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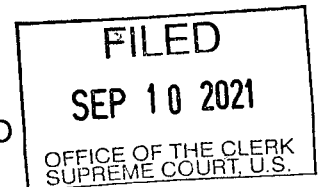
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IN THE
SUPREME COURT OF THE UNITED STATES

IN RE DAVID ANGEL SIFUENTES III, PETITIONER

ORIGINAL

ON PETITION FOR A WRIT OF MANDAMUS TO



The United States Court of Appeals for the Sixth Circuit Case no. 21-1201

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PETITION FOR WRIT OF MANDAMUS

David Angel Sifuentes III

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QUESTION(S) PRESENTED

I. Is Sixth Circuit required to docket Petitioner's Writ of Mandamus filed around August 10, 2021 and the Rules of Appellate Procedure Rule 21 require the clerk to immediately docket and present the petition to the Court of Appeals Judges.

Petitioner "Yes"

II. Is the Sixth Circuit required to apply the case of *Banister v. Davis*, 140 S.Ct. 1648 (2020) to Petitioner's Rule 60(b) motion.

Petitioner "Yes"

LIST OF PARTIES

“Yes” All parties appear in the caption of the case on the cover page.

RELATED CASES

Case No. 21-1201 6th Circuit

Case No. 21-5608 United States Supreme Court

Case No. 1:03-cv-637 Western District of Michigan

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF MANDAMUS

Petitioner respectfully prays that a writ of mandamus issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States court of appeals appears at Appendix A to the petition and is

JURISDICTION

The date on which the United States Court of Appeals decided my case was July 12, 2021.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1651(a) SCt. Rule 20.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1651(a)

14th Amendment Due Process

STATEMENT OF THE CASE

Now comes, David Angel Sifuentes III, In Pro Se, petitions this Honorable Court to issue a writ of mandamus to have the Sixth Circuit Court of Appeals Case no. 21-1201 apply this Courts recent ruling of Banister v. Davis, 140 S.Ct. 1648 (2020) which they have ignored to decide if it applies to his Rule 60(b) motion and also for not filing his writ of mandamus he filed on August 10, 2021, by filing electronically by way of the 6th Circuit Pro se email filing system. Sifuentes only seeks relief in the form that the Sixth Circuit file his writ of mandamus in accordance with FRAP 21 and 6 Cir. I.O.P. 21, which requires that a petition be docketed and rule on his writ of mandamus. Since it has been filed no docket has issued and the Clerk has stated that a team of specialized mandamus lawyers are reviewing the case to decide if the writ of mandamus should be presented to the Judges. However after reviewing the rules for a mandamus in the Sixth Circuit and speaking to the clerk around September 30, 2021 the clerk indicated that the Sixth Circuit is busy and does not have time to file are review the matter even though the rules require.

REASONS FOR GRANTING THE PETITION

Sifuentes seeks a writ of mandamus to have the Sixth Circuit address his Rule 60(b) issue if the case of *Banister v. Davis*, 140 S.Ct. 1648 (2020), applies in his habeas case. Sifuentes sought to amend his complaint in 2006 and the District Court and Sixth Circuit refused to address the issue amend allow him to amend his 14th Amendment due process claim. Sifuentes sought to amend his first habeas petition on a motion to amend in 2006. Also, to have the Sixth Circuit docket and file his writ of mandamus he filed on August 2021.

After completing his first habeas petition and multiple attempts to amend the Sixth Circuit and the District Court ignored the issue. Sifuentes filed a Rule 60(b) motion in 2020 with the District Court and brought the issue of *Banister v. Davis*, 140 S.Ct. 1648 (2020), to the Courts attention. The District Court addressed all of Sifuentes claims for Rule 60(b) relief and never addressed whether Sifuentes could obtain Rule 60(b) relief under *Banister*. The Sixth Circuit did the same. See (Exhibit A). Sifuentes also filed a writ of certiorari concerning this matter. However, Sifuentes has no adequate remedy to have his issue before this court addressed that is whether *Banister* will allow Sifuentes to seek habeas relief as he brought his Rule 60(b) motion within one year of the announcement of *Banister*, prior to the case there was no recourse to seek to have a state habeas claim amended after the denial of a first habeas petition in the Western District Court of Michigan Case No. 1:03-cv-637. Sifuentes sought to amend after his denial in 2006 of his first habeas matter in the District Court but was overlooked. Also, there was a circuit split on whether a state habeas applicant could seek to amend after denial in the district court on the first habeas petition. The Sixth Circuit also did not permit a state habeas applicant to seek such relief and would consider such requests as “second or successive”. See e.g. *Abdur 'Rahman v. Bell*, 392 F.3d 174 (6th Cir. 2004) (en banc).

Also, the ruling of *Banister* is an intervening change of habeas law and the Court should issue

extraordinary” circumstance allowing Sifuentes to obtain Rule 60(b) relief under Gonzalez v. Crosby, 545 U.S. 524 (2005). Sifuentes is not seeking to add claims but have his due process claim of prosecutorial misconduct addressed which he sought to amend in 2006 only.

The Sixth Circuit also has not filed his writ of mandamus are addressed his questions he asked in August 26, 2021. A writ should issue to have the Sixth Circuit file docket and address his writ of mandamus

WHEREFORE, Sifuentes PRAYS that this Honorable Court issue a writ of mandamus to address his claims of whether Bainster, would constitute rule 60(b) relief and file also docket and address his issues he raised in his writ of mandamus he filed on August 2021.

CONCLUSION

The petition for a writ of mandamus should be granted.

Respectfully submitted,

A handwritten signature in black ink, consisting of a stylized 'A' followed by a horizontal line.

Date: October 1, 2021