 2002

Before WOLLMAN, FAGG, and MORRIS SHEPPARD ARNOLD, Circuit Judges.

PER CURIAM.

John Gregory Lambros appeals the district court's[1] denial of his motion under Federal Rule of Civil Procedure 60(b)(6). For the reasons stated by the district court, the judgment is affirmed. See 8th Cir. R. 47B.

[1]The Honorable David S. Doty, United States District Judge for the District of Minnesota.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.



**APPENDIX G.**

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 99-28 (DSD)
Criminal No. 4-89-82(5) (DSD)

John Gregory Lambros,

Petitioner,

v. **ORDER**

United States of America,

Respondent.

This matter is before the court on petitioner's request for a certificate of appealability regarding this court's denial of his motion to vacate which this court construed as a successive section 2255 motion and his request for a motion for leave to file a petition for a writ of mandamus and direct appeal.

Under the Antiterrorism and Effective Death Penalty Act of 1996, an appeal may not be taken from a final order in a section 2255 proceeding unless a "circuit justice or judge issues a certificate of appealability." 28 U.S.C. § 2253(c)(1). A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

A certificate of appealability should not issue merely because the appeal is brought in good faith and raises a "non-frivolous" issue. Kramer v. Kemna, 21 F.3d 305, 307 (8th Cir. 1994).

64.

**APPENDIX H.**

FILED MAY 29 2002
RICHARD D SLETTEN, CLERK
Judgment Ent'd.

Instead, the applicant must show "that the issues are debatable among reasonable jurists, a court could resolve the issues differently, or the issues deserve further proceedings." Flieger v. Delo, 16 F.3d 878, 882-83 (8th Cir. 1994), cert. denied, 513 U.S. 946 (1994) (citing Lozado v. Deeds, 498 U.S. 430, 432 (1991)).

After carefully reviewing the petitioner's request, and for the same reasons that this court denied petitioner's previous motion,[1] the court concludes that petitioner has failed to meet the requisite showing for this court to issue a certificate of appealability.

Therefore, based on a review of the file, record, and proceedings herein, **IT IS HEREBY ORDERED** that petitioner's

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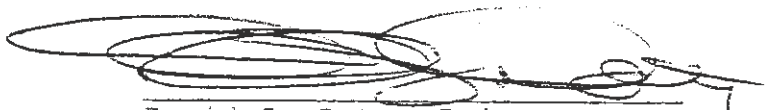
[1] Including this court's determination that petitioner fails to make a substantial showing of the denial of a constitutional right. Furthermore, even if Lambros were permitted to file a successive petition based on the alleged "conflict of interest" on the part of Judge Renner, such petition would be unlikely to succeed since the fact that Judge Renner previously was the United States Attorney for the District of Minnesota does not constitute newly discovered evidence nor does it provide a new rule of constitutional law. It is undisputed that Judge Renner did not preside over Lambros's trial but only entered the case several years after petitioner's conviction at the time of his re-sentencing. In a word, the court believes that defendant's assertions here are meritless.

application for certificate of appealability and motion for leave to appeal is denied.

Dated: May 29, 2002



David S. Doty, Judge
United States District Court



66.

**APPENDIX H.**

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. 4-89-82(5)(DSD)
Civil No. 99-28(DSD)

John Gregory Lambros,

Petitioner,

v. **ORDER**

United States of America,

Defendant.

This matter is before the court on petitioner's motion to vacate all judgments and orders [Doc. No. 237]. For the following reasons, the court dismisses the motion. The petitioner has also filed several other motions which are related to the motion to vacate including: (1) a motion for disclosure of documents filed by United States District Court Judge Robert Renner [Doc. No. 241]; (2) a motion for extension of time to respond [Doc. No. 242]; (3) a motion for appointment of counsel [Doc. No. 244]; and (4) a motion to disclose current investigation by the Minnesota Office of Lawyers' Professional Responsibility [Doc. No. 247]. Because the court concludes that these motions are collateral to the substantive motion which is being dismissed and since the court concludes that it lacks jurisdiction over this matter, the court will dismiss all of these motions.

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**APPENDIX I.**

## BACKGROUND

In 1993, petitioner John Gregory Lambros was convicted of several drug trafficking offenses after a jury trial. His initial sentence of life imprisonment was vacated on appeal by the Eighth Circuit Court of Appeals. The Eighth Circuit affirmed his conviction in all other respects and remanded the matter for resentencing. He was resentenced in 1997 to 360 months imprisonment. The Eighth Circuit later affirmed the resentencing.

The present petition marks Lambros's fifth post-conviction collateral attack on his conviction and sentence. The first such petition was filed at the time of his resentencing. Although described as a motion pursuant to Fed. R. Crim. P. 33, the district court construed it as a petition for § 2255 habeas corpus relief and denied it. Lambros filed a second petition on April 18, 1997, which was denied as successive.[1] Lambros's third petition was filed on January 7, 1999. The district court dismissed it for lack of jurisdiction because Lambros had not obtained authorization from the Eighth Circuit to file a successive petition for habeas relief. The Eighth Circuit affirmed the dismissal of the third petition in an unpublished order. Lambros's fourth petition was filed in the Eighth Circuit on June 29, 2001, as a motion for leave to file a second or successive § 2255 petition. The Eighth Circuit has not

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[1] The district court alternatively concluded that this second petition lacked merit.

yet ruled on that petition. Now, Lambros brings the present motion to vacate all judgments and orders by the United States District Court pursuant to Rule 60(b)(6). Although petitioner purports to bring this motion under Rule 60(b)(6) of the Federal Rules of Civil Procedure, the court concludes that it must be treated as a petition pursuant to 28 U.S.C. § 2255 since Lambros is attempting to collaterally attack his conviction and sentence. See Bolder v. Armontrout, 983 F.2d 98, 99 (8th Cir. 1993); Blair v. Armontrout, 976 F.2d 1130, 1134 (8th Cir. 1992).

Under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), a federal prisoner must obtain certification from the appropriate court of appeals prior to filing a second or successive petition for habeas relief in the district court. 28 U.S.C. § 2255 (2001). The Eighth Circuit has held that this prior certification rule is "absolute." Boykin v. United States, 2000 WL 1610732, *1 (8th Cir. 2000). When a prisoner fails to comply with the certification requirement, the district court lacks the power and authority to entertain the motion. Id., see also United States v. Allen, 157 F.3d 661, 664 (9th Cir. 1998); Nelson v. United States, 115 F.3d 136, 136 (2nd Cir. 1997). Because the present motion to vacate is a successive § 2255 petition for which Lambros

has not obtained permission from the Eighth Circuit Court of Appeals to file, this court lacks jurisdiction to hear the petition and must dismiss it accordingly.[2]

Moreover, because petitioner's several other motions are related to and dependant upon the motion to vacate, and since this court lacks jurisdiction, all of petitioner's other motions must be dismissed on the same basis.

**CONCLUSION**

Accordingly, **IT IS HEREBY ORDERED** that:

1. Petitioner's motion to vacate all judgments and orders [Docket No. 237] is dismissed;

2. Petitioner's motion for disclosure [Docket No. 241] is dismissed;

3. Petitioner's motion for extension of time [Docket 242] is dismissed;

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[2] The court also concludes that, even if Lambros were to apply to the Eighth Circuit for permission to file a successive petition based on the alleged "conflict of interest" on the part of Judge Renner, such permission would be unlikely to be granted since petitioner's claim does not fit either of the two criteria set forth in 28 U.S.C. § 2255 as providing a basis for permitting the filing of a successive petition. The fact that Judge Renner previously was the United States Attorney for the District of Minnesota does not constitute newly discovered evidence nor does it provide a new rule of constitutional law. Moreover, Judge Renner did not preside over Lambros's trial but only entered the case several years after petitioner's conviction at the time of his resentencing.



**APPENDIX I.**

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4. Petitioner's motion for appointment of counsel [Docket No. 244] is dismissed; and

5. Petitioner's motion to disclose current investigation [Docket No. 247] is dismissed.

Dated: March 8, 2002

David S. Doty, Judge
United States District Court



**APPENDIX I.**

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Ward during the mid-1980's, as he was in charge of guarding the 3 or 4 persons per year treated for implant removal. This document is two (2) pages in length in **PDF FORMAT**. This **PDF DOCUMENT NEEDS ADOBE ACROBAT READER TO VIEW AND PRINT.**

DOWNLOAD NOVEMBER 12, 1996, LETTER AS TO "DEPATTERNIENG/GRIED ROOMS" HERE IN PDF.

November 20, 1996 letter from Lambros to Federal Judge Renner and Lambros's attorney requesting that Dr. Criqui be subpoenaed to testify at the re-sentencing, and that he be paid by the government.

**ROBERT G. RENNER, UNITED STATES DISTRICT COURT JUDGE, AS TO VIOLATIONS OF TITLE 28 U.S.C. § 455(a) AND § 455(b) (3). DISTRICT OF MINNESOTA.WILL THE COURT CONDUCT A HEARING AT WHICH THERE WOULD BE FULL DISCLOSURE ON RECORD OF BASIS FOR DISQUALIFICATION OF JUDGE RENNER IN ACCORDANCE WITH TITLE 28 U.S.C.A. I 455(e)? See, IN RE KANSAS PUBLIC EMPLOYEES RETIREMENT SYSTEM, 85 F.3d 1353, 1359 (8th Cir. 1996); MORGAN vs. CLARKE, 296 F.3d 638, 648 (8th Cir. 2002); BARKSDALE vs. EMERICK, 853 F.2d 1359, 1361-1363 (6th Cir. 1988).**

April 13, 2001, "MOTION TO VACATE ALL JUDGMENTS AND ORDERS BY UNITED STATES DISTRICT COURT JUDGE ROBERT G. RENNER PURSUANT TO RULE 60(b)(6) OF THE FEDERAL RULES OF CIVIL PROCEDURE FOR VIOLATIONS OF TITLE 28 U.S.C.A. § 455." This document was filed in U.S. vs. LAMBROS, Civil File No. 99-28 (RGR), Criminal File No. 4-89-82(05) and is a **TOTAL OF 57 PAGES** with some of the exhibit pages containing two (2) pages that have been reduced to assist in lowering coping costs to the courts. Therefore, what you are reviewing in PDF format is an exact copy of the document as presented to the court on April 20, 2001 via U.S. Certified Mail with Return Receipt Requested. Please note that Lambros has numbered each page, in longhand, in the lower right hand corner so his readers are insured that they don't mix-up exhibit order as they maybe confusing. CLICK HERE to view these pages in **PDF format. THE FREE ACROBAT READER MAY BE DOWNLOADED FROM ADOBE SYSTEMS BY CLICKING HERE.**

DOWNLOAD APRIL 13, 2001 JUDGE RENNER DOCUMENT HERE IN PDF.

September 14, 2001, ORDER, by United States District Chief Judge JAMES M. ROSENBAUM, filed stamped by Clerk on September 18, 2001. Judge Rosenbaum ORDERED he government to respond to LAMBROS' MOTION TO VACATE ALL JUDGMENTS AND ORDER, by Monday, October 22, 2001. Also attached is the mailer slip that states this is part of Case No. 99-cv-28. This document contains two (2) pages. CLICK HERE to view these pages in **PDF format. THE FREE ACROBAT READER MAY BE DOWNLOADED FROM ADOBE SYSTEMS BY CLICKING HERE. PLEASE NOTE: IT APPEARS UNITED STATES DISTRICT COURT JUDGE ROBERT G. RENNER HAS RECUSED HIMSELF FROM LAMBROS' CASE, AS PER THIS ORDER.** See, U.S. vs. ARNPRIESTER, 37 F.3d 466 (9th Cir. 1994)(U.S. District Judge cannot adjudicate case that he or she as U.S. Attorney began).

DOWNLOAD SEPTEMBER 14, 2001, ORDER BY U.S. DISTRICT CHIEF JUDGE JAMES M. ROSENBAUM HERE IN PDF

September 20, 2001, Civil Case No. **99-CV-28**, LAMBROS' motion entitled, "SUPPLEMENTAL INFORMATION TO ASSIST THE COURT AND THE GOVERNMENT IN THEIR RESPONSE TO PETITIONER'S MOTION TO VACATE ALL JUDGMENTS AND ORDERS, AS ORDERED BY JUDGE ROSENBAUM ON SEPTEMBER 14, 2001, FILED SEPTEMBER 18, 2001." This is a continuation of criminal file number 4-89-82(5). This document is a TOTAL OF 9 PAGES including a one page certificate of service, two page motion, and six pages of exhibits. LAMBROS has numbered each page, in longhand, in the lower right hand corner so his readers are insured that they don't mix-up exhibit order. CLICK HERE to view these pages in PDF FORMAT. **THE FREE ACROBAT READER MAY BE DOWNLOADED FROM ADOBE SYSTEMS BY CLICKING HERE.**

DOWNLOAD SEPTEMBER 20, 2001, MOTION DOCUMENT HERE IN PDF.

October 19, 2001, Civil Case No. **99-28 (RGR)**, criminal number 4-89-82(5), governments' motion entitled, "OPPOSITION OF THE UNITED STATES TO PETITIONER'S MOTION TO VACATE ALL JUDGMENTS AND ORDERS." This document is a total of five (5) pages in PDF FORMAT. **THE FREE ACROBAT READER MAY BE DOWNLOADED FROM ADOBE SYSTEMS BY CLICKING HERE TO VIEW THIS DOCUMENT.** (The exhibits are not included within this download as they are court opinions and documents that appear within this web site). DOWNLOAD OCTOBER 19, 2001, OPPOSITION OF U.S. HERE IN PDF.

DOWNLOAD OCTOBER 19, 2001, OPPOSITION OF U.S. HERE IN PDF.

October 20, 2001, Civil Case No. **99-28 (RGR)**, criminal number 4-89-82(5), LAMBROS' "MOTION FOR DISCLOSURE OF DOCUMENTS FILED BY UNITED STATES DISTRICT COURT JUDGE ROBERT G. RENNER IN THIS ACTION." This document is a total of seven (7) pages including the one (1) page certificate of service in **PDF FORMAT. THE FREE ACROBAT READER MAY BE DOWNLOADED FROM ADOBE SYSTEMS BY CLICKING HERE TO VIEW AND PRINT THIS DOCUMENT.**

DOWNLOAD OCTOBER 20, 2001, MOTION FOR DISCLOSURE OF DOCUMENTS BY JUDGE RENNER IN THIS ACTION HERE IN PDF.



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October 30, 2001, Civil Case No. **99-28 (RGR)**, criminal number 4-89-82(5), LAMBROS' "MOTION FOR EXTENSION OF TIME TO RESPOND TO GOVERNMENTS' OPPOSITION DATED OCTOBER 19, 2001." This document is a total of two (2) pages including the one (1) page certificate of service in **PDF FORMAT. THE FREE ACROBAT READER MAY BE DOWNLOADED FROM ADOBE SYSTEMS BY** CLICKING HERE **TO VIEW AND PRINT THIS DOCUMENT.** (The one page exhibit not included).

DOWNLOAD OCTOBER 30, 2001, MOTION FOR EXTENSION OF TIME HERE IN PDF.

November 02, 2001, Civil Case No. **99-28 (RGR)**, criminal number 4-89-82(5), LAMBROS filed two (2) motions: **a)** "PETITION LAMBROS REQUESTS PERMISSION FROM THE COURT TO AMEND THIS ACTION UNDER RULE 15(a) & 19(a), FRCP." This motion is a total of four (4) pages with two (2) pages of exhibits. **PLEASE NOTE** that LAMBROS is including United States Chief Magistrate Judge **FRANKLIN LINWOOD NOEL** to this action, as Magistrate Judge NOEL was an Assistant U.S. Attorney in the U.S. Attorney's Office for the District of Minnesota, **MINNEAPOLIS OFFICE,** from **1983 thru 1989**, the same years LAMBROS was alleged to have conspired in drug transaction that ended in LAMBROS' **INDICTMENT** on May 17, 1989, from the MINNEAPOLIS OFFICE of the U.S. Attorney's Office. Therefore, Magistrate Judge **NOEL's** violations of Title 28 USCS Sections **455(a) and 455(b)(3). b)** "MOTION FOR THE APPOINTMENT OF COUNSEL." This motion is a total of two (2) pages. Therefore, there is a **TOTAL OF NINE (9) PAGES** including one (1) page for the certificate of service in **PDF FORMAT. THE FREE ACROBAT READER MAY BE DOWNLOADED FROM ADOBE SYSTEMS BY** CLICKING HERE **TO VIEW AND PRINT THIS DOCUMENT.** (please note that the exhibits in this package may not be clear, as they where faxed copies to start with).

DOWNLOAD NOVEMBER 02, 2001 MOTIONS TO AMEND AND APPOINTMENT OF COUNSEL HERE IN PDF.

November 09, 2001, Civil Case No. 99-28 (RGR), criminal number 4-89-82(5), LAMBROS' "PETITIONER LAMBROS' RESPONSE TO OCTOBER 19, 2001, 'OPPOSITION OF THE UNITED STATES TO PETITIONER'S MOTION TO VACATE ALL JUDGMENTS AND ORDERS.'" This document is fifteen (15) pages in length plus four (4) exhibit cover pages and one (1) page certificate of service page. Therefore, a TOTAL OF TWENTY (20) PAGES IN PDF FORMAT. PLEASE NOTE that the exhibit are not included in this download, but are available within the "SECOND AND SUCCESSIVE MOTIONS TO VACATE, SET ASIDE, OR CORRECT SENTENCES UNDER TITLE 28 U.S.C. §2255 BY JOHN GREGORY LAMBROS" section of this web site. See EXHIBIT INDEX within this document for exact descriptions. **THE FREE ACROBAT READER MAY BE DOWNLOADED FROM ADOBE SYSTEMS BY** CLICKING HERE **TO VIEW AND PRINT THIS DOCUMENT.**

DOWNLOAD NOVEMBER 09, 2001, LAMBROS' RESPONSE TO U.S. GOVERNMENT HERE IN PDF.

November 10, 2001, Civil Case No. 99-28 (RGR), criminal number 4-89-82(5), LAMBROS' motion entitled, "ADDENDUM TO: PETITIONER LAMBROS' RESPONSE TO OCTOBER 19, 2001, 'OPPOSITION OF THE UNITED STATES TO PETITIONER'S MOTION TO VACATE ALL JUDGMENTS AND ORDERS.'" This motion is two (2) pages in length plus one (1) page for the certificate of service. Therefore, a TOTAL OF THREE (3) PAGES in PDF FORMAT. PLEASE NOTE that this addendum introduced Lambros' August 09, 2001, two page letter to The Honorable Charles E. Grassley, United States Senator, regarding the "INVESTIGATION INTO TORTURE AND ILLEGAL EXTRADITION PROCESS FROM BRAZIL TO THE UNITED STATES IN U.S. vs. LAMBROS, CR-4-89-82(5), DISTRICT OF MINNESOTA." Also, LAMBROS' August 09, 2001, "AFFIDAVIT OF JOHN GREGORY LAMBROS TO THE UNITED STATES SENATE, 'COMMITTEE ON THE JUDICIARY.'" Copy of the August 09, 2001, letter and affidavit was attached to this motion when submitted to the Court. You may access copy of both the letter and affidavit by going to the beginning of this web sites' index and looking within the MAJOR DIVISION section under "UNITED STATES SENATOR CHARLES ERNEST GRASSLEY AND 'COMMITTEE ON THE JUDICIARY' INVESTIGATE LAMBROS' TORTURE AND EXTRADITION FROM BRAZIL." **THE FREE ACROBAT READER MAY BE DOWNLOADED FROM ADOBE SYSTEMS BY** CLICKING HERE **TO VIEW AND PRINT THIS DOCUMENT.**

DOWNLOAD NOVEMBER 10, 2001, LAMBROS' ADDENDUM TO GOVERNMENT RESPONSE HERE IN PDF.

January 02, 2002, Civil Case No. 99-28(RGR), criminal number 4-89-82(5), LAMBROS' motion entitled, "MOTION TO DISCLOSE CURRENT INVESTIGATION BY THE **MINNESOTA OFFICE OF LAWYERS PROFESSIONAL RESPONSIBILITY.**" This motion is three (3) pages in length plus a one (1) page certificate of service. Also there are thirty (30) pages of exhibits. Therefore, a TOTAL OF **34 PAGES.** Please note that this motion discloses the investigation of Attorney Colia F. Ceisel; U.S. Assistant Attorney Douglas Peterson; and U.S. Attorney David L. Lillehaug, by the Minnesota Office of Lawyers Professional Responsibility, as to Lambros' February 10, 1997 resentencing hearing held before Judge Robert G. Renner. This motion is in **PDF FORMAT. THE FREE ACROBAT READER MAY BE DOWNLOADED FROM ADOBE SYSTEMS BY** CLICKING HERE **TO VIEW AND PRINT THIS DOCUMENT.**

DOWNLOAD JANUARY 02, 2002 MOTION DISCLOSING INVESTIGATION BY MINNESOTA OFFICE OF LAWYERS PROFESSIONAL RESPONSIBILITY HERE IN PDF.

March 08, 2002, ORDER by U.S. District Court Judge David S. Doty in criminal action 4-89-82(5)(DSD) and civil action 99-28(DSD). Judge Doty dismissed this action against Judge Renner stating, "Because the court concludes that these motions are collateral to the substantive motion which is being dismissed and since the court concludes that it lacks jurisdiction over this matter, the court will dismiss all of these motions." This motion is five (5) pages and being offered in **PDF FORMAT. YOU NEED ADOBE** ACROBAT READER **TO VIEW AND PRINT THIS DOCUMENT.**



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DOWNLOAD MARCH 08, 2002 ORDER BY JUDGE DAVID S. DOTY HERE IN PDF.

MARCH 27, 2002, NOTICE TO PERFORM AND/OR ACTUAL NOTICE to Robert G. Renner, U.S. Senior District Court Judge from John G. Lambros, dated March 27, 2002. Why was Judge Rosenbaum assigned the case when Judge Renner had been assigned from 1997 thru February 20, 2001? This letter is 7 pages in total with exhibits and being offered in **PDF FORMAT. YOU NEED ADOBE ACROBAT READER TO VIEW AND PRINT THIS DOCUMENT.**

DOWNLOAD MARCH 27, 2002 LAMBROS' LETTER TO JUDGE RENNER HERE IN PDF.

April 10, 2002, Civil No. 99-28(DSD) and Criminal No. 4-89-82(5)(DSD). Lambros submits the following three (3) motions to the court, as to the appeal of Judge Doty's ORDER. (1) NOTICE OF APPEAL; (2) MOTION FOR ISSUANCE OF CERTIFICATE OF APPEALABILITY; and (3) MOTION FOR LEAVE TO FILE A PETITION FOR A WRIT OF MANDAMUS AND/OR DIRECT APPEAL. A total of 39 pages including exhibits and cover letter to the Clerk of the Court in **PDF FORMAT. YOU NEED ADOBE ACROBAT READER TO VIEW AND PRINT THIS DOCUMENT.** (Pages hand-numbered 1 thru 39 in lower right corner to assist you).

DOWNLOAD APRIL 10, 2002, LAMBROS' NOTICE OF APPEAL, CERTIFICATE OF APPEALABILITY, AND WRIT OF MANDAMUM/DIRECT APPEAL HERE IN PDF.

April 16, 2002, Civil No. 99-28(DSD) and Criminal No. 4-89-82(DSD). Lambros submits his "ADDENDUM TO: MOTION FOR ISSUANCE OF CERTIFICATE OF APPEALABILITY, Dated: April 10, 2002." This motion is 2 pages. The total document with exhibits and cover letter to the clerk of the court is six (6) pages in **PDF FORMAT. YOU NEED ADOBE ACROBAT READER TO VIEW AND PRINT THIS DOCUMENT.** (Pages hand-numbered 1 thru 6 in lower right corner to assist you).

DOWNLOAD APRIL 16, 2002 ADDENDUM TO: MOTION FOR ISSUANCE OF CERTIFICATE OF APPEALABILITY HERE IN PDF.

April 23, 2002, letter from U.S. Court of Appeal for the Eighth Circuit offering the APPEAL NUMBER in this action, 02-2026, USA vs. LAMBROS. The clerk states that he received Lambros' notice of appeal and DOCKET ENTRIES from the district court and that Lambros' appeal has been referred to the appeals court for consideration. PROBLEM: Why didn't Judge Doty make an ORDER as to Lambros' April 10, 2002 motions before the Eighth Circuit was given Lambros' motions? This letter with attachments is three (3) pages in **PDF FORMAT. YOU NEED ADOBE ACROBAT READER TO VIEW AND PRINT THIS DOCUMENT.**

DOWNLOAD APRIL 23, 2002 LETTER FROM EIGHTH CIRCUIT COURT OF APPEAL HERE IN PDF.

June 10, 2002, Eighth Circuit Court of Appeals Number 02-2026, District of Minnesota Civil No. 99-28(DSD) and Criminal No. 4-89-82(DSD). Lambros' "MOTION FOR ISSUANCE OF CERTIFICATE OF APPEALABILITY BY THE EIGHTH CIRCUIT COURT OF APPEALS." Please note that the U.S. Supreme Court has granted certiorari on the very same question Lambros is presenting to the Court. This motion is seven (7) pages including the cover letter to the court and Exhibit A and being offered in **PDF FORMAT. YOU NEED ADOBE ACROBAT READER TO VIEW AND PRINT THIS DOCUMENT.** Exhibit B of this document is Lambros' April 10, 2002, Motion for Issuance of Certificate of Appealability and is available within this section. Thank you.

DOWNLOAD JUNE 10, 2002, COA TO EIGHTH CIRCUIT COURT OF "APPEALS HERE IN PDF.

July 1, 2002, Eighth Circuit Court of Appeals No. 02-2026, District of Minnesota Civil No. 99-28(DSD) and Criminal No. 4-89-82(DSD). ORDER by the Eighth Circuit DENYING Lambros' Motion for a COA, for the reasons stated by the district court. The court's order is two (2) pages in **PDF FORMAT. YOU NEED ADOBE ACROBAT READER TO VIEW AND PRINT THIS DOCUMENT.**

DOWNLOAD JULY 1, 2002, ORDER BY EIGHTH CIRCUIT HERE IN PDF.

July 11, 2002, Eighth Circuit Court of Appeals No. 02-2026, USA vs. LAMBROS, District of Minnesota No. 99-28(DSD) and Criminal No. 4-89-82(DSD), Lambros' filing of PETITION FOR REHEARING (FRAP 40) WITH A SUGGESTION FOR REHEARING EN BANC (FRAP 35). This motion and cover letter to the court is eighth (8) pages, NOT including exhibits in PDF FORMAT. YOU NEED ADOBE ACROBAT READER TO VIEW AND PRINT THIS DOCUMENT. (Please note that exhibit B is Lambros' February 15, 2002 FILING OF COMPLAINT against U.S. Attorney Renner with the Office of Lawyers Professional Responsibility, St. Paul, Minnesota. This document is available within this web site by entering February 15, 2002 into the search engine of this web site)

DOWNLOAD JULY 11, 2002, PETITION FOR REHEARING WITH SUGGESTION FOR REHEARING EN BANC HERE IN PDF.

October 19, 2002, filed on November 1, 2002, and placed on the docket of the SUPREME COURT OF THE UNITED STATES on November 12,



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2002, as docket number **02-7346**, JOHN G. LAMBROS vs. UNITED STATES, Petition for a Writ of Certiorari. This is the final stage for Lambros' "MOTION TO VACATE ALL JUDGMENTS AND ORDERS BY U.S. DISTRICT COURT JUDGE ROBERT G. RENNER PURSUANT TO RULE 60(b)(6) OF FEDERAL RULES OF CIVIL PROCEDURE FOR VIOLATIONS OF TITLE 28 U.S.C.A. §455." This petition is a total of 93 pages including exhibits and is numbered in the lower right hand corner to assure order in your review. This **PDF FORMATTED DOCUMENT NEEDS ADOBE ACROBAT READER TO VIEW AND PRINT.** (On December 5, 2002 the Solicitor General requested an extension of time to respond.

DOWNLOAD OCTOBER 19, 2002, WRIT OF CERTIORARI HERE IN PDF.

January 13, 2003, United States Supreme Court docket number 02-7346, LAMBROS vs. USA, BRIEF FOR THE UNITED STATES IN OPPOSITION. This is Solicitor General Theodore B. Olson, Assistant Attorney General Michael Chertoff, and Attorney Michael A. Rotker's response to Lambros' October 19, 2002, Writ of Certiorari. Please note that the government does not respond to the actions of MAGISTRATE JUDGE FRANKLIN LINWOOD NOEL'S within the response. Thus, "establishing a claim or right to relief by evidence satisfactory to the court." See, Federal Rules of Civil Procedure 55(e). This document is a total of twenty-one (21) pages in PDF FORMAT and numbered in the lower right hand corner to assure order in your review. This **PDF DOCUMENT NEEDS ADOBE ACROBAT READER TO VIEW AND PRINT.**

DOWNLOAD JANUARY 13, 2003, GOVERNMENT RESPONSE TO WRIT OF CERTIORARI HERE IN PDF.

January 29, 2003, filed January 30, 2003, United States Supreme Court number 02-7346, LAMBROS vs. USA, PETITIONER LAMBROS' RESPONSE BRIEF TO BRIEF FOR THE UNITED STATES IN OPPOSITION DATED JANUARY 13, 2003. This is Lambros' response to the Solicitor General's brief. Please note that Lambros advises the court that AT LEAST FOUR (4) MEMBERS OF THE COURT GRANTED CERTIORARI ON THE SAME QUESTION LAMBROS IS PRESENTING AND JUSTICE STEVENS, WHO REMAINS OUTSIDE THE POOL, BELIEVES THE QUESTION LAMBROS PRESENTS SHOULD BE ANSWERED. Therefore, five (5) members (at LEAST five) of the United States Supreme Court, meeting the unwritten "rule of four", have already decided LAMBROS' question should be granted and placed on the calendar for hearing and decision. Also, Solicitor General Olson, has sent a not-so-subtle signal to the court that it SHOULD NOT IGNORE Lambros' question, as the government ONLY responds to approximately five (5%) percent of all "in forma pauperis" filings, the so-called "pauper" docket. This document has forty-nine (49) pages, including exhibits, in PDF FORMAT and numbered in the lower right hand corner in long hand to assure order in your review. This **PDF DOCUMENT NEEDS ADOBE ACROBAT READER TO VIEW AND PRINT.**

DOWNLOAD JANUARY 29, 2003, LAMBROS' RESPONSE BRIEF TO WRIT OF CERTIORARI HERE IN PDF.

February 22, 2003, filed February 25, 2003, **CORRECTED RESPONSE BRIEF BY LAMBROS**, in LAMBROS vs. USA, U.S. Supreme Court docket number 02-7346. This is PETITIONER LAMBROS' RESPONSE BRIEF TO BRIEF FOR THE UNITED STATES IN OPPOSITION DATED JANUARY 13, 2003. Please note that the Clerk returned Lambros' January 29, 2003 brief due to a violation of Rule 33.2(b) that requires a 15 page limit on response briefs. This document is forty-eight (48) pages, including exhibits, in PDF FORMAT and numbered in the lower right hand corner in long-hand to assure order for your review. This **PDF DOCUMENT NEEDS ADOBE ACROBAT READER TO VIEW AND PRINT.**

DOWNLOAD FEBRUARY 22, 2003. LAMBROS' "CORRECTED" RESPONSE BRIEF TO WRIT OF CERTIORARI HERE IN PDF.

February 24, 2003, ORDER from U.S. Supreme Court in LAMBROS vs. U.S., No. 02-7346, PETITION FOR A WRIT OF CERTIORARI DENIED. This document is one (1) page in PDF format. This **PDF DOCUMENT NEEDS ADOBE ACROBAT READER TO VIEW AND PRINT.**

DOWNLOAD FEBRUARY 24, 2003, SUPREME COURT ORDER HERE IN PDF.

March 07, 2003, letter from Clerk of Supreme Court to LAMBROS in LAMBROS vs. USA, returning CORRECTED RESPONSE BRIEF in light of denial of writ of certiorari on February 24, 2003, in Case No. 02-7346. This document is one (1) page in PDF format. This **PDF DOCUMENT NEEDS ADOBE ACROBAT READER TO VIEW AND PRINT.**

DOWNLOAD MARCH 07, 2003 LETTER FROM SUPREME COURT HERE IN PDF.

March 07, 2003, "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," in LAMBROS vs. USA, File No. 02-7346. This document is twelve (12) pages including cover letter and DOES NOT include exhibits that are available within this web site already. All pages are hand-numbered in the lower right hand corner to assure order. This **PDF DOCUMENT NEEDS ADOBE ACROBAT READER TO VIEW AND PRINT.**

DOWNLOAD MARCH 07, 2003, MOTION TO SUPREME COURT JUSTICE CLARENCE THOMAS HERE IN PDF.

March 17, 2003, letter from Clerk of Supreme Court in LAMBROS vs. USA, File No. 02-7346, returning LAMBROS' March 07, 2003, MOTION TO THE HONORABLE SUPREME COURT JUSTICE CLARENCE THOMAS. This states that LAMBROS' motion "does not have appended thereto a copy of a stay order that was dissolved upon the denial of certiorari nor does it otherwise clearly indicate the effect of the denial of certiorari." This document is one (1) page in PDF FORMAT. This **PDF DOCUMENT NEEDS ADOBE ACROBAT READER TO VIEW AND PRINT.**

DOWNLOAD MARCH 17, 2003 LETTER FROM U.S. SUPREME COURT HERE IN PDF.



**APPENDIX J.**

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March 13, 2003, PETITION FOR REHEARING in LAMBROS vs. USA, Supreme Court File No. 02-7346. This document is sixteen (16) -pages including cover letter and exhibits in PDF FORMAT All pages are hand-numbered in the lower right hand corner to assure order. This **PDF DOCUMENT NEEDS ADOBE ACROBAT READER TO VIEW AND PRINT.**

DOWNLOAD MARCH 13, 2003, PETITION FOR REHEARING HERE IN PDF.

April 21, 2003, the United States Supreme Court DENIED Lambros' PETITION FOR REHEARING in LAMBROS vs. USA, Supreme Court file No. 02-7346.

May 20, 2003, Lambros RETURNS TO THE DISTRICT COURT and files a MOTION TO VACATE JUDGMENT DUE TO INTERVENING CHANGE IN CONTROLLING LAW UNDER ANY ONE OF THREE SEPARATE SUBSECTIONS OF FEDERAL RULES OF CIVIL PROCEDURE 60(b) - SECTIONS ONE, FIVE, AND SIX. This document appears in the U.S. District Court for the District of Minnesota file numbers: Civil No. 99-28(DSD) and Criminal No. 4-89-82 (DSD). This document is thirty-three (33) pages including cover letter and exhibits in PDF FORMAT. All pages are hand-numbered in the lower right hand corner to assure order. This **PDF DOCUMENT NEEDS ADOBE ACROBAT READER TO VIEW AND PRINT.**

DOWNLOAD MAY 20, 2003, MOTION AS TO INTERVENING CHANGE IN CONTROLLING LAW HERE IN PDF.

July 07, 2003, U.S. Attorney Thomas B. Heffelfinger and U.S. Assistant Attorney Jeffrey S. Paulsen's "OPPOSITION OF THE UNITED STATES TO PETITIONER'S MOTION TO VACATE JUDGMENT DUE TO INTERVENING CHANGE IN CONTROLLING LAW." This document appears in the U.S. District Court for the District of Minnesota file number: Criminal NO. 4-89-82(5)(DSD) and Civil No. 99-28(DSD). This document is seven (7) pages including exhibits in PDF FORMAT. This **PDF DOCUMENT NEEDS ADOBE ACROBAT READER TO VIEW AND PRINT.**

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July 15, 2003, "PETITIONER LAMBROS' RESPONSE TO THE GOVERNMENT'S "OPPOSITION OF THE UNITED STATES TO PETITIONER'S MOTION TO VACATE JUDGMENT DUE TO INTERVENING CHANGE IN CONTROLLING LAW." LAMBROS vs. U.S.A, Civil No. 99-28(DSD) and Criminal No. 4-89-82(5)(DSD). This document is twelve (12) pages including cover letter in PDF FORMAT. All pages are hand-numbered in the lower right hand corner to assure order. This **PDF DOCUMENT NEEDS ADOBE ACROBAT READER TO VIEW AND PRINT.** (Please note that the government is lying to the court stating Lambros' appeal was decided on the **MERITS.**)

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September 30, 2003, filed October 02, 2003, "MOTION OFFERING CLARIFICATION OF FACTS, RECORD, AND EVIDENCE PERTINENT TO EXISTING ISSUES IN THIS ACTION AS TO THE INTEGRITY OF THE PROCEEDING THAT RESULTED IN THE DISTRICT COURT'S JUDGMENT ON FEBRUARY 10, 1997, AT RESENTENCING OF JOHN G. LAMBROS BY THE HONORABLE ROBERT G. RENNER." LAMBROS vs. USA, Civil No. 99-28(DSD) and Criminal No. 4-89-82(5)(DSD). This document is fifty-five (55) pages including cover letter to the clerk and exhibits in PDF FORMAT. All pages are hand-numbered in the lower right hand corner to assure order. This **PDF DOCUMENT NEEDS ADOBE ACROBAT READER TO VIEW AND PRINT.** Of interest in this document is the fact that Judge Renner would not give Lambros a HEARING as to a marijuana conspiracy when he was required to do so at RESENTENCING when he turned Lambros' Rule 33 MOTIONS into a Section 2255. See paragraph 27 within this document for case law.

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October 23, 2003, ORDER by U.S. District Court Judge David S. Doty in USA vs. LAMBROS, Civil No. 99-28(DSD), Criminal No. 4-89-82(5)(DSD/FLN). Judge Doty states, "Because the court finds no intervening change in law requiring it to vacate its dismissal of defendant's purported Rule 60(b) motion or its denial of defendant's motion for COA, the present motion is denied." This document is seven (7) pages in PDF FORMAT. This **PDF DOCUMENT NEEDS ADOBE ACROBAT READER TO VIEW AND PRINT.** Of interest is the fact a **HEARING FOR FULL DISCLOSURE ON THE RECORD** has never been conducted in this case, as required by TITLE 28 U.S.C. 5455(e). See, BARKSDALE vs. EMERICK, 853 F.2d 1359 (6th Cir. 1988).

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October 30, 2003, "MOTION TO ALTER OR AMEND JUDGMENT OF THIS COURT'S ORDER DATED OCTOBER 23, 2003, PURSUANT TO RULE 59(e) OF THE FEDERAL RULES OF CIVIL PROCEDURE." LAMBROS vs. USA, Civil No. 99-28(DSD), Criminal No. 4-89-82(5) (DSD/FLN). This document is twelve (12) pages including cover letter to clerk and exhibits in PDF FORMAT. All pages are hand-numbered in the lower right hand corner to assure order. This **PDF DOCUMENT NEEDS ADOBE ACROBAT READER TO VIEW AND PRINT.**

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November 06, 2003, ORDER by U.S. District Court Judge David S. Doty. LAMBROS vs. USA, Civil No. 99-28(DSD), Criminal No. 4-89-82(5)(DSD/FLN). Judge Doty ORDERED that Lambros' Rule 59(e) motion to alter or amend the judgment be denied. This document is three (3) pages in PDF FORMAT. This **PDF DOCUMENT NEEDS ADOBE ACROBAT READER TO VIEW AND PRINT.**

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**APPENDIX J.**

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November 25, 2003, Lambros' "NOTICE OF APPEAL" and "MOTION FOR ISSUANCE OF CERTIFICATE OF APPEALABILITY." USA vs. LAMBROS, Civil No. 99-28(DSD), Criminal No. 4-89-82(5)(DSD/FLN). Lambros requests a Certificate of Appealability as to the issue, **"WHY CHIEF JUDGE JAMES M. ROSENBAUM NOR JUDGE DAVID S. DOTY DID NOT CONDUCT A FULL-HEARING AT WHICH THERE WOULD BE FULL DISCLOSURE ON RECORD FOR DISQUALIFICATION OF JUDGE RENNER IN ACCORDANCE WITH TITLE 28 U.S.C.A. § 455(e)?"** The District Court was bound to conduct a HEARING as per precedent of the Eighth Circuit Court of Appeals. See, MORGAN vs. CLARKE, 296 F.3d 638, 648 (8th Cir. 2002); IN RE KANSAS PUBLIC EMPLOYEES RETIREMENT SYSTEM, 85 F.3d 1353, 1359 (8th Cir. 1996); BARKSDALE vs. EMERICK, 853 F.2d 1359, 1361-1363 (6th Cir. 1988). This document is twenty (20) pages including cover letter to clerk and exhibits in PDF FORMAT. All pages are hand-numbered in the lower right hand corner to assure order. This **PDF DOCUMENT NEEDS ADOBE ACROBAT READER TO VIEW AND PRINT.**

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February 20, 2004, Filed February 23, 2004, ORDER by District Court Judge David S. Doty in USA vs. LAMBROS, Civil No. 99-28(DSD), Criminal No. 4-89-82(5)(DSD/FLN). Judge Doty ordered Lambros' CERTIFICATE OF APPEALABILTY denied. **PLEASE NOTE** that Judge Doty does not state one word in his order as to the reasons he would not conduct a **FULL-HEARING AT WHICH THERE WOULD BE FULL DISCLOSURE ON RECORD FOR DISQUALIFICATION OF JUDGE RENNER IN ACCORDANCE WITH TITLE 28 U.S.C.A. § 455(e). WHY????** This document is six (6) pages in PDF FORMAT. This PDF DOCUMENT **NEEDS ADOBE ACROBAT READER TO VIEW AND PRINT.**

DOWNLOAD FEBRUARY 20, 2004, FILED FEBRUARY 23, 2004, ORDER BY JUDGE DOTY HERE IN PDF.

March 16, 2004, Lambros' "MOTION FOR ISSUANCE OF CERTIFICATE OF APPEALABILITY BY THE EIGHTH CIRCUIT COURT OF APPEALS," in USA vs. LAMBROS, Civil No. 99-28(DSD), Criminal No. 4-89-82(DSD/FLN), Eighth Circuit Court of Appeals No. 04-1559. Because "[a] district court by definition abuses its discretion when it makes an error of law," KOON vs. U.S., 135 L.Ed.2d 392 (1996), Quoting, U.S. vs. DICKERSON, 166 F.3d 667, 680 (4th Cir. 1999), Lambros informs the Eighth Circuit the merits of this action have never been ruled on, as **NO HEARING WAS CONDUCTED AS TO THE BASIS FOR DISQUALIFICATION IN ACCORDANCE WITH TITLE 28 U.S.C.A. § 455(e).** This document is eleven (11) pages including cover letter to clerk and exhibit page informing the reader where to download exhibits in PDF FORMAT. All pages are hand-numbered in the lower right hand corner to assure order. This PDF DOCUMENT **NEEDS ADOBE ACROBAT READER TO VIEW AND PRINT.**

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The above April 13, 2001, "MOTION TO VACATE ALL JUDGMENTS AND ORDERS BY U.S. DISTRICT COURT JUDGE ROBERT G. RENNER PURSUANT TO RULE 60(b)(6) OF FEDERAL RULES OF-CIVIL PROCEDURE FOR VIOLATIONS OF TITLE 28 U.S.C.A. §455" proves, as per Section §455, that the average person on the street "MIGHT" harbor doubts and reasonably question U.S. District Court Judge Robert G. Renner's impartiality toward JOHN GREGORY LAMBROS during all proceedings when Judge Renner was the United States Attorney for Minnesota that investigated and prosecuted LAMBROS in 1975 and 1976. Title 28 U.S.C. §455(a) states, "[A]ny justice, **JUDGE,** or magistrate of the United States shall **DISQUALIFY** himself in **ANY** proceeding in which his **IMPARTIALITY MIGHT REASONABLY BE QUESTIONED."** Title 28 U.S.C. §455(b)(3) states, **"[(b)]** He shall also **DISQUALIFY** himself in the following circumstances: **(3)** Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy." The following facts are exposed within the April 13, 2001, MOTION:

a. U.S. Attorney Robert G. Renner **ILLEGALLY** indicted LAMBROS on March 24, 1976 and assisted in the illegal sentencing of LAMBROS on June 21, 1976, as to violations of law that did not occur on federal property. Title 18 U.S.C. Sections 111 and 114. See, **EXHIBIT A.** (as to Criminal File Number CR-3-76-17, District of Minnesota).

b. The U.S. Attorney's Office in Minneapolis FALSIFIED documents to the U.S. Court of Appeals as to the March 24, 1976 INDICTMENT, as the Eighth Circuit stated LAMBROS was indicted on violations of Title 18 U.S.C. H 111 and 1114, not 114 as stated in the indictment and judgment order signed by Judge Devit. See, U.S. vs. LAMBROS, 614 F.2d 179, 180 (8th Cir. 1980).

c. The U.S. Attorney Robert G. Renner and his employees in 1976 used an ILLEGAL indictment to leverage a negotiated plea of guilty from LAMBROS on charges unrelated. See, U.S. vs. LAMBROS, 544 F.2d 962 (8th Cir. 1976).

d.Warden Mickey Ray is requested to investigate why two (2) JUDGMENT AND PROBATION/COMMITMENT ORDERS appear within Lambros' U.S. Bureau of Prisons file at Leavenworth Penitentiary, as to U.S. vs. LAMBROS., Docket Number CR-3-76-17, District of Minnesota. This is the same criminal case U.S. Attorney Robert G. Renner, now U.S. Judge Renner, indicted Lambros on March 24, 1976, for ASSAULT and changed the charges to MURDER after Lambros plead to an illegal indictment for assault. Lambros' August 20, 2001 letter to Warden Mickey Ray is a TOTAL OF 9 PAGES including exhibits. CLICK HERE to view these pages in **PDF format. THE FREE ACROBAT READER MAY BE DOWNLOADED FROM ADOBE SYSTEMS BY CLICKING HERE.**

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e. October 12, 2001, Lambros' letter to Warden Mickey E. Ray as to Warden Rays' response to Lambros' filing of administrative remedy case number 250231-F1. This is a continuation of Lambros' above August 20, 2001 letter to Warden Ray as to the actions of Judge Renner. This letter is a total of three (3) pages without exhibits in **PDF FORMAT. THE FREE ACROBAT READER MAY BE DOWNLOADED FROM ADOBE SYSTEMS BY CLICKING HERE.**

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