No. 21-5470

IN THE SUPREME COURT OF THE UNITED STATES

ALEKSYS LOMELI-GARCIA, ET AL, PETITIONERS

VS.

DAVID SHINN, RESPONDENT

ON A PETITION FOR A WRIT OF CERTIORARI TO THE NINTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI REHEARING

DECEMBER 15, 2021

Aleksys Lomeli Garcia, # 273617

In Propria Persona

Arizona State Prison

Safford Complex, Tonto Unit

896 South Cook Road

Safford, Arizona 85546

RULE 10 QUESTIONS

Pending before this Court were Aleksys' five, Petition for Certiorari, questions. After filing that Petition, Aleksys was given untimely notice by AZ of additional evidence which supports his Petition's first two grave questions regarding their fraudulent suspension of the habeas corpus writ, and this petition follows. The substance of Aleksys' five pending questions are summarized as follows:

1). Did the concealment fraud, which AZ concedes they perpetrated upon this Lewis v Casey 318 U.S. 343 (1996) court, cause this Court to suggest a court access 'forms only system', which forbids habeas filings? And should this Court exercise its inherent power to accept Cert. and remedy the fraud which was perpetrated upon this Court, by restoring the writ of habeas corpus for AZ indigents?

2). Could reasonable judges conclude that this fraud allowed AZ to implement D.O. 902, which forbids indigent habeas filings? And was said fraud and 902 the proximate cause for the lower court's error in suspending the next friend habeas corpus class action filing right?

3-4). Did the lower courts error by applying Made-Up 28 U.S.C. 2244(d)(1)(B)(D) legal standards to Aleksys' proper habeas corpus filing and error by failing to apply the correct standards to Aleksys' material facts?

5). Does newly discovered scientific evidence and Aleksys' corrected patient history, which both parties agree is his true history and which the lower courts failed to assess. Prove his substantive innocence and ground four claim, that his plea was not knowingly and intelligently tendered since he knew not of his innocence?

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Initially, the district court suspended the next friend class action filing right, which sought to remedy the Suspension clause violation and thousands of unlawful sentences. As it allegedly found no Supreme Court or Ninth Cir law which authorized the process and the procedure would allegedly conflict with judge made civil suits laws, (Pet. for Cert., Appendix #1). While the Ninth Cir panel and En Banc court declined to restore this next friend habeas class action right, by way of mandamus, (Pet. for Cert., App. #2).

Subsequently, the magistrate suggested dismissing the habeas as being untimely to which Aleksys objected, (Pet. for Cert., App. #3, #6). Thereafter, the district court adopted the suggestion, dismissed the habeas as untimely and denied Aleksys COA request, (Pet. for Cert., App. #4). While the Ninth Cir panel and En Banc court both refused to grant a COA for any of these plain timeliness, substantive innocence and next friend filing errors, (Pet. for Cert., App. #5). Aleksys Pet. for Cert. timely followed that final order.

JURISDICTIONAL STATEMENT

This Court has jurisdiction pursuant to 28 U.S.C. 1254(1). Moreover, it is Aleksys' legal position that this Court also has further jurisdiction under its inherent Art. III, U.S. CONST., powers. As said inherent powers authorize the Court to investigate and remedy any alleged concealment frauds which were perpetrated upon the Court by a Party to alter the outcome of its judgment, Chambers v Nasco Inc., 501 U.S. 32 (1991). If a Party brings the fraud to the Court's attention, as Aleksys does with his accusations of fraud, which AZ concedes are true, then the Court may exercise that power.

CONSTRUING SUPPLEMENT AS PETITION FOR REHEARING

Prior to the Court's 10.18.21 order denying Cert. in this case, "intervening circumstances of a substantial or controlling effect", Rule 44(C), Supreme Court Rules, took place on or about 9.17.21.

Due to these "intervening" (id) material facts, Aleksys promptly prepared a `supplement' and `supplemental appendix' for his then pending Pet. For Cert. This was done electronically on a tablet and then emailed to Aleksys' mother, so the pre-prepared documents could be printed up for physical filing with this Court.

Thereafter, this Court issued its 10.18.21 order and a few days later Aleksys received his printed copy of the `supplement' from his mother. Had Aleksys been a lawyer or a civilian, he could have filed his `supplement' prior to 10.18.21.

Since the `supplement' meets the Rule 44(C) "intervening events grounds for relief and in light of these unusual circumstances. Aleksys moves the Court and its Clerk to construe the appended pre-prepared supplement as his Petition For Rehearing.

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I. SUPPLEMENTAL ACTUAL INJURY FACTS:

Aleksys submits the following intervening facts and events in support of his Petition's first two questions which concern the suspension of the indigents' constitutional habeas court access right

A. New Lexis Proof Of Unavailability Actual Injuries:

Aleksys' habeas corpus petition class action ground one, his 28 U.S.C. 2244(d)(1)(B)(D) points, and equitable tolling claims. All asserted that his 4 new grounds' Supreme Court legal basis, which identified their material facts, were all knowingly made unavailable to him, pursuant to this Court's 1996 Casey, 518 U.S. 343 (1996), court forms only suggestion. Which prison policy D.O. 902 adopted and implemented in 1997. cf. Gunn v Newsome, 881 F.2d 949 (11th Cir. 1989)(En Banc)(indigent inmate must know both the legal basis and the material facts to know he has available claim).

AZ conceded to these factual allegations, which the lower courts therefore, accepted as being true, (Pet. for Cert., Appendix 3, at p. 8, lines #25-26). However, the lower courts would not apply 28 U.S.C. 2244(d)(1)(B)(D) to these material facts which the courts accepted (id.) and then disregarded in their analysis.

About one year ago AZ provided their prisoners with new electronic tablets and a restrictive email service. These tablets came with other applications. One such "App.", was a resource library icon. Clicking onto this icon was supposed to provide electronic access to only those resource materials listed in the D.O. 902 Attachment A, (SEE: (Supp. Appendix #1, D.O. 702 at p. 3, par. #2.2.11 "Lexis/Nexis ... Legal Resources ... Only content currently defined by Department Order 902 ... shall be made available.") (Also see Supp. Appendix #2, Attachment A, available resource material list). Prior to 11-21-20, D.O. 902 Attachment A did not notice the 28 U.S.C. 2242 code which inmates were not to access, (id.). While posted on their new tablets, the library resource icon was not enabled for use when Aleksys filed his Pet. for Cert. with this Court.

About the same time in which the 9th Cir. denied Aleksys COA, (App. #5, order FILED 11-23-20), on 11-21-20, AZ modified 902 to include the non-annotated version of 28 U.S.C. 2242 code.

Subsequently, on about 9-17-21, AZ finally enabled their library resources icon and made their Resource Library electronic service available to Aleksys and his class. Once enabled, Aleksys searched the data base and

verified that just as he had alleged before the lower courts. 902 had made the legal basis for his three primary grounds unavailable to him. Forbidding him from complying with his A.R.S. 13-4235, 28 U.S.C. 2254(a)(d), mandatory legal basis filing duties. Statutory requirements which were signed into law at a time when AZ prisoners had direct access to this Court's opinions, and prior to this Court's Casey, supra, judgement.

A Lexis search of the 2012-2019, 902 Attachment A resource materials for his ground one claim's, Johnson v Avery, 373 U.S. 483 (1969), 252 F. Supp. 783 (1966), Ali v. Ashcroft, 213 F.R.D. 390 (W.D. Wash.), aff'd, 346 F.3d 873, 2003 D.A.R. 1006 (9th Cir. 2003), U.S. v Preiser, 506 F.2d 1113 (2d Cir. 1974), Cert. dnd., 95 S.Ct. 1587 (1975), legal basis. Netted zero results as this legal basis was unavailable to Aleksys. Cf. (infra, subsection B, finding authorities in newly available 2242 annotations).

A Lexis 902 Attachment A search of those available 2012-2019, materials for his ground two claim's, Graham v. Weeks, 138 U.S. 461 (1891), Ex Parte Bain, 121 U.S. 1 (1887), Chambers v NASCO Inc., 501 U.S. 32 (1991), In re Oliver, 333 U.S. 257 (1948), Gautt v Lewis, 489 F.3d. 993 (9th Cir. 2007), Cert. dnd. 552 U.S. 1245 (2008)(S.Ct. case collection on point), legal basis. Likewise netted zero results for this legal basis which remained unavailable to Aleksys.

A Lexis 902 Attachment A search of those 2012-2019, materials for Aleksys' initial ground four Crane v Kentucky, 106 S.Ct. 2142, at 2146 (1986) [citing California v Trombetta, 467 U.S. at 485 for "a meaningful opportunity to present a complete defense" point], claim's legal basis. Netted zero results as the legal basis remained unavailable to Aleksys. Although this initial claim evolved to include a Brecht v Abrahamson, 507 U.S. 619 (1993), fundamental fairness and substantive innocence claim.

Grounds two and four, created the factual predicate for Aleksys' ground three IAC and ineffective psychiatrist claim. By making the legal basis for Aleksys' grounds one, two, and four, unavailable to him. His ground two's factual predicate likewise remained unavailable to him.

Therefore, while both the lower courts and AZ accepted the fact that this Court's Casey, supra, suggestion and 902, had made the legal basis for all four of Aleksys' new grounds unavailable to him. Accepted the fact that this material fact prohibited him from complying with his mandatory A.R.S. 13-4235 and 28 U.S.C. 2244(d)(1), 2254(a)(d) filing duties, and timely fling for relief during the relevant 2012-2019 years.

This new electronic tablet Lexis search evidence has now allowed Aleksys to objectively verify that these factual allegations are all true. As they can now be independently verified by any party or the Court via Lexis, as Aleksys has just done herein under penalty of perjury.

B. New Lexis Proof Of Additional 2242 Actual Injury:

Aleksys further found that this new 9-17-21 service, now provided electronic access to the 28 U.S.C. 2242 annotated case citations. A resource not listed in the old 1997-2013, or new 11-21-20, Attachment A, (Supp. Appendix #2). This newly available resource, served to notice Aleksys of newly discovered actual injuries he suffered due to this Court's Casey, supra, court forms only suggestion and 902. Knowledge and proof of these constitutional injuries were unavailable to Aleksys when he filed his Petition with this Court.

Aleksys' lower court record is permeated with the allegation that it was plain error for those courts to suspend his 2242 next friend habeas corpus class action filing right. This error was especially egregious, since the process was being used to remedy denied habeas court access and unlawful sentences for over 10,000 indigent, illiterate and poorly educated fellow prisoners. A textbook example of why the process should be used.

Throughout his habeas petition, his objections to the R and R, his mandamus petition to the En Banc 9th Cir., and his motions for a COA. Aleksys argued it was plain error, to suspend a 2242 right which this Avery, supra, Court recognized in principle and to not follow the Preiser, supra, 2nd Cir. holding on this constitutional and historic habeas corpus filing right.

As the lower court had determined that no Supreme Court or Ninth Cir court opinion authorized such a habeas class action process. Then presumed that even if such a right were to exist, the right could not be exercised by indigent prisoners. As judge made Rule 23, FRCP, 28 U.S.C. 1983, procedural laws mandated that class action lawsuits could only be filed and litigated by lawyers, (Pet. for Cert., App. #1 at p. 3). Ignoring Aleksys point that a 28 USC 1983 judge made law, cannot be applied to a habeas action for the purpose of suspending a historic and constitutional 2242 habeas corpus filing right.

After the indigent next friend class action filing right had been denied and suspended by all the lower courts.

AZ then untimely noticed Aleksys on about 9-17-21, that the 2242 annotated code was now electronically available to Aleksys via their just enabled resource library icon. In contradiction to their relevant policies, (Supp. Appendix #1-2).

A Lexis search of those annotations provided Aleksys with notice of the 1972-2003 Ninth Cir holdings which showed that unbeknownst to Aleksys, unbeknownst to his class of indigents and apparently unbeknownst to his lower Ninth Cir. courts. This suspended habeas class action filing right was recognized and well settled law in his Ninth circuit jurisdiction. In polar opposite --- to what his lower court had found. Class members ordered up the latest 2003 opinion for Aleksys. That opinion held as follows:

"Next friend standing refers to the procedure by which a third party appears in court on behalf of detained prisoners who are themselves unable to seek relief. See id. at 1157-1158 (discussing Whitmore v Arkansas, 495 U.S. 149 (1990)). A next friend does not himself become a party to a habeas corpus action in which he participates, but simply pursues the cause on behalf of the detained person, who remains the real party in interest. Whitmore 495 U.S., at 163. Unlike Coalition, in which none of the persons who filed the petition was a detainee, here, Petitioners are the detainees. Next friend standing is not at issue. See Ali, 213 F.R.D. at 406 (reasoning that there is no question that Petitioners meet standing requirements because they are Parties to the suit). The government further argues that Petitioner's standing is insufficient to confer next friend standing for class members who have not signed the habeas petition, emphasizing that habeas is an individual remedy. In Mead v. Parker, 464 F.2d 1108 (9th Cir. 1972), twenty-seven inmates filed a habeas petition that purported to be a class action on behalf of numerous other inmates. We held that the district court erred in holding that habeas corpus is not an appropriate vehicle for class action, because, although habeas relates to the individual and to his unique problem ... there can be cases ... where the relief sought can be of immediate benefit to a large and amorphous group. In such cases it has been held that a class action may be appropriate. Id. at 112-1113 cf. Cox v. McCarthy, 829 F.2d 800, 804 (9th Cir. 1987) (stating that although such actions are ordinarily disfavored, this court has held that a class action may lie in habeas corpus, and citing Mead) United States ex rel Sero v. Preiser, 506 F.2d 1115, 1126-1127 (2d Cir. 1974), [cert dnd 1975] (finding a habeas class action appropriate) Williams v. Richardson, 481 F.2d 358, 361 (8th

Cir.1973)(adopting language in Mead and concluding that a class action may be appropriate in a habeas proceeding). Petitioners have clearly established the requisite standing." "The district court further reasoned that the Petitioners had made a strong showing of next friend standing because the putative class members MAY NOT HAVE ACCESS TO THE COURT [Emph. added] ..., and Petitioners have some significant relationship with, and and are truly dedicated to, the best interests of the putative class members. Ali, 213 F.R.D. at 406-407". Ali v. Ashcroft, 213 F.R.D. 390 (W.D. Wash.), aff'd, 346 F.3d 873, 2003 D.A.R. 1006 (9th Cir. 2003)[there are no page numbers on Aleksys digital copy of this case].

This Ninth Cir. law is controlling on the issue and binding upon Aleksys lower courts. Just as Aleksys briefs had urged, his Ninth Cir had followed the 2nd Cir Preiser, supra, opinion. Just as Aleksys had argued, the Ali, id., court went on to find that pursuant to Rule 11, Rules Governing 2254 Cases, Rule 23, FRCP, did not control such filings, but was instructive. Therefore, Aleksys had not filed a motion under Rule 23 for class certification as the Ali detainees had. But, rather moved the lower court to appoint counsel to protect the class and to certify his suggested class members --- as a form of relief, (Pet. for Cert., App. #14, p. 3, requested orders #A1, B#1-2). To promote orderly procedure.

In sum and unbeknownst to Aleksys until 9-17-21, the Ninth Cir had agreed with all his points and all along had held that habeas class actions could be filed and litigated by indigents. For all of the very same reasons which Aleksys had argued in his briefs.

Since Ali, id., and its internal Mead cite, are binding and controlling laws in his Ninth circuit. Had Aleksys been able to present the above quotation to the magistrate, his judge, and the Ninth Cir., they could not have suspended the next friend class action filing right as was done her. As they would have been bound by both 1972 Mead and 2003 Ali, Ninth Cir. precedents. AZ did not contest the validity of this well settled process and right in any of their briefs.

Aleksys asserts that by denying him notice of, or access to, the 2242 annotated code or advising the lower courts of the Ali, id., line of authority, as was their ethical duty. AZ knowingly caused him to suffer the actual injury of losing the next friend class action filing right. Accordingly, he submits the above Ali line of Ninth Cir. authority, as proof of that newly discovered actual injury.

II. NEW EVIDENCE IS RELEVANT TO FIRST TWO QUESTIONS:

Aleksys asserts that his newly discovered evidence is relevant to the first two questions for the Court, due to the reasons which follow.

A. Was This Court A Fraud Victim?

In the first question Aleksys asserts that AZ concealed the new and intervening A.R.S. 13-4235 and AEDPA habeas corpus filing laws from this 1996 Casey, supra Court in their briefs. New laws which required mandatory legal citations to this Court's precedents which would identify the claims material facts and relied upon legal basis. Failing to comply with these intervening filing laws would mandate the habeas courts to enter a procedural default dismissing the contemplated claims for relief.

Further asserting that this 28 U.S.C. 2244(c), concealment fraud was an AZ legal strategy that caused this Court to suggest a court forms only system. That unbeknownst to this Court at that time, would forbid indigents from properly and timely filing for state or federal habeas corpus collateral review relief and would contradict the very Congressional purpose and intent of the AEDPA.

Throughout the lower courts and in their 8-29-21 dated waiver to this Court. AZ has repeatedly conceded that these accusations are all true. Tacitly admitting that they knowingly concealed these intervening habeas corpus filing laws, which forbid facts only filings, from this 1996 Court, to alter the outcome of Casey, supra.

Aleksys new Lexis service evidence now provides clear and convincing evidence, that a court forms ONLY system, as this Court suggested in 1996. Suspends the writ of habeas corpus for indigents who contemplate or suspect they have new claims for relief. As the system forbids compliance with the mandatory state and federal habeas corpus filing laws, by denying indigents notice of, or access to, their claims Supreme Court legal basis.

Moreover, it further forbids notice of this Court's retroactive decisions, 28 U.S.C. 2244/2254, and forbids indigent prisoners from complying with the very Congressional purpose and intent of the AEDPA bill to timely present all known grounds to the habeas courts in their first timely habeas corpus filing.

Aleksys new Lexis evidence proves that the Casey suggestion insured that the mandatory legal basis for all four of his claims would remain unavailable to Aleksys and that he could not comply with his mandatory filing

duties or the Congressional purpose and intent of 28 U.S.C. 2244(d)(1), 2254(a)(d).

Aleksys stands by his legal position that this sage and prestigious Court would never knowingly suggest a court forms only system. If it new the system would forbid state/federal habeas filings by indigents and interfere with the very Congressional purpose and intent of the AEDPA to timely and diligently present all grounds for relief to the courts. This could ONLY happen if the Court was a victim of a 28 U.S.C. 2244(c) concealment fraud as Aleksys asserts. AZ has tacitly admitted before this Court in their 8-29-21, waiver, that they knowingly perpetrated this concealment fraud upon this Court to alter the outcome of Casey, supra, and this Court should remedy that fraud.

B. Did Casey/902 Cause The Next Friend Suspension?

In Aleksys second question he asks if reasonable judges could conclude that this Court's Casey suggestion and 902, were the proximate cause for the lower courts erroneous suspension of the 28 U.S.C. 2242 Next friend habeas corpus class action filing right, which this Court should remedy? This new Lexis search evidence answers that question with clear and convincing evidence ----- in the affirmative.

902 was clearly modeled upon this Court's Casey suggestion, which makes Casey the obvious cause for the implementation of 902. While Aleksys new Lexis search evidence clearly shows that Casey/902 caused the lower courts to suspend the next friend class action filing right.

For when AZ followed that suggestion with 902, they insured that Aleksys would be forbidden timely notice of the well settled Ninth Cir. law on this issue. Without adequate and timely notice that those settled Ninth Cir. laws existed, Aleksys was forbidden from complying with his duty to brief those lower courts on those laws. Since those courts were unaware of the Ali, supra, line of authority, they understandably, but incorrectly, sought guidance from the Rule 23, FRCP, body of law which forbids indigent prisoner from filing class actions.

Indeed, Aleksys magistrate and District court could not have held that:

"First, neither the Supreme Court nor the Ninth Circuit ... has permitted a pro se habeas petitioner to seek habeas relief on behalf of a class of prisoner. Moreover, nothing in the Rules Governing Section 2254 ..., 28 U.S.C. 2254,

authorizes a habeas petitioner to act as a class representative on behalf of other prisoners. ... even if Petitioner can, in theory, seek habeas relief on behalf of a class, he cannot adequately represent the interests of the putative class because he is proceeding pro se." (Pet. for Cert., App. #1, p. 3).

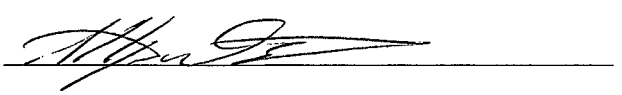
Had those courts been presented with the Ali, supra,Mead, supra, binding and controlling lines of authority which clearly reject that holding and it's rationale. They could not have suspended this basic, historical, and fundamental 2242 habeas corpus filing right.

Unambiguous evidence, that those courts were misguided by the 28 U.S.C. 1983, Rule 23, FRCP, jurisprudence whereat they sought instructions, rather than being guided by the correct Mead, supra, Ali, supra, body of habeas corpus law which bound them. Whatever may be said of that plain judicial error, the error could not have occurred had Aleksys been able to provide those courts with the above extensively quoted Ali, supra, binding and controlling legal citation.

III. CONCLUSION:

For all of these supplemental reasons, Aleksys moves the Court to accept Cert. and restore the AZ indigents right to timely and effectively file for habeas corpus relief.

Dated this 16th day of December 2021

Signed under 28 USC 1746. By: 

Aleksys Lomeli-Garcia
Petitioner/Next Friend
In Propria Persona

RULE 44(1) CERTIFICATE OF COMPLIANCE

Aleksys asserts that the foregoing Pet. For Rehearing was initially prepared as a 'supplement' prior to 10.18.21, and founded upon intervening material facts.

That said documents should now be construed as a valid 'Petition For Rehearing (id., p. 1A). That this Petition For Rehearing is presented in good faith to advise the Court of intervening 9.17.21 events, and is not submitted for the purpose of delay.

That this Petition For Rehearing, like its initial Supplement, is confined only to "intervening circumstances of a substantial or controlling effect", Rule 44(2), Supreme Court Rules. NOTHING MORE SAYETH AFFIANT.

Signed Under 28 USC 1746 By: _____
Aleksys Lomeli-Garcia