

In The Supreme Court
Of The United States

Garry David Gallardo,
Petitioner,

v.
United States of America,
Respondent.

No. _____
Motion For Extension of Time
to File Certiorari Petition to
Justice Samuel Alito,
Justice for the Fifth Circuit
Sup. Ct. Rule 13.5

Now comes Garry David Gallardo, petitioner, to respectfully apply to the Honorable Samuel Alito, Justice for the Fifth Circuit, to grant petitioner an extension of time of 30 days in which to file his petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit, issued on July 29, 2024, a copy heretofore attached, where the 90-day date to seek certiorari review in this Court is on October 27, 2024.

It will be presented, in the petition, that both the District Court and the Court of Appeals failed to examine the lower court's jurisdiction, and realize that the limits in U.S. Const., Art. III, § 2, as construed by this Court, does not allow the conferral of "criminal" case jurisdiction, by Congress, upon a Constitutional Article III court that sits within a State, and is a case "involving principles the settlement of which is



portance to the public as distinguished from that of "petitioner alone. Powell v. Nevada, 511 U.S. 79, 86 (1994) (Thomas, J., with whom Rehnquist, C.J., dissent).

As petitioner has a constitutional right not to be prosecuted by the federal Government, for conduct that is not a "precise subject-matter" the Framers did not enumerate, in Article I, §8, of the Constitution for federal—thus congressional—regulation, see, e.g., Keller v. United States, 213 U.S. 138, 146-147 (1909), in an Article III court only to be able to sit in judgment to "cases in law and equity," in the conjunctive, but when the United States shall be a party only "to controversies (but not to 'all')" controversies, Williams v. United States, 289 U.S. 553, 572 (1933), he has had his "federally protected rights...invaded," and "it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief." Bell v. Hood, 327 U.S. 678, 684 (1946). In this case—the reversal of the unconstitutional federal criminal convictions, and dismissal of the constitutionally infirm indictments with prejudice. See, also, Barnes v. Gorman, 536 U.S. 181, 189 (2002) (same).

As this Court takes an oath "to uphold the Constitution of the United States," Rostker v. Goldberg, 453 U.S. 57, 64 (1981), as Mr. Justice Stevens opined, "this Court—has] a primary ob-

igation to protect the rights of the individual that are embodied in the Federal Constitution," Harris v. Reed, 489 U.S. 255, 267 (1989) (citation omitted) (Stevens, J., concurring), by granting an extension of time requested, see, e.g., Bond v. United States, case number 09-1227, March 9, 2010, request for 30 day extension to file petition for a writ of certiorari granted.

Dated: October 16, 2024.

Respectfully submitted,

Garry David Gallardo

Garry David Gallardo, #41571-080

Petitioner pro se

Federal Correctional Institution - Hazelton

P.O. Box 5000

Bruceston Mills, WV 26525

Certificate of Service

I hereby certify that a copy of the foregoing application for an extension of time, and declaration of good faith and circumstances warranting such extension, was served, by first class mail, postage prepaid, on this 16th day of October, 2024, on:

Solicitor General
of the United States
950 Pennsylvania Ave, N.W.
Room 5614
Washington, DC 20530-0001

Garry David Gallardo
Garry David Gallardo, petitioner pro se

United States Court of Appeals
for the Fifth Circuit

No. 23-50878

United States Court of Appeals
Fifth Circuit

FILED

July 29, 2024

UNITED STATES OF AMERICA,

Lyle W. Cayce
Clerk

Plaintiff—Appellee,

versus

GARRY DAVID GALLARDO,

Defendant—Appellant.

Application for Certificate of Appealability
the United States District Court
for the Western District of Texas
USDC No. 5:06-CR-133-1
USDC No. 5:87-CR-98-1

ORDER:

Garry David Gallardo, federal inmate # 41571-080, is in custody pursuant to his 1987 and 2006 child pornography convictions. Gallardo filed identical motions under Federal Rule of Civil Procedure 60(b) in each of his criminal proceedings, attacking his underlying criminal convictions and contending that the trial courts respectively lacked jurisdiction over his criminal proceedings and to enter his criminal judgments. The district court construed the motions as seeking relief under 28 U.S.C. § 2255 and dismissed them without prejudice for lack of jurisdiction for failure to obtain

authorization from this court to file a successive § 2255 motion. The district court also denied Gallardo's motions to proceed in forma pauperis (IFP) on appeal, finding that any appeal would "fail to present a good faith non-frivolous issue." Gallardo's notices of appeal are construed as motions for a certificate of appealability (COA) to appeal the district court's dismissal of his Rule 60(b) motions. *See* FED. R. APP. P. 22(b)(2). Gallardo also moves for leave to proceed IFP on appeal, to expedite his appeal, and for this court to protect his constitutional rights.

As a preliminary matter, because Gallardo did not raise in his Rule 60(b) motions his argument that he received ineffective assistance when his counsel abandoned him with respect to the direct appeal of his 1987 conviction, this court lacks jurisdiction to consider it. *See Black v. Davis*, 902 F.3d 541, 545 (5th Cir. 2018). Otherwise, to obtain a COA to appeal the denial of his Rule 60(b) motions, Gallardo must make "a substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2), by showing "at least, that jurists of reason would find it debatable whether the [motion] states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling," *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Gallardo fails to make the requisite showing, and, accordingly, his motion for a COA is DENIED. His motion to proceed IFP on appeal, his motion to expedite his appeal, and his motion seeking protection of his constitutional rights are likewise DENIED.

Gallardo has ignored this court's previous warnings and has remained undeterred by the sanctions previously imposed by continuing to file frivolous, repetitive, or otherwise abusive motions in this court and the district court challenging his 1987 and 2006 child pornography convictions. Accordingly, Gallardo is ORDERED to pay a sanction of \$500 to the clerk of this court, and he is BARRED from filing, in this court or in any court

subject to this court's jurisdiction, any pleading based, in whole or in part, on his child pornography convictions until the sanction is satisfied. In the event that Gallardo satisfies the \$500 sanction, he shall remain BARRED from filing, in this court or in any court subject to this court's jurisdiction, any pleading based, in whole or in part, on his child pornography convictions, unless he first obtains leave of the court in which he seeks to file such challenge.

Gallardo is further WARNED that he should review any pending complaints, motions, and appeals and withdraw any that are frivolous or repetitive, and that failure to withdraw any frivolous or repetitive proceedings could result in the imposition of monetary sanctions. Finally, Gallardo is WARNED that filing any frivolous or repetitive pleading or challenge to his child pornography convictions, in this court or any court subject to this court's jurisdiction, will subject him to additional and progressively more severe sanctions.



CORY T. WILSON

United States Circuit Judge

IN THE SUPREME COURT
OF THE UNITED STATES

Garry David Gallardo,
Petitioner

No. _____

vi
United States of America,
Respondent.

Unsworn Declaration of Good Faith
and Circumstances warranting
Extension of Time

Comes now Garry David Gallardo, petitioner, pro se, in good faith, to apprise this Court of the extraordinary circumstances that warrant granting the extension of time to file a petition for a writ of certiorari, and why said request has been attempted to be filed "with the Clerk at least 10 days before the date the petition is due," Sup. Ct. R. 13.5.

This institution is severely plagued with staffing and management problems that render inmates on the lower housing units, of which petitioner, having to use a wheelchair, to be deprived of access to the electronic law library computers, located in the Education Department, when staff shortages in the mornings prevent the lower units from going to the Education Department, to research the law and make copies on the inmate copier located in said Department.

And to obtain copies via unit team staff, especially

from certain inmate counselors makes pulling teeth from a chicken much easier.

As the appendices, that will be attached to the petition will demonstrate, the Government has done nothing but to have denied petitioner of his guaranteed constitutional rights that the petition will delve to prove, to this Court, that it is time to bring the Federal Government back to the limits the Framers intended, when they established a Federal Government whose powers are supposed to be few and defined, and not limitless as it has been exercising for so many decades.

The attached Lockdown Status notice is just one example of the many times this compound suffers from inaccess to inmate services (copies, low library, etc.) as to render the institution merely a warehouse of human beings, at the whim of the administration staff.

I declare under the penalty of perjury that the foregoing, and the motion for extension of time, is true and correct.
28 U.S.C. § 1746.

Dated: October 16, 2024.

Respectfully submitted,
Garry David Gallardo
Garry David Gallardo, # 41571-080

petitioner pro se
Federal Correctional Institution
Hazleton
P.O. Box 5000
Bruneton Mills, WV 26525

Certificate of Service

I hereby certify that a copy of the foregoing instrument was served, by first class mail, postage prepaid, on this 16th day of October, 2024, on

The Solicitor General
of the United States
950 Pennsylvania Ave, N.W.
Room 5614
Washington, DC 20530-0001

Garry David Gallardo
Garry David Gallardo, petitioner pro se



FCC Hazelton

FCI Hazelton

Lockdown Status

This serves as a notification to the FCI Hazelton inmate population. The FCI will remain on lockdown status until further notice. This is the result of an incident which occurred on September 17, 2024, which involved a staff member. Understand, these types of incidents will not be tolerated and will result in the loss of privileges as well as increased safety and security measures. The only means of returning to modified operations is through inmates' strict adherence to the rules, regulations, and orders put forth by staff. All refusals to cooperate will be met with disciplinary action and may result in extended lock down periods. Your cooperation is not only appreciated but expected. Thank you.

J. Boliar, Acting Warden, FCI

09/17/2024

Date