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Opinions

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# General Docket

## US Court of Appeals for the Second Circuit

LEAD HEARD  
CLOSED C11789  
SB 808 4

Court of Appeals Docket #: 92-6090  
Nsuit: 2890 STATUTES-Other  
Haitian Centers, et al v. McNary, et al  
Appeal from: U.S. District Court EDNY

Filed: 4/9/92

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Case type information:

- 1) Civil
- 2) USA as party
- 3) none

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Lower court information:

District: 0207-01: 92-cv-1258  
Trial Judge: Sterling Johnson, Jr.  
Date Filed: 3/17/92  
Date order/judgment: 4/7/92  
Date NOA filed: 4/8/92

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Fee status: waived

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Prior cases:

None

Current cases:

Consolidated:	Lead	Member	Start	End
	92- 6090	92- 6104	5/5/92	

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Panel Assignment:

Panel: RJC JDM LWP 1705 :CA2 5/13/92 am  
Date of decision: 6/10/92

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LEAD HEARD  
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92-6090 Haitian Centers, et al v. McNary, et al

HAITIAN CENTERS COUNCIL, INC.  
Plaintiff - Appellee

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NATIONAL COALITION FOR HAITIAN  
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Plaintiff - Appellee

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92-6090 Haitian Centers, et al v. McNary, et al

[COR LD NTC ret]

Robert Rubin, Esq.  
(See above)  
[COR LD NTC ret]

IMMIGRATION LAW CLINIC OF THE  
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Plaintiff - Appellee

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Harold Hongju Koh, Esq.  
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Robert Rubin, Esq.  
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[COR LD NTC ret]

FRANK LEGAL SERVICES  
ORGANIZATION, OF NEW HAVEN  
CONNECTICUT  
Plaintiff - Appellee

Lucas Guttentag, Esq.  
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FRANTZ GUERRIER, DR.  
Plaintiff - Appellee

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92-6090 Haitian Centers, et al v. McNary, et al

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[COR LD NTC ret]

Harold Hongju Koh, Esq.  
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PASCAL HENRY  
Plaintiff - Appellee

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Plaintiff - Appellee

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Plaintiff - Appellee

Lucas Guttentag, Esq.  
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92-6090 Haitian Centers, et al v. McNary, et al

[COR LD NTC ret]

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Plaintiff - Appellee

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[COR LD NTC ret]

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92-6090 Haitian Centers, et al v. McNary, et al

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[COR LD NTC ret]

JEAN DOE  
Plaintiff - Appellee

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Robert Rubin, Esq.  
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ROGES NOEL, on Behalf of  
themselves and all other  
similarly situated  
Plaintiff - Appellee

Harold Hongju Koh, Esq.  
(See above)  
[COR LD NTC ret]

A. IRIS VILNOR, on Behalf of  
Herself and all others

Lucas Guttentag, Esq.  
(See above)

similarly situated  
Plaintiff - Appellee

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MIREILLE BERGER  
Plaintiff - Appellee

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92-6090 Haitian Centers, et al v. McNary, et al

(See above)  
[COR LD NTC ret]

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Harold Hongju Koh, Esq.  
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YVROSE PIERRE  
Plaintiff - Appellee

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similarly situated  
Plaintiff - Appellee

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92-6090 Haitian Centers, et al v. McNary, et al

[COR LD NTC ret]

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Defendant - Appellant

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92-6090 Haitian Centers, et al v. McNary, et al

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Defendant - Appellant

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Defendant - Appellant

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92-6090 Haitian Centers, et al v. McNary, et al

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[COR LD NTC ret]

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ADMIRAL KIME  
Defendant - Appellant

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COMMANDANTS, UNITED STATES  
COAST GUARD  
Defendant - Appellant

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 [COR LD NTC ret]

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92-6090 Haitian Centers, et al v. McNary, et al

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 (See above)  
 [COR LD NTC ret]

Scott A. Dunn, Esq.  
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 [COR LD NTC ret]

COMMANDER, U.S. NAVAL BASE,  
 GUANTANAMO BAY  
 Defendant - Appellant

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92-6090 Haitian Centers, et al v. McNary, et al

FOUNDATION

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92-6090 Haitian Centers, et al v. McNary, et al

New York, NY 10001

NATIONAL ASSOCIATION FOR THE  
ADVANCEMENT OF COLORED PEOPLE,  
INC.

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92-6090 Haitian Centers, et al v. McNary, et al

Official Caption 1/  
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Docket Nos. 92-6090 and 92-6104

HAITIAN CENTERS COUNCIL, INC.; NATIONAL COALITION FOR  
HAITIAN REFUGEES; IMMIGRATION LAW CLINIC OF THE JEROME N.;  
FRANK LEGAL SERVICES ORGANIZATION, OF NEW HAVEN CONNECTICUT;  
FRANTZ GUERRIER, DR.; PASCAL HENRY; LAURITON GUNEAU;  
MEDILIEU SOREL ST. FLEUR; DIEU RENEL; MILOT BAPTISTE; JEAN  
DOE; ROGES NOEL, on Behalf of themselves and all other  
similarly situated; A. IRIS VILNOR, on Behalf of Herself and  
all others similarly situated; MIREILLE BERGER; YVROSE  
PIERRE; MATHIEU NOEL, on Behalf of themselves and all others  
similarly situated

Plaintiffs-Appellees,

v

GENE MCNARY, Commissioner, Immigration and Naturalization  
Service; WILLIAM P. BARR, Attorney General, Immigration and  
Naturalization Service; JAMES BAKER, III, Secretary of State;  
REAR ADMIRAL ROBERT KRAMEK; ADMIRAL KIME; COMMANDANTS,  
UNITED STATES COAST GUARD; COMMANDER, U.S. NAVAL BASE, GUANTANAMO BAY;

Defendants-Appellants.

Authorized Abbreviated Caption 2/  
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Docket Nos. 92-6090 and 92-6104

HATIAN CENTERS COUNCIL V MCNARY

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 1/ Fed. R. App. P. Rule 12(a) and 32(a).  
 2/ For use on correspondence and motions only.

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92-6090 Haitian Centers, et al v. McNary, et al

4/9/92 Appellants Gene McNary et al motion for stay pending appeal and expedition FILED (w/pfs). (ORIG: W/AH AND 3CC's W/CAL) [272637-2] (coa) [92-6090]

4/9/92 Affidavit of Counsel Michael Jay Singer in support of motion # [272637-1] filed. (coa) [92-6090]

4/9/92 Appellant William P. Barr, Appellant James Baker, Appellant Robert Rear Admiral Robert, Appellant Admiral Kime, Appellant Commandants, US, Appellant Commander, US Naval papers supporting motion # [272637-1] by Appellant William P. Barr, James Baker III, Robert Rear Admiral Robert, Admiral Kime, Commandants, US, Commander, US Naval, supporting motion # [272637-2] by Appellant William P. Barr, James Baker III, Robert Rear Admiral Robert, Admiral Kime, Commandants, US, Commander, US Naval filed. (coa) [92-6090]

4/9/92 Copy of district court docket entries and notice of appeal on behalf of Appellant Gene McNary, Appellant William P. Barr, Appellant James Baker, Appellant Robert Rear Admiral Robert, Appellant Admiral Kime, Appellant Commandants, US, Appellant Commander, US Naval filed. [92-6090] Form C due on 4/20/92,. Form D due on 4/20/92,. (coa) [92-6090]

4/10/92 Appellees Haitian Centers, et al motion for permission to file response in excess of ten page limit FILED (w/pfs). (ORIG & 3CC'S W/CAL) [273183-1] (coa) [92-6090]

4/10/92 Appellees Haitian Centers, Natl Coalition Haiti, Immigration Law, Frank Legal Services, Frantz Guerrier, Pascal Henry, Lauriton Guneau, Medilieu Sorel St. Fleur, Dieu Renel, Milot Baptiste, Jean Doe, Roges Noel, A. Iris Vilnor, Mireille Berger, Yvrose Pierre, Mathieu Noel papers received. Problem: memo oversized. (cal) [92-6090]

4/13/92 Appellants Gene McNary, William P. Barr, James Baker, Robert Rear Admiral Robert, Admiral Kime, Commandants, US, Commander, US Naval papers supporting motion # [272637-1] William P. Barr, James Baker III, Robert Rear Admiral Robert, Admiral Kime, Commandants, US, Commander, Naval, received. Problem: motion pending. (cal) [92-6090]

4/14/92 Order FILED DENYING motion for stay and expediting appeal. further noting that the appellant shall serve and file a brief on April 17, 1992. Appellee shall file a brief by April 24, 1992. Any reply brief shall b filed by April 29, 1992. Argument shall be heard during the week of May 4, 1992 on May 7, 1992 or May 8, 1992 subject to approval of presiding judge of that panel [272637-1] endorsed on motion dated 4/9/92. (BEFORE:HON. WHT,CJ/HON. GCP, CJ/HON.

MUKASEY,DJ) (BY:EJG) (coa) [92-6090]

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92-6090 Haitian Centers, et al v. McNary, et al

- 4/14/92 Expedited scheduling order filed. Appellant's brief and appendix due on 4/17/92,. Appellee's brief is due on 4/24/92,. Appellant's reply brief is due on 4/29/92,. Argument as early as the week of 5/4/92. (coa) [92-6090]
- 4/16/92 Appellant William P. Barr, Appellant James Baker, Appellant Robert Rear Admiral Robert, Appellant Admiral Kime, Appellant Commandants, US, Appellant Commander, US Naval motion for partial stay pending appeal FILED (w/pfs). [275198-1] (twt) [92-6090]
- 4/17/92 Order FILED DENYING motion for stay [275198-1] by Appellant William P. Barr, James Baker III, Robert Rear Admiral Robert, Admiral Kime, Commandants, US, Commander, US Naval, endorsed on motion dated 4/16/92. (twt) [92-6090]
- 4/20/92 Non-dispositive stipulation to file deferred appendix by 5/1/92 RECEIVED. [275562-1] (twt) [92-6090]
- 4/20/92 Appellant Gene McNary, Appellant William P. Barr, Appellant James Baker, Appellant Robert Rear Admiral Robert, Appellant Admiral Kime, Appellant Commandants, US, Appellant Commander, US Naval brief RECEIVED. Problem: Stipulation pending to file a defered appendix and caption is incorrect. . (twt) [92-6090]
- 4/21/92 Motion papers returned (not in proper form) to Appellant Gene McNary, Appellant William P. Barr, Appellant James Baker, Appellant Robert Rear Admiral Robert, Appellant Admiral Kime, Appellant Commandants, US, Appellant Commander, US Naval. (twt) [92-6090]
- 4/22/92 Proposed for argument the week of 5/8/92. (cac) [92-6090]
- 4/22/92 Appellant William P. Barr, Appellant James Baker, Appellant Robert Rear Admiral Robert, Appellant Admiral Kime, Appellant Commandants, US, Appellant Commander, US Naval motion to consolidate with appeal from district court order dated 4/15/92. docket #: has not been assigned FILED (w/pfs). [277005-1] (twt) [92-6090]
- 4/24/92 Movant American Immigration Lawyers Association and American Immigration Law Foundation amicus curiae brief received. Problem: Motion pending to file brief as amicus curiae. (twt) [92-6090]
- 4/24/92 Movant Americas Watch amicus curiae brief received: Counsel will file motion for leave to file as amicus today. (twt) [92-6090]

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92-6090 Haitian Centers, et al v. McNary, et al

4/24/92 New party added: American Immigration Lawyers Association and American Immigration Law Foundation as movants to become amici. (unj) [92-6090]

4/24/92 Movants Amer Immigration Law, Movant Amer Immig Law Found motion to participate as amicus curiae and to file brief as amicus curiae FILED (w/pfs). [280784-2] (unj) [92-6090]

4/27/92 Movant International Human Rights Law Group Amicus Curiae briefs received. Problem: Briefs need to be double-spaced or a motion asking court to accept the briefs as is. amicus curiae brief received. (twd) [92-6090]

4/27/92 Movant National Association for the Advancement of Colored People amicus curiae brief received. Problem: Atty advised to either file a double spaced brief today or in the alternative file a motion to accept brief as is. (twt) [92-6090]

4/27/92 Movant Lawyers committee for Human Rights amicus curiae brief received. Problem: Atty advised to file a corrected double spaced brief or a motion to accept brief with single spacing by this afternoon. (twt) [92-6090]

4/27/92 Appellee Haitian Centers, Appellee Natl Coalition Haiti, Appellee Immigration Law, Appellee Frank Legal Services, Appellee Frantz Guerrier, Appellee Pascal Henry, Appellee Lauriton Guneau, Appellee Medilieu Sorel St. Fleur, Appellee Dieu Renel, Appellee Milot Baptiste, Appellee Jean Doe, Appellee Roges Noel, Appellee A. Iris Vilnor, Appellee Mireille Berger, Appellee Yvrose Pierre, Appellee Mathieu Noel brief RECEIVED. Problem: Appellants brief not filed; atty advised to file by this afternoon a double spaced brief or a motion to accept brief as is. (twt) [92-6090]

4/27/92 Letter received: Copy of Supreme Court order granting application for a stay of preliminary injunction; ordering preliminary injunction entered by the District Court EDNY be stayed pending disposition of the appeal by this Court. (twt) [92-6090]

4/27/92 Movant National Commission on AIDS amicus curiae brief received. Problem: Motion pending to file deferred appendix. (twt) [92-6090]

4/27/92 New party added: Americas Watch as movant to become amicus. (unj) [92-6090]

4/27/92 Movant Americas Watch motion to participate as amicus curiae and to file brief as amicus curiae FILED (w/pfs). [280778-2] (unj) [92-6090]

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4/30/92 Appellant Gene McNary, Appellant William P. Barr, Appellant James Baker, Appellant Robert Rear Admiral Robert,

Appellant Admiral Kime, Appellant Commandants, US,  
 Appellant Commander, US Naval reply brief received.  
 Problem: Stip pending to file def apx. (twt)  
 [92-6090]

- 5/5/92 Order FILED GRANTING motion to participate as amicus [280778-1] by Movant Americas Watch, endorsed on motion form dated 4/27/92., GRANTING motion to file brief as amicus curiae [280778-2] by Amicus Curiae Americas Watch, endorsed on motion form dated 4/27/92. (unj) [92-6090]
- 5/5/92 Amicus Curiae Americas Watch brief filed with proof of service. (unj) [92-6090]
- 5/5/92 Order FILED GRANTING motion to participate as amicus [280784-1] by Movant Amer Immigration Law, Amer Immig Law Found, endorsed on motion form dated 4/24/92., GRANTING motion to file brief as amicus curiae [280784-2] by Amicus Curiae Amer Immigration Law, Amer Immig Law Found, endorsed on motion form dated 4/24/92. (unj) [92-6090]
- 5/5/92 Amicus Curiae Amer Immigration Law, Amicus Curiae Amer Immig Law Found brief filed with proof of service. (unj) [92-6090]
- 5/5/92 Letter filed dated April 23, 1991 from Malcolm L. Stewart giving consent on behalf of the appellants for he NATIONAL COMISSION ON AIDS to file a brief as amicus curaie. (unv) [92-6090]
- 5/5/92 Letter filed dated April 22, 1992 by Attorney Joseph F. Tringali, Esq. confirming that the appellees have no objection to the filing of a brief of amicus curaie on behalf of the NATIONAL COMISSION ON AIDS. (unv) [92-6090]
- 5/5/92 New party added: National Commmission on AIDS as amicus curaie on appeal. (unv) [92-6090]
- 5/5/92 Amicus Curiae Natl Comm on AIDS brief filed with proof of service. (unv) [92-6090]
- 5/5/92 Letter filed dated April 21, 1992 form Attorney Joseph F. Tringali, Esq. confirming that the appellees have no objection to the filing of an amicus brief on behalf of International Human Rights Group. (unv) [92-6090]
- 5/5/92 Letter filed dated April 17, 1992 from Michael Jay Singer, consenting on behalf of the appellants, for the International Human Rights Law Group to file a brief as an amicus curaie. (unv) [92-6090]

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- 5/5/92 New party added: International Human Rights Law Group as amicus curaie on appeal. (unv) [92-6090]
- 5/5/92 Amicus Curiae International Human Rights Law Group brief filed with proof of service. (unv) [92-6090]



5/5/92 Letter filed dated April 22, 1992 by Attorney Joseph F. Tringali, Esq. confirming that the appellees have no objection to the filing of a brief on amicus curiae on behalf of the Lawyers Committee for Human Rights. (unv) [92-6090]

5/5/92 Letter filed dated April 22, 1992 from John F. Daly consenting on behalf of the appellants to the filing of amicus brief for the Lawyers' Committee for Human Rights. (unv) [92-6090]

5/5/92 New party added: Lawyers' Committee for Human Rights as amicus curiae on appeal. (unv) [92-6090]

5/5/92 Amicus Curiae Lawyers' Committee for Human Rights brief filed with proof of service. (unv) [92-6090]

5/5/92 Letter filed dated April 23, 1992 from John F. Daly consenting on behalf of the Appellants to NAACP filing a brief as amicus curiae. (unv) [92-6090]

5/5/92 Letter filed dated April 22, 1992 for attorney Joseph F. Tringali, Esq. confirming that the appellees have no objection on the filing of a brief of Amicus Curiae on behalf of the National Association for the Advancement of Colored People. (unv) [92-6090]

5/5/92 New party added: (NAACP) National Association for the Advancement of Colored People as amicus curiae on appeal. (unv) [92-6090]

5/5/92 Amicus Curiae NAACP brief filed with proof of service. (unv) [92-6090]

5/5/92 Order FILED GRANTING motion to consolidate appeals 92-6090 and 92 6104 [277005-1] by Appellant William P. Barr, James Baker III, Robert Rear Admiral Robert, Admiral Kime, Commandants, US, Commander, US Naval, endorsed on motion form dated 4/22/92. (unv) [92-6090]

5/5/92 LEAD case flag set. (unv) [92-6090]

5/5/92 Document [275562-1] non-dispositive stipulation to file deferred appendix filed in 92-6090 FILED. (unv) [92-6090 92-6104]

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92-6090 Haitian Centers, et al v. McNary, et al

5/5/92 Appellants Gene McNary, William P. Barr, James Baker, Robert Rear Admiral Robert, Admiral Kime, Commandants US Cost Guard, Commander, US Naval brief FILED with proof of service. (unv) [92-6090]

5/5/92 Appellants Gene McNary, William P. Barr, James Baker, Robert Rear Admiral Robert, Admiral Kime, Commandants, US Cost Guard, Commander, US Naval joint appendix filed w/pfs. Number of volumes: 3. (unv) [92-6090]

5/5/92 Appellees Haitian Centers, Natl Coalition Haiti, Immigration Law, Frank Legal Services, Frantz Guerrier, Pascal Henry, Lauriton Guneau, Medilieu Sorel St. Fleur,

Dieu Renel, Milot Baptiste, Jean Doe, Roges Noel, A. Iris Vlnor, Mireille Berger , Yvrose Pierre, Mathieu Noel brief filed with proof of service. (unv) [92-6090]

5/5/92 Appellants Gene McNary, William P. Barr, James Baker, Robert Rear Admiral Robert, Admiral Kime, Commandants, US Costal Guard, Appellant Commander, US Naval reply brief filed with proof of service. Satisfy appellant's reply brief due. (unv) [92-6090]

5/5/92 The CAPTION PAGE for this appeal has been AMENDED. (unv) [92-6090]

5/11/92 Set for argument on 5/13/92 . [92-6090] (cal) [92-6090]

5/11/92 The CAPTION PAGE for this appeal has been AMENDED. (unv) [92-6090]

5/12/92 Letter sent to all parties: Amended caption issued. (twt) [92-6090]

5/13/92 Case heard before CARDAMONE, PIERCE, MAHONEY, C.JJ. (TAPE: #211) (caa) [92-6090]

5/14/92 Record on appeal filed. (Original papers of district court.) (Docs. #1 - 58 with docs. #45 & 58 MISSING; accompanied by undocumented, undated orig. order and numerous unrecorded exhibits) (Number of volumes: ten with vols. #3 - 10 as Exhibit vols.) (cob) [92-6090]

5/20/92 Letter received: Corrected covers filed by Appellees and Amicus Curiae parties. (twt) [92-6090]

6/10/92 Judgment AFFIRMED, AS MODIFIED by published signed opinion filed. (LWP). (twk) [92-6090]

6/10/92 Judge Mahoney DISSENTING in a separate opinion filed. (twk) [92-6090]

6/10/92 Judgment filed. (twk) [92-6090]

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6/10/92 Judgment AFFIRMED, AS MODIFIED by published signed opinion filed. (LWP). (twk) [92-6104]

6/10/92 Judge Mahoney DISSENTING in a separate opinion filed. (twk) [92-6104]

6/10/92 Judgment filed. (twk) [92-6104]

6/10/92 Transcript of 6/10/92 filed. (twg) [92-6090]

6/11/92 ORDER FILED STATING: It is hereby ordered that the mandate shall issue forthwith. (unv) [92-6090]

6/11/92 Judgment MANDATE ISSUED. (92-6090) (une) [92-6090]

6/11/92 Judgment MANDATE ISSUED. (92-6104) (une) [92-6104]

6/24/92 Appellant Commander, US Naval in 92-6090 PETITION FOR REHEARING, petition for rehearing in banc [294716-2] with proof of service filed. (twm) [92-6090]

7/24/92 Order FILED DENYING petition for REHEARING [294716-1] by Appellant Commander, US Naval, endorsed on motion dated 6/24/92. , DENYING petition petition for rehearing in banc [294716-2] by Appellant Commander, US Naval, endorsed on motion dated 6/24/92. (twm) [92-6090]

7/27/92 Transcript of Oral Argument RECEIVED. (twd) [92-6090]

9/30/92 Notice of filing petition for writ of certiorari for Appellant Gene McNary in 92-6090, William P. Barr in 92-6090, James Baker in 92-6090, Admiral Kramek in 92-6090, Admiral Kime in 92-6090, Commandants, US in 92-6090, Commander, US Naval in 92-6090 dated 9/22/92 filed. Supreme Ct#: 92-528. (twr) [92-6090]

8/2/93 Certified copy of Supreme Court order GRANTING petition for writ of certiorari [321615-1] by Appellant Gene McNary, William P. Barr, James Baker III, Rear Admiral Kramek, Admiral Kime, Commandants, US, Commander, US Naval, endorsed on motion form dated 9/30/92. dated 6/28/93. Copies to panel & E.G. (twr) [92-6090]

8/2/93 Supreme Court judgment filed. ON WRIT OF CERTIORARI to the United States Court of Appeals for the 2nd Cir. THIS CAUSE having been submitted on the petition for writ of certiorari and thereto, ON CONSIDERATION WHEREOF, it is ordered and adjudged by this Court that the judgment of the above court in this cause is vacated as moot. Copies to panel & E.G. (twr) [92-6090]

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11/3/93 Order filed stating that the action herein having been taken to the Supreme Court of the United States by Writ of Certiorari and a certified copy of the judgment of the said court having been received and filed, vacating the judgment of this court as moot. ON CONSIDERATION WHEREOF, it is hereby ORDERED that the judgment of this Court of June 10, 1993 is vacated as moot in accordance with the opinion of the Supreme Court. See United States v Munsingwear, 340 U.S. 36, 39-40 (1950); University of Texas v Camenisch, 451 U.S. 390 (1981). (EJG) (unj) [92-6090]

11/3/93 CORRECTED order filed stating that the action herein having been taken to the Supreme Court of the United States by Writ of Certiorari and a certified copy of the judgment of the said court having been received and filed, vacating the judgment of this court as moot. ON CONSIDERATION WHEREOF, it is hereby ORDERED that the judgment of this Court of June 10, 1992 is vacated as moot in accordance with the opinion of the Supreme Court. See United States v Munsingwear, 340 U.S. 36, 39-40 (1950); University of Texas v Camenisch, 451 U.S. 390 (1981). (EJG) (unx) [92-6090]

12/13/93 Mandate receipt returned from the district court.(92-6090)

(ren) [92-6090]

12/13/93

Mandate receipt returned from the district court.(92-6104)

(ren) [92-6104]

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**PACER Service Center****Transaction Receipt**

06/22/2007 11:34:07

<b>PACER Login:</b>	wu0079	<b>Client Code:</b>	
<b>Description:</b>	dkt report	<b>Case Number:</b>	92-6090
<b>Billable Pages:</b>	22	<b>Cost:</b>	1.76