

19-6571
No. 18-_____

Supreme Court, U.S.
FILED
OCT 18 2019
OFFICE OF THE CLERK

IN THE
Supreme Court of the United States

FRANCISCO ILLARRAMENDI,

Petitioner,

v.

JOHN J. CARNEY,

IN HIS CAPACITY AS COURT-APPOINTED RECEIVER FOR HIGHVIEW POINT PARTNERS, LLC, MICHAEL KENWOOD GROUP, LLC, MK MASTER INVESTMENTS LP, MK INVESTMENTS, LTD., MK OIL VENTURES LLC, MICHAEL KENWOOD CAPITAL MANAGEMENT, LLC, MICHAEL KENWOOD ASSET MANAGEMENT, LLC, MKENERGY AND INFRASTRUCTURE, LLC, MKEI SOLAR, LP, MK AUTOMOTIVE, LLC, MK TECHNOLOGY, LLC, MICHAEL KENWOOD CONSULTING, LLC, MK INTERNATIONAL ADVISORY SERVICES, LLC, MKG ATLANTIC INVESTMENT, LLC, MICHAEL KENWOOD NUCLEAR ENERGY, LLC, MYTCART, LLC, TUOL, LLC, MK CAPITAL MERGER SUB, LLC, MK SPECIAL OPPORTUNITIES FUND, MK VENEZUELA, LTD., SHORT TERM LIQUIDITY FUND I, LTD.,

Plaintiff – Appellee,

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Second Circuit

**MOTION FOR LEAVE TO PROCEED IN FORMA
PAUPERIS**

Francisco Illarramendi, Pro Se
Inmate No. 20402-014

Federal Correctional Institution Fairton Camp
P.O. Box 420
Fairton, NJ 08320

1. Pursuant to the instructions of the GUIDE FOR PROSPECTIVE INDIGENT PETITIONERS FOR WRITS OF CERTIORARI, I, Francisco Illarramendi, Defendant, acting Pro Se, request LEAVE to proceed *In Forma Pauperis* in filing my attached Petition for a Writ of Certiorari to the United States Court of Appeal for the Second Circuit (the “Petition”).
2. Copies of the District Court Rulings subject of the Petition as well as the Summary Affirmation of the same are attached to the Petition.
3. I have previously been granted leave to proceed *In Forma Pauperis* in the appeal of the District Court decisions before the Second Circuit Court. I have previously filed a Petition for Certiorari pursuant to an earlier affirmation by the Second Circuit Court of Appeals of an interlocutory ruling in a parallel District Court case. The docket number of that petition is 18-5136. I also filed a separate Petition for Certiorari for the grant of Summary Judgment in that parallel case. The filing was initially rejected as untimely, but I am filing a Motion to file said Petition out of time. The instant case which this Petition refers to is separate and distinct from that case and this is a new Petition related to a different decision from the Second Circuit in a distinct, even if related, case.
4. As can be derived from the Petition, I am a defendant who was convicted and incarcerated in violation of the Constitution and Laws of the United States. This matter presents a clear issue of importance from a Constitutional viewpoint as the questions presented for the Court in the Petition affect the rights of countless incarcerated defendants throughout every Federal District and every State in the United States. In addition, the decisions at the Circuit and District levels directly violate several well-established precedents of this Supreme Court.

5. From a personal standpoint, I believe I am entitled to Certiorari Review and to a remand of the District Court ruling and the Circuit Court Summary Affirmance for several reasons which are mentioned in my Petition.
6. I am attaching a copy of the Court-provided financial affidavit form in support of this motion. For purposes of fully clarifying my financial position with respect to the foregoing motion, the following should be taken into account when evaluating the information in the attached affidavit:
 - a. In February of 2011 the District Court in an inextricably intertwined case (the “SEC Case”) imposed a Temporary Restraining Order (“TRO”)¹ freezing all of my assets. Subsequently, all of my assets were transferred into an escrow account under the control of the Court and a Court-appointed Receiver – the Plaintiff-Respondent to the Petition – and then were ultimately transferred to the SEC. I therefore have no effective assets to pay for any of the Court costs, fees or securities associated with the Petition. Moreover, my estimates of what was held in escrow are made without the benefit of updated information, as I have not received any formal information from

¹ As reflected in various portions of the case record this case is inextricably intertwined with the SEC Case, as defined in the Petition. This case is also inextricably intertwined with my unconstitutional criminal conviction and the Petition is partly based on the fact that the District Court has granted partial Summary Judgment relying on collateral estoppel from that conviction despite the fact it has before it a valid collateral attack of the conviction via a Habeas Petition which was filed prior to the filing of the Motion for Partial Summary Judgment by the Plaintiff. The District Court has thus effectively sequestered the judicial process by deciding the underlying case while remaining mute on the more important Habeas Petition. In particular, the TRO was a structural violation of my Constitutional right to Counsel of Choice in as defined by this Court in Luis v. United States, 136 S. Ct. 1083; 194 L. Ed. 2d 256; 2016 U.S. LEXIS 2272; 84 U.S.L.W. 4159; 26 Fla. L. Weekly Fed S 49. In the Habeas proceeding underlying the Criminal Matter, I am presently challenging my criminal conviction and sentence, partly because the TRO froze all of my assets, including those that were unequivocally untainted and made it impossible for me to hire counsel of choice to defend me in the underlying criminal matter as defined in the Petition. In the process, the TRO also left me effectively indigent, a condition that remains so to this day.

the Receiver regarding the amount of assets in escrow, their provenance, any interest income they may be deriving or otherwise.

- b. I have been incarcerated continuously since January 25, 2013. I am presently being held at the FCI Fairton Camp in Fairton, NJ ("Fairton").
- c. Under my present incarceration at Fairton, I receive approximately \$150 a month in salary from my work as Warehouse Clerk at Unicor Prison Industries and an additional loan allowance from my elderly parents totaling approximately \$75 a month, plus some sporadic, occasional help from friends and extended family.
- d. From these receipts, I am presently paying a quarterly amount under the inmate FRP of \$25 to help defray the costs of Court assessments.
- e. The remaining funds are used for all personal expenses including, phone (approximately \$60 a month), laundry (approximately \$20 a month), electronic communication and legal work (approximately \$110 a month), medicines (approximately \$30 a month) and food or personal hygiene items purchased through the Fairton Commissary Service (approximately \$100 a month).
- f. Although I was married at the time of my incarceration, my wife and I have since divorced. I never received a copy of the divorce decree and do not know whether or not I have any future financial obligations as a result thereof, particularly in the care of our two children. I list no income for my Spouse as she is not and cannot help to support me financially in any way at this time.
- g. Based on the facts described herein, I have assumed that the totality of any assets or income presently available to me for all of my expenses and obligations are limited to

those described in points b., c., and d. above; and have assumed that all my other assets are effectively equal to zero, which is the way I have listed them in the accompanying affidavit.

7. For all of the foregoing, I respectfully request that this Honorable Court allow me to pursue my Petition for Certiorari *In Forma Pauperis*.

The present document is respectfully submitted on or before October 18, 2019.



Francisco Illarramendi, Pro-se
Federal Reg ID: 20402-014
FCI – Fairton Camp
Post Office Box 420
Fairton, NJ 08320

CERTIFICATE OF SERVICE

I, Francisco Illarramendi, hereby certify that on or before October 18, 2019, the foregoing was served by United States First Class Mail on the following parties:

- Jonathan New, BakerHostetler – Counsel for Plaintiff.



Francisco Illarramendi

**AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

I, François J. L'orment, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ <u>150⁰⁰</u>	\$ <u> </u>	\$ <u>150⁰⁰</u>	\$ <u> </u>
Self-employment	\$ <u> </u>	\$ <u> </u>	\$ <u> </u>	\$ <u> </u>
Income from real property (such as rental income)	\$ <u> </u>	\$ <u> </u>	\$ <u> </u>	\$ <u> </u>
Interest and dividends	\$ <u> </u>	\$ <u> </u>	\$ <u> </u>	\$ <u> </u>
Gifts	\$ <u> </u>	\$ <u> </u>	\$ <u> </u>	\$ <u> </u>
Alimony	\$ <u> </u>	\$ <u> </u>	\$ <u> </u>	\$ <u> </u>
Child Support	\$ <u> </u>	\$ <u> </u>	\$ <u> </u>	\$ <u> </u>
Retirement (such as social security, pensions, annuities, insurance)	\$ <u> </u>	\$ <u> </u>	\$ <u> </u>	\$ <u> </u>
Disability (such as social security, insurance payments)	\$ <u> </u>	\$ <u> </u>	\$ <u> </u>	\$ <u> </u>
Unemployment payments	\$ <u> </u>	\$ <u> </u>	\$ <u> </u>	\$ <u> </u>
Public-assistance (such as welfare)	\$ <u> </u>	\$ <u> </u>	\$ <u> </u>	\$ <u> </u>
Other (specify): <u>Loans</u>	\$ <u>250⁰⁰</u>	\$ <u> </u>	\$ <u>250⁰⁰</u>	\$ <u> </u>
Total monthly income:	\$ <u>400⁰⁰</u>	\$ <u> </u>	\$ <u>400⁰⁰</u>	\$ <u> </u>

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
Unilov Prison Ind.	FCI Fairton, WI	8-2015 to Present	\$ 150 ⁰⁰
			\$
			\$
			\$

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
NA			\$
			\$
			\$

4. How much cash do you and your spouse have? \$ 147⁰⁰

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings)	Amount you have	Amount your spouse has
NA	\$ 0	\$ NA
	\$	\$
	\$	\$

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Home
Value _____

Other real estate
Value _____

Motor Vehicle #1
Year, make & model _____
Value _____

Motor Vehicle #2
Year, make & model _____
Value _____

Other assets
Description _____
Value NA

Assets held in escrow in Receivership. Please see attached explanation. Assets are not realizable or available as they are frozen by Order of the District Court. (See Motion for Leave to Proceed In forma Paupers - Attached herein)

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or
your spouse money

N/A

See attached Motion
for explanation

Amount owed to you

\$ N/A

Amount owed to your spouse

\$ N/A

\$

\$

\$

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

	Name	Relationship	Age
Minor children	<u>M. I.</u>	<u>Daughter</u>	<u>14</u>
	<u>A. I.</u>	<u>Son</u>	<u>12</u>

Spouse is divorced and cares singly for our two children listed here

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

Rent or home-mortgage payment
(include lot rented for mobile home)

Are real estate taxes included? Yes No
Is property insurance included? Yes No

You

\$ = 0 =

Your spouse

\$ N/A

See
attached
Motion
for
explanati

Utilities (electricity, heating fuel,
water, sewer, and telephone)

\$ 60⁰⁰

\$

Home maintenance (repairs and upkeep)

\$ = 0 =

\$

Food

\$ 100⁰⁰

\$

Clothing

\$ 15⁰⁰

\$

Laundry and dry-cleaning

\$ 20⁰⁰

\$

Medical and dental expenses

\$ 30⁰⁰

\$

	You	Your spouse
Transportation (not including motor vehicle payments)	\$ 0	\$ NA
Recreation, entertainment, newspapers, magazines, etc.	\$ 0	\$
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$ 0	\$
Life	\$	\$
Health	\$	\$
Motor Vehicle	\$	\$
Other: <i>Gas, telephone, power, rent, etc.</i>	\$ 50.00	\$
Taxes (not deducted from wages or included in mortgage payments)		
(specify):	\$ 0	\$
Installment payments		
Motor Vehicle	\$ 0	\$
Credit card(s)	\$	\$
Department store(s)	\$	\$
Other:	\$	\$
Alimony, maintenance, and support paid to others	\$	\$
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$	\$
Other (specify): <i>Legal work, printing, research, etc. in the infinite legal library</i>	\$ 150.	\$
Total monthly expenses:	\$ 375.00	\$

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

Yes No If yes, describe on an attached sheet.

10. Have you paid — or will you be paying — an attorney any money for services in connection with this case, including the completion of this form? Yes No

If yes, how much? _____

If yes, state the attorney's name, address, and telephone number:

11. Have you paid — or will you be paying — anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

Yes No

If yes, how much? _____

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

Please see the attached Motion to Proceed
In Forme Pauperis for further explanations.

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

Executed on October 18, 2019



(Signature)

Please note that I do not have an
original of this form to I or obtain a
re-dated + re-titled copy of a
prior submission to this Court. There are no material changes
& the information contained herein is accurate.  Oct 18, 2019