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20-7506

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

GAKUBA, PETER

— PETITIONER

(Your Name)

vs.

ILLINOIS

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

20-1137 (18-3398) 17CV50337

US COURT APPEALS-7 ; US DISTRICT COURT - M.D. IL., ROCKFORD DIV.

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

(w. DIV.)

PETITION FOR WRIT OF CERTIORARI

PETER GAKUBA (M52946)

(Your Name)

VIENNA CORREC. CTR.

6695 STATE RT., 146 E.

(Address)

VIENNA, IL 62995

(City, State, Zip Code)

414

(Phone Number)

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SUPREME COURT, U.S.

GAKUBA

PET.

VS. ILLINOIS
RESP.

#

U.S. SUPREME COURT

ISSUES PRESENTED FOR REVIEW

HABEAS 28 USC §2254 ; CERT. OF APPEAL 28 USC §2253 ; F.R.CIV.P. RULE 60(b)(1-4)

① PER GONZALEZ V. CROSBY 545 US 524, 125 S.Ct. 2641 (2005) GAKUBA'S F.R.CIV.P. RULE 60(b)(1-4) MOTION CHALLENGING THE USDC-HD IL-ROCKFORD DIV.'S VIOLATION OF HABEAS DUE PROCESS ON "MIXED" HABEAS PETITIONS WHEN IT DISMISSED "UNEXHAUSTED" CLAIMS THEN DENIED EXHAUSTED CLAIMS, WAS DENIED IN AN UNSUPPORTED AND WHOLLY CONCLUSORY ORDER(S). THIS WAS OBJECTIVELY UNREASONABLE, CONTRARY TO GONZALEZ. SEE ACCORD SPARKS V. DORETHY 2018 US APP LEXIS 32265 **1-3 (USCA7 1/9/2018) ("MIXED" HABEAS - CITES ROSEN V. LUNDY 455 US 569 (1982); RHINES V. WEDER 544 US 369 (2005)).
1ST, 5TH, 14TH AMENDS. VIOL.

② GAKUBA'S ONE -- AND ONLY -- § 2254 HABEAS PETITION WAS NOT "FRIVOLOUS" RENDERING THE USCA7'S THREAT TO FINE GAKUBA AT LEAST "\$500" AND ORDER ALL USDC CASES PENDING IN THE USCA7'S JURISDICTION RE: FALSE ARREST AND 8TH AMEND. VIOLATIONS OF IMPRISONMENT TO BE DISMISSED PER ANDERSON V. US 121 F.3d 312, 313-16 (7TH 1997) A 1ST AMEND. RETALIATION VIOLATION BY IL. FED'L COURTS W/ A HISTORY OF IRRATIONAL BIAS AND PREJUDICE -- BIGOTRY -- AGAINST GAKUBA. SEE 2013-14 GAKUBA APPEALS (SANCTIONS THREATENED IN UNSUPPORTED CONCLUSORY ORDERS AGAINST GAKUBA FOR ASSERTING HIS RIGHTS PER 18 USC § 2271(d)-(e))
1ST, 5TH, 14TH AMENDS. VIOL.

LIST OF PARTIES

☒ 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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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 - GONZALEZ v. CROSBY 545 US 524 (2005)

☒ For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix B, D-E 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 United States district court appears at Appendix A, C to the petition and is

☐ reported at _____; or,

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

* ☒ is unpublished.

* - MIXED" HABEAS DUE PROCESS VIOL.: SPARKS v. DORETHA 2018 US APP LEXIS 32265 ** 1-3 (USCA7 - 4/8/2018)

☐ For cases from state courts: (cites ROSE v. LUMBY 455 US 569 (1982); RHINES v. WEBER 544 US 369 (2005))

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

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was OCTOBER 22, 2020 BAROBA v. GRISSOM 20-1137 (USCA7)

☐ 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: NOVEMBER 14, 2020, and a copy of the order denying rehearing appears at Appendix E.

☐ 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).

CONSTITUTIONAL | STATUTORY PROVISIONS

① 14TH AMEND. PER 28 USC §§ 2254, 2253; F.R. CIV. P. RULE 60(b)(1-4)

GONZALEZ V. CROSBY 543 US 524 (2005)

ROSE V. LUNDY 455 US 569 (1982)

RHINES V. WEBER 544 US 369 (2005)

SPARKS V. DORETHY 2018 US APP LEXIS 32265 ¶¶ 1-3 (USCA7 1/9/2018)

* "MAKED" HABEAS DUE PROCESS VIOLATION

STATEMENT OF THE CASE

I

PROCEDURAL BACKGROUND

AS A MATTER OF LAW, GARUBA'S ²⁰¹⁹ SEPT. 2020 F.R.CIV.P. 60(b)(1-4) MOTION (DENIED JAN. 2020) SHOULD HAVE BEEN GRANTED, RESULTING IN A RE-DO / DO OVER OF GARUBA'S 28 USC § 2254 "MIXED" HABEAS PETITION. IT'S ADJUDICATION BY DISMISSING "EXHAUSTED" CLAIMS BY USDC (RETIRED) JUDGE KAPALA, THEN, DECIDING THE "EXHAUSTED" CLAIMS (VERSUS A 'STAY AND ABEYANCE') WAS A FLAGRAANT AND EGREGIOUS 14TH AMEND. VIOLATION OF HABEAS DUE PROCESS PER GONZALEZ V. CROSBY 545 US 524 (2005); SEE ACCORD SPARKS V. DORETHY 2018 US APP LEXIS 32265 **1-3 (USCA7 1/9/2018) ("MIXED" HABEAS - CITES ROSE V. LUNDY 455 US 369 (1982); RHINES V. WEBER 544 US 369 (2005)); ARRIETA V. BATTAGLIA 461 F.3d 861 (7TH 2006).

ON 11/20/2017 GARUBA'S 60-PAGE PRO SE HABEAS PETITION WAS SCREENED BY (RETIRED) USDC JUDGE KAPALA CONCLUDING ISSUES 1-4 WERE EXHAUSTED, 5-7 UNEXHAUSTED: A "MIXED" PETITION. APPX. A, C.

ON 10/24/2018 THAT HABEAS PETITION WAS ERRONEOUSLY DENIED, SO TOO A C.O.A.

ON 6/24/2019 THE USCA7 DENIED A C.O.A.; THEN DENIED PETITION FOR REHEARING, HEARING EN BANC. GARUBA 18-3398 (USCA7). THEREAFTER, GARUBA FILED A TIMELY OBJECTION MOTION CITING THE "MIXED" HABEAS ROSE + RHINES FLAGRAANT ERRORS. IT WAS PRISON LEGAL MAILED BEFORE THE MANDATE ISSUANCE DATE, IMEXPLICADLY ISSUED LESS THAN 9 DAYS FROM THE REHEARING DENIAL, BUT DOCKETED AFTER THE MANDATE ISSUED. IN VIOLATION OF THE "PRISONER MAILBOX RULE" THE USCA7 DENIED RECALLING THE MANDATE TO DECIDE THE FLAGRAANT AND EGREGIOUS 14TH AMEND. "MIXED" HABEAS DUE PROCESS VIOLATION. GARUBA 18-3398 (USCA7); GARUBA V. IL ² (US S.Ct.) (CERT. DENIED).

ON OR ABOUT 8/2019 GARUBA SOUGHT CORRECTION OF THE ROSE + RHINES HABEAS DUE PROCESS VIOLATIONS IN A PRO SE PLEADING CONSTRUED AS A 2ND / SUCCESSIVE HABEAS PETITION. GARUBA V. MEESE 19-2669 (USCA7). IN A FLAGRAANTLY CIRCULAR DENIAL, THE USCA7 RULED THAT THE "MIXED" HABEAS DUE PROCESS ERROR SHOULD HAVE BEEN RAISED IN GARUBA 18-3398 (WHICH IT WAS, BUT RECKLESSLY DISREGARDED PER THE "PRISONER MAILBOX RULE").

IN 9/2019 GARUBA RETURNED TO GARUBA 17CV50337 (MD.LL.) PER F.R.CIV.P. 60(b)(1-4)
MOTION SEEKING CORRECTION OF THE PROCEDURALLY DEFECTIVE HABEAS DUE PROCESS.
IN 1/2020 USDC-MD.LL. JUDGE LEE DENIED THAT RULE 60(b) MOTION IN AN UNSUPPORTED
WHOLLY CONCLUSIVE 2-SENTENCE ORDER, IMPLYING POSSIBLY RES JUDICATA.
IN 2/2020 APPEAL WAS MOTILED. GARUBA 20-1137 (USCA7). AND IN A SUSPICIOUS
COINCIDENCE, SHORTLY AFTER GARUBA FILED HIS 2ND CIRCUIT RULE 36 RE-ASSIGNMENT OF
JUDGE ON REMAND (CITING BIAS+PREJUDICE, CONFLICTS-OF-INTEREST (SEE GARUBA V. O'BRIEN
12CV7296, 13CV50218 (USDC-MD.LL.) (SAME JUDGE AS HABEAS PETITION)) THE CASE WAS
DENIED C.D.A. OF THE GONZALEZ, ROSE + RHINES OBJECTIVELY UNREASONABLE, CONTRARY
ERRORS OF FACT AND LAW.
ON 11/17/2020 REHEARING, HEARING EN BANC WAS DENIED. GARUBA 20-1137 (USCA7).
GARUBA v. IL ? (US S. CT.) PROVIDES A FOULSOME FACTUAL BACKGROUND. (CERT. DENIED)

REASONS FOR GRANTING THE PETITION

①

NO CRIMINAL CASE -- EVER -- INCLUDES SO MANY VIOLATIONS OF FED'L STATUTORY AND CONSTITUTIONAL LAWS. SEE GARUBA 17CV50337 (UDC-MD, IL), GARUBA 18-3398 (USCA7), GARUBA 19-2669 (USCA7), GARUBA v. IL. ? (US S. CT.) (CERT. DENIED).

NOT ONLY WERE THERE UNDISPUTEDLY 3 STRUCTURAL ERRORS -- ISSUE 1: 6TH AMEND. PUBLIC TRIAL VIOL.; ISSUE 4: 6TH AMEND. PRO SE RIGHT DENIAL "WEEKS BEFORE TRIAL" AS A "DELAY TACTIC"; ISSUE 5: BY AN IRRATIONALLY BIASED AND PREJUDICED IL STATE TRIAL JUDGE (AS ADVOCATE) -- BUT, NOW, EVEN GARUBA'S BASIC RIGHT TO "EQUAL JUSTICE UNDER LAW" PER GONZALEZ v. CROSBY 545 US 524 (2005) HAS BEEN FLAGRANTLY AND EGREGIOUSLY VIOLATED BY AN IRRATIONALLY BIASED AND PREJUDICED USCA7 WHICH BRANDS SUCH 14TH AMEND. HABEAS DUE PROCESS VIOLATIONS PER ROSE v. LUNDY 455 US 269 (1982) AND RHINES v. WEBER 544 US 369 (2005) -- "FRIVOLOUS."

"FRIVOLOUS" IS COMPARED TO ANDERSON v. US 121 F.3d 312, 313-16 (7TH 1997); RECKLESSLY DISREGARDING THE USCA7'S OWN CASE LAW PRECEDENCE - SPARKS v. DOROTHY 2018 US APP LEXIS 32265 ** 1-3 (USCA7 1/9/2018 - "MIXED" HABEAS DUE PROCESS ERROR CITES TO ROSE + RHINES); SEE ALSO ARRIETA v. BATTAGLIA 461 F.3d 861 AT 864 (7TH 2006) (RULE 60b AVAILABILITY TO REOPEN PREVIOUSLY DISMISSED HABEAS PETITIONS PER 28 USC § 2254 PROVIDED, SOUGHT DOES NOT ATTACK RESOLUTION OF CLAIMS ON MERITS. GONZALEZ v. CROSBY 125 S. CT. 2641, 2649 (2005) ("RULE 60(b) HAS AN UNQUESTIONABLY VALID ROLE TO PLAY IN HABEAS CASES")).

LIKE IN SPARKS AT ** 1-2, "[THE] DISTRICT COURT'S PROCEDURE [WAS] NOT COMPATIBLE WITH ROSE v. LUNDY 455 US 509 (1982) WHICH REQUIRES MIXED PETITIONS BE DISMISSED ADDING IN RHINES v. WEBER 544 US 269 (2005) THAT A DISTRICT JUDGE MAY ALLOW A PETITIONER TO DISMISS THE UNEXHAUSTED CLAIMS [AND] THIS IS NOT WHAT OCCURRED [HERE]. INSTEAD THE JUDGE DISMISSED THE UNEXHAUSTED CLAIMS AND PROCEEDED TO DECIDE THE REST. [AT * 2:] THE JUDGE DID NOT WAIT FOR SPARKS [GARUBA] TO DECIDE WHETHER TO AMEND THE PETITION SO THAT IT ONLY CONTAINED EXHAUSTED CLAIMS. INSTEAD THE COURT TREATED THE OPPORTUNITY EXTENDED BY RHINES AS ONE THAT COULD BE ACCEPTED BY THE JUDGE. YET THE CHOICE BELONGS TO THE PETITIONER, AND FAILURE TO PROTEST THE JUDGE'S DECISION TO PROCEED IS NOT AN EFFECTIVE CHOICE

TO DISMISS THE UNEXHAUSTED CLAIMS, GIVING THE CHOICE ABOUT DISMISSING THE UNEXHAUSTED

CLAIMS TO THE JUDGE RATHER THAN THE LITIGANT WOULD AMOUNT TO OVERRULING LUNDY WHICH

RHINES DID NOT DO. (EMPHASIS IN ORIGINAL)

ONCE DISMISSED, CLAIMS CANNOT BE REASSERTED IN A LATER COLLATERAL ATTACK WITHOUT

APPELLATE APPROVAL FOR A 2ND / SUCCESSIVE PETITION. SPARKS [GAKUBA] HAS HEUTR

MANIFESTED HIS CONSISTENT TO HAVING UNEXHAUSTED CLAIMS TREATED THAT WAY. (EMPHASIS)

* 2-3: RHINES GIVES A DISTRICT JUDGE 2 OPTIONS: (1) DISMISSES THE WHOLE PETITION UNDER

LUNDY AND LEAVE IT UP TO THE PETITIONERS TO DEBATE EXHAUSTED CLAIMS AND REFILE (2)

OR STAY THE PROCEEDINGS WHILE PETITIONER EXHAUSTS REMAINING STATE COURT REMEDIES.

RHINES SAY US AT 278 ALLOWS A STAY []

CONSEQUENTLY, THIS CASE'S HABEAS PROCEEDINGS UNWISDOMLY WERE FATALLY DEFECTIVE,

UNDERMINING ITS INTEGRITY -- WELL ESTABLISHED LAW SCRUPULOUSLY OBEYED BY ALL US

DISTRICT AND CIRCUIT COURTS. SEE CF SPARKS V. ROHTE 464 US F.3D 1213, 1215-16 (10TH 2006);

HOLLEY V. TERRELL 2018 US DIST. LEXIS 71840 AT *7 (USDC-ED.LA 5/1/2018) (CITE)

ADAMS V. THAYER 679 F.3D 312, 319 (5TH 2012) (QUOTING GONZALEZ V. CROSBY 545 US 529 AT 532);

NELSON V. LAGHBROOK 2018 US DIST. LEXIS 232003 AT *8 (USDC-MOIL. 9/30/2018);

BROWN V. FOSTER 2019 US DIST. LEXIS 189694 AT *4 (USDC-ED.WI 11/1/2019) (DISTRICT COURT HAS

3 OPTIONS IN A CASE INVOLVING A "MIXED" HABEAS PETITION);

KIMMEL V. PALMER 2012 US DIST. LEXIS 158361 (USDC-D.MY 11/5/2012) (SAME - CITE)

RHINES V. WEBER 544 US 269, 276 (2005) + ROSE V. WINDY 455 US 509, 510 (1982) (ON 3 OPTIONS);

THE USCA7, PRECEDED BY 2 DIFFERENT USDC JUDGES, RECKLESSLY DISREGARDED ALL

GAKUBA'S RIGHTS -- ESPECIALLY NOW HABEAS DUE PROCESS.

THIS WAS NO MERE ERROR, BUT CALCULATED JUDICIAL OVERREACH BY IRRATIONALLY

BIASED AND PREJUDICED -- BIGOTRY -- FED. JUDICIARY WHICH, IN AFFIRMING WRONGFUL

CONVICTIONS, THEY ROADBLOCK GAKUBA'S FIGHTING PRO SE FED. 301: GAKUBA 12CY7296

(USDC-MOIL), GAKUBA #11 F.3D 751 (7TH 2013). 1ST, 5TH, 14TH AMEND. VIOLATIONS.

BUT THE IRRATIONAL ANIMUS DOES NOT END WITH THESE FLATLY WRONG 1ST SEQUENCE DENIALS.

7/8/89

II

THE USCA7 SEEMS TO CHILL GARUBA'S EXERCISE OF HIS 1ST AMEND. RIGHTS BY THREATENING A PRO SE INDIGENT WITH A MINIMUM \$500 SANCTION AND DISMISSAL OF ALL GARUBA'S PENDING PRO SE SUITS WERE GARUBA TO FILE ANYMORE "FRIVOLOUS" HABEAS PLEADINGS PER THEIR 10/22/20 DENIAL ORDER CITING TO CONTRARY CASE LAW FOR SUPPORT: ANDERSON v. US 121 F.3d 312, 313-16 (7TH 1997).

CONTRA ANDERSON AT 313: 4TH COLLATERAL ATTACK (14 YRS - SINCE ~~2015~~ ¹⁹⁹⁵) ALL WITH "THE SAME THEME": INEFFECTIVE ASSISTANCE OF COUNSEL; TWICE BEFORE THE ISSUE WAS "ADDRESSED AND RESOLVED [ON] THE MERITS." 28 USC § 2255.

ID AT 314: BOTH THE DISTRICT AND CIRCUIT COURTS "ADDRESSED THEM ON THE MERITS."

ID AT 315: PETITION CONTAINS NOTHING BUT EFFORTS TO RING CHANGES ON POINTS ADVANCED BEFORE.

ID AT 316: 14 RE TC1 LTD 769 F.2d 441 (7TH 1985) HOLDS MONETARY SANCTIONS "APPROPRIATE WHEN OBJECTIVELY UNREASONABLE LITIGATION MULTIPLYING CONDUCT CONTINUES [.]"; WAGES v. IRS 915 F.2d 1230, 1235-36 (9TH 1990) (CONCURS FOR PRO SE LITIGANTS); CONTRA SASSOWER v. FIELD 973 F.3d 75, 80 (2ND 1992).

AS ANDERSON PLAINLY CITES TO CIRCUIT COURT DIVISION BETWEEN THE 7TH & 9TH VERSUS THE 2ND, IT'S ADDED REASON MERITING US S.C.T. REVIEW. WAGES VS. SASSOWER.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 1/11/2021