

No. **22-5407**

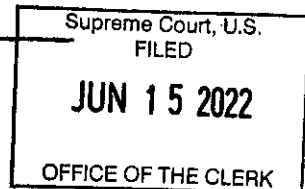
**ORIGINAL**

IN THE  
SUPREME COURT OF THE UNITED STATES

In re  
JAMES RUSSELL AUSTIN,

vs.

HONORABLE JEROME FARRIS, Senior Circuit Judge; and  
HONORABLE MARY H. MURGUIA, Circuit Judge of the  
United States Court of Appeals for the Ninth Circuit,  
Respondents.



ON PETITION FOR WRIT OF MANDAMUS TO  
THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF MANDAMUS

JAMES RUSSELL AUSTIN  
CDCR # AK6078 / E25-C104-04LOW  
RICHARD J. DONOVAN CORRECTIONAL FACILITY  
480 ALTA ROAD  
SAN DIEGO, CA 92179  
In Propria Persona

### **QUESTION(S) PRESENTED**

- 1. WHETHER THE HIGH COURT'S HOLDING IN GONZALEZ VS. CROSBY, 545 U.S. 524, 528, 125 S.Ct. 2641, 162 L.Ed.2d 480 (2005) CONTROLS AND IS MANDATED TO BE FOLLOWED BY RESPONDENTS?**
- 2. WHETHER A 60(b) MOTION FOR RELIEF OF JUDGMENT IS THE PROPER VEHICLE TO SEEK RELIEF FROM JUDGMENT, RE-OPEN CASE AND REINSTATE APPELLATE JURISDICTION?**
- 3. WHETHER RESPONDENTS' FAILURE TO EVEN ENTERTAIN AND/OR ADJUDICATE THE 60(b) MOTION CONFLICT WITH ITS OWN PRIOR RULINGS AND NOT IN HARMONY WITH INTERPRETATIONS FROM UNITED STATES SUPREME COURT PRECEDENT?**
- 4. WHETHER ISSUANCE OF A WRIT OF MANDAMUS THE ONLY REMEDY AVAILABLE TO CORRECT THIS ABUSE OF DISCRETION THAT RESULTED IN A MISCARRIAGE OF JUSTICE?**
- 5. WHETHER PETITIONER'S ACCESS TO THE COURTS WAS IMPEDED?**

## LIST OF PARTIES

- [X] 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:

## RELATED CASES

People of the State of California vs. James Russell Austin, No. PA064769, Los Angeles County Superior Court. Judgment Pending on Petition for Resentencing.

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IN THE  
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2022

No. 22-1111

In re JAMES RUSSELL AUSTIN,

Petitioner,

vs.

HONORABLE JEROME FARRIS, Senior Circuit Judge;  
and HONORABLE MARY H. MURGUIA, Circuit Judge  
of the United States Court of Appeals for the  
Ninth Circuit,

Respondents.

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Petition for Writ of Mandamus  
to the United States Court of  
Appeals for the Ninth Circuit

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PETITION FOR WRIT OF MANDAMUS

James Russell Austin(hereinafter Petitioner),proceeding in propria persona,  
hereby petitions for a writ of mandamus pursuant to 28 U.S.C. § 377 and 28 U.S.C.  
§ 1651(a) for this Court to invoke its Discretion to review for abuse the Order of  
the United States Court of Appeals for the Ninth Circuit Senior Circuit Judge Jerome  
Farris and Circuit Judge Mary H. Murguia,and subsequent failure to adjudicate the  
filed Motion for Relief from Judgment that was filed pursuant to Rule 60(b) of the  
Federal Rules of Civil Procedure & Request to Reinstate Appellate Jurisdiction.

This Petition seeks an Order by the Court compelling Respondents to comply  
with its Rulings in *Gonzalez v. Crosby*(2005)545 U.S. 524,and its progeny *Ryan v.*  
*Schad*(2013)570 U.S. 521,and to adjudicate the filed Rule 60(b) Motion to prevent an  
injustice.

OPINIONS BELOW

The Opinion of the United States Court of Appeals appears at Appendix A to the

Petition and is Unpublished.

#### JURISDICTION

A timely Motion for Reconsideration was Denied by the United States Court of Appeals [Respondents] on January 28, 2020, and a copy of the Order denying Reconsideration appears at Appendix A.

A Motion for Relief from Judgment pursuant to Rule 60 (b)[Fed. R. Civ. P.], Request to Reinstate Appellate Jurisdiction seeking relief from the January 28, 2020 Order was filed, then rejected on the basis of that Order, and a copy of the General Docket Sheet reflecting the Action taken appears at Appendix B.

A copy of the filed 60(b) Motion appears at Appendix C.

The Jurisdiction of this Court is invoked under both 28 U.S.C. § 1651(a) and 28 U.S.C. § 377.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The United States Supreme Court has "grounded the right of access to court in the Article IV Privileges and Immunity Clause [citations], the First Amendment Petition Clause [citations], the Fifth Amendment Due Process Clause [citations], and the Fourteenth Amendment Equal Protection [citations] and Due Process Clauses [citations]." *Christopher v. Harbury* (2000) 536 U.S. 403, 415, fn.12; cf. *Cal. Const.*, art. 1 § 3, subd. (a) ["People have a right to...petition government for redress of grievances"]; see also *McCarthy v. Madigan*, 503 U.S. 140, 153, 112 S.Ct. 1081 (1992) (quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886)) ["[B]ecause a prisoner ordinarily is divested of the privilege to vote, the right to file a court action might be said to be his remaining most 'fundamental political right, because preservative of all rights.'"], "the constitutional right to access to the court extends to prisoners." *In re Jesusa*, V. (2004) 32 Cal.4th 588, 601 ["there is no dispute that prisoners have a constitutional right of access to the courts."]

28 U.S.C. § 377, provides that:

"The United States Supreme Court and other Federal Courts shall have the power to issue all writs not specifically provided by Statute, which may be necessary for the exercise of their respective jurisdictions and arguable to the usage and principles of law."

28 U.S.C. § 1651(a) provides that, "issuance by the court of an extraordinary writ authorized by 28 U.S.C. § 1651(a) is not a matter of right, but of discretion sparingly exercised."

**Federal Rules of Civil Procedure**, Rule 60(b), allows a party to seek relief from a final judgment, and request opening of his case, under a limited set of circumstances,<sup>10</sup> and "attacks" some defect in the integrity of the Federal Habeas Proceedings." *United States v. Washington*, 653 F.3d 1057, 1060 (9th Cir. 2011) (quoting *Gonzalez*, 545 U.S. at 532.)



## STATEMENT OF THE CASE

On January 07,2019, Petitioner filed a timely Notice of Appeal in the United States Court of Appeals for the Ninth Circuit and was assigned Case No.19-55046.

On December 20,2019,the Court denied a request for a Certificate of Appealability. On January 13,2020,Petitioner submitted for filing his initial Motion to Reconsider. This Motion was Denied by Respondents on January 28,2020. Petitioner submitted for filing a second Motion to Reconsider describing extraordinary circumstances warranting relief on February 19,2020. This Motion was rejected based on the January 28,2020 Order from Respondents. On January 25,2021,Petitioner submitted for filing a Motion for a Stay of the Proceedings based on extraordinary circumstances caused by the COVID-19 Pandemic. This Motion was never adjudicated.

On May 19,2021,Petitioner filed a Motion for Relief from Judgment pursuant to Rule 60(b)(1),or alternatively,Rule 60(b)(6) of the Federal Rules of Civil Procedure and Request for the Court to Reinstate Appellate Jurisdiction. The Court filed the Motion on May 19,2021 construed as a Motion to Reinstate,then rejected it on the basis of the Court's January 28,2020 Order by Respondents.

Respondents had a clear,present,and ministerial duty to abide by and adhere to the exercise of sound discretion,governed by legal rules,set precedent,to do justice according to the law in conducting Hearings,recieving evidence,and to issue rulings consistent with laws governing the subject matter of this Petition.

Despite facts brought before Respondents and the state of existing law,the Respondents ~~abused~~ their discretion in failing to adjudicate the filed Rule 60(b) Motion & Request to Reinstate Appellate Jurisdiction on Case No.19-55046,that was brought consistent with **Jones v. Ryan**,733 F.3d 825,833(9th Cir.2013),that states: "Rule 60(b)"allows for a party to seek relief from a final judgment,and request re-opening of his case,under a limited set of circumstances."(quoting **Gonzalez v. Crosby**545 U.S. 524,528,125 S.Ct. 2641,162 L.Ed.2d 480(2005)).

Petitioner was never afforded adjudication of the Rule 60(b) Motion filed.

### PRELIMINARY STATEMENT

In accordance with Rule 20.1, the granting of this Writ will assist the Appellate Courts jurisdiction, in as much, that in exercising its discretion, this Court must consider whether its failure to intervene and Remand this Case with Orders to comply with controlling law related to Rule 60(d)(1)[Fed. R. Civ. P.], will unduly delay or prejudice adjudication of Petitioner's Rights. This Court has made clear, "[i]f a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the Case which directly controls, leaving this Court the prerogative of overruling its own decisions." *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 484 (1989).

The Federal Rules and its amendments were authorized by the Rules Enabling Act, see ch. 651, 48 Stat. 1064 (1934) (codified as amended at 28 U.S.C. §§ 2071-2077 (2012)), under which Congress delegated to the Supreme Court its rule-making authority over the "practice and procedure" of federal courts. *United States v. Jacobo Castillo*, 496 F.3d 947, 954 (9th Cir. 2007) (en banc) (quoting 28 U.S.C. § 2072(a)). Here, the holding in *Gonzalez vs. Crosby*, 545 U.S. 524, 528, 125 S.Ct. 2641, 162 L.Ed. 2d 480 (2005) controls and is mandated that it be followed by Respondents. A 60(b) Motion for Relief of Judgment is the proper vehicle to seek relief and re-open the Case reinstating Appellate Jurisdiction. relief under 60(b)(6) is to be "used sparingly as an equitable remedy to prevent manifest injustice and is to be utilized only where extraordinary circumstances prevented a party from taking timely action to prevent or correct an erroneous judgment." *Harvest v. Castro*, 531 F.3d 737, 749 (9th Cir. 2008) (quoting *Latshaw v. Trainer Wortham & Co., Inc.*, 452 F.3d 1097, 1103 (9th Cir. 2006)). The fact that the Court has broad discretion in determining a Rule 60(b) Motion does not mean that there are no limits on the Court's actions when confronted with a Rule 60(b) motion." The discretion is not an arbitrary one to be capriciously exercised, but a sound legal discretion guided by accepted legal principles." See e.g., *Assmann*

v. Fleming, 159 F.2d 332, 336 (9th Cir. 1947). This is consistent with the Supreme Court's recent statements that it is "a good thing...that court's sometimes construe one kind of filing as another" to "identify a route to relief." See *Mata v. Lynch*, 135 S.Ct. 2150, 2156, 192 L.Ed.2d 225 (2015).

When discussing the prerequisite "exceptional circumstances" that warrant the Court's exercise of its discretionary powers, here, Petitioner alleges, that the Respondents abused their discretion when in its exercise they exceeded the bounds of reason. Even when having knowledge of all the circumstances before it being considered, including evidence of Petitioner's Medical as well as Mental Conditions which had already been recognized by the same District Court requiring he be appointed Counsel in a separate action. The Appellate Court [Respondents] as well as the District Court have held Petitioner, who is proceeding in pro per, to a higher and stricter Standard of pleading in all his Litigation. Because he is proceeding as a pro per litigant the Court "must 'hold his pleadings 'to less stringent Standards than formal pleadings drafted by lawyers.'" See, *Haines v. Kerner*, 404 U.S. 519, 520, 92 S.Ct. 594, 30 L.Ed. 2d 652 (1972). This Supreme Court has repeatedly stressed, "a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers," *Erickson v. Pardus*, 551 U.S. 89, 94, 127 S.Ct. 2197, 167 L.Ed.2d 1081 (2007) (per curiam) (summarily reversing where a pro se complaint was dismissed "on the ground that petitioner's allegations of harm were too conclusory to put the matters in issue."). See, e.g., *Castro v. United States*, 540 U.S. 375, 381-383, 124 S.Ct. 786, 157 L.Ed.2d 778 (2003), (affirming Court's authority to recast pro se litigants motion to "avoid an unnecessary dismissal" or "inappropriately stringent application of formal labeling requirements, or to create a better correspondence between the substance of a pro se Motion's claim and its underlying legal basis," (citation omitted)).

As alleged previously, this case involves violations of Access to the Court and this Court has the power to issue a writ necessary for the exercise of principles

of law and controlling law. Rule 60(b) allows for Petitioner to seek relief from final judgment, and to request that the respondents' Appellate Court re-open his case, because he is 'attacking some defects in the integrity of the federal habeas proceedings,' *United States v. Washington*, 653 F.3d 1057, 1060 (9th Cir. 2011) (quoting *Gonzalez*, 545 U.S. at 532. The Respondents have deviated from this sound practice and instead ignored these principles. Which, brings me to why adequate relief cannot be obtained in any other form or from any other Court. pursuant to Rule 20.1, Petitioner has diligently attempted to bring this matter to Respondents' attention, however has not been allowed to proceed with the Rule 60(b) Motion for Relief of that Final Judgment and has no other recourse than seeking this Court's issuance of a Mandate [extraordinary relief]. As alleged in the Reasons for Granting the Petition, Petitioner lays out the relevant facts and authority.

## REASONS FOR GRANTING THE PETITION

To allow the Respondents' Order to stand and overrule well-established law will invite a departure from the limits within which Authority may be exercised. Here, this Court's discretionary power to issue the Writ of Mandamus under 28 U.S.C. § 377, which provides that: "The United States Supreme Court and other Federal Courts shall have the power to issue all writs not specifically provided by Statute, which may be necessary for the exercise of their respective jurisdictions and arguable to the usage and principles of law." The United States Supreme Court has full power in its jurisdiction to issue the writ of mandamus. This Court<sup>0</sup> having ultimate discretionary jurisdiction by Certiorari---but such power will be exercised only where a question of public importance is involved or where the question is such a matter that is peculiarly appropriate that such action by the court should be taken. Pp. 245, 248; see also *Ryan v. Schad*, 570 U.S. 521, 133 S.Ct. 2548, 186 L.Ed.2d 644 (2013); Sup.Ct. Rule 20. This Discretion is warranted to clarify and compel Respondents to act in accordance with this Court's prior Rulings, which include, *Gonzalez v. Crosby* (2005) 545 U.S. 524, 125 S.Ct. 2641, 162 L.Ed.2d 480, to prevent a manifest injustice.

This issue is likely to recur. Writ of Mandate is the appropriate remedy in the present Case, as there is no Appeal Petitioner can exercise and/or available that will allow timely resolution of the controversy presented in the Rule 60(b) Motion filed and rejected by Respondents. Respondents continue to refuse to adjudicate the Rule 60(b) Motion filed, and allow for Petitioner to seek relief from judgment entered on January 28, 2020 and to request Re-opening of his Case under Appellate Jurisdiction. This Petition is necessary to enforce the lower Court's compliance with the precedent established by this Court and to protect a Petitioner's legal rights to be free from arbitrary and illegal action by respondents.

Respondents' failure to adjudicate the Rule 60(b) Motion, that was grounded on Supreme Court precedent and Petitioner's claim of denial of meaningful access to the Courts as basis for relief from judgment entered on January 28, 2020 was

Rule 60(b) Motion that fell consistent with Supreme Court precedent.

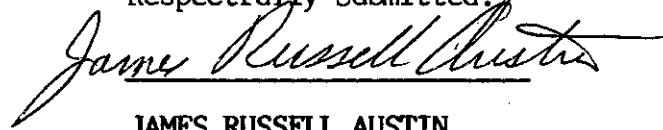
This Case cries out for Justice, and the need for this Court to issue the Writ of Mandamus to correct this Miscarriage of Justice.

CONCLUSION

The Petition for Writ of Mandamus should be granted.

Dated: 5-18-22

Respectfully Submitted:

A handwritten signature in cursive script, reading "James Russell Austin", written over a horizontal line.

JAMES RUSSELL AUSTIN  
CDCR # AK6078