

No. 17-867

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

MARCUS E. BARROSO, ET AL.,
Petitioners,

v.

SHERIFF OF BEXAR COUNTY, TEXAS; BRYAN COLLIER, EXECUTIVE DIRECTOR, TEXAS
DEPARTMENT OF CRIMINAL JUSTICE; & BEXAR COUNTY, TEXAS,
Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit

RESPONDENT COLLIER'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether Petitioner has raised any cognizable issue for review.
2. Whether Petitioner timely filed a motion for reconsideration pursuant to Federal Rule of Civil Procedure 59(e).

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RESPONDENT COLLIER'S BRIEF IN OPPOSITION

Petitioner Marcus E. Barroso fails to present an issue worthy of the Court's review. Barroso failed to timely appeal summary judgment in the district court, and failed to timely file any cognizable motion

challenging dismissal of his lawsuit pursuant to Federal Rule of Civil Procedure 59. The only issue conceivably appealable to this Court is the timeliness of Barroso's motion for relief under Rule 59, and relief for Barroso would be limited to remand for consideration of the merits of such a motion. Barroso, however, does not raise any issue concerning denial of his Rule 59 motion, and has therefore presented no cognizable issue for review.

STATEMENT OF THE CASE

Barroso challenges an unpublished *per curiam* decision of the Fifth Circuit that affirmed the District Court's denial of relief under Federal Rule of Civil Procedure 59(e). On October 20, 2015, Senior District Judge Harry Lee Hudspeth granted Respondents' motions for summary judgment and issued final

judgment.¹ R. at 1038-45. Barroso subsequently filed a motion to disqualify Judge Hudspeth for bias, along with a timely motion to reconsider the grant of summary judgment. R. at 1047. Chief District Judge Fred Biery cursorily granted Barroso's motion to disqualify, without findings, and reassigned the lawsuit to District Judge Xavier Rodriguez. R. at 1103. Judge Rodriguez issued an order on December 15, 2015, denying Barroso's motion for reconsideration, as well as denying the motion to disqualify Judge Hudspeth on the merits. R. at 1130. Barroso then filed what he styled as a motion for new trial, pursuant to Rule 59(a). R. at 1143. On August 18, 2016, Judge Rodriguez issued an opinion and order construing Barroso's motion as a second motion

1. Cites to "R." refer to the district court clerk's record, filed in the Fifth Circuit. Cites to "Pet.App.A." refer to Petition for Writ of Certiorari.

for reconsideration under Rule 59(e), denying the motion as untimely (and explaining that the motion would also be denied on the merits), and finally dismissing the lawsuit. R. at 1544.

Barroso appealed dismissal of his lawsuit to the United States Court of Appeals for the Fifth Circuit on August 31, 2016. R. at 1553-54. The Court of Appeals partially granted a motion to dismiss on November 8, 2016, finding that Barroso failed to timely appeal summary judgment for Respondents. Pet.App.A. at App.3. On March 13, 2017, the Court of Appeals issued a *per curiam* opinion adopting the findings of the District Court wholesale, and affirming judgment for Respondents. Pet.App.A at App.1.

STATEMENT OF FACTS

Barroso's lawsuit arises from his allegation that he was held in jail in Bexar County, Texas, for

three weeks beyond the end of his sentence. Barroso failed to timely appeal the District Court's grant of summary judgment for Respondents. Barroso failed to timely move for relief under the Federal Rules of Civil Procedure.

SUMMARY OF THE ARGUMENT

None of the questions presented warrant review by this Court. The appealable issues are confined to the timeliness of Barroso's attempts to find relief from summary judgment. At most, this Court has jurisdiction to overturn the lower courts' rulings on timeliness, and to remand in order to consider the merits of Barroso's second motion for reconsideration. Barroso merely asks this Court to second-guess the lower courts' application of well-established and uncontroversial rules of civil procedure. There is no dispute among the circuits on

timeliness of appeal or motions under Rule 59, nor is there any confusion or ambiguity on the issue. The writ should accordingly be denied.

**PETITIONER'S QUESTIONS PRESENTED ARE
IMPROPER**

Barroso presents three questions for review in his Petition. Pet.App.A. at Questions Presented. The questions are convoluted, confusing, and have absolutely nothing to do with the actual issues properly before or actually addressed by the Court of Appeals. Collier respectfully asserts that Barroso's questions presented are entirely improper, and should be wholly discarded as a basis for consideration of the petition.

REASONS TO DENY REVIEW

The Rules of the Supreme Court provide that review on Writ of Certiorari is not a matter of right, but of judicial discretion, and will be granted only for

“compelling reasons.” SUP. CT. R. 10. Barroso advances no compelling reasons to grant the writ in this case, and none exist.

**I. PETITIONER HAS RAISED NO COGNIZABLE
ISSUE ON APPEAL**

Barroso’s questions presented exclusively concern the District Court’s orders granting summary judgment for Respondents and denying Barroso’s first motion for reconsideration. These orders were respectively issued on October 20, 2015, and December 15, 2015. As found by both the District Court and the Court of Appeals, Barroso failed to timely appeal either of these final orders. Pet.App.A. at App.1-3. Barroso’s appeal, noted August 31, 2016, was timely only as to the District Court’s order denying his second motion for reconsideration, issued August 18, 2016. Id. Barroso has raised no issue concerning the August 18, 2016 order either in this

Court or in the Court of Appeals. Barroso has therefore raised no cognizable issue in this Court, and this Court lacks jurisdiction to proceed.

**II. THERE IS NO CIRCUIT SPLIT, AMBIGUITY OR
CONFUSION ON THE ISSUE OF TIMELINESS OF
MOTIONS MADE PURSUANT TO RULE 59**

Federal Rule of Civil Procedure 59(e) states that “[a] motion to alter or amend the judgment must be filed no later than 28 days after the entry of judgment. Rule 6(b)(2) precludes any extension of time to act under Rule 59(e).

It is factually undisputed that Barroso’s second motion for reconsideration – denial of which is the sole appealable issue in this matter – was filed well beyond the 28 days following entry of summary judgment for Respondents. Barroso offers no authority, or even argument, that there is any circuit split, ambiguity or confusion regarding the timeliness

provisions of Rule 59(e). There is no compelling reason for this Court to take up Barroso's cause.

CONCLUSION

Respondent Bryan Collier respectfully requests that the Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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