

April 28, 2005

John Gregory Lambros  
Reg. No. 00436-124  
U.S. Penitentiary Leavenworth  
P.O. Box 1000  
Leavenworth, Kansas 66048-1000

**CLERK**

U.S. Court of Appeals for the Eighth Circuit  
Thomas F. Eagleton Court House  
Room 24.329  
111 South 10th Street  
St. Louis, Missouri 63102  
U.S. CERTIFIED MAIL NO. 7003-3110-0005-5772-2236

**RE: LAMBROS vs. USA, EIGHTH CIRCUIT NO. 05-1992**

Dear Clerk:

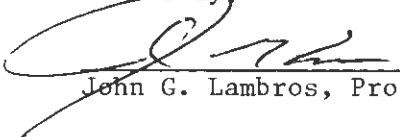
Attached please find for **FILING** one (1) original and three (3) copies of the following motion:

1. PETITIONER LAMBROS' RESPONSE TO GOVERNMENT'S APRIL 20, 2005 OPPOSITION.  
Dated: **April 28, 2005**

in the above-entitled action.

Thank you in advance for your consideration in this matter.

Sincerely,

  
John G. 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 USP Leavenworth MailRoom on this **28th DAY of APRIL, 2005**, to:

2. Clerk of the Court as stated above;
3. U.S. Attorney's Office, Attn: Jeffrey S. Paulsen, 600 U.S. Courthouse, 300 S. Fourth Street, Minneapolis, Minnesota 55415.

  
John Gregory Lambros, Pro Se

).

UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

JOHN GREGORY LAMBROS,                   \*  
  \*     **APPEAL NO. 05-1992**  
  \*  
vs.   \*  
  \*  
**UNITED STATES OF AMERICA,**           \*  
  \*  
Respondent.                           \*     **AFFIDAVIT FORM.**

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**PETITIONER LAMBROS' RESPONSE TO GOVERNMENT'S APRIL 20,  
2005 OPPOSITION**

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NOW COMES the Petitioner JOHN GREGORY LAMBROS, Pro Se, (hereinafter MOVANT) in response to the Governments' April 20, 2005, "OPPOSITION OF THE U.S. TO PETITIONER'S APPLICATION FOR PERMISSION TO FILE A SECOND OR SUCCESSIVE PETITION UNDER 28 U.S.C. § 2255."

JOHN GREGORY LAMBROS, declares under the penalty of perjury:

1. I am the Movant in the above-entitled action and make this declaration in opposition to the actions of the Clerk of the Court for the District of Minnesota and the April 20, 2005, opposition by the government.
2. Movant Lambros denies each and every material allegation contained in the government's April 20, 2005 opposition, except as hereinafter may be expressed and specifically admitted.

**FACTS:**

3. On February 15, 2005, Movant LAMBROS filed via U.S. Certified Mail No. 7001-0320-0005-5878-9876, with the Clerk of the Court for the District of Minnesota, that was received on February 22, 2005, 8:53 A.M. at the clerks office, his motion entitled, " MOTION FOR RELIEF FROM JUDGMENT OR ORDER, DUE TO INTERVENING CHANGE IN CONTROLLING LAW, CRAWFORD vs. WASHINGTON, 158 L.Ed.2d 177 (March 08, 2004), UNDER ANY ONE OF THREE SEPARATE SUBSECTIONS OF FEDERAL RULES OF CIVIL PROCEDURE 60(b) -

SECTIONS ONE (1), FIVE (5), AND SIX (6)."

4. On April 12, 2005, Clerk Gans for the Eighth Circuit wrote U.S. Assistant Attorney JEFFREY S. PAULSEN in this above-entitled action requesting him to respond as to Movant's alleged permission to file a successive habeas petition as per Rule 22B(c).

5. On April 15, 2005, Movant Lambros telephoned **CLERK PAM** for the Eighth Circuit and informed her "I didn't file any pleading with your court and was concerned how I received a file number." See, **EXHIBIT A**. Clerk Pam requested I telephone the Clerk for the Eighth Circuit in St. Paul, as she did not have my pleading. At approximately 8:30 a.m. I telephoned Clerk Judy at (651) 848-1300 and informed her that:

- a. The above-entitled pleading was filed with the District Court as a RULE 60(b) motion;
- b. The district court has never ruled on the Rule 60(b) motion;
- c. The U.S. Attorney has never responded to the Rule 60(b) I submitted;
- d. I have never received a CIVIL CASE FILE NUMBER on the Rule 60(b) motion I filed with the district court from the Clerk for the District Court;
- e. I never intended my Rule 60(b) motion to be filed with the Eighth Circuit unless the district court denied my Rule 60(b) motion.
- f. CLERK JUDY STATED: She would speak to her supervisor;
- g. She would write me as to the status of my pleading with a form for me to sign as to the facts; **(TO DATE I HAVE NOT RECEIVED SAME)**
- h. She would try to have my Rule 60(b) motion filed with the district court after facts were clarified.

6. I JOHN G. LAMBROS did not give permission to the Clerk for the District Court for the District of Minnesota to transfer my Rule 60(b) pleading as described above in paragraph three (3) to the Eighth Circuit Court of Appeals.

7. Title 18 Sections 2071 and 2076: Movant Lambros believes the Clerk for the District Court for the District of Minnesota is in violation of the following statutes for not filing movant's RULE 60(b) Motion in this action and transferring same to the Eighth Circuit Court of Appeals without Movant's permission:

a. Title 18 USC Section 2071, "Concealment, removal, or mutilation generally;"

b. Title 18 USC Section 2076, "Clerk of United States District Court."

8. This Movant requests that his Court return his Rule 60(b) motion back to the Clerk for the District Court and order the Clerk to place same on the docket sheet for the district court's review and ORDER.

**RESPONSE TO GOVERNMENT'S OPPOSITION:**

9. **PAGE ONE (1)**: The government states Lambros filed a motion under Rule 60(b) of the Federal Rules of Civil Procedure seeking relief based on the Supreme Court's decision in CRAWFORD vs. WASHINGTON, 541 U.S. 36 (2004). This is true. The government also states, "Because Crawford has not been made retroactive to cases on collateral review, the application should be denied." This is not true. On February 22, 2005, the Ninth Circuit held in BOCKTING vs. BAYER, 399 F.3d 1010 (9th Cir. 2005):

a. "(1) CRAWFORD decision applied retroactively,"

10. The March 2, 2005, Vol. 76, No. 21, CRIMINAL LAW REPORTER, clearly stated on Page 405, "The U.S. Supreme Court's landmark Confrontation Clause decision in CRAWFORD vs. WASHINGTON, greatly hobbling prosecutors' ability to introduce at trial out-of-court testimonial statements made by a nontestifying declarant, is a new "WATERSHED" procedural rule that PROVIDES A POTENTIAL AVENUE FOR HABEAS CORPUS RELIEF TO PRISONERS WHOSE CONVICTIONS WERE ALREADY FINAL WHEN THE RULING CAME DOWN, the Ninth Circuit declares." (emphasis added).

11. **PAGE ONE (1):** The government states, "It is undisputed that the present motion would constitute a successive section 2255 petition." This is not true. Movant clearly filed a RULE 60(b) Motion and the district court did not rule that Movant motion was a successive 2255 motion, therefore how can the government state my Rule 60(b) motion is a successive section 2255 motion. It appears that the U.S. Attorney's Office in Minnesota, Thomas B. Heffelfinger and Jeffrey S. Paulsen, are stating:

a. That every Fed.R.Civ.P. 60(b) motion constitutes a prohibited "second or successive" habeas petition as matter of law!

b. That they refuse to permit consideration of vital intervening legal development!

12. **PLEASE NOTE:** On April 25, 2005, the U.S. Supreme Court heard oral hearings in GONZALEZ vs. CROSBY, U.S. No. 04-6432, as to the following question:

a. "Did court of appeals err in holding that every Rule 60(b) motion (other than for fraud under (b)(3)) constitutes prohibited "second or successive petition as matter of law, in square conflict with dicisions of this court and other circuits?"

13. **PAGE TWO (2):** The government states, "Importantly, only the Supreme Court itself can make a new rule of constitutional law retroactive to cases on collateral review. TYLER vs. CAIN, 533 U.S. 656, 663 (2001). This is not true. On March 22, 2005, the U.S. Supreme Court heard arguments regarding the commencement of the Antiterrorrorism and Effective Death Penalty Act's **ONE-YEAR LIMITATIONS PERIOD** when a federal prisoner seeks habeas relief and/or RULE 60(b) relief on the basis of a constitutional right newly recognized by the Supreme Court. Some of the federal courts of appeals have held that the limitations period begins to run on the date the justices **INITIALLY** recognize the new right. Other circuits have held or assumed that the period does not commence until the Supreme Court holding has been declared retroactive on collateral review. The latter position raises the further

issue of WHICH COURT MUST DECLARE THE RIGHT RETROACTIVE TO TRIGGER THE LIMITATIONS PERIOD - A DISTRICT COURT, A CIRCUIT COURT, OR THE SUPREME COURT. See, DODD vs. U.S., U.S. No. 04-5286. MADE RETROACTIVE BY WHOM? Justice Sandra Day O'Connor commented at the DODD hearing to Justice Bergmann that "there have been very few instances in which the Supreme Court has declared a right to be retroactive. The retroactive decision is usually made in the first instance by a lower court," she noted. Justice O'Connor further stated, "nothing in the statute says which level of court must declare the right to be retroactive."

14. **PAGE TWO AND THREE:** The government states CRAWFORD has not been made retroactive to cases on collateral review and quotes this Court's opinion in EVANS vs. LUEBBERS, 371 F.3d 438, 444 (8th Cir. 2004). Upon review of this Courts OPINION in EVANS, this Court only offered an **ONE (1) SENTENCE OVERVIEW AS TO THE RETROACTIVITY OF CRAWFORD.**

"First, the CRAWFORD Court did not suggest that this doctrine would apply retroactively and the doctrine itself does not appear to fall within either of the two narrow exceptions to TEAGUE vs. LANE'S non-retroactivity doctrine."

See, EVANS vs. LUEBBERS, 371 F.3d 438, 444 (8th Cir. 2004)

15. Movant Lambros incorporates and restates the opinion of the Ninth Circuit as to the CRAWFORD rule is a new "Watershed" procedural Rule available on collateral review. See, BOCKETING vs. BAYER, 399 F.3d 1010 (9th Cir. 2005). Movant Lambros believes this court should offer a more astute review of CRAWFORD instead of the language, "the doctrine itself does not appear to fall within ..."

16. **PAGE THREE:** The government states, "Even if CRAWFORD were retroactive to cases on collateral review, it still would not help Lambros. Lambros first complains that testimonial hearsay statements were used in the GRAND JURY. But CRAWFORD applies **ONLY TO THE USE OF TESTIMONIAL HEARSAY AT TRIAL, NOT IN THE GRAND JURY.**" (emphasis added) This is not true. This court clearly stated in EVANS that the CRAWFORD holding applies to GRAND JURIES:

"Still, by its terms, CRAWFORD's holding applies 'to prior testimony at a preliminary hearing, BEFORE A GRAND JURY, or at a former trial; and to police interrogations." (emphasis added)

See, EVANS vs. LUEBBERS, 371 F.3d 438, 445 (8th Cir. 2004)

17. It is clear that the government is trying to mislead this court and take the path of the yellow brick road. It is unfortunate the U.S. Attorney's Office for the District of Minnesota chooses to waste the time of this court with untruthful statements of law.

18. **PAGE THREE:** The government states, "For the foregoing reasons, Lambros' application to file a successive section 2255 petition should be denied." THIS IS NOT TRUE. Again, this Movant did not file an application to file a successive section 2255 petition with the district court nor this court.

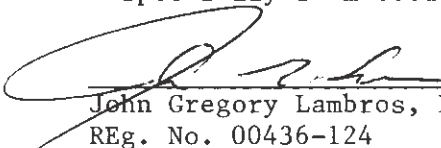
**CONCLUSION:**

19. Movant requests that his Court forward his RULE 60(b) pleading back to the district court to be docketed and ruled on by the district court.

20. I JOHN GREGORY LAMBROS, declare under the penalty of perjury that the foregoing is true and correct. Title 28 USCA §1746.

**EXECUTED ON: April 28, 2005**

Respectfully submitted,

  
\_\_\_\_\_  
John Gregory Lambros, Pro Se  
REg. No. 00436-124  
U.S. Penitentiary Leavenworth  
P.O. Box 1000  
Leavenworth, Kansas 66048-1000 USA  
Web site: [www.brazilboycott.org](http://www.brazilboycott.org)

April 15, 2005

John Gregory Lambros  
REG. No. 00436-124  
U.S. Penitentiary Leavenworth  
P.O. Box 1000  
Leavenworth, Kansas 66048-1000

Attn: Clerk Pam

CLERK OF THE COURT  
Attn: Clerk Pam  
United States Court of Appeals for the Eighth Circuit  
Thomas F. Eagleton Court House  
Room 24.329  
111 S. 10th Street  
St. Louis, Missouri 63102

RE: 05-1992, LAMBROS vs. USA

Dear Clerk Pam:

Today we spoke at approximately 8:15 a.m. as to the above-entitled case number and the April 12, 2005, copy of your letter to U.S. Attorney Jeffrey Paulsen, as to the above-entitled action.

As you may recall, I informed you I didn't file any pleading with your court and was concerned how I received a file number. You requested I telephone the Clerk at your St. Paul, Minnesota Office, as the pleading was filed there.

At approximately 8:30 a.m. I telephoned (651) 848-1309 and spoke with Clerk JUDY who informed me that her supervisor had requested that she file a Rule 60(b) motion I had filed with the District Court on or about February/March 2005. I informed Clerk JUDY of the following facts:

1. the Rule 60(b) motion was filed with the District Court for a ruling;
2. the district court has never ruled on the Rule 60(b) motion;
3. the U.S. Attorney has never responded to the Rule 60(b) motion;
4. I have never received a CIVIL CASE FILE NUMBER on the Rule 60(b) motion;
5. I never intended my Rule 60(b) motion to be filed with the Eighth Circuit unless the district court denied my Rule 60(b) motion.

Clerk JUDY informed me of the following:

1. She would speak to her supervisor;
2. She would write me as to the status of my pleading with a form for me to sign as to the facts;
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FILE

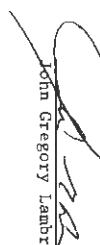
Page 2  
April 15, 2005  
Lambros' letter to Clerk Pam, 8th Circuit Ct. of Appeals  
RE: 05-1992, LAMBROS vs. USA

Clerk JUDY was very helpful and professional and I believe understood my concern as to my district court filing being transferred to the Eighth Circuit Court of Appeals WITHOUT MY PERMISSION and not even being docketed within the district court.

Hopefully I had followed all filing rules when I filed the Rule 60(b) pleading and have not caused this misunderstanding somehow.

Thank you in advance for your continued consideration in this most important matter.

Sincerely,

  
John Gregory Lambros, Pro Se

c:  
Lambros family  
File

EXHIBIT A.

8