

In The
SUPREME COURT OF THE UNITED STATES

FRANCISCO TINEO-SANTOS (Din# 13-A-0532),

Petitioner,

Vs.

Case No.: 24-5619

LYNN LILLEY,

Superintendent of Eastern NY Correctional Facility,

Respondent,

ON PETITION FOR REHEARING
FROM THE DENIAL OF THE *PRO SE* PETITION
FOR WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR REHEARING

FRANCISCO TINEO-SANTOS (Din# 13-A-0532)

Petitioner, *Pro Se.*

Eastern NY Correctional Facility

30 Institution Road, PO Box. 338

Napanoch, New York 12458-0338

Petitioner respectfully request that this Court grant rehearing of its order dated October 21, 2024, which denied certiorari (Attachment (“Att.”) “A”), and that the Court now grant certiorari.

The petitioner for certiorari previously filed herein presented the questions of:

(I) Whether the DENIAL of a *Pro Se* application for a Certificate of Appealability (“COA”) with the United States Court of Appeals, Second Circuit, in relation to a Civil writ of *Habeas Corpus* Proceedings, constituted as a DENIAL, on its merits, of an Appeal of the *Habeas Corpus* Claims relief, for the purpose of removing the Exclusive Jurisdiction of the United States District Court, Southern District of New York, over subsequently, timely & comprehensively, submitted/filed Motion pursuant to Rule 60(a); 60(b)(1); 60(b)(3); 60(b)(6), and; 60(d), of the Federal Rules of Civil Procedure for the United States District Courts (“Fed.R.Civ.P.”), attacking the Integrity of the Original *Habeas corpus* proceeding in seek to cure defects appearing that amounts to a Grave Miscarriage of Justice?;

(II) Whether the united States Court of Appeals for the Second Circuit (“2nd Cir. Court”) abused its discretion in first sidestepping, without a COA &/or jurisdiction to review the merits of the appeal, to take full consideration of the merits of the appeals in justifying the DENIAL of the *Pro Se* COA application?, and;

(III) Whether the United States District Court for the Southern District of New York (“S.D.N.Y. Court”) abused its discretion in refusing to review, on its merits, the timely and comprehensively filed Rule 60(a); 60(b)(1); 60(b)(3); 60(b)(6), and; 60(d), Fed.R.Civ.P., attacking the Integrity of the original *Habeas Corpus* proceedings in seek of curing appearing defects that amount to a Grave Miscarriage of Justice, violating the Fourteenth Amendment, on the basis of “Lack of Jurisdiction” due to the previously issued DENIAL of the COA by the 2nd Cir. Court of the appeal of the original *Habeas Corpus* claim relief?

The Petition for certiorari discussed the importance of the question presented by the Second Circuit’s & the District Court’s decisions in this case and its impact upon the administration of Justice in the Federal Courts. At the same time, the petition for certiorari acknowledged that, although several comparable cases made decisions in this Court, there did then existed a conflict of decisions with this Court’s holdings.

On February 22, 2017, and on June 01, 2020, however, years before the denial of certiorari (Att. “A”) in this case, this Court have had rendered a decision in Buck V. Davis, 580 U.S. 100, at *115, 137 S.Ct. 759, at *773, 197 L.Ed.2d 1 (February 22, 2017) (Holding that “The COA inquiry, we have emphasized, is not coextensive with a merits analysis.[...] This threshold question should be decided without ‘full consideration of the factual or legal bases adduced in support of the claim.[...] ‘When a court of appeals sidesteps [the COA] process by

first deciding the merits of an appeal, and then justifying its denial of a COA based on its adjudication of the actual merits, it is in essence deciding an appeal without jurisdiction.”), and in Banister V. Davis, 590 U.S. 504, at *520, 140 S.Ct. 1698, at *1710, 207 L.Ed.2d 58 (2020) (holding that An appeal from the denial of Rule 60(b) relief ‘does not bring up the underlying judgment for review.’[...] Instead, that denial is appealed as ‘a separate final order.’ It will be seen that the instant case is in all material respects comparable to the cases of *Buck* and *Banister* but that it reaches an exactly opposite result. (A)The S.D.N.Y. Court’s opinion in the instant case holding that it “**Lack Jurisdiction**” to review a subsequently, timely and comprehensively, filed Rule 60(a); 60(b)(1); 60(b)(3); 60(b)(6), and; 60(d), Fed.R.Civ.P., attacking the Integrity of the original *Habeas Corpus* proceedings in seek of simply to reopen the *Habeas Corpus* proceeding and to cure the appearing defects that amount to a Grave Miscarriage of Justice, violating the Fourteenth Amendment of the U.S. Constitution, due the 2nd Cir. Court’s previously issued DENIAL of the *Pro Se* COA application seeking to appeal the original *Habeas Corpus* claim reliefs Judgment, and; (B)The 2nd Cir. Court’s opinion in the instant case holding that “Appellant has failed to show that (1) jurist of reason would find it debatable whether the district court abuse its discretion in denying[to review on its merits] the Rule 60[(a); 60](b)[(1); 60(b)(3); 60(b)(6), and; 60(d), Fed.R.Civ.P.,] motion[attacking the Integrity of the original *Habeas Corpus* proceedings in seek of curing appearing defects that amount to a Grave Miscarriage of Justice, violating

the Fourteenth Amendment], and (2) jurist of reason would find it debatable whether the underlying habeas petition, in light of the grounds alleged to supporting the [Rule] 60[(a); 60](b)[(1); 60(b)(3); 60(b)(6), and; 60(d), Fed.R.Civ.P.,] motion[attacking the Integrity of the original *Habeas Corpus* proceedings in seek of curing appearing defects that amount to a Grave Miscarriage of Justice, violating the Fourteenth Amendment], states a valid claim of the denial of a constitutional right”, erroneously citing to Kellogg V. Strack, 269 F.3d 100, at *104 (2nd Cir. 2001) (per curiam), and having done so, both the S.D.N.Y. Court’s and the 2nd Cir. Court’s analyzes and expressly rejects this Court’s reasoning and results in *Buck* and *Banister*. Both the S.D.N.Y. Court’s and the 2nd Cir. Court’s opinion are in complete conflict with this court’s decision and in the best interest of justice, this court need to resolve this conflict soon.

Since there exists a clear and express conflict of the decisions of the lower Courts with this Court on an important question of Federal Law affecting many people in different parts of the country, compelling reasons are evident why the question presented should be reviewed and definitively determined and clarified by this Court.

Conclusion

For the reasons set forth in this Petition for rehearing, as well as in the *Pro Se* Petition for Certiorari previously filed, rehearing and Certiorari should now be granted.

Date: November 05, 2024
ULSTER, NEW YORK

Respectfully Submitted,

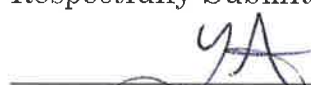


Petitioner, *Pro Se.*
FRANCISCO TINEO-SANTOS (Din# 13-A-0532)

CERTIFICATE OF *PRO SE* PETITIONER

Pursuant to Rule 44.2, I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay, and is limited to the grounds specified in Rule 44.2.

Respectfully Submitted,



Petitioner, *Pro Se.*
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Respondent.

DECLARATION OF SERVICE

I, Francisco Tineo-Santos (Din# 13-A-0532), hereby certify under penalty of perjury, pursuant to 28 U.S.C. § 1746, that on November 04, 2024 I served a Copy, under the "Prison Mailbox Rule", of the herein-enclosed *Pro Se* documents titled "DECLARATION OF SERVICE", and the "PETITION FOR REHEARING FROM THE DENIAL OF THE *PRO SE* PETITION FOR WRIT CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT", along with the Attachment "A" in support, upon the Respondent's last known representing counsel of record by U.S. Postal Service Mail, First-Class Mail, to the following address:

David M. Cohn
Assistant District Attorney
Bronx County District Attorney's Office
198 East 161st Street
Bronx, New York 10451

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is True & Correct.

Date: November 05, 2024
ULSTER, NEW YORK

Respectfully Submitted,



Petitioner, *Pro Se.*
FRANCISCO TINEO-SANTOS (Din# 13-A-0532)