

IN THE UNITED STATES SUPREME COURT

Bernard Bagdis	:	
Movant/Petitioner/Appellant	:	Application # _____
v.	:	
United States of America	:	
Appellee	:	

**MOTION for EXTENSION of TIME
to File a
PETITION for WRIT of CERTIORARI**

COMES NOW, Movant, Bernard Bagdis, who files this Motion for Extension of Time to File a Writ of Certiorari because of an unresolved issue in the recent decision of the Third Circuit Court of Appeals, filed of record on May 4, 2018¹, and the denial of reconsideration filed of record on July 3, 2018². The Third Circuit decision of May 4, 2018 fails to address the district court's denial of two separate motions which were specifically appealed. Mr. Bagdis filed a Motion for Reconsideration of the Panel's decision on June 13, 2018, which was denied on July 3, 2018, again without addressing the separate motions denied by the district court and unresolved by the Third Circuit.

Because the direct appeal of denial of separate motions [under Rule 15(a) and Rule 60(b)] by the district court were never scheduled for briefing by the clerk of the Third Circuit, they still remain unresolved³. After several calls to the case manager(s) and to the clerk's office failed to provide any answer to the question of the status of the unresolved motions, Mr. Bagdis sent a formal letter to the Clerk on July 17, 2018, requesting that a briefing schedule be issued. At this time, there has been no response yet received from the clerk's office.⁴

Mr. Bagdis requests an extension of sixty (60) days beyond the original expiration date of

1 A copy of the decision of the Third Circuit is included in the appendix as Exhibit A.

2 A copy of the denial of reconsideration/rehearing is included in the appendix as Exhibit B.

3 A copy of the Notice of Appeal is included in the appendix as Exhibit C.

4 A copy of the letter to the Clerk of the Third Circuit is included in the appendix as Exhibit D.

October 1, 2018, as provided for under Supreme Court Rule 30(1), 30(4), and Rule 13(5) for the following reasons:

1. Petitioner was convicted of a tax offense in the United States District Court for the Eastern District of Pennsylvania, on April 22, 2009, for violation of 26 U.S.C. 7212(a), Attempt to Interfere with the Administration of Internal Revenue Laws, ONE COUNT; and of twenty-six subsumed counts covering specific acts related to that attempt.
2. After a first appeal, the case was remanded for correction of an illegal sentence.
3. At the re-sentencing, a second illegal sentence was appealed; the second appeal was denied; and a petition for certiorari was filed on July 10, 2015.
4. On October 5, 2015, certiorari was denied,
5. Mr. Bagdis then filed a petition for rehearing of the denial of certiorari.
6. On November 30, 2015, the United States Supreme Court denied the request for rehearing, finally ending the criminal proceeding.⁵
7. On November 29, 2016, Mr. Bagdis filed a Motion to Vacate, Set Aside, or Correct His Sentence under 28 U.S.C. § 2255.
8. Mr. Bagdis believed that this motion was timely filed under the provisions of 28 U.S.C. 2255(f) (1) because it was filed on November 29, 2016, which is within one year of the date of his judgment of conviction became final when the Supreme Court denied rehearing on November 30, 2015.
9. However, this motion *was also timely filed* under the provisions of 28 U.S.C. 2255(f)(4) because of the discovery of exculpatory *Brady* materials⁶ - consisting of two expert reports furnished to

⁵ A copy of the Supreme Court docket is included in the appendix as Exhibit E.

⁶ In the most serious manifestation of concealment of *Brady* materials by the government, there was an expert report prepared for Co-Defendant Wayne D. Bozeman by Edward L. Perkins, Esq. of the firm of Gibson & Perkins, P.C. and dated May 23, 2008. This report was addressed to AUSA Sean O'Connell, one of the trial prosecutors, at the Tax Division in Washington, D.C. There was also an analysis of that report, dated May 27, 2008, prepared by Frank J. Baldino, a Certified Public Accountant, an attorney, and a former IRS agent. This analysis was again directed to AUSA O'Connell in Washington. These expert reports were not furnished in any discovery materials provided by the government to the Bagdis defense attorney, nor were they discovered by Mr. Bagdis, until just recently, when they serendipitously, came to light. It is significant that during their deliberation, the jury asked only two specific questions, both of which were addressed in detail in these suppressed expert reports.

the government in 2008. Mr. Bagdis only discovered their existence in October of 2016, when he received copies in the mail at the Schuylkill Federal Prison Camp. Thus the statutory limitations date was extended beyond November 30, 2016 and into October of 2017, under the provisions of 28 U.S.C. 2255(f)(4).

10. The 2255 Motion contains documented instances of prosecutorial misconduct including multiple instances of suppression of *Brady* materials⁷ as well as commission of multiple felonies including subornation of perjury, witness bribery, and misprision of felonies - all by the prosecuting government attorneys.

11. The district court ordered the government to respond to the motion.

12. Instead of addressing the serious charges of professional misconduct, the government attorneys concocted a novel theory that the date of finality for the criminal proceeding should be October 5, 2015, the date certiorari was originally denied, not November 30, 2015, the date rehearing was denied. The Third Circuit has no such rule, nor has the Supreme Court issued a definitive instruction. The government attorneys filed a motion to dismiss the 2255 motion as untimely under 28 U.S.C. 2255(f) (1) - a procedural dismissal - concealing or misrepresenting to the district court that the motion was still timely under 28 U.S.C. 2255 (f)(4) based on the discovery of the government's continued suppression of *Brady* materials - which was disclosed in detail within the 2255 motion itself.

13. There is no case law precedent *within the Third Circuit* determining whether finality in a criminal case occurs when certiorari is denied or when a requested rehearing (if filed) is denied.

14. Nevertheless, in spite of the February 2017 teachings of the Supreme Court, in *Buck v. Davis*, (No.15-8049) (S. Ct. Feb 22, 2017), which expressed a preference for a decision "on the merits" rather than a dismissal for procedural reasons, the district court granted the government's motion and issued a procedural dismissal on October 17, 2017.⁸

⁷ As recently as January of 2018, the government released the latest installment of exculpatory *Brady* materials, thus extending the actual limitations date for filing this 2255 motion into 2019.

⁸ A copy of the district court Order is included in the appendix as Exhibit F.

15. The threshold question for review in *Buck* is whether the district court's ruling is debatable amongst jurists of reason.

16. In this case, there is a federal statute⁹, and the language is clear:

The limitation period shall run from the latest of—

(f)

- (1) the date on which the judgment of conviction becomes final;
- (2) ...
- (3) ...
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

17. In a situation with issues remarkably similar to the issues in this matter, a Pennsylvania district court entered its order, denying a 2255 Motion as time-barred. The Third Circuit, *sua sponte*, pointed out that the district court "completely missed altogether that the defendant's efforts to file a § 2255 motion were timely under the discovery rule of §2255 (f)(4), ..." and remanded the case to the district court. *United States v. Johnson*, 590 Fed. App'x. 176, 179 (3d Cir. 2014).

18. Mr. Bagdis contends that the case law and statutes are in his favor. The threshold question for a procedural dismissal is whether the decision of the district court is debatable among jurists of reason. *Buck v. Davis*, No.15-8049 (S. Ct. Feb 22, 2017). Jurists of reason, in the Third Circuit, have *already* debated the determination of timelines under 2255 (f)(1) and (f)(4), and accepted that a later (f)(4) date is determinative. See *United States v. Johnson*, 590 Fed. App'x. 176, 179 (3d Cir. 2014).

19. The separate Rule 60(b) motion filed by Mr. Bagdis, directly seeking to correct the error of dismissing a 2255 motion under an improper procedural determination of timeliness, has not been addressed by the Third Circuit and remains unresolved.

20. Mr. Bagdis, now preparing a Petition for the grant of a Writ of Certiorari, requires an extension of time to adequately prepare the Petition because he is still awaiting a response from the Third Circuit clerk which will have an ultimate impact on the nature and scope of his petition.

21. Mr. Bagdis requests an extension of sixty (60) days beyond the original expiration date of October 1, 2018, as provided for under Supreme Court Rule 30(1), 30(4), and Rule 13(5).

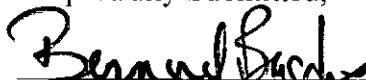
22. This Petition has national importance and the issues raised are not limited to this Petitioner, but are applicable to all federal defendants who face procedural dismissal of motions filed under 28 U.S.C. 2255.

23. This Motion for Extension of Time is meritorious, well-grounded, filed in good faith, and is not offered to inappropriately or unjustly delay or prejudice any party or this Honorable Court.

WHEREFORE, Mr. Bagdis respectfully requests that this Motion for Extension of Time be granted, and that Movant receive an additional sixty (60) days beyond October 1, 2018 to file his Petition for a Writ of Certiorari, consistent with the Rules of this Honorable Court.

August 6, 2018

Respectfully Submitted,



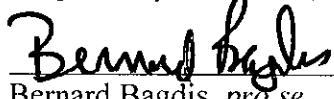
Bernard Bagdis, *pro se*
Movant/Petitioner
Federal ID# 62725-066
1625 North Wales Road
Norristown, PA 19403

POINTS and AUTHORITIES

1. Movant relies upon the United States Supreme Court Rule 30(4) and Rule 13(5).
2. Movant also relies upon the inherent power of this Honorable Court to provide Petitioner with the full opportunity, under the existing circumstances, to submit his Petition in a concise and well-researched fashion.
3. The importance of bringing these issues involving timeliness of a motion submitted under 28 U.S.C. 2255 permits this Honorable Court to grant Movant this additional time needed to properly file his Petition for a Writ of Certiorari.

WHEREFORE, Movant respectfully requests that this Honorable Court grant his request for an extension of time.

Respectfully Submitted,



Bernard Bagdis, *pro se*
Movant/Petitioner
Federal ID# 62725-066
1625 North Wales Road
Norristown, PA 19403

August 6, 2018