

December 6, 2005

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

**CLERK OF THE COURT**

U.S. Court of Appeals for the Eighth Circuit  
24.329 Thomas F. Eagleton U.S. Courthouse  
111 South Tenth Street  
St. Louis, MO. 63102-1116  
U.S. CERTIFIED MAIL NO. 7002-2410-0001-3729-9166

**RE: USA vs. LAMBROS, Appeal No. 05-3383 - FRAP 28(j) - CITATION OF SUPPLEMENTAL AUTHORITY.**

Dear Clerk of the Court:

As per FRAP 28(j) "Citation of Supplemental Authority" and this Court's IOP-III-I(2), I am requesting to call the Court's attention to an intervening case that was decided by the U.S. Court of Appeals for the Third Circuit on September 06, 2005, that has just become available to the U.S.P. Leavenworth Library due to new clerical inmates within the law library:

**IN RE WAGNER, 421 F.3d 275 (3rd Cir. 2005)**

**REASONS FOR SUPPLEMENTAL CITATION:**

On Page 5 of Lambros' "PETITION FOR REHEARING AND/OR PETITION FOR REHEARING EN BANC," filed on November 9, 2005, Lambros raised the following issue:

**II. CASTRO vs. U.S., 157 L.Ed.2d 778 (2003) APPLIES RETROACTIVELY**

The Third Circuit applied CASTRO vs. U.S., RETROACTIVELY within IN RE WAGNER, 421 F.3d 275 (2005):

"Over the past decade [April 1995 thru 2001], Wagner has filed four motions in the District Court for post-conviction relief. The District Court denied Wagner's first two motions on the merits. This Court affirmed. However under CASTRO, neither of these documents are properly viewed as motions under §2255." Id. at 278.

"... we hold that Wagner is entitled to file a motion pursuant to §2255. Accordingly, the District Court's order denying Wagner's Third and Fourth Motion as second or successive § 2255 motions are vacated." Id. at 278.

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December 06, 2005

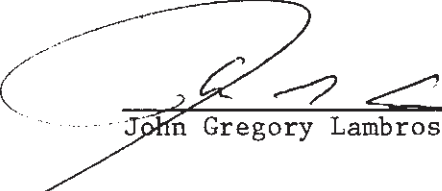
Lambros' letter to Clerk of Court for 8th Circuit

RE: USA vs. LAMBROS, Appeal No. 05-3383 - FRAP 28(j)

See, EXHIBIT A (Time line of four (4) motions filed by Wagner, IN RE WAGNER, 421 F.3d 275 (3rd Cir. 2005)

Thank you in advance for directing this letter to Circuit Judges Riley, Fagg, and Gruender.

Respectfully submitted,



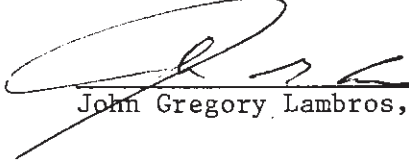
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John Gregory Lambros, Pro Se

CERTIFICATE OF SERVICE

I declare under the penalty of perjury that a true and correct copy of this letter was mailed within a stamped addressed envelope from the USP Leavenworth legal mailbox or mailroom on this **6th DAY OF DECEMBER, 2005**, to:

1. The Clerk of the Court, as addressed above. One (1) original and five (5) copies;
2. Jeffrey S. Paulsen, Attorney; Office of the U.S. Attorney, 600 U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota 55415.



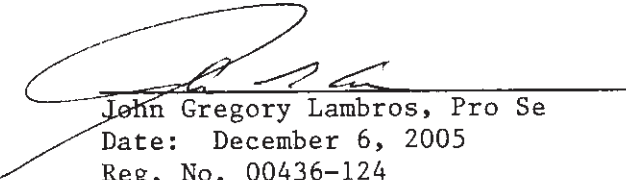
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John Gregory Lambros, Pro Se

PROCEDURAL TIME LINE OF MOTIONS FILED IN:

IN RE WAGNER, 421 F.3d 275 (3rd Cir. 2005)

1. WAGNER sentenced on February 28, 1994.
2. No direct appeal filed by WAGNER.
3. **FIRST MOTION:** WAGNER filed his first motion in late 1994 or early 1995. It is unclear as to the statute the first motion was filed under. The District Court denied WAGNER's first motion on the merits on April 24, 1995. On July 24, 1996, the Third Circuit affirmed the denial.
4. **SECOND MOTION:** WAGNER filed a Rule 60(b)(6) Motion in October 1996, and the District Court RECHARACTERIZED the motion under 28 USC § 2255. The District Court denied the motion on the merits on October 31, 1996.
5. **THIRD MOTION:** WAGNER filed a Title 28 USC § 2255 motion on May 6, 1997. The District Court denied, no date offered. On September 18, 1997, the Third Circuit entered an order denying a certificate of appealability.
6. **FOURTH MOTION:** WAGNER filed a 28 USC §2255 in 2001. No date offered. District Court denied.
7. **INSTANT PROCEEDING:** WAGNER filed under 28 USC §2244 to the Third Circuit Court of Appeals, on October 2003. WAGNER requested the impact of the U.S. Supreme Court decision, CASTRO vs. U.S., 157 L.Ed.2d 778 (2003), as to the filing of the above four (4) motions.
8. The Third Circuit held: The First and Second motion can not be properly viewed as motions under § 2255, due to CASTRO. WAGNER's Third Motion was not a second § 2255 and his Fourth Motion was not a successive § 2255 motion.
9. The Third Circuit has applied CASTRO **RETROACTIVELY** in this action.

  
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Date: December 6, 2005  
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P.O. Box 1000  
Leavenworth, Kansas 66048-1000

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