

26-5509

CASE No. _____

ORIGINAL

FILED

MAY 05 2026

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE UNITED STATES SUPREME COURT

BRIAN LEES, a/k/a Brian Lee,
Petitioner,

vs.

KENNETH LIZOTTE,
Respondent.

ON PETITION TO THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT, CASE Nos. 24-1972, 24-2023

PRO SE PETITION FOR WRIT OF CERTIORARI

Mr. Brian Lees
Prisoner Identification No. W95564
c/o M.C.I. NORFOLK
Two Clark Street, P.O. Box 43
Norfolk, Massachusetts 02056-0043

QUESTION(S) PRESENTED

1. Whether Fed. R. Civ. P. 60(b)(1946), Fed. R. Civ. P. 62.1(3) (2009), and Fed. R. App. P. 12.1(1)(2)(2009), was an intergral part of the prisoner's first opportunity in habeas proceedings to seek collateral review that the Anti-Terrorism and Effective Death Penalty Act (A.E.D.P.A.) of 1996 ensures?
2. Whether a judgement as rendered by the district court under Fed. R. Civ. P. 62.1(1)(2)(2009), is subject to the requirement of a certificate of appealability for purposes of Title 28 U.S.C. § 2253(c)(2) of the United States Code?
3. Whether a timely Fed. R. Civ. P. 60(b)(1)(2)(4),(d)(3) motion for relief from a judgement fall under the A.E.D.P.A. restriction against repetitive petitions for the purpose of Title 28 U.S.C. § 2244 of the United States Code?

LIST OF PARTIES

A list of all parties to the proceeding in the court whose judgment is the subject of this petition is provided below. If a party is a corporation with a stock ticker symbol, that symbol is also included.

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RESPONDENT—Kenneth Lizotte, Superintendent of M.C.I. NORFOLK
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RELATED CASES

United States Court of Appeals for the First Circuit
BRIAN LEES, a/k/a Brian Lee, vs. KENNETH LIZOTTE,
CASE No. 23-1824

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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☒ is unpublished.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 D 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☒ is unpublished.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 February 9, 2026.

☐ 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: March 10, 2026, and a copy of the order denying rehearing appears at Appendix B.

☐ 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

§ 2253. Appeal

(a) In a habeas corpus proceeding or a proceeding under section 2255 [28 USCS § 2255] before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.

(b) There shall be no right of appeal from a final order in a proceeding to test the validity of a warrant to remove to another district or place for commitment or trial a person charged with a criminal offense against the United States, or to test the validity of such person's detention pending removal proceedings.

(c) (1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or

(B) the final order in a proceeding under section 2255 [28 USCS § 2255].

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

HISTORY:

June 25, 1948, ch 646, 62 Stat. 967; May 24, 1949, ch 139, § 113, 63 Stat. 105; Oct. 31, 1951, ch 655, § 52, 65 Stat. 727; April 24, 1996, P. L. 104-132, Title I, § 102, 110 Stat. 1217.

§ 1254. Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

HISTORY:

June 25, 1948, ch 646, 62 Stat. 928; June 27, 1988, P. L. 100-352, § 2(a), (b), 102 Stat. 662.

§ 2244. Finality of determination

(a) No circuit or district judge shall be required to entertain an application for a writ of habeas corpus to inquire into the detention of a person pursuant to a judgment of a court of the United States if it appears that the legality of such detention has been determined by a judge or court of the United States on a prior application for a writ of habeas corpus, except as provided in section 2255 [28 USCS § 2255].

(b) (1) A claim presented in a second or successive habeas corpus application under section 2254 [28 USCS § 2254] that was presented in a prior application shall be dismissed.

(2) A claim presented in a second or successive habeas corpus application under section 2254 [28 USCS § 2254] that was not presented in a prior application shall be dismissed unless—

(A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(B) (i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and

(ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

(3) (A) Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.

(B) A motion in the court of appeals for an order authorizing the district court to consider a second or successive application shall be determined by a three-judge panel of the court of appeals.

(C) The court of appeals may authorize the filing of a second or successive

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(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

HISTORY:

June 25, 1948, ch 646, 62 Stat. 965; Nov. 2, 1966, P. L. 89-711, § 1, 80 Stat. 1104; April 24, 1996, P. L. 104-132, Title I, §§ 101, 106, 110 Stat. 1217, 1220.

§ 2254. State custody; remedies in Federal courts

(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

(b) (1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that—

(A) the applicant has exhausted the remedies available in the courts of the State;
or

(B) (i) there is an absence of available State corrective process; or
(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

(2) An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.

(3) A State shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the State, through counsel, expressly waives the requirement.

(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

(e) (1) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.

(2) If the applicant has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that—

(A) the claim relies on—

(i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and

(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

(f) If the applicant challenges the sufficiency of the evidence adduced in such State court proceeding to support the State court's determination of a factual issue made therein, the applicant, if able, shall produce that part of the record pertinent to a determination of the sufficiency of the evidence to support such determination. If the applicant, because of indigency or other reason is unable to produce such part of the record, then the State shall produce such part of the record and the Federal court shall direct the State to do so by order directed to an appropriate State official. If the State cannot provide such pertinent part of the record, then the court shall determine under the existing facts and circumstances what weight shall be given to the State court's factual determination.

(g) A copy of the official records of the State court, duly certified by the clerk of such court to be a true and correct copy of a finding, judicial opinion, or other reliable written indicia showing such a factual determination by the State court shall be admissible in the Federal court proceeding.

(h) Except as provided in section 408 of the Controlled Substance Acts [21 USCS § 848], in

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all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel for an applicant who is or becomes financially unable to afford counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

(i) The ineffectiveness or incompetence of counsel during Federal or State collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under section 2254 [28 USCS § 2254].

HISTORY:

June 25, 1948, ch 646, 62 Stat. 967; Nov. 2, 1966, P. L. 89-711, § 2, 80 Stat. 1105; April 24, 1996, P. L. 104-132, Title I, § 104, 110 Stat. 1218.

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STATEMENT OF THE CASE

U.S. DISTRICT COURT PROCEEDING

1. On August 8, 2022, petition files a civil action pursuant to Title 28 U.S.C. § 2254 of the United States Code. See, Vol. 2, Appx. 1, P.p. 1-19
2. On habeas petition to the United States District Court for the District of Massachusetts, reflects three cognizable claims seeking issuance of a writ. See, Vol. 2, Appx. 1, P.p. 6-19
3. Petition sought further proceedings for purposes of 28 U.S.C. § 2254(d)(3)-(8),(e)(2)(ii)(B). See, Vol. 2, Appx. 2, P.p. 11-17
4. The judgment was entered denying the habeas petition and all motions pertaining thereto. See, Vol. 2, Appx. 3
5. A motion for relief judgment denying the habeas petition was sought for purposes of Fed. R. Civ. P. 60(b)(1)(4),(d)(3). See, Vol. 2, Appx. 4
6. The judgment was entered denying the motion for relief due to a pending appeal. See, Vol. 1, Appx. D.
7. On motion for reconsideration for purposes of Fed. R. Civ. P. 59(e), brings to the attention of the district court the issue of jurisdiction over the denied motion for relief. See, Vol. 2, Appx. 5
8. The motion to proceed in forma pauperis on appeal from the denial of the Civil Rule 60(b) motion for relief, allowed. See, Vol. 2, Appx. 6
9. A report was sent to the First Circuit Court stating, "The

Court denied the motion explaining it was without jurisdiction because an appeal was pending. No certificate of appealability shall issue from that ruling as the appeal therefrom is frivolous." See, Vol. 1, Appx. D.

CIRCUIT COURT PROCEEDING

10. Petition was ordered to try satisfying the requirements for issuance of a certificate of appealability (C.O.A.) to appeal from the denial of the Civil Rule 60(b) motion for relief. See, Vol. 1, Appx. E

11. An application for issuance of a C.O.A. for purposes of 28 U.S.C. § 2253(c)(2), filed. See, Vol. 2, Appx. 7

12. A motion to secure an indicative ruling on the denied Civil Rule 60(b) motion for relief, filed. See, Vol. 2, Appx. 8

13. On February 9, 2016, the judgment of C.O.A. panel is entered denying the issuance of a C.O.A. to appeal from the denial of the Civil Rule 60(b) motion for relief. See, Vol. 1, Appx. A

14. On February 16, 2026, a combined petition for panel hearing with suggestion for a rehearing en banc, filed. See, Vol. 2, Appx. 9

15. On March 10, 2026, an Order of the First Circuit Court was entered to deny petition for rehearing en banc. See, Vol. 1, Appx. B

STATEMENT OF FACTORS

16. The Civil Rule 60 motion for relief brings issues about the decision for inconsideration of the proceedings were improperly entered. See, Vol. 2, Appx. 4, P. 2, ¶¶6-8

17. District Court's review sees that there is no actual occasion to consider the Civil Rule 60 motion further than what it stands on lack of subject matter jurisdiction due to a pending appeal, which is a signal to grant relief on remand. See, Vol. 1, Appx. D.

18. Petition files a motion to remand for an indicative ruling in accordance with Fed. R. App. P. 12.1(1)(2009). See, Vol. 2, Appx. 8. P. 1, ¶1

19. The C.O.A. panel has decided that the motion to remand for a an indicative ruling should be treated as a second or successive petition for purposes of Title 28 U.S.C. § 2244, to deny it. See, Vol. 1, Appx. A, P. 2

SUMMARY OF OBJECTIONS

20. A jurist of reason would have debate amongst the fairminded that it was necessary for the case to be remanded until a final judgment has been entered in accordance with Fed. R. App. P. 12.1 (1)(2)(2009), in which claims of district court error may be ventilated.

21. The problem started when the First Circuit Court of Appeals ordered the petition to try satisfy the requirements of a C.O.A. to appeal from the denial of his Civil Rule 60(b)(1)(4),(d)(3) motion for relief. See, Vol. 1, Appx. E.

22. One of the problems with following that course of direction is, that the judgment (vol. 1, appx. E) was rendered pursuant to Civil Rule 62.1(1) deferring consideration of the Civil Rule 60 motion for relief, and that judgment cannot be predicated for a C.O.A. analysis of a final judgment under Title 28 U.S.C. § 2253

(c)(2) of the United States Code. See, Rules Governing Section 2254 Cases in the United States District Courts, Rule 11(a).

23. The other problem with following that course of a direction, is, that the judgment (vol. 1, appx. D) was rendered pursuant to Civil Rule 62.1(2) dismissing the case for lack of jurisdiction over the subject matter "because of a pending appeal," and that judgment decided a federal court issue which is inapplicable to a C.O.A. analysis of Title 28 U.S.C. § 2253(c)(2) of the United States Code.

24. The problem with obtaining relief became exacerbated, where the First Circuit Court of Appeals denies motion to remand for an indicative ruling on the Civil Rule 60(b) motion for relief (see vol. 1, appx. A, P. 2), and that denial compromised the district court's want to grant relief and rendered the important question about being denied relief unreviewable on appeal.

25. Another problem arises when the C.O.A. panel renders a judgment (vol. 1, appx. A) stating, "It appears that the district court erroneously denied the Rule 60 motion for lack of subject matter jurisdiction....," and that judgment highlights a decision on the merits to conflict with the decision of the Supreme Court in *Beck v. Davis*, 580 U.S. 100, 116, 197 L. Ed. 2d 1, 16, 137 L. Ct. 759, 773 (2016).

26. The next problem was created when the C.O.A. panel renders a judgment (vol. 1, appx. A) stating, "Because the District court's ultimate denial of Rule 60(b) relief was neither debatable nor wrong, the application for a C.O.A. is denied," and that standard of review conflicts with the decision of the Supreme Court in

Miller-El v. Cockrelli, 537 U.S. 322, 336, 154 L. Ed. 2d 931, 950, 123 S. Ct. 1029 (2003).

27. On petition for rehearing en banc, the First Circuit Court of Appeals renders an Order (vol. 1, appx. B) stating, "We add that, even if a certificate of appealability were not required for these appeals, no relief would be warranted because the petitioner's motion for Fed. R. Civ. P. 60 relief were clearly without merit, therefore, the denial was correct," and that Order exceeded the scope of Title 28 U.S.C. § 2253(c)(2) analysis to rule on the merits of the case, and then justify its denial of a certificate of appealability based on its adjudication of the actual merits.

28. The federal appellate courts have jurisdiction solely over an appeal from a decision of its district courts of the United States. See, Title 28 U.S.C. § 1291.-Catlin v. United States, 324 U.S. 229, 233, 65 S. Ct. 631, 89 L. Ed. 911(1945).

29. The district courts must, pursuant to the Rules Governing Section 2254 Cases, adjudicate each claim before its decision may be considered final and appealable. See, Title 28 U.S.C. § 2253(c)(2) of the United States Code.-Browder v. Dir. Dept of Corr. of Ill, 434 U.S. 257, 265, 98 S. Ct. 556, 54 L. Ed. 2d 521 (1978).

30. For all intended purposes of Civil Rule 62.1(1)(2)(3)(2009).

31. The likelihood that Fed. R. App. P. 12.1(1)(2012), have been operated to deprive the district court of its want to grant relief from a judgment dismissing the case.

REASONS FOR GRANTING THE PETITION

32. Title 28 U.S.C. § 1254(1)(1988).-Hohn v. United States, 524 U.S. 236, 241, 141 L. Ed. 2d 242, 118 S. Ct. 1968 (1998), citing Nixon v. Fitzgerald, 457 U.S. 731, 741-742, 73 L. Ed. 2d 349, 102 S. Ct. 2690 (1982).

33. The Supreme Court may grant a certiorari in order to explore some facet of the problem to be resolved. See Sup. Ct. R. 10(c). Miranda v. Arizona, 384 U.S. 436, 441-442, 16 L. Ed. 2d 694, 705, 86 S. Ct. 2690 (1982).

34. This suit involves a judgment (vol. 1, appx. A) compromising the district court's want to grant relief under Civil Rule 60(b) and rendered an important question about being denied relief unreviewable in the First Circuit Court of Appeals.

35. Petition respectfully ask the Supreme Court to resolve, once and for all habeas cases, whether the denial of a Civil Rule 60 (b) motion for relief was open for further proceedings pursuant to Civil Rule 62.1(c)(2009) and Fed. R. App. P. 12.1(1)(2)(2009) or subject to a certificate of appealability requirement under Title 28 U.S.C. § 2253(c)(2) of the United States Code?

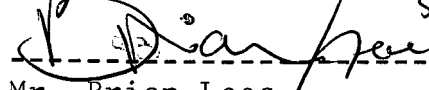
36. The importance of this federal question pertains to whether Fed. R. App. P. 12.1(1)(2)(2009), must be regarded as a threshold inquiry seprate from the merits to be determined by the district court.

37. Let there be justice for everyone who seeks it.

CONCLUSION

Petition respectfully ask the Supreme Court for the issuance of a writ of certiorari directing that the First Circuit Court of Appeals to reverse its dismissal of the case and remand the case for further proceeding in the district court.

Signed under the penalty of perjury.

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May 1, 2026