No. 22-6385

IN THE

SUPREME COURT OF THE UNITED STATES

Peter Gakuba — PETITIONER
(Your Name)

vs.

Rob Jeffreys — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Gakuba v. Jeffreys, 22-3039 (USCA7) (Mot. for Authorization - 2nd/Successive Habeas)
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Peter Gakuba / pgakuba@gmail.com
(Your Name)

58 W. Biddle St., Apt. 103
(Address)

Baltimore, MD 21201
(City, State, Zip Code)

410-244-8100
(Phone Number)

Case No.

UNITED STATES SUPREME COURT

ISSUES PRESENTED FOR REVIEW

I. *GAKUBA V. JEFFREYS*, 22-3039 (USCA7) (MOT. FOR AUTHORIZATION – 2ND-IN-TIME HABEAS) ($500 SANCTIONS AND BAR FROM FILING FUTURE HABEAS PETITIONS)

Gakuba's one—and only—§2254 habeas petition was not "frivolous" rendering the USCA-7's sanction against Gakuba of "$500" and bar from any future federal habeas petitions constitutes a First Amendment retaliation violation by Illinois federal courts with 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 §2710(d)-(e)).

First, Fifth, and 14th Amendments violations.

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:

RELATED CASES

Gakuba v. Illinois Prisoner Review Bd., 129009 (IL S. Ct.) (cert. denied 11/03/22)

Gakuba v. Grissom, 20-7506 (US S. Ct.) (cert. denied)

Gakuba v. USA, 20-6392 (US S. Ct.) (cert. denied)

Gakuba v. O'Brien, 19-8395 (US S. Ct.) (cert. denied)

Gakuba v. Neese, 19-6543 (US S. Ct.) (cert. denied)

Gakuba v. Illinois, 18-9041 (US S. Ct.) (cert. denied)

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UNITED STATES SUPREME COURT

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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

[✓] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A 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[✓] is unpublished.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 _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[ ] For cases from **state courts**:

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 November 21, 2022.

[✓] 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: _____, 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. § 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).

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UNITED STATES SUPREME COURT

CONSTITUTIONAL AND STATUTORY PROVISIONS

1st, 5th and 14th Amendments

28 USC §§ 2253, 2254

Fed. R. Civ. P. Rule 60(b)(1-4)

per...

** "mixed" habeas due process violations **

UNITED STATES SUPREME COURT

STATEMENT OF THE CASE

I. Procedural Background

As a matter of law, Gakuba's September 2019 Fed. R. Civ. P. Rule 60(b)(1-4) motion (denied Jan. 2020) should have been GRANTED; resulting in a re-do/do-over of Gakuba's 28 USC §2254 "mixed" habeas petition. Its adjudication by dismissing "unexhausted" claims by (retired) USDC Judge Kapala, then, deciding the "exhausted" claims (versus a 'stay and abeyance') was a flagrant and egregious 14th Amendment 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 (USCA-7 01/09/2018)("mixed" habeas – cites *Rhines v. Weber*, 544 US 269 (2005); *Rose v. Lundy*, 455 US 509 (1982)); *Arrieta v. Battaglia*, 461 F.3d 861, 864 (7th Cir. 2006).

On 11/20/2017 Gakuba's 60-page *pro se* habeas petition was screened by (retired) USDC Judge Kapala concluding issues one thru four (1-4) were exhausted, five thru seven (5-7) unexhausted: a "mixed" petition. **Appx. A,C.**

On 10/24/2018 that habeas petition was egregiously DENIED; so too a C.O.A.

On 06/24/2019 the USCA-7 denied a C.O.A.; then denied petition for rehearing, hearing *en banc*. *Gakuba v. Neese*, 18-3398 & 19-2669 (USCA-7). Thereafter, Gakuba filed a timely objection motion citing the "mixed" habeas *Rhines* and *Rose* flagrant errors. It was prison legal mailed before the mandate issuance date—inexplicably issued less than nine days from the rehearing denial, but docketed after the mandate issued. In violation of the "prisoner mailbox rule" the USCA-7 denied recalling the mandate to decide the flagrant and egregious 14th Amendment "mixed" habeas due process violation. *Gakuba v. Neese*, 18-3398 & 19-2669 (USCA-7); *Gakuba*

v. Neese, 19-6543 (US S. CT.) (*cert.* denied).

On or about 08/2019 Gakuba sought correction of the *Rhines* and *Rose* habeas due process violations in a *pro se* pleading construed as a 2nd/successive habeas petition. *Gakuba v. Neese*, 19-2669 (USCA-7). In a flagrantly circular denial, the USCA-7 ruled that the "mixed" habeas due process error should have been raised in *Gakuba v. Neese*, 18-3398 (USCA-7)—which it was, but recklessly disregarded per the "prisoner mailbox rule."

In 09/2019 Gakuba returned to *Gakuba v. Neese*, 17cv50337 (USDC-ND.IL) per a Fed.R. Civ. P. Rule 60(b)(1-4) motion seeking correction of the procedurally defective habeas due process error.

In 01/2020 USDC-ND.IL Judge Lee denied that Rule 60(b) motion in an unsupported wholly conclusory two-sentence order implying possibly *res judicata*.

In 01/2020 appeal was noticed. *Gakuba v. Grissom*, 20-1137 (USCA-7). And in a suspicious coincidence, shortly after Gakuba filed his second Circuit Rule 36 motion in that case (seeking re-assignment of the judge on remand—citing bias and prejudice, conflicts-of-interest, see *Gakuba v. O'Brien*, 12cv7296 (USDC-ND.IL) and *Gakuba v. Karner*, 13cv50218 (USDC-ND.IL) (same judge as habeas petition)) the case was denied a C.O.A. of the *Gonzalez, Rhines* and *Rose* objectively unreasonable, contrary errors of fact and law.

On 11/17/2020 rehearing, hearing *en banc* was DENIED. *Gakuba v. Grissom*, 20-1137 (USCA-7).

Gakuba v. Neese, 19-6543 (US S. CT.) (*cert.* denied) provides a fulsome factual background.

REASONS FOR GRANTING THE PETITION

I. Systemic Racial Injustice Writ Large

No criminal case—ever—includes so many violations of federal statutory and constitutional laws. See *Gakuba v. Neese*, 17cv50337 (USDC-ND.IL); *Gakuba v. Neese*, 18-3398 & 19-2669 (USCA-7); *Gakuba v. Neese*, 19-6543 (US S. CT.) (*cert.* denied).

Not only were there undisputedly three (3) structural errors—Issue One: Sixth Amendment (public trial viol.); Issue Four: Sixth Amendment (*pro se* right denial "weeks before trial" as a "delay tactic"); Issue Five: Fifth and 14th Amendment (by an irrationally biased and prejudiced Illinois state trial judge (as advocate))—but, now, even Gakuba'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 USCA-7 which brands such 14th Amendment habeas due process violations per *Rhines v. Weber*, 544 US 269 (2005) and *Rose v. Lundy*, 455 US 509 (1982) … "frivolous."

"Frivolous" is compared to *Anderson v. US*, 121 F.3d 312, 313-16 (7th Cir. 1997); recklessly disregarding the USCA-7's own case law precedence: *Sparks v. Dorethy*, 2018 US APP LEXIS 32265 **1-3 (USCA-7 01/09/2018)("mixed" habeas – cites *Rhines v. Weber*, 544 US 269 (2005); *Rose v. Lundy*, 455 US 509 (1982)); see also *Arrieta v. Battaglia*, 461 F.3d 861, 864 (7th Cir. 2006)(Rule 60(b) availability to reopen previously dismissed habeas petitions per 28 USC §2254 (provided relief 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. [*Id* at *2:] The judge did not wait for Sparks [/Gakuba] to decide whether to amend the petition so that it only contained exhausted claims. Instead the court treated the opportunity extend 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 added)]
>
> Once dismissed, claims cannot be reasserted in a later collateral attack without appellate approval for a 2nd/successive petition. Sparks[/Gakuba] has never manifested his consent to having unexhausted claims treated that way. [(emphasis) *Id* at **2-3:] *Rhines* gives a district judge two options: (1) dismiss the whole petition under *Lundy* and leave it up to the petitioner to delete unexhausted claims and; (2) or stay the proceedings while petitioner exhausts remaining state court remedies. *Rhines*, 544 US at 278 allows a stay [.]" *Sparks* at **1-3.

Consequently, this case's habeas proceedings undisputedly were fatally defective, undermining the integrity—well established law—scrupulously obeyed by all U.S. district and circuit courts. See cf *Spitznas v. Boone* 464 F.3d 1213, 1215-16 (10th Cir. 2006); *Holley v. Terrell* 2013 US DIST LEXIS 71840 at *7 (USDC-ED. LA 05/06/2013) (cites *Adams v. Thaier* 679 F.3d 312, 319 (5th Cir. 2012) (quoting *Gonazalez v. Crosby* 545 US 524 at 532)); *Nelson v. Lashbrook* 2018 US DIST LEXIS 232603 at *8 (USDC-ND. IL 09/30/2018); *Brown v. Foster* 2019 US DIST LEXIS 189594 at *4 (USDC-ED. WI 11/01/2019) (district court has three options in a case involving a "mixed" habeas petition); *Kimmel v. Palmer* 2012 US DIST LEXIS 158361 (USDC-D. NY 11/05/2012) (same—cites *Rhines v. Weber*, 544 US 269, 276 (2005) and *Rose v. Lundy*, 455 US 509, 510 (1982) (on three options)).

The USCA-7, preceded by two different USDC judges, recklessly disregarded **ALL** Gakuba's rights—especially, now, habeas due process.

This was no mere error, but calculated judicial overreach by an irrationally biased and prejudiced—bigotry—federal judiciary which, in affirming wrongful convictions, they roadblock Gakuba's pending *pro se* federal suit: *Gakuba v. O'Brien*, 12cv7296, *Gakuba v. Karner*, 13cv50218 (USDC-ND. IL). First, Fifth and 14th Amendments violations.

But the irrational animus does not end with these flatly wrong one sentence denials.

II. System Racial Injustice—Sanctions to "shut up and dribble" an "uppity black"

The USCA-7 seeks to chill Gakuba's exercise of his First Amendment rights by threatening a *pro se* indigent with a minimum $500 sanction and dismissal of all Gakuba's pending *pro se* suits were Gakuba to file anymore "frivolous" habeas pleadings per the 10/22/2020 denial order citing to contrary case law for support: *Anderson v. US*, 121 F.3d 312, 313-16 (7th Cir. 1997).

Contra *Anderson* at 313: Fourth collateral attack (in two years—since 1995) all with "the same theme": ineffective assistance of counsel. Twice before the issue was "addressed and resolved [on] the merits." 28 USC § 2255.

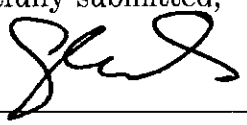
Id at 316: *In Re TCI Ltd.*, 769 F.2d 441 (7th Cir. 1985) holds monetary sanctions "appropriate when objectively unreasonable litigation multiplying conduct continues [.]" *Wages v. IRS*, 915 F.2d 1230, 1235-36 (9th Cir. 1990) (concurs for *pro se* litigants); contra *Sassower v. Field*, 973 F.3d 75, 80 (2nd Cir. 1992).

As *Anderson* plainly cites to circuit court division between the 7th and 9th circuits versus the 2nd circuit, it's added reason meriting U.S. Supreme Court review: *Wages* versus *Sassower*.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 12/17/2022