

Appeal No. _____

IN THE
UNITED STATES SUPREME COURT

GREGORY C. KAPORDELIS,

Petitioner-Applicant,

v.

UNITED STATES OF AMERICA,

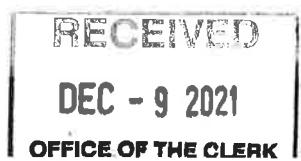
Respondent.

**APPLICATION FOR EXTENSION OF TIME TO FILE
A PETITION FOR WRIT OF CERTIORARI**

Pursuant to this Court's Rules 13.5 and 30.2, Petitioner Kapordelis prays, to the Supreme Court justice assigned to the U.S. Court of Appeals for the Eleventh Circuit, for a 60-day extension of time---or, if more appropriate under Kapordelis's circumstances, an abeyance---to file a petition for writ of certiorari in this Court. The case to be appealed from has been assigned Appeal No. 21-11921-C by the U.S. Court of Appeals for the Eleventh Circuit.

1. Timeliness, Jurisdiction, and Opinion Below:

On September 24, 2021, the United States Court of Appeals for the Eleventh Circuit issued a two-judge order denying reconsideration of an August 12, 2021, single-judge order denying a certificate of appealability ("COA") to appeal from the district court's orders in a Rule 60(b)(4) proceeding, Fed.R.Civ.P. (The Eleventh Circuit orders are reprinted at Appendix A and B, respectively). A petition for writ of certiorari would be due, pursuant to this Court's Rules 13.1, 13.3, and 30.1, on or



before December 24, 2021. This application for an extension of time is being filed more than ten days before that date. See Supreme Court Rule 30.2. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

2. Reasons for Granting the Extension:

(a) Procedural History:

The underlying civil action was filed in the District Court, Northern District of Georgia, pursuant to Rule 60(b)(4), Federal Rules of Civil Procedure. *United States v. Kapordelis*, Case No. 04-cr-249-CAP ("Crim.Doc."). In the Rule 60(b)(4) motion, Kapordelis sought to reopen his 28 U.S.C. § 2255 proceedings due to three fundamental due process defects in the integrity of those proceedings. (Crim.Doc. #650). *Defect #1* alleges that the district judge violated Kapordelis's due process right to be heard, by (i) expressly refusing to evaluate the objections to the magistrate court's order denying recusal, and (ii) inviting the Eleventh Circuit to review the objections to the recusal order in the first instance (Crim.Doc #591). *Defect #2* alleges that the district court and appellate court violated Kapordelis's due process right to be heard by deeming the recusal arguments "moot" based on the denial of a COA to appeal from the final judgment, and on this basis denying IFP status to proceed on appeal even though (i) a COA is not required to appeal from otherwise "ripe" recusal orders; (ii) the district court expressly invited the Eleventh Circuit's review of the objections to the recusal orders, in a written order (Crim.Doc. #591); (iii) jurisdiction for appellate review of recusal orders is authorized, as a "matter of right," pursuant to 28 U.S.C. § 1291; (iv) every U.S. Circuit Court of Appeals to address this issue has concluded that a COA is not required to appeal from ripe recusal orders; and (v) persuasive case law in the Eleventh Circuit establishes that recusal orders are not moot based on the denial of a COA, and that recusal orders must be reviewed on appeal because the court could vacate the final order and remand the case for an assessment by an impartial judge. *Defect #3* alleges that the two aforementioned defects left Kapordelis with no choice but to confront a § 2255 judge who was both

extrajudicially and pervasively biased, in violation of Kapordelis's Fifth Amendment right to an impartial tribunal in civil and criminal proceedings.

Crucial in this application for an extension of time, Kapordelis filed (contemporaneous with his Rule 60(b)(4) motion) a motion to recuse the district judge from the Rule 60(b) proceedings, pursuant to 28 U.S.C. § 455(a) and (b)(1). (Crim.Doc. #640, #645). Ultimately, the district court denied the Rule 60(b)(4) motion and the motion to recuse, as well as subsequent motions for reconsideration of these denials. (Crim.Doc. #643, #648, #653, #658). The district court also denied a COA to appeal from the final order. *Id.*

Kapordelis filed a timely Notice of Appeal ("NOA"), wherein he targeted for review both the final order denying Rule 60(b)(4) relief AND the non-final order denying recusal. (Doc. #660)(Reprinted at Appendix C). Kapordelis made clear that, although a COA is required to appeal from the final judgment disposing of the merits in a collateral proceeding, pursuant to 28 U.S.C. § 2253(c), jurisdiction to appeal from an otherwise ripe recusal order is authorized---as a matter of statutory right---pursuant to 28 U.S.C. § 1291. *Id.* at 1-5.

Kapordelis filed at the Eleventh Circuit an application for COA. See *Kapordelis v. United States*, Appeal No. 21-11921-C, docket entry dated June 14, 2021 (Docket reprinted at Appendix D). In his application, Kapordelis argued that a COA should issue with respect to the Rule 60(b)(4) claims. Kapordelis also informed the appellate court that he would await a briefing schedule concerning the appeal from the district court's recusal order, i.e., an appeal which did not require a COA in order to proceed. *Id.* On August 12, 2021, the Eleventh Circuit issued a single-judge order denying a COA. (Appendix B). There was no reference in this order to the district judge's recusal orders or to Kapordelis's request to appeal therefrom. Accompanying the single-judge order was a notice from the Clerk of Court indicating that the Court's mandate would issue based on the order denying a COA.

On September 2, 2021, and through *pro bono* counsel, Kapordelis filed a timely motion for reconsideration of the August 12th order, wherein he (i) urged the court to reconsider the denial of the COA, and (ii) reiterated his argument as to why an appeal from the recusal order should be allowed to proceed irrespective of whether a COA was issued to appeal from the final order disposing of the Rule 60(b)(4) claims. On September 24, 2021, a two-judge panel issued a one sentence order denying reconsideration of the single-judge order. (Appendix A). This order, like the single-judge order denying a COA, made no reference to the recusal orders or to Kapordelis's request to appeal therefrom, nor did it assert that a COA was required in order to appeal from recusal orders in collateral proceedings. In the end, Kapordelis had no choice but to conclude the Eleventh Circuit had decided it would not exercise its appellate jurisdiction under 28 U.S.C. § 1291 and review the recusal orders.

On November 2, 2021, Kapordelis filed with the Eleventh Circuit a Motion to Recall the Mandate to Prevent Injustice, pursuant to Eleventh Circuit Rule 41-1(b) and (c). (Reprinted at Attachment E). In this motion, Kapordelis claimed that the mandate had been improvidently issued because there had yet to be a merits review of the ripe recusal arguments which were targeted in Kapordelis's notice of appeal. Kapordelis insisted that the mandate should be recalled so the Eleventh Circuit could properly exercise the appellate jurisdiction granted by Congress under 28 U.S.C. § 1291. In support, Kapordelis presented many of the same arguments that he enumerated in his notice of appeal (Appendix E at 7-20), but he argued further that a refusal by the Eleventh Circuit to exercise appellate jurisdiction granted by Congress would violate Kapordelis's Fifth Amendment rights based on Eleventh Circuit and Supreme Court precedential holdings (Appendix E at 20-22).

As of December 1, 2021, the Motion to Recall the Mandate remains unresolved by the Eleventh Circuit.

(b) Grounds for Certiorari Cannot be Reasonably Determined until The Recall Motion is Ruled On:

Kapordelis argues that until the Eleventh Circuit's business in Appeal No. 21-11921-C has been properly concluded---which requires a ruling on the motion to recall the mandate to determine whether the recusal orders will (or will not) be reviewed on their merits---proper identification of the legitimate grounds for a writ of certiorari is impossible. For example, if the Eleventh Circuit decides, as it should, to recall its mandate and conduct a merits review of the ripe recusal orders after full briefing, this Court's attention will likely be required if the district court's recusal order is affirmed. This is true because Kapordelis's recusal arguments are well supported, factually and legally. (See Appendix E at 22-25 for an overview of the grounds for recusal). Alternatively, if the Eleventh Circuit recalls its mandate and concludes, as it should, that the district judge was pervasively and extrajudicially biased against Kapordelis as a party in the case, no Supreme Court intervention will be needed at all, at least not anytime soon.

There is another potential outcome which may justify Supreme Court intervention: If the Eleventh Circuit refuses to recall its mandate, and by extension refuses to exercise appellate jurisdiction under 28 U.S.C. § 1291 to review the ripe recusal orders, Kapordelis would be in a legitimate position to request from the Supreme Court a Petition for Writ of Mandamus, pursuant to 28 U.S.C. § 1651(a), in order to compel the Eleventh Circuit to perform as Congress has directed, in aid of this Court's appellate jurisdiction on the matter of recusal.

3. The Need for an Extension of Time:

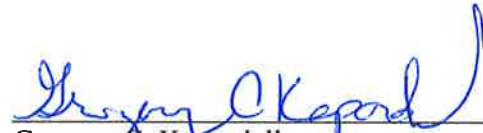
Kapordelis requests the extension of time---or an abeyance, if deemed more appropriate by this Court---so he can arrive at a point where he will be able to determine which issues (if any) are appropriate for this Court's consideration, and where he can also determine the vehicle (i.e., a petition for writ of certiorari or a petition for writ of mandamus) is appropriate under the law. In sum, it appears that a 60 day delay or an abeyance would be in Kapordelis's best interests and the Court's best interests.

A delay or abeyance would also conserve judicial resources by avoiding the need for multiple petitions concerning the same appeal.

CONCLUSION

Wherefore, Applicant-Petitioner Kapordelis requests that an order be entered extending by 60 days the time within which he may petition this Court for certiorari or mandamus, or, in the alternative, an order be entered granting an abeyance until such time that the Eleventh Circuit resolves the pending motion to recall the mandate.

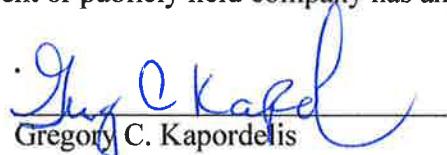
Respectfully submitted this 1st day of December, 2021,



Gregory J. Kapordelis, *pro se*
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CORPORATE DISCLOSURE STATEMENT

I, Gregory C. Kapordelis, hereby state for the record, pursuant to Supreme Court Rule 29.6, that no parent or publicly held company has any interest in this case.



Gregory C. Kapordelis

INDEX TO APPENDICES

APPENDIX A: Copy of Eleventh Circuit's September 24, 2021, order denying reconsideration of the August 12, 2021 order denying a COA.

APPENDIX B: Copy of Eleventh Circuit's August 12, 2021, order denying a COA.

APPENDIX C: Copy of Notice of Appeal, filed at the District Court, N.D.GA, on May 25, 2021.

APPENDIX D: Copy of Eleventh Circuit Docket in Case No. 21-11921-C

APPENDIX E: Copy of Kapordelis's Motion to Recall Mandate, filed November 2, 2021, at the Eleventh Circuit.