

**ORIGINAL**

No. 24-

**218**

**In the  
Supreme Court of the United States**

**FILED**  
**MAY 17 2024**  
OFFICE OF THE CLERK  
SUPREME COURT, U.S.

DAMON B. COOK,

*Petitioner,*

v.

GEORGE M. GALAZA, WARDEN

*Respondent.*

**On Petition for a Writ of Certiorari to the  
United States Court of Appeals for the Ninth Circuit**

**PETITION FOR A WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

1. Whether the petitioner Damon Cook was prejudicially denied an opportunity to be heard on his insufficiency of the evidence of force claim in violation of due process – Thereby making the 2002 federal district court’s judgment as void pursuant to Federal Rule of Civil Procedure 60(b)(4)? *See United Student Aid Funds Inc. v. Espinosa* 559 U.S. 260, 271 (2010).

2. Whether the 2002 federal district court’s judgment is void under Federal Rule of Civil Procedure 60(b)(4). Because the district court acted inconsistent with due process of law? *See Constr. Drilling. Inc. v. Chusid*, 131 F. App’x 366, 372-3 (3d Cir. 2005).

3. Whether the petitioner Damon Cook was entitled to a certificate of appealability on the Federal question of the validity of the 2002 district court’s judgment pursuant to Federal Rule of Civil Procedure 60(b)(4). As void for a violation of due process being denied an opportunity to be heard on the true merits of his insufficiency of the evidence of force claim? *See Exp. Grp. v. Reef Indus., Inc.*, 54 F.3d 1466, 1469 (9th Cir. 1995).

A certificate of appealability should issue on the question,

4. Whether the district court erred when it denied petitioner Damon Cook a “Hearing” on his insufficiency of the evidence of force claim?

In violation of due process that deprived Damon Cook the opportunity to be heard on his insufficiency of the evidence of force claim thereby making the 2002 federal district court’s judgment as void pursuant to Federal Rule of Civil Procedure 60(b)(4). *See United*

*Student Aid Funds, Inc. v. Espinosa* 559 U.S. 260, 271 (2010).

5. Whether the district court erred in refusing to vacate the 2002 judgment under Rule 60(b)(4)?

6. Whether the Ninth Circuit prejudicially erred when it misconstrued the Rule 60(b)(4) motion appeal with the Rule 60(b)(4) motion appeal as a motion for reconsideration? Thereby denying petitioner Damon Cook appellate review on the merits, of his Rule 60(b)(4) motion in violation of due process of law to be heard *See Mullane* 339 U.S. 306, 314 (1950).

## **PARTIES TO THE PROCEEDINGS**

### **Petitioner and Appellant Below**

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- Damon B. Cook – Petitioner Pro Se

### **Respondent and Appellee Below**

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- George M. Galaza, Warden

## **CORPORATE DISCLOSURE STATEMENT**

The petitioner Damon Cook is a state prisoner and is being held in unlawful state custody in violation of the constitution or laws or treaties of the United States. See *Wilson v. Corcoran*, 131 S.Ct. 13, 16 (2010).

## LIST OF PROCEEDINGS

The following proceedings are directly related to this case within the meaning of Rule 14.1(b)(iii)

U.S. District Court, Central District of California.

Damon B. Cook, Petitioner v. George M. Galaza  
(Warden) Respondent

Case No. CV-00-08569-JFW(AGR)

Order Entered on January 17, 2024

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United States Court of Appeals for the Ninth Circuit

Case No. 24-630

Damon B. Cook, Appellant v.  
George M. Galaza (Warden) Respondent

Order Entered on May 9, 2024.

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## PETITION FOR A WRIT OF CERTIORARI

Petitioner Damon Cook respectfully seek a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit and reverse and remand the decision below.



## OPINIONS BELOW

The order of the United States Court of Appeals for the Ninth Circuit, dated May 9, 2024, is included at Appendix A at App.1a. Damon Cook's response to the Ninth Circuit Opinion and Order is included within this petition at page 5.

The Order of the United States District Court for the Central District of California, dated January 17, 2024, is included at Appendix B at App.5a.



## JURISDICTION

The United States Court of Appeals entered order on May 9, 2024 (Appendix A, App.1a). The court has jurisdiction. Under 28 U.S.C. § 1254(1).

The district court had subject matter jurisdiction over this federal habeas corpus case under 28 U.S.C. § 2254(a) and 28 U.S.C. § 2241(d) and venue under 28 U.S.C. § 84 and 28 U.S.C. § 1391(b)(c).

The court of appeals had jurisdiction under 28 U.S.C. § 2253 and under 28 U.S.C. § 1291.

This case is properly before this U.S. supreme court. *See FBI v. Fikre* (2024) 601 U.S. 234, 240.



## CONSTITUTIONAL PROVISIONS INVOLVED

The 5th and 14th Amendments of the United States Constitution.

### Right to Due Process to be Heard

The due process clause of the 14th Amendment to the United States Constitution guarantees that no state will deprive a person of life, liberty or property without due process of law. *See Mullane* 339 U.S. 306 at 314, 313.

The due process clause of the 5th amendment requires that before life, liberty, or property can be taken, notice and an opportunity for a “Hearing” be provided to be heard. *Id* at p. 313

The state and federal courts did not provide petitioner Damon Cook with a “Hearing” on his insufficiency of the evidence of force claim and did not apply the relevant law of:

*Jackson v. Virginia* (1979) 443 U.S. 307, 316, 319, 324, Fn.16 and *In Re Winship* (1970) 397 U.S. 358, 364.

*See United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 271; Rule 60(b)(4).

Petitioner Damon Cook was prejudicially denied an opportunity to be heard on his insufficiency of the

evidence of force claim on its true merits during the proceedings culminating the federal district court's 2002 under lying judgment – a denial and violation of due process of law

Note: The district rejected the insufficiency of the evidence of force claim without holding a “Hearing” on the true merits of the claim and without applying the relevant law of *Jackson v. Virginia* (1979) 443 U.S. 307, 316, 319, 324, Fn. 16 and *In Re Winship* (1970) 397 U.S. 358, 364 to Damon Cook's insufficiency of the evidence of force claim – A denial and violation of due process of law to be heard. *Mullane* 339 U.S. 306, 314 *See Frank v. Mangum* 237 U.S. 309, 340 *See Powell v. Alabama* 287 U.S. 45, 69

Rule 60(b)(4) – The District Court's 2002 judgment is void. *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 271.

The 5th and 14th Amendment is prohibit the government from depriving a prisoner of life, liberty, or property without due process of law.

*See Buckley v. Florida* (2003) 538 U.S. 835, 540 123 S.Ct. 2020



## STATEMENT OF THE CASE

### A. Factual Background

Petitioner Damon Cook Respectfully request that this United States Supreme Court take judicial notice of its case file records of the district court's 2002 judgment in this U.S. supreme court's case of: Damon B. Cook v. George M. Galaza back in October 2003, 24

S.Ct. 57 for the statement of the case and for the factual background and a review of the U.S. magistrate judge's report at pages 7-11 on petitioner's Damon Cook's insufficiency of the evidence of force claim that was not address and not heard by the court – A deprivation and a violation of due process of law to be heard. Mullane 339 U.S. 306 at 314, 313.

*See Powell* 287 U.S. 45, 69 (1932)

*See Frank* 237 U.S. 309, 340 (1915)

*See Fiore v. White* (2001) 121 S.Ct. 712 531 U.S. 225, 226-229, 228-229

*See United Student Aid Funds, Inc. v. Espinosa* 559 U.S. 260, 271 (2010).

*See Rule 60(b)(4)*

*See Buckley v. Florida* (2003) 123 S.Ct. 2020 538 U.S. 835, 840



## REASONS FOR GRANTING THE PETITION

- I. The Court Should Grant the Writ of Certiorari to Give Petitioner Damon Cook His Constitutional Right to Due Process of Law to Be Heard on His Insufficiency of the Evidence of Force Claim and Order His Release on These Charges. *Buckley* 538 U.S. at 840.

*See Mullane v. Cent. Hanover Bank & Trust Co.* 339 U.S. 306, 314 (1950).

*See Fiore v. White* 531 U.S. 225, 228-229 (2001).

*See Brown v. Allen* 344 U.S. 443, 747 (1953).

The court declared that the United States Supreme Court's duty is to protect the federal constitutional rights of all.

*See Taylor v. Louisiana* 419 U.S. 522, 527 (1975).

This United States Supreme Court should decide the questions presented for review in numbers 1-6

Under our system of justice, the opportunity to be heard is the most fundamental requirement.

*See Mullane v. Cent. Hanover Bank & Trust Co.* 339 U.S. 306, 314, 70 S.Ct. 652 (1950).

The fundamental requisite of due process of law is the opportunity to be heard.

*See New York Life Ins. Co. v. Brown*, 84 F.3d 137, 143 (5th Cir. 1996).

Because the 2002 district court's judgment against Damon is void,

The district court erred in refusing to vacate the judgment under Rule 60(b)(4).

## **II. Petitioner Response to Ninth Circuit Opinion — Ninth Circuit Opinion Misconstrued Appeal as a Motion for Reconsideration.**

The Ninth Circuit "misconstrued" this appeal as a motion for reconsideration under Rule 60(b)(4), Pursuant to 9th Cir. R. 27-10

This was a "wrongful misconception" by the Ninth Circuit

Petitioner Damon Cook's Appeal is concerning a Rule 60(b)(4) motion and declarations in support of Federal Rule of Civil Procedure 60(b)(4) motion.

Please take notice this, This is the "First Appeal" under Rule 60(b)(4) , Throughout petitioner's histories of litigation.

Therefore, There was no room for discretion on the part of the Ninth Circuit to "misconstrue" this appeal under Rule 60(b)(4) as a motion for reconsideration.

The Ninth Circuit had a legal responsibility or obligation to decide the validity of the judgment under Rule 60(b)(4) as void but failed to do so.

*See Export Group v. Reef Indus*, 54 F.3d 1466, 1469 (9th Cir. 1995).

*See United States v. \$277,000 U.S. Currency*, 69 F.3d 1491, 1493 (9th Cir. 1995).

The Ninth Circuit "Prejudicially erred" and "misconstrued" the Rule 60(b)(4) motion appeal with the Rule 60(b)(4) motion for reconsideration appeal because the petitioner Damon Cook had consolidated both appeal case numbers on a correspondence to the court at the time when the appeal of Rule 60(b)(4) motion for reconsideration was pending in the Ninth Circuit.

*See Balbuena v. Sullivan*, 980 F.3d 619 (9th Cir. 2020).

With consolidated appeals case numbers whom Judge Bade's opinion

But the petitioner Damon Cook had elected not to Petition for Writ of Certiorari again on the same Rule



60(b)(4) motion for reconsideration because it was before this U.S. Supreme Court and denied on November 8, 2021 and rehearing denied on January 10, 2022

However both Rule 60(b)(4) and “Rule 60(b)(4) has different legal functions.” This is the appeal of a Rule 60(b)(4) and declarations in support of the Rule 60(b)(4) motion.

Not a motion for reconsideration under the 9th circuit Rule 27-10 re: Rule 60(b)(4) appeal.

Note: Petitioner Damon Cook has never personally submitted a motion for reconsideration under 9th Circuit Rule 27-10 pertaining to the Rule 60(b)(4) motion appeal.

In Ninth Circuit had erred in “Misconstruing” the Rule 60(b)(4) motion appeal with the motion for reconsideration under Rule 60(b)(4) pertaining to the 9th circuit Rule 27-10 as a motion for reconsideration of the Rule 60(b)(4) motion appeal.

The decision of the Ninth Circuit should be reversed for justice and for error of misconstruing the petitioner’s Rule 60(b)(4) motion appeal as a motion for reconsideration for the Rule 60(b)(4) motion appeal.

**United State Supreme Court Re: Rule 60(b)( 4)**

Damon B. Cook was deprived of and denied his constitutional due process of law right to be heard on his insufficiency of the evidence of force claim thereby making the 2002 district court’s judgment void.

**Justice for Damon B. Cook**

*See United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 271 (2010).

*See Mullane v. Central Hanover Bank & Trust Co.* 339 U.S. 306, 314 (1950).

*See New York Life Ins. Co.* 84 F.3d 137, 143.



### CONCLUSION

For the foregoing reasons, this court should grant this petition for writ of certiorari.

Respectfully submitted,

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