

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 90-6036-CR-GONZALEZ  
95-6419-CV-GONZALEZ

Gabriel Scaff-Martinez,

Petitioner,

vs.

United States of America,

Respondent.

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**ORDER**

**THIS CAUSE** came before the Court upon Petitioner's Motion to Reopen Case [DE 7], Motion for Summary Judgment [DE 8] and Motion for Relief from Judgment Under Rule 60(b)(6) [DE 9].

The United States Code provides that no District Judge shall be required to entertain an application for a writ of habeas corpus if it appears that the legality of such detention has been determined in a prior application for a writ of habeas corpus. 28 U.S.C. § 2244(a). In order for a successive petition to escape dismissal, the applicant must show that the claim relies on a new rule of constitutional law made retroactive, the factual predicate for the claim could not have been discovered previously, or that the facts underlying the claim would be sufficient to establish that but for constitutional error, no reasonable fact finder would have found the applicant guilty of

the underlying offense. 28 U.S.C. § 2244(b)(2).

Petitioner Martinez cites Clisby v. Jones for the proposition that "the district courts must resolve all claims for relief in petitions for writ of habeas corpus, regardless of whether habeas relief is granted or denied" [DE 7, at page 5]. However, Petitioner Martinez "grounds for relief" are merely repetitious arguments regarding the Petitioner's original indictment, jury instructions, and government's proof presented at trial. This Court considered the aforementioned arguments in previous orders and denied same. See Docket entry 4, in civil case 95-6419, and Docket entries 666, 672, 723, 738, 747, 759, 765, 781, and 790 in criminal case 90-6036. Since Petitioner's Motion to Reopen Case [DE 7], Motion for Summary Judgement [DE 8] and Motion for Relief from Judgement Under Rule 60(b)(6) [DE 9] seem to be successive applications for habeas relief, and jurists of reason would not find these motions to state a claim of the denial of a constitutional right, Petitioner's motions must be denied.

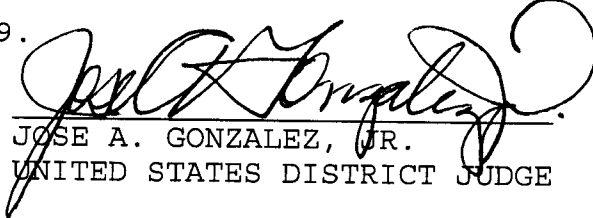
**THE COURT** having reviewed the issues at hand and being fully advised in the premises, it is hereby

**ORDERED AND ADJUDGED** that

- 1) Petitioner's Motion to Reopen Case [DE 7] is DENIED,
- 2) Motion for Summary Judgement [DE 8] is DENIED, and

3) Motion for Relief from Judgement Under Rule 60(b)(6) [DE  
9] is DENIED.

**DONE AND ORDERED**, in chambers, at Fort Lauderdale, Florida,  
this 20<sup>TH</sup> day of March, 2009.

  
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JOSE A. GONZALEZ, JR.  
UNITED STATES DISTRICT JUDGE