03-8710 ORIGINAL

IN the
Supreme Court of the United States

Supreme Court, U.S.
FILED
JAN 26 2003
OFFICE OF THE CLERK

IN re

Joseph M. WASKO,

Petitioner.

Petition for a Writ of ~~Mandate~~ ~~or~~ Habeas Corpus ~~or Certiorari or any other Writ Authorized by~~ this Court ~~to the United States Court of Appeals for the Ninth Circuit~~

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Joseph M. WASKO, C-14226
P.O. Box 8103, Room 2367X
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IN Propria Persona

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## Introduction

Petitioner, Joseph M. Wasko, a California state prisoner confined at the California Men's Colony in San Luis Obispo, California, respectfully requests that a writ of ~~mandate or~~ habeas corpus ~~or certiorari~~ issue; or in the alternative, that the Court use its power of original jurisdiction to issue the appropriate remedy to correct the injustice of the Court below; specifically, the order of September 23, 200

by the Ninth Circuit Court of Appeals, denying the Certificate of Appealability (COA).

## The Question Presented

Is it discretionary or mandatory for the courts below to issue a COA when petitioner has met the prerequisite "substantial showing of a denial of a constitutional right" under 28 U.S.C. section 2253(c) and this Court's holding in Slack v. McDa. (2000) 528 U.S. 473?

## Jurisdiction

Jurisdiction of this Court is found under 28 U.S.C. sections 1254(1) and 1651(a). The Ninth Circuit Court of Appeals denied petitioner's request for a COA on September 23, 2003. ~~The present petition is submitted within the required 90 day period following the denial.~~

## Statement of the Case and Facts

Petitioner, Joseph M. Wasko, attended his eighth (8th) parole suitability hearing on August 5, 1997. After being denied parole, Wasko sought relief by way of an administrative appeal which was unsuccessful. Wasko then petitioned the California Supreme Court for a writ of habeas corpus. That petition was

denied on December 22, 1998. Wasko filed a petition for a writ of habeas corpus under 28 U.S.C. Section 2254 in the United States District Court for the Southern District of California on February 1, 1999. On February 18, 1999, the petition was transferred to the United States District Court for the Central District of California. On February 24, 1999, the petition was summarily dismissed with leave to amend. On March 11, 1999, Wasko filed a First Amended Petition in the United States District Court for the Central District of California. On March 31, 1999, the Magistrate Judge assigned to the petition issued an order for further proceedings. On June 30, 1999, Respondent submitted a Return. On July 18, 1999, Wasko submitted his Traverse.

On March 24, 2003, after waiting patiently for almost four (4) years for a decision on his petition, Wasko submitted a motion to the district court Judge requesting the proceedings be expedited and that an immediate ruling be issued. On April 29, 2003, the Magistrate Judge filed his Report and Recommendation, recommending that the district Court deny the First Amended Petition and

dismiss it with prejudice. On May 17, 2003, Wasko submitted 40 pages of objections to the Magistrate Judge's Report pointing out the errors, stating reasons for his objections, and pointing to evidence in the record supporting his objections. On June 11, 2003, the district court adopted the Magistrate Judge's recommendation and proposed order without comment or consideration to Wasko's 40 page of objections. On July 4, 2003, Wasko submitted to the district court a Notice of Appeal, request for issuance of a COA, and a motion to proceed on appeal in forma pauperis. On July 25 2003, the district court summarily denied the request for the COA. On September 23, 2003, the Ninth Circuit Court of Appeals summarily denied the request for the COA. On September 29, 2003, Wasko submitted a hand printed letter to Judges Silverman and Wardlaw of the Ninth Circuit Court of Appeals asking for reconsideration in light of two decisions rendered by that Court on June 30, 2003, in Biggs v. Terhune and on August 4, 2003, in Brown v. Poole, having direct bearing on Wasko's petition. On September 30, 2003, Wasko submitted a hand

printed letter to the Chief Judge of the Ninth Circuit Court of Appeals asking that he or she look into the mistake that resulted in the erroneous decision to deny the COA. Wasko receiv an order dated December 17, 2003, denying reconsider-ation.

## The Reasons this Court Must Intervene

First and foremost, to prevent this type of injustice from recurring. If the Ninth Circuit's order is allowed to stand, then this Court will be condoning the invidious practice of closing the courthouse doors, at whim, to those litigants who meet the prerequisites to enter and have their claims adjudicated.

The reason this Court should use its authority to issue an extraordinary writ is because the decision by the Ninth Circuit to deny the COA was wrong. This error must be corrected in the interest of justice. The denia of the COA prevents Wasko from taking an appeal and leaves the violation of his constitution rights by the parole board left unadjudicated.

According to this Court's holding in

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED
SEP 23 2003
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

JOSEPH M. WASKO,

Petitioner - Appellant,

v.

BOARD OF PRISON TERMS; et al.,

Respondents - Appellees.

No. 03-56371

D.C. No. CV-99-01689-GAF (AN)
Central California
(Los Angeles)

ORDER

LODGED
CLERK, U.S. DISTRICT COURT
SEP 29 2003
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

Before: SILVERMAN and WARDLAW, Circuit Judges.

The request for a certificate of apealability is denied. *See* 28 U.S.C. § 2253(c)(2).

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Clerk of Court
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SEP 23 2003
by Deputy Clerk

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OCT 7 2003

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