

January 15, 2014

Thomas J. Petters
Reg. No. 14170-041
U.S. Penitentiary
P.O. Box 1000
Leavenworth, Kansas 66048-1000

Clerk of the Court
U.S. District Court
Warren E. Burger Fed. Bldg.
316 North Robert Street
St. Paul Minnesota
US. CERTIFIED MAIL NO. 7008-1830-0004-2648-9831

RE: USA vs. PETERS, CIVIL NO. 13-1110(RHK)
Criminal NO. 08-364 (RHK)

Dear Clerk:


Attached for filing in this above-entitled action, is copy of my:

1. THOMAS JOSEPH PETERS' RESPONSE TO "GOVERNMENT'S RESPONSE IN OPPOSITION TO DEFENDANT PETERS' MOTIONS TO ALTER AND AMEND JUDGMENT PURSUANT TO RULE 59(e) AND MOTION TO DISQUALIFY UNDER 28 U.S.C. §455" -DATED: JANUARY 8,2014
This motion is dated: January 15, 2014.
2. MOTION FOR BAIL. **Dated: January 15, 2014.**

If possible, please return a filed stamped copy of this first page of the above-entitled motion for my files.

Thank you for you continued assistance in this most important matter.

Sincerely,




Thomas J. Petters, Pro Se

CERTIFICATE OF SERVICE

I THOMAS J. PETERS certify that I mailed a copy of the above-entitled motion within a stamped envelope with the correct postage to the following parties on **JANUARY 15, 2014,** from the U.S. Penitentiary Leavenowrth Legal MAILROOM:

3. Clerk of Court as addressed above.
4. U.S. Attorney, 300 South 4th Street, 600 US Courthouse, Minneapolis Minnesota.



UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA,	*	
Plaintiff,	*	CRIMINAL NO. 08-364 (RHK)
vs.	*	CIVIL NO. 13-1110 (RHK)
THOMAS JOSEPH PETERS,	*	
Defendant.	*	AFFIDAVIT FORM

MOTION FOR BAIL

COMES NOW, Defendant THOMAS JOSEPH PETERS, Pro Se, (hereinafter Movant) with the assistance of his JailHouse Lawyer John Gregory Lambros, MUNZ vs. NIX, 908 F.2d 267, 268 FootNote 3 (8th Cir. 1990)(JailHouse Lawyer has STANDING to assert rights of inmates who need help); BEAR vs. KAUTZKY, 305 F.3d 802, 805 (8th Cir. 2002), offering this Court his "MOTION FOR BAIL".

STANDARD FOR REVIEW:

1. Federal Courts have inherent authority to admit section 2255 movants to bail pending the decision of their case, but the power is "to be exercised very sparingly." See, CHEREK vs. U.S., 767 F.2d 335, 337 (7th Cir. 1985) (collecting cases).
2. Before a section 2255 movant may be released on bail, he must be able to show a substantial claim of law upon which there is a high probability of success, or some exceptional circumstance that makes the grant of bail necessary in the interest of justice. See, U.S. vs. METT, 41 F.3d 1281, 1282 (9th Cir. 1994); OSTRER vs. U.S., 584 F.2d 594, 596 FN.1 (2nd Cir. 1978); ARONSON vs. MAY, 85 S. Ct. 3, 5 (1964).

3. If Movant's section 2255 is GRANTED and this Court either orders a new trial or a new sentencing, and the government appeals this Court's decision, Movant Petters may seek release from custody pending appeal. This Court's decision whether to release or detain Movant Petters' pending the outcome of an appeal is guided by Federal Rules of Appellate Procedure, **RULE 23(c)**. See, HILTON vs. BRAUNSKILL, 481 U.S. 770, 772 (1987). Movant Petters' has been advised to apply first to this Court for release pending appeal.

4. **RULE 23(c)** creates a "**PREFERENCE FOR RELEASE**" of a person winning his section 2255 while appellate procedure are ongoing. See, HILTON, 481 U.S. at 778. It states:

While a decision ordering the release of a prisoner is under review, the prisoner **MUST** - unless the court or judge rendering the decision, or the court of appeals, or the Supreme Court, or a judge or justice of either court orders otherwise - **BE RELEASED ON PERSONAL RECOGNIZANCE, WITH OR WITHOUT SURETY.**

See, **RULE 23(c)**, **Fed. R. App. P.** (emphasis added).

FACTS:

5. Movant Petters filed two (2) motions on or about December 28, 2013, in this above-entitled action:

- a. MOTION TO ALTER OR AMEND JUDGMENT PURSUANT TO RULE 59(e) ...; and
- b. MOTION TO DISQUALIFY THE HONORABLE JUDGE RICHARD H. KYLE IN THIS ACTION. PURSUANT TO 28 U.S.C. §455 et al....

6. This court has the authority of grant bail in this action.

7. Movant Petters believes that the motions he filed above have a high probability of success.

8. Movant Petters trial and direct appeal attorney's, Attorney's Jon M. Hopeman and Eric J. Riensche, believe that the Honorable Judge Kyle should of disqualified himself in this action and stated within a September 17, 2010

letter to Movant Petters on page two (2):

"NOW TO THE SUBSTANCE: WE THINK THE ARGUMENT REGARDING WHETHER THE JUDGE SHOULD BE DISQUALIFIED IS A DECENT ONE.

**

If we should lose the appeal, you might make a Section 2255 motion on that ground, and perhaps **ARGUE YOUR COUNSEL (US) WERE INEFFECTIVE FOR FAILING TO MOVE FOR DISQUALIFICATION.** There might be other ways to frame the issue as well, but that is one." (emphasis added)


See, "MOTION TO DISQUALIFY ... JUDGE KYLE ... PURSUANT TO 28 USC §455 et al.", Pages 15 and 16, paragraphs 50 and 51, **EXHIBIT K.**

CONCLUSION:

9. WHEREFORE, Movant Petters respectfully moves this Court **FOR BAIL PENDING A DECISION OF THIS CASE AND/OR AFTER THIS COURT GRANTS MOVANT A NEW TRIAL OR NEW SENTENCING.**

10. I THOMAS JOSEPH PETERS, declare under penalty of perjury that the foregoing is true and correct pursuant to 28 U.S.C. §1746.

EXECUTED ON: JANUARY 15, 2014



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Assisted legal research as per: **JOHNSON vs. AVERY, 393 U.S. 483, 490 (1969)**

BY: John Gregory Lambros, JailHouse Lawyer
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