

No. 20-1361

In the Supreme Court of the United States

Regina Berglass Heisler, individually and as the executrix
of the Succession of Frederick P. Heisler,

Petitioner,

v.

Girod LoanCo, LLC,

Respondent.

**Second Supplement to
Rule 44 Petition for Rehearing as to April 26 Denial of Certiorari**

Henry L. Klein (SCOTUS Bar 99146)
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*Admitted to the United States Supreme Court
Bar on September 6, 1974*

RELIEF REQUESTED

Petitioner, described as *Nominal Borrower F* in *United States v. Gibbs* and *United States v. Ryan* is at the cusp of losing \$15 million to an admitted vulture fund — Girod LoanCo — notwithstanding an infirm bankruptcy that fits Justice SOTOMAYOR’s concurrence in *Chicago v. Fulton* in ways and means likely *never to be replicated*. Because the case *sub judice* continues to legally-cascade in ways not foreseeable when Petitioner first filed, we articulate the GVR relief sought as a *modest* minimum:

1. Grant Rehearing to consider (i) the unprecedented lifting of the stay *a qua*, (ii) allowing the Trustee to sell assets without a single evidentiary hearing, (iii) *before* the contested Proof of Claim by Girod is allowed or disallowed, (iv) aggravated further by the lending of a \$1.8 million “credit bid” entered by Girod REO, a vulture affiliate;

2. Vacate the infirm orders by Judge Scott U. Schlegel, unconstitutionally compromised by \$47,500 in campaign contributions under circumstances exactly alike *Caperton v. A.T. Massey Coal* (but for the amounts); and

3. Remand the case with instructions to enforce this Court’s ruling in *Henson v. Santander USA* as to Girod the OWNER of Millions of Dollars in toxic debt purchased for the express intent of filing for amounts far in excess of the purchased debt¹.

On May 10, 2021, the Trustee’s sale of 844 Baronne took place in a rushed process void of constitutional protections to Petitioner — who did not receive any of the money bilked by Gary Gibbs and others in the Ponzi loan-kiting scheme at First NBC Bank².

The United States Trustee has declined to take action, despite multiple warnings that

1 The United Nations Council on Human Rights ranks Vulture Funding as the vilest of international evils, ahead of human trafficking and the maltreatment of leprosy (previously cited).

2 By Court Order, moveables not taken by May 17 were abandoned to the purchaser, Girod REO (not Girod LoanCo). The Law Library, a \$500,000 value, could not be moved before the Trustee changed the locks.

bankruptcy fraud was afoot. Should the Court give Petitioner GVR prompt succor, Petitioner's counsel is ready, willing and able to assist the Court on all of the grave issues raised.

Respectfully submitted,



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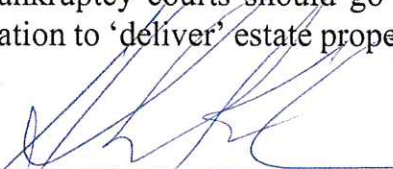
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RULE 44(1) CERTIFICATE

I, Henry L. Klein, certify that the Statement of Relief Requested was made necessary by continuing constitutional violations in April and May, 2021 unforeseen when Petitioner first filed. The multiple intervening circumstances are not presented for delay. Still to qualify as a further "...intervening circumstance..." is the failure, *vel non* of courts below to answer the question posed by Justice SOTOMAYOR's concurrence in Chicago v. Fulton:

"I write separately to emphasize that the Court has not decided whether and when §362(a)'s other provisions may require a creditor to return a debtor's property. Those provisions stay, among other things, 'any act to create, perfect, or enforce any lien against property of the estate' and 'any act to collect, assess, or recover a claim against [a] debtor' that arose prior to bankruptcy proceedings. §§362(a)(4), (6). . . Nor has the Court addressed how bankruptcy courts should go about enforcing creditors' separate obligation to 'deliver' estate property to the trustee or debtor under §542(a).



Henry L. Klein, Supreme Court Bar 19946





April 14, 2021

Judge Grabill:


How can 844 Baronne be sold without Girod's claim being decided?

I don't understand why this is happening backwards.

I object to proceeding without a hearing with oaths and testimony.

I would like to be excused from today's telephone conference. It's too upsetting and I don't have anything to contribute. I have stated everything that is needed and only want to be sworn in for actual testimony at a hearing. Henry Klein will update on any outcome to me.

We are 8 days from a Supreme Court ruling.

A handwritten signature in cursive script that reads "Regina Heisler". The signature is written in dark ink and is positioned above the printed name.

Regina Heisler



United States Department of Justice

THE UNITED STATES ATTORNEY'S OFFICE
EASTERN DISTRICT *of* LOUISIANA

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Department of Justice

U.S. Attorney's Office

Eastern District of Louisiana

FOR IMMEDIATE RELEASE

Wednesday, August 26, 2020

Developer Admits To Working with Bank Executives to Defraud First NBC Bank Out Of Over \$123 Million

NEW ORLEANS – The United States Attorney's Office announced that **GARY R. GIBBS ("GIBBS")**, age 66, a resident of Niceville, Florida, pled guilty today to conspiracy to defraud First NBC Bank, the New Orleans-based bank that failed in April 2017.

According to court documents, from in or around 2010 through April 2017, **GIBBS** had a banking relationship with First NBC Bank, individually and through various corporate entities he controlled. During that time, **GIBBS** and his entities were regularly unable to pay existing loans or overdrafts on First NBC Bank accounts. Bank President Ashton Ryan Jr., Chief Credit Officer William Burnell, and Executive Vice President Robert Calloway, who were all charged on July 10 in a 46-count indictment, disguised **GIBBS's** and his entities' true financial condition by making new loans to pay **GIBBS's** existing loans and to cover his overdrafts. They falsely stated in loan documents that **GIBBS** was able to pay his loans with cash generated by his businesses, and they hid from the First NBC Bank Board of Directors, auditors, and examiners that **GIBBS** was only making his existing loan payments by getting new loans from First NBC Bank. Ryan, Burnell, and Calloway hid the fact that they actually made loans to **GIBBS** to keep him and his entities off of month-end reports to the Board, auditors, and examiners. These month-end reports listed borrowers who were not paying their loans or whose accounts were overdrawn. By keeping **GIBBS** and his entities off of those reports, Ryan, Burnell, and Calloway were able to hide their scheme to keep lending to **GIBBS** despite his inability to pay his loans.

When **GIBBS** told Ryan and Calloway that he was considering filing bankruptcy or not paying his loans, Ryan told **GIBBS** that First NBC Bank could not afford for **GIBBS** to default on the loans. After that, Ryan, Burnell, and Calloway continued to make false statements and material omissions in loan documents to hide from the Board, auditors, and examiners that the purpose of the new loans was to keep **GIBBS** and his entities from defaulting and that, in reality, **GIBBS** was not able to make his payments to the bank without receiving proceeds from new loans. Neither Ryan nor Calloway ever disclosed to the Board, auditors, or examiners that **GIBBS** was considering defaulting on his loans or filing bankruptcy, because that would have revealed that **GIBBS** did not generate enough cash to pay his loans.

To hide their scheme, Ryan directed **GIBBS** to inflate certain financial statements that **GIBBS** provided to First NBC Bank, by falsely increasing the income of **GIBBS's** entities to hide the amount of money these entities were losing. Ryan did not tell the Board, auditors, or examiners that **GIBBS** inflated his financial

statements at Ryan's direction. Calloway also made false statements to First NBC Bank's external auditors about **GIBBS** and his loans. By the time First NBC Bank failed in April of 2017, **GIBBS** and his entities owed the bank over \$123 million.

"Today's guilty plea demonstrates the FDIC, our law enforcement partners will not tolerate criminals who defraud our insured financial institutions and cause harm to the nation's banking industry," said Laurie Younger, Special Agent in Charge, Dallas Region, Office of Inspector General for the Federal Deposit Insurance Corporation.

"The FBI and our law enforcement partners have dedicated significant time and resources toward investigating the failure of FNBC, which resulted in nearly a billion dollar loss to the FDIC. This guilty plea should be a deterrent to others who would attempt to manipulate the nation's banking system," said Bryan Vorndran, FBI New Orleans Special Agent in Charge.

"We are committed to working with our law enforcement partners in holding accountable wrongdoers whose fraudulent actions materially impact financial institutions regulated and supervised by the Federal Reserve Board," said Stephen Donnelly, Acting Special Agent in Charge, Eastern Region, Office of Inspector General for the Board of Governors of the Federal Reserve System and the Bureau of Consumer Financial Protection.

GIBBS pled guilty to one count of conspiracy to commit bank fraud, in violation of Title 18, United States Code, Sections 1344 and 1349. The maximum penalties that may be imposed at sentencing are thirty years in prison; a fine of the greater of twice the gain to **GIBBS** or twice the loss to any victim; and up to five years of supervised release.

Judge Jane Triche Milazzo set **GIBBS's** sentencing for December 2, 2020.

This case is being investigated by the Federal Bureau of Investigation; the Federal Deposit Insurance Corporation, Office of Inspector General; and the Board of Governors of the Federal Reserve System, Consumer Financial Protection Bureau, Office of Inspector General. Assistant U.S. Attorneys Sharan E. Lieberman, Nicholas D. Moses, Matthew R. Payne, and J. Ryan McLaren are in charge of the prosecution.

* * *

Attachment(s):

[Download gibbs_gary_factual_basis.pdf](#)

Topic(s):

Financial Fraud

Component(s):

[Federal Bureau of Investigation \(FBI\)](#)

[USAO - Louisiana, Eastern](#)

Updated August 26, 2020

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA	*	CRIMINAL NO. 20-60
v.	*	SECTION: "H"
GARY R. GIBBS	*	
	* * *	

FACTUAL BASIS

1. The Defendant, **GARY R. GIBBS** ("GIBBS"), has indicated that he intends to plead guilty as charged to Count One of the Bill of Information pending against him, that is, conspiracy to commit bank fraud, in violation of 18 U.S.C. § 1349.

2. The United States and **GIBBS** do hereby stipulate and agree that the allegations in the Bill of Information and the following facts are true and correct and that, should this matter have proceeded to trial, the Government would have proven them beyond a reasonable doubt, through the introduction of competent testimony and admissible tangible and documentary exhibits. This Factual Basis does not attempt to set forth all of the facts known to the United States regarding the allegations in the Bill of Information. The limited purpose of this Factual Basis is to demonstrate that there exists a sufficient legal basis for **GIBBS's** guilty plea. By their signatures below, the parties expressly agree that there is a factual basis supporting the Defendant's guilty plea. The parties also agree that this Factual Basis may, but need not, be used by the United States Probation Office and the Court in determining the applicable advisory guideline range under the United States Sentencing Guidelines or the appropriate sentence under 18 U.S.C. § 3553(a).

See Page 13

25. On or about March 21, 2016, Ryan, Burnell, and Calloway made false statements and material omissions in **GIBBS's** loan documents related to, among other things, the purpose of the loan and the source of repayment, causing \$3 million in loan proceeds to be disbursed to one of **GIBBS's** entities. **GIBBS** then used approximately \$31,000 of those loan proceeds to pay Borrower F's loans.

Nominee Lending

26. Beginning in or around 2011, Ryan, Burnell, Calloway, and **GIBBS** concealed the true purpose of certain nominee loans. Specifically, they falsely stated in loan documents that a given loan was for one borrower's business purposes, when the true purpose of the loan was to pay another borrower's loans and overdrafts. The nominees included Borrower E, Borrower F, and their related entities.

27. Ryan, Burnell, and Calloway submitted loan documents falsely stating that Borrower E was repaying a debt to **GIBBS**. In fact, no such debt to **GIBBS** actually existed, and **GIBBS** was instead obtaining Bank funds by using Borrower E as a nominee. The loan proceeds were transferred directly to **GIBBS** or to his entities, and were, in part, used to pay **GIBBS's** and his entities' existing debts at the Bank or to enrich **GIBBS**.

28. Ryan, Burnell, and Calloway, and **GIBBS** regularly made payments on the Borrower F's loans to keep Borrower F current. They used funds from new loans that the Bank made to **GIBBS** and his entities. However, many of Borrower F's loans that **GIBBS** paid were not included in **GIBBS's** financial documents as liabilities.

29. This practice had the effect of falsely understating **GIBBS's** debt obligations in loans to **GIBBS** and his entities, making them falsely appear to have additional income available to pay new loans. It also kept the loans to the nominees from being downgraded or impaired, even

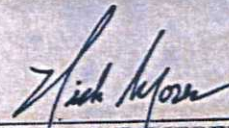
though the nominees were often unable to pay their loans without obtaining new loan proceeds through GIBBS.

30. All in violation of Title 18, United States Code, Section 1349.

III. CONCLUSION


Various records, including income tax returns, IRS filing records, bank records, corporate records, audio and video recordings, and documents and tangible objects would be introduced at trial to prove the facts as set forth above. In addition, the testimony of employees and agents of the Federal Bureau of Investigation, the Federal Deposit Insurance Corporation Office of Inspector General, the Federal Reserve Board of Governors Office of Inspector General, and other competent witnesses would be introduced at trial to prove the facts set forth above.

APPROVED AND AGREED TO:


SHARAN E. LIEBERMAN
NICHOLAS D. MOSES
MATTHEW R. PAYNE
J. RYAN McLAREN
Assistant United States Attorneys

8/25/2020

Date


RANDY SMITH
TIM YAZBECK
Attorneys for Gary R. Gibbs

8-24-20
Date


GARY R. GIBBS
Defendant

8.24.20
Date