

No. 18-6526

IN THE
SUPREME COURT OF THE UNITED STATES

In re MASAO YONAMINE,

Petitioner,

vs.

ANN M. DONNELLY, Judge,
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
UNDER DOCKET No.18-cv-4325 (AMD),

Respondent.

MOTION FOR AN ORDER OF REHEARING PURSUANT TO U.S. SUPREME COURT'S
RULE 44 & RULE 20, FOR A CLARIFICATION OF THE DENIAL 1/7/2019 OF
THE WRIT OF MANDAMUS PURSUANT TO 28 USCA Sec.1651(a).

MOTION FOR AN ORDER OF REHEARING

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QUESTION PRESENTED

WHETHER, FAILURE OF THE COURT TO COMPLY PURSUANT TO U.S. SUP. COURT'S RULE 20. & Subd., AS REQUIRED BY JUDICIAL PROCESS FOR AN ADJUDICATION FOR APPLICATIONS OF WRIT OF MANDAMUS PURSUANT TO ALL WRITS 28 USCA Sec. 1651(a) IS IN VIOLATION OF DUE PROCESS OF LAW & EQUAL PROTECTION OF THE LAWS ? (U.S. Const. 14th Amends. rights).

LIST OF PARTIES

All Parties appear in the caption of the case on the cover page.

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- APPENDIX C: Application to Proceed in Forma Pauperis dated Oct.28/18.
- APPENDIX D: A copy of Declaration of Service of Documents by Certified Mail Receipt with Postmark & dated Nov.6/18, Notifying to Mr. Scott S.Harris, Clerk of the U.S.Sup.Court, Attn. to Mr. Jacob Levitan, indicating that Documents were served to all parties involved in the case via Cert. Mail Receipts with Postmarked & dated Nov.5/18.
- APPENDIX E: An entire copy of the Petitioner's Petition for a Writ of Habeas Corpus pursuant to 2241(a)(c)(3) & Sec.1651(a) dated 7/25/18, submitted to the Dist. Court for (E.D.N.Y.), Docketed as No.18-cv-4325 (AMD), assigned to Judge DONNELLY.

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UNITED STATES SUPREME COURT'S DECISION

On January 7, 2019, this Honorable Court denied Petitioner's Petition for a WRIT OF MANDAMUS without an opinion, where Petitioner requested the Court to issue a Writ of Mandamus to compel the Dist. Court of New York State to adjudicate Petitioner's Writ from a petition for Writ of Habeas Corpus pursuant to 28 USCA Sec.2241(a)(c)(3) & 28 USCA Sec.1651(a), submitted to the U.S.Dist. Court for Eastern Dist. of New York dated July 25, 2018, filed under Dkt.#18-cv-4325 (AMD) Yonamine v. Gerbing, assigned to Judge ANN M. DONNELLY.

Justice DONNELLY, without conducting a hearing pursuant to 28 USCA Sec.2241(5) & Sec.2243 as law and justice require to determine of the substance of the Petitioner's Writ under 2241(a)(c)(3)'s language, mislabeled petitioner's Writ and circumvented said Writ via transferring said Writ to the 2nd. Cir. Court of Appeals to pursue as an application as a successive habeas relief pursuant to 28 USCA Sec.2244(b)(3)(A); Where the 2nd. Cir. Court Docketed Petitioner's WRIT as No.18-2416 Yonamine v. Gerbing.

DECISION OF PRIOR OPINION FROM THIS COURT & OPINION BELOW

Please see attached copies of documents for better understanding of the case with respect to this Motion for a REHEARING for a Clarification of the denial Decision 1/7/2019 of the WRIT OF MANDAMUS as follows:

APPENDIX A: Court's denial decision 1/7/2019 of the Petition for a WRIT OF MANDAMUS.

APPENDIX B: A copy Petitioner's Writ of Mandamus dated Oct.28/18, submitted to this Court and Docketed as #18-6526 In Re Masao Yonamine.

APPENDIX C: Application to proceed in Forma Pauperis dated Oct.28/18.

APPENDIX D: A copy of Declaration of Service of Documents by Certified Mail Receipt with Postmarked & Dated Nov.6/18, notifying to Mr. SCOTT S. HARRIS, Clerk of the U.S.Sup. Court, ATTN. to Mr. JACOB LEVITAN, indicating that Documents were served to all parties involved in the case via Cert.Mail Receipts with Postmark & Dated Nov.5/18.

APPENDIX E: An entire copy of the Petitioner's Petition for a WRIT OF HABEAS CORPUS pursuant to 2241(a)(c)(3) & Sec.1651(a) dated 7/25/18, submitted to the Dist. Court for (E.D.N.Y), Docketed as # 18-cv-4325 (AMD), assigned to Judge DONNELLY.

JURISDICTION

The Jurisdiction of this Court is invoked by Petitioner according to Act.III Sec.2, cl.(2) of the U.S. Constitution; U.S.Const.Art.1, Sec.9,cl.(2); 28 USCA Sec.2241(a)(c)(3); 28 USC Sec.2243; 28 USC Sec.2242; 28 USCA Sec. 2403(a)(b); All Writ 28 USC 1651(a); 28 USC Sec.1361; 28 USC 3904; 28 USC 1257 18 USC s401; 5 USC s706; U.S.Sup.Ct.'s Rule 44; Rule 20. & Subds.; & etc..

QUESTION PRESENTED

WHETHER, FAILURE OF THE COURT TO COMPLY PURSUANT TO U.S. SUP. COURT'S RULE 20. & Subd., AS REQUIRED BY JUDICIAL PROCESS FOR AN ADJUDICATION FOR APPLICATIONS OF WRIT OF MANDAMUS PURSUANT TO ALL WRITS 28 USCA Sec.1651(a) IS IN VIOLATION OF DUE PROCESS OF LAW & EQUAL PROTECTION OF THE LAWS ? (U.S.Const. 14th Amends.' rights).

It is respectfully submitted that the QUESTION PRESENTED, are in good faith and not for delay, with respect to this Motion for a Rehearing for a clarification and, for a final determination by this Honorable Court, in respect to Petitioner's Writ of Mandamus pursuant to "All Writs," 28 USCA Sec. 1651(a) that, was denied without an opinion on January 7, 2019 (See APPENDIX A appended hereto); and without any response in opposition to said Writ of Mandamus from RESPONDENT(S) to Petitioner herein, and to the Court as required by a judicial process for an adjudication of an application for a Writ of Mandamus pursuant to this Court's RULE 20.3(b), which provides in part that:

"The petition shall be served on every party to the proceeding with respect to which relief is sought. Within 30 days after the petition is placed in the docket, a party shall file...any brief or briefs in opposition thereto..... If a party named as respondent does not wish to respond to the petition, that party may so advise the CLERK and all other parties by letter. All persons served are deemed respondents for all purposes in this Court."(see e.g. APPENDIX D copies of the petition for a Writ of Mandamus were served to all respondent(s) in this action. Thereby, the decision & Order 1/7/19 of this Court did not amount indeed, technically speaking, to a final judgment, because the matter claimed by petitioner still remained to be disposed of).

Thus, the Court's action to deny on 1/7/19 Petitioner's Writ of Mandamus without any Respondent(s)' opposition was/is a violation of the fourteenth

amendment, which provides in part that: "Nor shall.....deprive any person of life, liberty..... without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

CLARIFICATION OF REASON FOR GRANTING THE WRIT OF MANDAMUS

It is respectfully submitted that the only way to compel the Dist. Court for its refusal to adjudicate Petitioner's Writ of Habeas Corpus pursuant to 28 USCA Sec.2241(a)(c)(3)'s language of the construction, interpretation and, mandatory provision of said Statute 2241(a)(c)(3), that petitioner has been unlawful convicted, sentenced and, in-custody, restrained of his life/liberty in violation of the constitution or laws or treaties of the United States, and that adequate relief cannot be obtained in any other form or from any court(s) or judge(s). (Please, see APPENDIX B State/Federal's Court denial of the Writ of Habeas Corpus relief without opinion & final determination of petitioner's case attached to Petitioner's Writ of Mandamus Docketd #18-6526). Thereby, can be corrected by Writ of Mandamus pursuant to "ALL WRITS" 28 USCA Sec.1651(a).

For Example, see where the District Court's refusal to comply with this Court's mandate in United States v. Haley, 358 US 644, 79 S.Ct. 537, 3 L.Ed.2d 567, and of its judgment issued Feb.24, 1959; also see U.S. v. Haley, 371 US 18 (1962), 83 S.Ct. 11, (where the Supreme Court, Per Curiam, held that mandamus would be proper means for rectifying error of District Court which misconceived scope and effect of Supreme Court's decision on appeal. And at 371 US 20 indicates: The District Court error should be rectified without delay, and we think that the proper means for accomplishing this by mandamus. 28 U.S.C. s1651, 28 USCA s1651; see In re Potts, 166 U.S. 263, 17 S.Ct. 520, 41 L.Ed.994; United States v. United States District Court, 334 U.S. 258,263, 68 S.Ct. 1035, 1037, 92 L.Ed.1351. According, in No.139, Misc., the Government's motion for leave to file a petition for a writ of mandamus, and its petition

for a writ of mandamus, are granted). Also, See Ex parte Washington & G.R.Co., 140 US 91 at 95, where ("A mandamus will lie to correct such an error, where there is no other adequate remedy, and where there is no discretion to be exercised by the inferior Court." see Sibbald v. U.S., 12 Pet. 488; Ex parte Bradley, 7 Wall. 364,376; Virginia v. Rives, 100 U.S. 313, 329).

This Honorable Court in appropriate cases the court may decide that the petition for writ of mandamus should be treated as a petition for certiorari and may grant certiorari to review the judgment or order being attacked, as Petitioner's case herein. See e.g., Collier v. United States, Ohio 1965, 382 US 890, 86 S.Ct. 188, 15 L.Ed.2d 148, reversed and remanded 1966, 86 S.Ct. 1253, 384 US 59,16 L.Ed.2d 353; Carter v. U.S. Court of Appeals, 5th Cir., 1973, 93 S.Ct. 942, 409 US 1122, 35 L.Ed.2d 254; Calderon v. Thomson, Cal., 1977, 118 S.Ct. 16 ___ U.S. ___, 138 L.Ed.2d 1048. Further, this Court might also, in appropriate circumstances, treat a motion for clarification of its mandate or judgment as a petition for mandamus- in which event the Court's Rules relating for mandamus, including service on the judge or judges to whom the writ is sought to be directed as well as upon other parties, are to be complied with. See Vendo Co. v. Lektro-Vent Corp., 434 US 425, 98 S.Ct. 702, 54 L.Ed.2d 659 (1978). (In this case the Court clarified and indicates that: "there is no indication in the papers filed by either petitioner or respondent that any such service has been made." And its remedy is by motion for leave to file a writ of mandamus pursuant to Rule 31, including service of the motion or petition upon the judge or judges to whom the writ would be directed. The petition for clarification of judgment is therefore denied without prejudice to the filing of a motion for leave to file a petition for mandamus."

Furthermore, for Example, this Court in denying a petition for writ of mandamus the Court may at the same time applying Court's guidelines pursuant

to Court's Rules 20.1 which provides that "To justify the granting of any writ under that provision, it must be shown... that adequate relief cannot be obtained in any other form or from any other court," & Court's Rule 20.3(b), which provides in part, see supra, for a denial of the writ of mandamus. See e.g. In re Blodgett, 502 U.S. 236 (1992), 112 S.Ct. 164, this Court held that: mandamus to the Court of Appeals would not issue, where State had not filed any objection to the Court of Appeals' Order and did not ask Court of Appeals to vacate or modify its order. Because the State has failed to comply with this Court's Rule 20.1. I believe that the State's petition should have been denied summarily. See 502 US at 243.

Here, accordingly to the case mentioned above and comparing with petitioner's case is that Petitioner had complied with Court's Rules 20.1 and Rule 20.3(b), in which the Respondent(s) failed to comply with said Rule 20.3(b) which provides "If a party named as a respondent does not wish to respond to the petition, that party may so advise the Clerk and all other parties by letter." In this case so far petitioner did not received any respond from any of the Respondent(s) as required by Court's Rule 20.3(b). Thereby, Petitioner respectfully requests the Court to clarify and correct its own denial Order dated 1/7/2019 as law and justice required with compliance of the Rule 20.3(b) in conformity with the provision of the 14th amendment of U.S. Constitution of due process of law and equal protection of the laws by issue a writ of mandamus. Based, that mandamus is, of course, a proper means of securing compliance with a mandate, where in this case the District Court with its respective jurisdiction has failed or refused to comply, to adjudicate Petitioner' submission of his petition pursuant to 28 USC Sec.2241 (a)(c)(3)'s language of the construction, interpretation and mandatory provision of said statute 2241(a)(c)(3), because, petitioner has been unlawful

in-custody for over 32 years; indeed, this Court has described that as "a high function of mandamus to keep a lower tribunal from interposing unauthorized obstructions to enforcement of a judgment of a higher court. Delaware, L. & W. R.Co. v. Rellstab, 276 US 1, 5, 48 S.Ct. 203. That function may be as important in protecting a past exercise of jurisdiction as in safeguarding a present or future one." See U.S.Dist.Court for Southern Dist. of N.Y., 334 US 258 at 264; Also, see In Re Pott, 166 US 263; In re Washington & G.R.CO., 140 US 91. ("that such execution and proceedings be had as, according to right and justice and the laws of the United States, ought to be had."). Accordingly, mandamus is appropriate here is relief cannot be obtained pursuant to Writ of Habeas Corpus pursuant to 28 USC Sec.2241(a)(c)(3)'s language by any other form or from any other court (Rule 20.1).

CONCLUSION

For the foregoing reasons petitioner respectfully request the Court to clarify the order 1/7/2019 and granting a writ of mandamus to compel the District Court to adjudicate Petitioner's petition pursuant to 28 USC Sec.2241(a)(c)(3), with this Court in United States v. Haley, 358 US 644, 79 S.Ct. 537, 3 L.Ed.2d 567 and of its judgment issued February 24 1959; and further relief as the Court may be just in the premises.

MAILED: PRIORITY MAIL EXPRESS No. EK 606036662 US TO THE U.S.Sup.Court's Clerk, BLDG.1 First St., N.E., Washington, DC 20543.

Dated: Otisville New York
January 18, 2019

CC: ANN M. DONNELLY, Judge
U.S.Dist.Ct. EDNY
225 CADMAN PLAZA EAST
Brooklyn, NY 11201

Respectfully submitted,


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SOLICITOR GENERAL OF THE UNITED STATES
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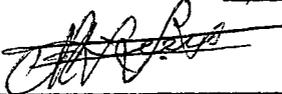
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I certift, verify, or state under penalty
of perjury, pursuant to 28 USCA 1746 that
the foregoing is true and correct.

EXECUTED DATED: 1/18/19



Masao Yonamine 88A7233

Sworn to before me on this
18th day of January 2019



NOTARY PUBLIC

JAMES L THOMPSON
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01TH6383051
Qualified in Orange County
My Commission Expires: 11/13/2022

CERTIFICATE OF COMPLIANCE

No. 18-6526

IN THE
SUPREME COURT OF THE UNITED STATES

In re MASAO YONAMINE,

Petitioner,

vs.

ANN M. DONNELLY, Judge,
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
UNDER DOCKET No.18-cv-4325 (AMD),

Respondent.

Pursuant to Supreme Court Rule 44.2, I hereby, certify that the foregoing Motion for a Rehearing are presented in good faith and not for delay, and are restricted to the grounds specified in Rule 44.2.

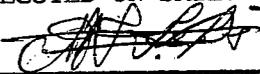
As require by the Supreme Court Rule 33.1(h), I certify that the Motion for an Order of Rehearing pursuant to Rule 44 is for a clarification of the denial 1/7/2019 of the WRIT OF MANDAMUS pursuant to 28 USCA Sec.1651(a), pursuant to Sup. Court's Rule 20, contains 3,250 words, excluding the part of the petition that are exempted by the Supreme Court Rule 33.1(d).

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

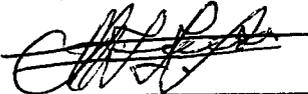
DATED: Otisville, New York
January 18, 2019

I declare, certify, verify, or state under penalty of perjury, pursuant to 28 USCA Sec.1746, that the foregoing is true and correct.

EXECUTED ON DATE: 1/18/19


Masao Yonamine 88A7233

Respectfully submitted,



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**Additional material
from this filing is
available in the
Clerk's Office.**