

No. 22-7622 **ORIGINAL**

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

APR 11 2023

OFFICE OF THE CLERK

ANTHONY BOGARIN — PETITIONER
(Your Name)

vs.

A. MARTINEZ, WARDEN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

NINTH CIRCUIT COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ANTHONY BOGARIN V-28304
(Your Name)

P.O. Box 689 - CTF
(Address)

SOLGADO, CA 93960-0689
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

May the Circuit Court of Appeals decide
the merits of Appellate Procedure Rule
4(a) without support of statutory language
or direction by the Supreme Court?

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:

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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☒ is unpublished.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 B & C 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☒ is unpublished.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☐ is unpublished.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☐ is unpublished.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 January 23, 2023.

☒ 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 2254

FEDERAL RULES OF APPELLATE PROCEDURE
RULE 4

FEDERAL RULES OF CIVIL PROCEDURE
RULE 60

STATEMENT OF THE CASE

PETITIONER ANTHONY BUGAZIN WAS CONVICTED IN STATE SUPERIOR COURT OF RESIDENTIAL BURGLARY, CALIFORNIA PENAL CODE SECTION 459, AND SENTENCED ON DECEMBER 4, 2014 TO 25 YEARS-TO-LIFE WITH TWO CONSECUTIVE FIVE-YEAR ENHANCEMENTS UNDER CALIFORNIA'S THREE STRIKES LAW. ON DIRECT APPEAL THE CONVICTION WAS AFFIRMED IN THE APPELLATE COURT, AND THE STATE SUPREME COURT DENIED A PETITION FOR REVIEW WITHOUT EXPLANATION JUNE 8, 2016.

PETITIONER WAS 44 YEARS-OLD IN 2016 WITH A READING LEVEL OF MID-4TH GRADE. HE HAS INTELLECTUAL AND COGNITIVE DEVELOPMENT ISSUES, LIMITED FORMAL EDUCATION, AND PAST HISTORY OF ALCOHOL AND SUBSTANCE ABUSE.

AFTER STATE-APPOINTED APPELLATE COUNSEL EXHAUSTED AVAILABLE STATE REMEDIES, PETITIONER WAS "ASSISTED" IN FILING A 28 U.S.C. SECTION 2254 HABEAS CORPUS PETITION IN FEDERAL DISTRICT COURT ON NOVEMBER 10, 2016. THIS PETITION WAS PREPARED BY A SELF-STYLED "KINDLY CHRISTIAN TAILORING LAWYER" AND CONSISTED OF TWO ASSISTANT'S FANTASIES WHILE IGNORING TWO FAIRLY PRESENTED AND EXHAUSTED STATE APPELLATE ISSUES. PLEASE SEE THE ORIGINAL SECTION 2254 PETITION.

AFTER MULTIPLE PROBLEMS AND NEAR DISMISSALS, PETITIONER FOUND SOMEONE CLOSE TO HELP HIM. A "STAY" WAS OBTAINED TO EXHAUST ACTUAL ISSUES IN STATE COURT, AND PETITIONER WAS ABLE TO FILE HIS

"ABANDONED PETITION" IN DISTRICT COURT ON AUGUST 29, 2018. FOLLOWING A COMPLETE BRIEFING PROCESS A FEDERAL MAGISTRATE JUDGE ISSUED A REPORT ON MAY 13, 2019, RECOMMENDING DISMISSAL OF THE PETITION.

NOTING THAT THE DISTRICT COURT HAD SET A HEARING ON THE REPORT AND RECOMMENDATIONS (TO BE HELD ON AUGUST 16, 2019), PETITIONER FILED HIS OBJECTIONS IN THE COURT ON JUNE 7, 2019. PETITIONER ALSO EXPLICITLY REQUESTED THAT IF THE PETITION WAS DENIED, THE COURT SHOULD ISSUE A CERTIFICATE OF APPEALABILITY ("COA"), ALLOWING HIS APPEAL TO THE NINTH CIRCUIT COURT.

ON AUGUST 16, 2019, THE DISTRICT COURT DEEMED THE REPORT AND PETITIONER'S OBJECTIONS TO HAVE BEEN "SUBMITTED" FOR ADJUDICATION. NOTHING FURTHER APPEARS ON THE DOCKET SHEET UNTIL JUNE 20, 2020, WHEN THE DISTRICT COURT ENTERED AN ORDER THAT: (1) ADOPTED THE MAGISTRATE'S RECOMMENDATION; (2) OVERRULED THE OBJECTIONS; (3) DENIED THE PETITION; AND (4) ISSUED A COA TO ALL CLAIMS. SEE APPENDIX C.

HOWEVER, PETITIONER (WITH ASSISTANCE IN ALL FILINGS) SENT A LETTER TO THE COURT AND RESPONDED ON SEPTEMBER 5, 2019, EXPRESSING CONCERN THAT HE HAD NOT RECEIVED ANY ORDER OR DISPOSITION FROM THE COURT.

PETITIONER HAD SEVERAL ISSUES WITH MAILING AND RECEIPT OF HIS "LEGAL MAIL" IN THE PREVIOUS THREE-YEAR PERIOD.

HE WAS CONCERNED HIS PETITION WAS DENIED AT THE AUGUST 16TH HEARING. HE REQUESTED REISSUE AND

1 MAILING OF ANY ORDERS OR DISPOSITION, AND RESCUING OF
2 HIS 30 DAY APPEAL TIME LIMIT. THIS LETTER WAS SENT
3 VIA U.S. MAIL WITH PROOF OF SERVICE TO THE COURT AND
4 RESPONDENT'S COUNSEL. THE COURT DID NOT RESPOND TO
5 THIS LETTER, NOR WAS IT PLACED ON THE OFFICIAL DOCKET.

6 A COMBINATION OF THREE CIRCUMSTANCES CAUSED THE
7 FAILURE TO TIMELY FILE A NOTICE OF APPEAL. FIRST,
8 PETITIONER MOVED TO ANOTHER HOUSING UNIT, WHICH
9 LIMITED HIS ACCESS TO HIS INMATE ASSISTANT. SECOND,
10 THE COVID-19 PANDEMIC SHUT DOWN THE COUNTRY AND
11 STATE IN EARLY 2020. PETITIONER'S PRISON WENT INTO
12 A HIGHLY RESTRICTIVE QUARANTINE "MODIFIED PROGRAM,"
13 ESSENTIALLY A NEAR TOTAL LOCKDOWN VIRTUALLY
14 ELIMINATING INMATE MOVEMENT. THIRD, THE DISTRICT COURT
15 ISSUED ITS JUNE 22, 2020 "ORDER" (APPENDIX C),
16 BUT PETITIONER FAILED TO RECEIVE HIS COPY

17 PETITIONER WAS UNABLE TO ASK THE CLERK OF THE
18 COURT FOR THE STATUS OF HIS CASE UNTIL LATE MARCH
19 2021, WHEN HE WAS INFORMED OF THE DENIAL IN JUNE
20 2020. WITH ASSISTANCE PETITIONER WAS ABLE TO FILE
21 A MOTION TO "EXTEND" THE TIME TO FILE A NOTICE
22 OF APPEAL ON APRIL 15, 2021 - 267 DAYS AFTER ENTRY
23 OF JUDGMENT. THIS WAS CONSTRUED UNDER FEDERAL
24 RULES OF APPELLATE PROCEDURE ("FRAP"), RULE 4(a)(6),
25 SINCE HE WAS BEYOND TIME FOR A CONVENTIONAL TIME
26 EXTENSION UNDER RULE 4(c)(5).

27 WITH HIS MOTION, PETITIONER INCLUDED HIS LAST
28

FOLLOW-UP LETTER TO THE DISTRICT COURT ON DECEMBER 22, 2019, AND A PHOTOGRAPH FROM THE PRISON MAILROOM SHOWING NO LEGAL MAIL RECEIPT IN JUNE/JULY 2020.

IN AN ORDER DATED JUNE 10, 2021, THE DISTRICT COURT DENIED THE MOTION UNDER FRAP RULE 4(c)(6), DEEMING ITSELF BOUND BY THE NINTH CIRCUIT'S OPINION IN IN RE STEIN, 197 F.3d 421, 425 (9th Cir. 1999).

SEE APPENDIX B. THE DISTRICT COURT DETERMINED THAT RULE 4(c)(6) WAS THE EXCLUSIVE PROCEDURE PERMITTING AN EXTENSION TO A NOTICE-OF-APPEAL FILING PERIOD.

THE COURT FURTHER CONCLUDED BECAUSE IN RE STEIN EXPLICITLY PRECLUDES A PETITIONER FROM USING FEDERAL RULES OF CIVIL PROCEDURE ("FRCP") RULE 60(b) AS AN END-AROUND FROM FRAP RULE 4(c)(6)'S STRICT NO-EXCEPTIONS 180 DAY PERIOD, THE DISTRICT COURT WAS NOT AUTHORIZED TO ALLOW PETITIONER'S APPEAL OF THE COURT'S FINAL ORDER AND JUDGMENT. SEE APPENDIX 3.

HOWEVER, THE DISTRICT COURT ISSUED A COA PERMITTING AN APPEAL TO THE NINTH CIRCUIT, LIMITED TO ONLY WHETHER IT WAS A PROCEDURAL ERROR TO NOT ALLOW REOPENING UNDER RULE 4(c)(6). PETITIONER FILED A TIMELY NOTICE OF APPEAL ON JUNE 28, 2021, AGAIN WITH HELP FROM HIS PRIMARY ASSISTANT.

PETITIONER FILED A MOTION FOR APPOINTMENT OF COUNSEL AND A MOTION TO CONTEND THAT HIS LETTER OF SEPTEMBER 5, 2019, CONSTITUTED AN "EARLY-FILED" NOTICE OF APPEAL (A "CONSTRUCTIVE FILING")

AS NG BGLIGUGO), THAT COULD BE MADE FORWARD TO
THE LATER ENTRY OF JUDGMENT ON JUNE 20, 2020,
UNDER RULE 4(a)(2). PETITIONER REQUESTED THE
NINTH CIRCUIT COURT STAY HIS APPEAL AND REMAND
TO THE DISTRICT COURT FOR AN EVIDENTIARY HEARING
REGARDING THE UNDOCKETED LETTER.

OF SIGNIFICANT NOTE IS THAT THE STATE DID NOT
OPPOSE THIS MOTION.

A NOTIONS PANEL OF THE NINTH CIRCUIT DENIED
THE "STAY/EVIDENTIARY HEARING" MOTION ON JANUARY
24, 2022, APPLYING THE COURT'S OPINION IN
SONNE V. PETERSON, 989 F.2d 371 (9th Cir. 1993),
REASONING THAT EVEN IF THE UNDOCKETED LETTER
WAS CONSIDERED AS AN EARLY FILED NOTICE OF APPEAL,
RULE 4(a)(2) DOES NOT APPLY UNDER A PROSPECTIVE
APPELLANT IS AWAITING A DISTRICT JUDGE'S REVIEW OF
A MAGISTRATE JUDGE'S REPORT AND RECOMMENDATIONS.

THE NINTH CIRCUIT COURT THEN RESOLVED THE BRIEFING
SCHEDULE DIRECTING PETITIONER TO ADDRESS IN HIS
OPENING BRIEF THE SOLE PROCEDURAL ISSUE HE WAS
GRANTED THE COA FOR PREVIOUSLY.

PETITIONER FILED HIS PRO SE OPENING BRIEF IN
THE NINTH CIRCUIT ON AUGUST 18, 2021, JUST PRIOR
TO RECEIVING NOTICE THAT COUNSEL HAD BEEN
APPOINTED BY THE COURT. HIS PRO SE BRIEF ALSO
PRESENTED THE "UNCERTIFIED" ISSUE - WITH HIS
GUIDANCE - OF THE UNDOCKETED LETTER AND HIS PRIOR

1 ISSUES REGARDING HIS LEGAL MAIL.

2 PETITIONER'S APPOINTED COUNSEL FILED THE OPENING
3 BRIEF WITH BOTH THE CERTIFIED AND UNCERTIFIED ISSUES
4 ON APRIL 25, 2022. COUNSEL STATED THAT THE
5 PRESENTATION OF THE "UNCERTIFIED ISSUE" WAS TO PRE-
6 SENSE THE ISSUE FOR POSSIBLE SUBMISSION IN A PETITION
7 FOR REWRITING EN BANC IN THE COURT, OR A PETITION
8 FOR WRIT OF HABEAS CORPUS IN THIS HONORABLE COURT.

9 ON JANUARY 23, 2023, A NINTH CIRCUIT PANEL
10 AFFIRMED THE DISTRICT COURT'S DENIAL OF PETITIONER'S
11 MOTION TO REOPEN TIME TO FILE HIS NOTICE OF APPEAL
12 BASED SOLELY ON THE CIRCUIT'S DECISION OF IN RE
13 STEIN, 197 F.3d 421. THE PANEL ALSO DECLINED TO
14 CONSIDER THE UNCERTIFIED ISSUE SINCE PETITIONER
15 FAILED TO MAKE A SUBSTANTIAL SHOWING OF THE
16 DENIAL OF A CONSTITUTIONAL RIGHT. SEE APPENDIX A.

17 ON FEBRUARY 13, 2023, APPOINTED COUNSEL MAILED
18 THE NINTH CIRCUIT'S DECISION WITH A LETTER INFORMING
19 HIM THAT COUNSEL COULD NOT FILE A MOTION FOR PANEL
20 REWRITING OR REWRITING EN BANC, BUT HE WAS STILL
21 "RESEARCHING GROUNDS" FOR A WRIT OF HABEAS CORPUS.

22 PETITIONER RECEIVED THIS ABOUT A MONTH INTO THE 90-
23 DAY FILING PERIOD IN THIS COURT. AFTER SEVERAL
24 ATTEMPTS - AND MORE TIME - PETITIONER WAS ABLE TO
25 CONTACT HIS ATTORNEY, WHO TOLD HIM HE WAS ON HIS
26 OWN TO FILE IN THE SUPREME COURT.

PETITIONER AGAIN TURNED TO HIS LONG-TIME ASSISTANT
FOR THIS, HIS LAST FILING AND LAST CHANCE AVAILABLE,
WHO IS STILL HEALING FROM A VIOLENT ASSAULT AND
SURGERY IN JANUARY 2023. PETITIONER'S ASSISTANT
APOLOGIZES TO THE COURT FOR THE INADEQUACY OF
THIS PLEADING.

REASONS FOR GRANTING THE PETITION

THE NINTH CIRCUIT COURT OF APPEALS' DECISION IN IN RE STEIN, 197 F.3d 421 (9th Cir. 1999), INTERPRETS FEDERAL RULES OF APPELLATE PROCEDURE RULE 4(a)(6) TO NEGATE FEDERAL RULES OF CIVIL PROCEDURE RULE 60(b), WITHOUT SUPPORT OF ACTUAL STATUTORY LANGUAGE IN EITHER RULE, OR DIRECTION BY THIS HONORABLE COURT.

THE DISTRICT COURT'S AND NINTH CIRCUIT'S DENIALS OF PETITIONER'S MOTIONS TO REOPEN THE TO FILE A NOTICE OF APPEAL (APPENDIX B AND A RESPECTIVELY) HOLD THE ONLY MEANS AVAILABLE IS VIA FRAP RULE 4(a)(6), GRANTING A 180-DAY EXTENSION DUE TO FAILURE TO RECEIVE NOTICE FROM THE COURT, AND THAT FRCP RULE 60(b) IS PRECLUDED FROM USE BY IN RE STEIN, SUPRA, 197 F.3d AT 425-426.

HOWEVER, PETITIONER'S READING OF RULE 60(b) FINDS SIX CIRCUMSTANCES FOR "RELIEF" FROM A FINAL ORDER, JUDGMENT OR PROCEEDING. Grounds "(1) MISTAKE, INADVERTENCE, SURPRISE, OR EXCUSABLE NEGLIGENCE;" OR "(6) ANY OTHER REASON THAT JUSTIFIES RELIEF," APPEAR TO OFFER PETITIONER RELIEF. RULE 60(c)(1) ALLOWS PETITIONER UP TO A YEAR FOR A RULE 60(b) MOTION IN SOME CASES.

1 THERE IS NO LANGUAGE IN RULE 60 THAT MAKES
2 IT SUBORDINATE TO FRAP RULE 4 OR 4(a)(6).
3 THIS NULLIFICATION IS ONLY FOUND IN THE NINTH
4 CIRCUIT'S IN RE STEIN, SUPRA.

5 FRAP RULE 4 MAKES ONLY ONE REFERENCE TO
6 FRCP RULE 60 IN 4(a)(4)(vi), CONCERNING
7 THE EFFECT OF A MOTION WHILE FILING A NOTICE OF
8 APPEAL WHICH IS INAPPLICABLE IN THIS CASE.

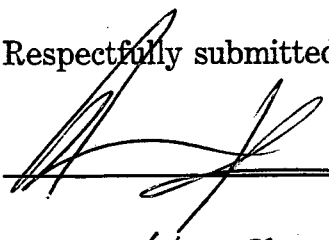
9 THERE IS NO LANGUAGE IN FRAP RULE 4 REGARDING
10 THAT IT SUPERSEDES OR AMENDS FRCP RULE 60.
11 AGAIN, THIS IS ONLY FOUND IN STEIN, SUPRA,
12 STATING: "IN FINE, RULE 4(a) AND [FRCP]
13 RULE 77(d) NOW FORM A TESSERATED SCHEME;
14 THEY LEAVE NO GAPS FOR [FRCP] RULE 60(b)
15 TO NOW FILL." IN RE STEIN, 197 F.3d at 426.

16 PETITIONER IS UNAWARE OF ANY AUTHORITY THAT
17 GIVES FEDERAL COURTS' POWER TO PICK AND CHOOSE
18 WHICH FEDERAL RULES OF CIVIL PROCEDURE THEY
19 WILL AND WILL NOT FOLLOW, ASSUME PLAIN LANGUAGE
20 IN THE "RULES" THOUGHTLESS OR DIRECTION FROM
21 THIS HONORABLE COURT.
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CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, consisting of a series of loops and strokes, positioned above a horizontal line.

Date: 4-9-2023

QUESTION(S) PRESENTED

May THE NINTH CIRCUIT COURT OF APPEALS DECIDE
THAT FEDERAL RULES OF APPELLATE PROCEDURE RULE
4(a)(6) NEGATES FEDERAL RULES OF CIVIL PROCEDURE
RULE 60(b), WITHOUT SUPPORT OF STATUTORY LANGUAGE
IN EITHER RULE OR DIRECTION BY THE SUPREME
COURT ?