

June 11, 2002

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**Clerk**

U.S. Court of Appeals for the Eighth Circuit  
Thomas P. Eagleton Court House  
Room 24.329  
111 South 10th Street  
St. Louis, Missouri 63102  
U.S. CERTIFIED MAIL NO. 7001-0320-0005-1583-3086

RE: 02-2026, LAMBROS vs. U.S.A.  
District of Minnesota Court/Agency Numbers: Civil No. 99-28 (DSD)  
Criminal No. 4-89-82(5) (DSD)

Dear Clerk:

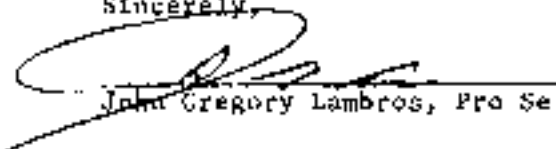
Attached for filing in the above-entitled action is the following document:

- a. MOTION FOR ISSUANCE OF CERTIFICATE OF APPEALABILITY BY THE EIGHTH CIRCUIT COURT OF APPEALS. Dated: June 10, 2002.

Please find one original and three copies.

Thanking you in advance for your continued assistance in this matter.

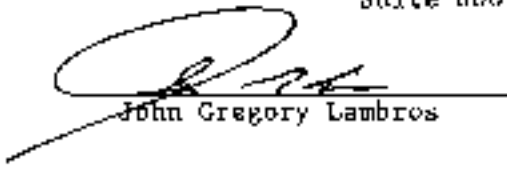
Sincerely,

  
John Gregory Lambros, Pro Se

**CERTIFICATE OF SERVICE**

I declare under the penalty of perjury that a true and correct copy of the above listed document/motion was mailed within a stamped addressed envelope from the USF Leavenworth Mailroom on this 11th day of June, 2002, to:

1. U.S. ATTORNEYS OFFICE, District of Minnesota, U.S. Federal Court House, Suite 600, 300 South 4th Street, Minneapolis, Minnesota 55415.

  
John Gregory Lambros

UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

JOHN GREGORY LAMBROS,	*	<b>APPEAL NO. 02-2026</b>
Petitioner - Appellant,	*	District of Minnesota Court/Agency
vs.	*	Numbers: Civil No. 99-28 (DSD)
	*	Criminal No. 4-89-82(5)(DSD)
UNITED STATES OF AMERICA,	*	
Respondent - Appellee	*	<b><u>AFFIDAVIT FORM</u></b>

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MOTION FOR ISSUANCE OF CERTIFICATE OF APPEALABILITY  
BY THE EIGHTH CIRCUIT COURT OF APPEALS

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NOW COMES the Petitioner - Appellant, John Gregory Lambros, Pro-Se, (hereinafter Movant) and requests this Honorable Court pursuant to Title 28 U.S.C.A. § 2253, for the issuance of a Certificate of Appealability (hereinafter COA), as the District of Minnesota Court ruled, pro forma on May 29, 2002, that the court would not grant such a COA when the court DENIED Movant's "MOTION TO VACATE ALL JUDGMENTS AND ORDERS BY UNITED STATES DISTRICT COURT JUDGE ROBERT G. RENNER PURSUANT TO RULE 60(b)(6) OF THE FEDERAL RULES OF CIVIL PROCEDURE FOR VIOLATIONS OF TITLE 28 U.S.C.A. § 455." Judge Renner was the U.S. Attorney who indicted Movant.

The District Court erred in holding, in square conflict with the U.S. Supreme Court decision LILJEBERG vs. HEALTH SERVICES CORP., 486 US 847, 100 L.Ed2d 855, 108 S.Ct. 2194 (1988) and other circuits, that every Federal Rules of Civil Procedure 60(b) motion constitutes prohibited "second or successive" habeas petition as matter of law. The District Court stated, "Although petitioner purports to bring this motion under Rule 60(b)(6) of the Federal Rules of Civil Procedure, the court concludes that it must be treated as a petition pursuant to 28 U.S.C. § 2255 since Lambros is attempting to collaterally attack his conviction and sentence." See, March 08, 2002, ORDER by Judge Doty, Page 3.

**APPELLANT HAS MADE A SUBSTANTIAL SHOWING OF A DENIAL OF A CONSTITUTIONAL RIGHT:**

1. The Supreme Court in CHAPMAN vs. CALIFORNIA, 17 L.Ed.2d 705, 710 (1967) stated that an impartial judge is a constitutional right so basic to a fair trial that its infraction can never be treated as harmless error. Quoting, TUNEY vs. OHIO, 273 US 510, 71 L.Ed. 749 (1927). See, CHAPMAN, 17 L.Ed.2d at 710 n.8.

**ON APRIL 22, 2002, THE UNITED STATES SUPREME COURT GRANTED CERTIORARI ON THE VERY SAME QUESTION:**

2. On April 22, 2002, the United States Supreme Court **GRANTED CERTIORARI** on the very same question that the District Court **DENIED** Movant's 'MOTION TO VACATE ALL JUDGMENTS AND ORDERS BY UNITED STATES DISTRICT COURT JUDGE ROBERT C. RENNER PURSUANT TO **RULE 60(b)(6)** OF THE FEDERAL RULES OF CIVIL PROCEDURE FOR VIOLATIONS OF TITLE 28 U.S.C.A. § 455," in ABDUR'RAHMAN vs. BELL, #01-9094, questions presented:

(1) Did Sixth Circuit err in holding, in square conflict with decisions of this court and other circuits, that every Fed.R.Civ.P. **60(b)** motion constitutes prohibited "second or successive" habeas petition as matter of law? (emphasis added)

(2) Does court of appeals abuse its discretion in refusing to permit consideration of vital intervening legal development when failure to do so precludes habeas petitioner from ever receiving any adjudication of his claims on merits?

See, **EXHIBIT A** (CRIMINAL LAW REPORTER, April 24, 2002, Volume 71, No. 4, Pages 2026 and 2028)

**STATEMENT OF THE CASE**

3. Movant incorporates and restates his attached April 10, 2002, MOTION FOR ISSUANCE OF CERTIFICATE OF APPEALABILITY, that was filed with the United States District Court for the District of Minnesota. See, **EXHIBIT B**.

Movant also requests this court to hear, review, and incorporate the full record that was developed within the District Court. Movant requested the Clerk of the District Court to certify and transmit the full record to this court on June 5, 2002.

ISSUES MOVANT SEEKS TO PRESENT ON APPEAL

4. Again, Movant incorporates the restates the following three (3) issues within his April 10, 2002, MOTION FOR ISSUANCE OF CERTIFICATE OF APPEALABILITY, that was filed with the United States District Court for the District of Minnesota, **EXHIBIT B**, and incorporates the full record that was developed within the District Court:

- a. **ISSUE ONE (1):** WHETHER THE DISTRICT COURT ABUSED ITS DISCRETION BY NOT ALLOWING REVIEW UNDER THE CONSTRUCTION AND APPLICATION OF RULE 60(b)(6) OF THE FEDERAL RULES OF CIVIL PROCEDURES FOR VIOLATIONS OF TITLE 28 USCA § 455(a) AND 455(b)(3), UNDER THE STANDARD ESTABLISHED IN LILJEBERG vs. HEALTH SERVICES CORP., 486 US 847 (1988)?
- b. **ISSUE TWO (2):** WHETHER THE COURT OF APPEALS MAY REVIEW THE QUESTION OF RECUSAL DE NOVO ON REVIEW OF THE PROCEEDINGS?
- c. **ISSUE THREE (3):** WHETHER JUDGE RENNER AND NOEL ABUSED THEIR DISCRETION BY THEIR FAILURE TO DISQUALIFY THEMSELVES FOR VIOLATIONS OF § 455(a) AND § 455(b)(3) AT THE TIME THEY HEARD MOVANT LAMBROS' CASE AND ENTERED JUDGMENT, AS BOTH JUDGE RENNER AND NOEL HAD ACTUAL KNOWLEDGE OF THE FACTS AND LAW?

CONCLUSION

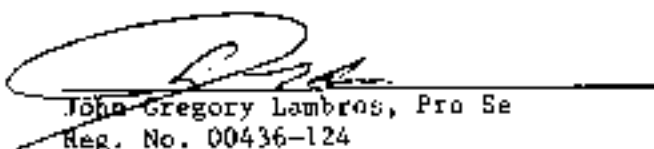
5. Movant Lambros requests this Court to issue a COA, as Movant has made a substantial showing of the denial of a constitutional right. To meet what the Ninth Circuit has referred to as this "modest standard," see CHARLES vs. HICKMAN, 228 F.3d 981, 982 n.1 (9th Cir. 2000), this Movant "must demonstrate that the issues are debatable among jurists of reason; that a court could resolve the

issues [in a different manner]; or that the questions are adequate to deserve encouragement to proceed further." BAREFOOT vs. ESTELLE, 463 U.S. 880, 893 n.l, 103 S.Ct. 3383, 17 L.Ed.2d 1090 (1983). Quoting, RANDOLPH vs. KEMNA, 276 F.3d 401, 403 n.l (8th Cir. 2002).

6. The U.S. Supreme Court has demonstrated that the issues are debatable among jurists of reason; that a court could resolve the issues in a different manner and that the questions are adequate to deserve encouragement to proceed further, when it GRANTED CERTIORARI in ABDUR'RAHMAN vs. B.K.J., #01-9094, on April 22, 2002, on the very same question Movant has presented within this COA. See, Paragraph Two (2) within this motion.

7. I JOHN GREGORY LAMBROS, declare under the penalty of perjury that the foregoing is true and correct. Title 28 U.S.C.A. § 1746.

EXECUTED ON: June 10, 2002

  
John Gregory Lambros, Pro Se  
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U.S. Penitentiary Leavenworth  
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Injunctive relief is available in private plaintiffs under civil remedy provision of Racketeer Influenced and Corrupt Organizations Act, 18 USC 1964; allegation that anti-abortion protesters took clinic patients' right to seek medical services, clinic doctors' right to perform their jobs, and clinics' right to provide medical services and otherwise conduct their businesses, although involving loss of intangible property in form of rights, stated claim for "obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear" within meaning of definition of extortion in Hobbs Act, 18 USC 1951.

Questions presented: (1) Did Seventh Circuit correctly hold, in acknowledged conflict with Ninth Circuit, that injunctive relief is available in private civil action for treble damages brought under RICO statute? (2) Does Hobbs Act which makes it crime to obstruct, delay, or affect interstate commerce "by robbery or extortion," and which defines "extortion" as "the obtaining of property from another, with [the owner's] consent," when such consent is "induced by the wrongful use of actual or threatened force, violence, or fear," 18 USC 1951(b)(2), criminalize activities of political protesters who engage in sit-ins and demonstrations that obstruct public's access to business's premises and interfere with freedom of putative customers to obtain services offered there?

**01-1119 Operation Rescue v. National Organization for Women Inc.**

*Racketeering—Private civil actions—Injunctive relief—Hobbs Act.*

Ruling below (*National Organization for Women Int. v. Scheidler*, 7th Cir., 267 F.3d 887, 70 LW 1218 (2001)):

Injunctive relief is available to private plaintiffs under civil remedy provision of Racketeer Influenced and Corrupt Organizations Act, 18 USC 1964; allegation that anti-abortion protesters took clinic patients' right to seek medical services, clinic doctors' right to perform their jobs, and clinics' right to provide medical services and otherwise conduct their businesses, although involving loss of intangible property in form of rights, stated claim for "obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear" within meaning of definition of extortion in Hobbs Act, 18 USC 1951.

Questions presented: (1) Did Seventh Circuit correctly hold, in acknowledged conflict with Ninth Circuit, that injunctive relief is available in private civil action for treble damages brought under RICO statute? (2) Does Hobbs Act, which makes it crime to obstruct, delay, or affect interstate commerce "by robbery or extortion," and which defines "extortion" as "the obtaining of property from another, with [the owner's] consent," when such consent is "induced by the wrongful use of actual or threatened force, violence, or fear," 18 USC 1951(b)(2), criminalize activities of political protesters who engage in sit-ins and demonstrations that obstruct public's access to business's premises and interfere with freedom of putative customers to obtain services offered there?

**01-9094 Abdul-Rahman v. Bell**

*Habeas corpus—Second or successive petitions—Intervening legal development.*

Ruling below (8th Cir., 1/28/02, unpublished, and 2/11/02, unpublished):

Motion under Fed.R.Civ.P. 60(b) for relief from judgment holding that claims asserted in habeas corpus action were procedurally defaulted, which motion was based upon intervening adoption of state supreme court rule relating to exhaustion of state remedies respecting claims of error, was properly construed by district court as equivalent

of successive habeas corpus petition and, as such, is denied for movant's failure to satisfy criteria of 28 USC 2244(b)(2).

Questions presented: (1) Did Sixth Circuit err in holding, in square conflict with decisions of this court and other circuits, that every Fed.R.Civ.P. 60(b) motion constitutes prohibited "second or successive" habeas petition as matter of law? (2) Does court of appeals abuse its discretion in refusing to permit consideration of vital intervening legal development when failure to do so precludes habeas petitioner from ever receiving any adjudication of his claims on merits?

Petition for certiorari filed 3/19/02, by Thomas C. Goldstein, Amy Howe, and Goldstein & Howe PC, all of Washington, D.C., William P. Redick Jr., of Whites Creek, Tenn., and Bradley MacLean and Sites & Harbison PLLC, both of Nashville, Tenn.

## Review Denied

**01-1053 Anderson v. Mathewy**

*Habeas corpus—Evidentiary hearing—Competency.*

Ruling below (7th Cir., 253 F.3d 1025 (2001)):

Evidentiary hearing is required to determine whether habeas corpus petitioner received ineffective assistance of counsel when his defense team failed to pursue his request for hearing on his competency to stand trial; petitioner did not receive full and fair hearing on this issue in state courts.

**01-1060 Bishop v. United States**

*Juries—Seating of statutorily disqualified jurors—Evidence—Hearsay.*

Ruling below (8th Cir., 264 F.3d 535 (2001)):

Out-of-court statements of tax defendant's deceased former bookkeeper that it was her fault that income was omitted from defendant's books was proffered by defendant to show truth of matter asserted and, therefore, was inadmissible hearsay; although juror was statutorily disqualified from sitting due to pending criminal charge, her presence on defendant's jury was not reversible error in absence of demonstration that she was biased.

**01-1192 Wilson v. Georgia**

*Search and seizure—Vehicle stops—Reliability of informer.*

Ruling below (Ga. Ct. App., 549 S.E.2d 418, 249 Ga.App. 560 (2001)):

Trial court's determination that informer whose tip led to stop of defendant's vehicle was reliable, based on police officer's testimony that informer had on two previous occasions provided officer with information that led to arrests and seizures of drugs, was not clearly erroneous, even though officer testified that, in absence of long-standing relationship with informer, he felt compelled to independently verify information in tip.

**01-1194 Smaldone v. Senkowski**

*Habeas corpus—Limitations period—Equitable tolling—Issue preclusion.*

Ruling below (2d Cir., 273 F.3d 133 (2001)):

Erroneous belief on part of attorney for habeas corpus petitioner that properly filed state motion for collateral relief "resets" limitations period rather than simply tolling it is not rare and exceptional circumstance meriting application of equitable tolling; this court lacks jurisdiction to consider issue of retroactive application of *Zarva v. Artus*, 254 F.3d 374, 69 CrL 471 (2d Cir. 2001), which held that district court may—and in some cases must—gray proceedings on habeas petition that, as originally submitted, con-

# Journal of Proceedings

Reprinted below are excerpts from the Supreme Court's Journal of Proceedings covering all criminal matters acted upon by the court on the dates indicated.

April 22, 2002

## Certiorari—Summary Disposition

**00-1936** Newkirk v. United States. The petition for a writ of certiorari is granted. The judgment is vacated and the case is remanded to the United States Court of Appeals for the Eleventh Circuit for further consideration in light of *Ashcroft v. Free Speech Coalition*, 535 U.S. \_\_\_ [71 CrL 81] (2002).

**00-8114** Mento v. United States. The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated and the case is remanded to the United States Court of Appeals for the Fourth Circuit for further consideration in light of *Ashcroft v. Free Speech Coalition*, 535 U.S. \_\_\_ [71 CrL 81] (2002).

**01-571** Tampico v. United States. The petition for a writ of certiorari is granted. The judgment is vacated and the case is remanded to the United States Court of Appeals for the Fifth Circuit for further consideration in light of *Ashcroft v. Free Speech Coalition*, 535 U.S. \_\_\_ [71 CrL 81] (2002).

**01-805** Fox v. United States. The petition for a writ of certiorari is granted. The judgment is vacated and the case is remanded to the United States Court of Appeals for the Fifth Circuit for further consideration in light of *Ashcroft v. Free Speech Coalition*, 535 U.S. \_\_\_ [71 CrL 81] (2002).

**01-836** O'Connor v. United States. The petition for a writ of certiorari is granted. The judgment is vacated and the case is remanded to the United States Court of Appeals for the Armed Forces for further consideration in light of *Ashcroft v. Free Speech Coalition*, 535 U.S. \_\_\_ [71 CrL 81] (2002).

**01-1058** Peebles v. United States. The petition for a writ of certiorari is granted. The judgment is vacated and the case is remanded to the United States Court of Appeals for the Fifth Circuit for further consideration in light of *Ashcroft v. Free Speech Coalition*, 535 U.S. \_\_\_ [71 CrL 81] (2002).

**01-7495** Snow v. United States. The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated and the case is remanded to the United States Court of Appeals for the Fifth Circuit for further consideration in light of *Ashcroft v. Free Speech Coalition*, 535 U.S. \_\_\_ [71 CrL 81] (2002).

## Orders in Pending Cases

**01M48** Matney v. Battles, Warden

**01M50** Buell v. Mitchell, Warden

The motions to direct the Clerk to file petitions for writs of certiorari out-of-time are denied.

**01-8270** Paris v. United States. The motion of petitioner for leave to proceed *in forma pauperis* is denied. Petitioner is allowed until May 13, 2002, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

## Certiorari Granted

**00-9094** Abdur'Rahman v. Bell, Warden. The motion of petitioner for leave to proceed *in forma pauperis* is granted.

The petition for a writ of certiorari is granted limited to Questions 1 and 2 presented by the petition.

## Certiorari Denied

**00-1060** Sishop v. United States

**01-1192** Wilson v. Georgia

**01-1194** Smalcione v. Senkowski, Supt., Clinton

**01-1202** Jackson v. Michigan

**01-1282** Williams v. Jaglowski, Detective

**01-1286** Harris v. Michigan

**01-1309** Fintizi v. Murphy

**01-1400** Trammell v. United States

**01-1405** Jones v. United States

**01-1409** Avaios-Barriga v. United States

**01-1414** Jimenez v. United States

**01-1422** Williams v. United States

**01-7593** Lewis v. California

**01-7776** Wrinkles v. Indiana

**01-7858** Hatten v. Texas

**01-8405** Straight v. Jimmy

**01-8408** Bordner v. Missouri

**01-8412** Armstrong v. Lebowitz

**01-8421** Lewis v. Smith

**01-8426** Mackinruth v. Arkansas

**01-8427** Lippert v. Trippett, Warden

**01-8428** Lambesta v. Greiner, Supt., Green Haven

**01-8430** Tinsley v. Million, Warden

**01-8439** McGee v. Hildebrand

**01-8448** Shabazz v. California

**01-8450** Stevens v. Colorado

**01-8488** McCord v. Florida

**01-8459** Deuty v. Texas

**01-8480** Cowan v. Phillips, Warden

**01-8481** Parks v. Indiana

**01-8486** Swails v. GA Bd. of Pardons & Parole

**01-8489** Williams v. Merkle, Warden

**01-8471** Romano v. New York

**01-8473** Parrilla v. New York

**01-8474** Brown v. Kennedy

**01-8476** Caldwell v. Cahill-Masching, Warden

**01-8483** Gallamore v. Cockrell, Dir., TX DCJ

**01-8485** Peoples v. Doolan

**01-8486** Bagley v. Vance

**01-8487** McFarland v. Garcia, Warden

**01-8489** Hill v. Oklahoma

**01-8493** Hadley v. Taylor

**01-8494** Hilton v. Moore, Sec., FL DOC

**01-8497** Hirsch v. Jones, Warden

**01-8498** Hulcomb v. Kemna, Supt., Crossroads

**01-8499** Gordon v. New Orleans

**01-8500** Hernandez v. Candelaria, Warden

**01-8501** Gross v. Kupec, Warden

**01-8502** Khalid v. Luebbers, Supt., Potasi

**01-8504** Hill v. Florida

**01-8520** Sontchi v. Cockrell, Dir., TX DCJ

**01-8522** Naddi v. Lamarque, Warden

**01-8523** In re Pellegrino

**01-8524** Piarczyk v. Ayers, Warden

**01-8530** Spurgeon v. Texas

**01-8533** Woods v. Alabama

**01-8535** Tracy v. Addison, Warden

**01-8543** Dumas v. Jury Selection Comm'n

**01-8545** Anderson v. Lambert, Supt. WA

**01-8560** Nobles v. Florida

**01-8571** Barnes v. Arkansas

**01-8576** Jones v. Bryant, Warden

**01-8584** Smith v. Luebbers, Supt., Potasi

**01-8586** Moore v. Jackson

**01-8589** Moore v. Starnes, Warden

**01-8609** Price v. Sutton, Admn'r