

Not Reported in F.Supp.2d, 2000 WL 1100784 (E.D.Pa.)
(Cite as: 2000 WL 1100784 (E.D.Pa.))



Only the Westlaw citation is currently available.

United States District Court, E.D. Pennsylvania.
Mumia ABU-JAMAL, Petitioner,

v.

Martin HORN et al., Respondents.

No. CIV. A. 99-5089.
Aug. 7, 2000.

Memorandum and Order

YOHN

*1 Before the court are four petitions, filed by different amici curiae, for permission to file briefs in this case. I will deny the petitions as unnecessary and unhelpful, without comment on the merits of the arguments sought to be raised or the merits of petitioner's underlying claims.

BACKGROUND

On October 15, 1999, Mumia Abu-Jamal ("petitioner") filed in this court a 160 page petition for a writ of habeas corpus setting forth 29 claims for relief, with numerous but unnumbered subparts, challenging both his capital conviction and his sentence of death. *See* Doc. No. 1. Following a hearing on October 27, 1999, the court entered an order scheduling the filing of briefs by both parties. *See* Doc. No. 8.

On December 8, 1999, petitioner filed a 97-page memorandum of law in support of his petition for writ of habeas corpus, the purpose of which was to set forth the legal authority in support of his petition. *See* Doc. No. 14. Because petitioner's memorandum indicated an intent to file additional motions as the litigation proceeded, even though the original briefing order was clearly intended to cover all briefs to be filed, the court held a hearing on January 14, 2000, to clarify scheduling expectations. In light of the legal and public nature of this action, the court granted petitioner leave to file two additional submissions. *See* Order of Jan. 20, 2000 (Doc. No. 17). The court also granted respondents a right of response to the expected filings, and granted petitioner the right to

file a traverse. *See id.* On January 20, 2000, petitioner filed a 100-page motion to review the reasonableness of state court fact-findings. *See* Doc. No. 18. Following an extension of time, petitioner filed a 19-page motion for an evidentiary hearing. *See* Order of Mar. 9, 2000 (Doc. No. 26). On March 30, 2000, the last of the scheduled briefs was filed. *See* Doc. No. 30.

On April 18, 2000, the Supreme Court announced decisions in two cases which clarified the proper construction of the Anti Terrorism and Effective **Death Penalty** Act of 1996 ("AEDPA"), [Pub.L. No. 104-132 § 104, 110 Stat. 1214](#), which amended federal statutes regarding habeas relief in the federal courts. *See* [Williams v. Taylor, 120 S.Ct. 1479 \(2000\)](#); [Williams v. Taylor, 120 S.Ct. 1495 \(2000\)](#). Because justice so required, petitioner was granted leave to file a brief regarding the impact of the Supreme Court decisions on this action, and respondents were granted the right of a response. *See* Order of May 12, 2000 (Doc. No. 36). Each party then filed a brief as permitted. *See* Pet'r Supp.Mem. of L. (Doc. No. 37); Resp.Response to Pet'r Supp.Mem. of L. (Doc. No. 38).

By June 14, 2000, the parties had submitted to the court 11 substantive filings exceeding 750 pages, addressing the factual and legal bases of 29 claims for relief, the construction of controlling federal law, the deference due to state court fact-findings, the propriety of an evidentiary hearing, and the impact of the recent Supreme Court decisions. Four additional groups now seek leave to file amicus briefs with the court.

*2 On March 24, 2000, a Petition for Permission to File a Memorandum of Law in Support of a Petition for Writ of Habeas Corpus was filed by the Pennsylvania affiliate of the American Civil Liberties Union ("ACLU") and the Philadelphia branch of the National Association for the Advancement of Colored People ("NAACP") (jointly "First Amici"). *See* Pet. for Permission for Amici Curiae to File a Mem. of Law in Support of Pet. for Writ of Habeas Corpus (Doc. No. 28) [hereafter "1st Pet."]. The petition included a copy of the 33-page proposed memorandum. *See id.* Respondent objected to the petition on procedural grounds. *See* Doc. No. 31.

Not Reported in F.Supp.2d, 2000 WL 1100784 (E.D.Pa.)
(Cite as: 2000 WL 1100784 (E.D.Pa.))

On April 3, 2000, a Petition for Permission to File a Brief in Support of Petition for Writ of Habeas Corpus was filed by the Center for Human Rights and Constitutional Law, the International Association of Democratic Lawyers, the National Conference of Black Lawyers, the National Lawyers Guild, the Prisoners Self Help Legal Clinic, and the Southern Poverty Law Center (jointly "Second Amici"). See Pet. for Permission for Amici Curiae to File a Br. in Support of Pet. for Writ of Habeas Corpus (Doc. No. 32) [hereafter "2d Pet."]. The petition included a copy of the 28-page proposed brief. See *id.* Again, respondent objected on procedural grounds. See Doc. No. 33.

On June 23, 2000, a Petition for Permission to File a Memorandum of Law in Support of a Petition for Writ of Habeas Corpus was filed by 22 members of Britain's Parliament (jointly "Third Amici"). See Pet. for Permission For Amici Curiae to File a Mem. of L. in Support of Pet. for Writ of Habeas Corpus (Doc. No. 39) [hereafter "3d Pet."]. The petition included a copy of the 62-page brief proposed to be filed. See *id.* Respondent objected on procedural grounds. See Resp. to Pet. of 3d Group of Putative Amici for Pet'r (Doc. No. 42). Third Amici then filed a reply in support of their petition. See Doc. No. 45.

On June 28, 2000, a Petition for Leave to File a Brief in Support of a Petition for Writ of Habeas Corpus was filed by the Chicana/Chicano Studies Foundation ("Fourth Amicus"). See Pet. to File Amicus Curiae Br. in Support of Pet. for Writ of Habeas Corpus (Doc. No. 40) [hereafter "4th Pet."]. The petition was accompanied by the 72-page brief proposed to be filed. See *id.* Respondent filed procedural objections, see Doc. No. 41, to which Fourth Amicus filed a reply, see Doc. No. 44.

STANDARD OF REVIEW

I find no statute, rule or controlling case defining a federal district court's power to grant or deny leave to file an amicus brief. No group of amici cite authority in this regard. Respondent observes that [Federal Rule of Appellate Procedure 29](#) sets forth the standards for filing an amicus brief in the United States Courts of Appeals.^{FN1} In short, the appellate rule requires amici to demonstrate that a proposed brief is permissible, helpful and timely.^{FN2}

^{FN1}. See Doc. No. 31 ¶ 3; Doc. No. 33 ¶ 4; Doc. No. 41 ¶ 3; Doc. No. 42 ¶ 3. Respondent cites text of the rule prior to its 1998 amendment. In note 2, *infra*, I rely on the text of the amended rule.

^{FN2}. [Federal Rule of Appellate Procedure 29](#) imposes specific limits on the filing of amicus briefs. First, such briefs must state "the reason why an amicus brief is desirable." See [Fed.R.App.P. 29\(b\)\(2\)](#). Second, amicus must present a "concise statement of ... the source of its authority to file." See [Fed.R.App.P. 29\(c\)\(3\)](#). Third, "[e]xcept by the court's permission, an amicus brief may be no more than one-half the maximum length authorized by these rules for a party's principal brief." See [Fed.R.App.P. 29\(d\)](#). The "maximum length authorized by these rules for a party's principal brief" is 30 pages. See [Fed.R.App.P. 32\(a\)\(7\)\(A\)](#). Fourth, "[a]n amicus curiae must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the principal brief of the party being supported is filed." See [Fed.R.App.P. 29\(e\)](#).

*3 District courts have required a similar showing. It is within a district court's discretion whether to permit the filing of an amicus brief. See [Sciotto v. Marple Newtown Sch. Dist.](#), 70 F.Supp.2d 553, 554 (E.D.Pa.1999); [Waste Mgt. of Pa., Inc. v. City of York](#), 162 F.R.D. 34, 36 (M.D.Pa.1995); [Yip v. Pagano](#), 606 F. Supp. 1566, 1568 (D.N.J.), *aff'd* 782 F.2d 1033 (3d Cir.1985). Other district courts, mindful of concerns of exhaustion and efficiency, have inquired whether proposed amicus filings present information which is "timely and useful." See [Sciotto](#), 70 F.Supp.2d at 555; [The Hawksbill Sea Turtle v. FEMA](#), 11 F.Supp.2d 529, 541 (D.V.I.1998); [Waste Mgt. of Pa., Inc.](#), 162 F.R.D. at 36; [Yip](#), 606 F.Supp. at 1568. Consequently, district courts have denied leave to file an amicus brief when it is unnecessary and the parties are adequately represented. See [Sciotto](#), 70 F.Supp.2d at 555; [Goldberg v. Philadelphia](#), Civ. No. 91-7575, 1994 U.S. Dist. Lexis 9392, at *2 (E.D.Pa. July 14, 1992).

DISCUSSION

I recognize the sincere interest of First Amici in the question they present and recognize further that it

Not Reported in F.Supp.2d, 2000 WL 1100784 (E.D.Pa.)
(Cite as: 2000 WL 1100784 (E.D.Pa.))

appears consistent with their substantial goals. [FN3](#) Similarly, the proposed submission of Second Amici appears wholly consistent with their important aims. [FN4](#) Although Third Amici are associated in a less formal arrangement, they present an issue of clear importance to them. [FN5](#) Finally, Fourth Amicus presents multiple questions, none appearing inconsistent with its organizational interests. [FN6](#) I do not question the professional skill possessed by counsel for all amici groups. Nothing in this memorandum or the attached order is intended to reflect on the merits of the proposed amici filings or of petitioner's underlying claims. Rather, I will deny each petition for permission to file as unnecessary and unhelpful.

[FN3.](#) First Amici present the following question:

Did not the trial court err during the **death penalty** sentencing hearing by allowing the prosecutor to present to the jury unpopular political views and controversial group associations maintained by the petitioner twelve years earlier, as a teenage member of the Black Panther Party, in violation of the petitioner's First Amendment right to free speech and free association?

See Pet. Proposed Mem. of Law in Support of Pet. for Writ of Habeas Corpus at 4 (Doc. No. 28).

First Amici state their interests in the matter. The ACLU “has consistently taken the position that the right to hold unpopular views is protected by the First Amendment and that such unpopular views cannot, by themselves, be outlawed or punished.... In addition, the ACLU and its affiliates have long sought to support the abolition of capital punishment, believing the **death penalty** to contravene the Eighth Amendment prohibition against cruel and unusual punishment.” *See* 1st Pet. at 1-2. Amicus NAACP has as its aim “‘elimination of all barriers to political, educational, social and economic equality’ for blacks and other racial minorities. The NAACP has repeatedly engaged in litigation ... to support and protect the rights of

freedom of speech and freedom of association for all Americans. It has also opposed the imposition of the **death penalty**.” 1st Pet. at 2.

[FN4.](#) Second Amici address the applicability of the AEDPA and the “‘general principles underlying [the Supreme Court’s] habeas corpus jurisprudence.’” 2d Pet. ¶ 2 (quoting *Calderon v. Thompson*, 523 U.S. 538, 118 S.Ct. 1489, 1500 (1998)).

Second Amici “have an intense and abiding interest in civil liberties and the **death penalty**, and in ensuring the availability of a thorough and fair hearing in federal courts on petitions for writ of habeas corpus.” *See* 2d Pet. ¶ 3. Amicus “Center for Human Rights and Constitutional Law is a non-profit, non-partisan legal services organization which provides representation to insular minorities in accessing the courts to vindicate constitutional and statutory rights.” 2d Pet. at 30. Amicus International Association of Democratic Lawyers is a non-governmental organization whose aims “are to defend and promote human and people’s rights; to struggle for strict adherence to the rule of law and the independence of the judiciary and legal profession; to restore, defend and develop democratic rights and liberties in legislation and practice and to ensure due process of law.” *See* 2d Pet. at 31. The National Conference of Black Lawyers is an association whose “mission is to serve the legal arm of the movement for Black Liberation, to protect human rights, to achieve self-determination of Africa and African Communities in the Diaspora and to work in coalition to assist in ending oppression of all peoples.” *See* 2d Pet. at 32. The National Lawyers Guild “is opposed to the use of the **death penalty** [and] has an abiding interest in ... making available to all a thorough and fair hearing in federal courts on petitions for Writs of Habeas Corpus.” *See* 2d Pet. at 33. Amicus Prisoner’s Self Help Clinic “opposes the use of capital punishment as a human rights violation [and] is deeply

Not Reported in F.Supp.2d, 2000 WL 1100784 (E.D.Pa.)
(Cite as: **2000 WL 1100784 (E.D.Pa.)**)

concerned about preserving the right of habeas corpus and its continued availability to the incarcerated.” See 2d Pet. at 34.

FN5. Third Amici present the following question:

Did not the trial court err in the voir dire, the guilt hearing and the **death penalty** sentencing hearing by refusing to allow the petitioner to represent himself or to continue to represent himself as a pro se defendant with the assistance of a friend, John Africa, in violation of Petitioner's Sixth Amendment right to a fair trial and his Fourteenth Amendment right to due process?

See 3d Pet. Proposed Mem. of L. at 8.

Third Amici explain that, “[a]s Members of the British Parliament, [they] are dedicated to preserving and defending around the world the right to a fair and public trial.” See 3d Pet. ¶ 3.

FN6. Fourth Amicus presents five questions, pertaining to rights of self-representation, the propriety of the **death penalty**, the right to jury trial, due process rights, and procedural default under [28 U.S.C. § 2254](#). See 4th Pet. Ex. Proposed Br. at i.

Fourth Amicus is dedicated “to gaining equality for Chicanos and Latinos in higher education and society itself. The [Chicana/Chicano Studies] Foundation is deeply concerned about the disproportionate number of Chicanos and Latinos, Blacks, Native Americans, and poor whites in prison and on death row in this country, many of them victims of ineffective representation by their attorneys, prosecutorial and police misconduct, racism and discrimination.” See 4th Pet. ¶ 5.

First, I find that additional filings by amici in this matter are not necessary because petitioner is adequately represented. See [Sciotto, 70 F.Supp.2d at 555; Golberg, 1994 U.S. Dist. Lexis 9392 at * 2](#) (citing

[Liberty Lincoln-Mercury, Inc. v. Ford Mktg. Corp., 149 F.R.D. 65, 82 \(D.N.J.1993\)](#)). Petitioner has the benefit of privately-retained counsel of his choice. See 1st Mot. for Pro Hac Vice Admis. ¶ 7 (Doc. No. 4); 2d Mot. for Pro Hac Vice Admis. ¶ 8 (Doc. No. 12). By all appearances, petitioner's counsel are highly qualified to represent him in this matter. Leonard Weinglass has been a member of the bar since 1959, has “handled capital homicide cases in Georgia, Alabama, Washington state and California,” and is a veteran of a specialized capital defense seminar. See 1st Mot. for Pro Hac Vice Admis., Aff. of Leonard Weinglass ¶¶ 2-3. Daniel Williams has been a member of the bar since 1986, has “extensive experience in capital cases,” and has benefitted from participation in specialized capital defense seminars. See 1st Mot. for Pro Hac Vice Admis., Aff. of Daniel Williams ¶¶ 2-3. Moreover, he brings to this action both his experience “as Habeas Clerk to the Honorable [James R.] Browning, [the now former-] Chief Judge of the Ninth Circuit Court of Appeals” and his experience as an assistant to Harvard Law School Professor Alan Dershowitz “in criminal appeals and habeas matters.” See *id.* ¶ 3. Finally, Steven Hawkins has been a member of the bar since 1989, has “represented death sentenced persons in their appeals across the country, including Alabama, Arkansas, Texas, Missouri, Oklahoma, and Utah,” and brings to this action his six years of experience “as a staff attorney in the NAACP Legal Defense Fund's Capital Punishment Project.” See 2d Mot. for Pro Hac Vice Admis., Aff. of Steven Hawkins ¶¶ 2-3. In short, each has extensive experience in litigating capital cases.

*4 Equally important in this protracted matter, each of petitioner's counsel has represented him “since the inception of [post-conviction] proceedings in the Pennsylvania state courts,” giving each a high degree of “familiarity with the record in this case.” See 1st Mot. for Pro Hac Vice Admis. ¶¶ 4-5; 2d Mot. for Pro Hac Vice Admis. ¶¶ 5-6. In light of their experience with this area of law and this particular action, there appears little need for additional assistance by outside organizations. In fact, no amici suggest that petitioner's legal counsel is inadequate.

Finally, petitioner's counsel appear to have identified the factual and legal bases for claims underlying the legal questions presented by each amici. **FN7** In so stating, I do not state that every discrete question raised by amici has been raised by petitioner. What I

Not Reported in F.Supp.2d, 2000 WL 1100784 (E.D.Pa.)
(Cite as: **2000 WL 1100784 (E.D.Pa.)**)

do state, however, is that the principal legal claims arising out of various events appear to have been comprehensively treated by petitioner and his counsel. I note that no amici suggest in their petition that petitioner's legal analysis is inadequate. In light of the caliber of petitioner's counsel and the quality and quantity of the filed papers in this matter, I conclude that additional assistance to the court is unnecessary.

FN7. Petitioner's twenty-second claim for relief is that his "rights to freedom of speech and association ... were violated by the prosecution's use of Jamal's teenage affiliation with the Black Panther Party to argue for the **death penalty**." See Pet. for Writ of Habeas Corpus ¶ 565 at 134 (Doc. No. 1). That claim presents substantially the same issue raised by First Amici. See *supra*, note 3. Moreover, petitioner has briefed the scope and application of the AEDPA and federal habeas law both in his original memorandum of law supporting his petition, see Doc. No. 14 at 1-13, and in his newly filed supplemental memorandum addressing the impact of recent Supreme Court decisions on the application of the AEDPA to this case, see Doc. No. 37. Those submissions address the essential question presented by Second Amici. See *supra*, note 4. Petitioner's seventh and eleventh claims for relief address the question whether his rights were violated as a result of trial court decisions regarding his choice of counsel. See Pet. for Writ ¶¶ 295-310 & 374-386 (Doc. No. 1). Those claims appear to raise legal issues very similar to those suggested by Third Amici. See *supra*, note 5. Finally, petitioner's third, seventh, eleventh, seventeenth through twenty-fifth, and twenty-ninth claims appear to address the questions raised by Fourth Amicus. See *supra*, note 6. In short, it appears that highly qualified counsel have addressed the principal factual and legal issues which amici groups seek to address.

Second, I find the petitions unhelpful. The burden they impose should not be overlooked. To the extent that amici seek to amplify a claim already presented by petitioner, see *supra* note 7, the burden on the court and parties in terms of additional pages filed and time required to resolve the issues presented

likely would outweigh the nominal analytical contribution. To the extent that amici articulate a claim not presented by petitioner, they would force resolution of complicated questions of standing and exhaustion which would substantially add to the burden of the court and the parties. Moreover, I am reluctant to add to either the procedural complexity or the prodigious record in this matter. Regardless of the issues raised, if I grant permission to file additional briefs, respondent would be entitled to additional time to answer to the arguments of amici.^{FN8} Such a course of action would further add to an already substantial record.

FN8. District courts have denied leave to file amicus briefs when the amicus clearly was partisan. See, e.g., [Sciotto, 70 F.Supp.2d at 555-56](#); [Goldberg](#), 94 U.S.Dist.Lexis 9392, at *3. Without taking a position on the weight of this consideration, I conclude that the filing of a partisan brief would be fair only if the other party was afforded an opportunity to respond.

My conclusion in this regard is buttressed by the potential for numerous amicus filings in this action. I am aware of the world-wide interest in this case. To permit amicus filings in this matter would present the real possibility of a plethora of filings, each offered by a particular group with a particular interest in this case. I recognize also the possibility that organizations opposed to the petition would seek to file amicus briefs as well. I fear that once trespassed, the slippery slope of permissiveness regarding amicus filings may become inescapable. The delay occasioned by substantial additional filings will work to the detriment of petitioner, respondent, and the just and speedy administration of this action by the court. Because additional filings present a substantial additional burden, I conclude that they would be unhelpful.

*5 Third, I note the absence of prejudice resulting from a denial of permission for amici to file a memorandum of law. There has been no allegation that petitioner's counsel has not adequately presented petitioner's claims. Nor do amici allege any potential prejudicial impact on other litigation as a result of any decision this court may make. Cf. [Sciotto, 70 F.Supp.2d at 555](#) (distinguishing between "special interest" in an action, marked by the prospect of standing-like injury, and "generalized interest," char-

Not Reported in F.Supp.2d, 2000 WL 1100784 (E.D.Pa.)
(Cite as: 2000 WL 1100784 (E.D.Pa.))

acterized by policy-based interest); [Ryan v. Commodity Futures Trading Comm'n](#), 125 F.3d 1062, 1063 (7th Cir.1997) (suggesting that amicus briefs should be considered only where “a party is not represented competently ..., when the amicus has an interest in some other case that may be affected by the decision in the present case ..., or when the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide”) (emphasis added).

Finally, although I do not rest my decision on the criteria of [Federal Rule of Appellate Procedure 29, I](#) do note that each amicus brief offered in this action would be impermissible under that rule as too long, untimely, and lacking proper foundation. *See supra*, note 2. In part, [Rule 29](#) is designed to limit the scope and volume of filings: “[A]n amicus brief is supplemental.... It should treat only matter not adequately addressed by a party.” *See* [Fed.R.App.P. 29\(d\)](#) Adv.Comm. Notes to 1998 Amend. It is also designed to ensure the timely resolution of claims presented: “The 7 day stagger [between filing of the principal brief and the supporting amicus brief] ... is long enough to permit an amicus to review the completed brief of the party being supported and avoid repetitious argument [and] is short enough that no adjustment need be made in the opposing party's briefing schedule.” *See* [Fed.R.App.P. 29\(e\)](#) Adv.Comm. Notes to 1998 Amend. The concerns of necessity and timeliness which undergird the rule appear no less important in the district court than in the court of appeals. Although I do not rely on [Rule 29, I](#) find that it supports my decision to deny leave to file the amicus briefs.

CONCLUSION

Petitioner has highly experienced and qualified counsel who have identified the principal legal issues which amici curiae ask to brief. In addition, leave to file additional memoranda of law would add to the record and complexity of this case without any particular benefit to petitioner. Moreover, no prejudice to either petitioner or to amici will result from denial of the amici petitions. Finally, under the relevant appellate rule, each brief would be both excessive in length and untimely. Therefore, the petitions of amici will be denied as unnecessary and unhelpful. An appropriate order follows.

Order

And now, this __ day of August, 2000, upon consideration of four petitions of amici curiae for permission to file legal memoranda in support of a petition for writ of habeas corpus (Doc. Nos. 28, 32, 39 & 40), respondent's opposition to each (Doc. Nos. 31, 33, 42 & 41, respectively), and reply briefs in support of the two most recent petitions (Doc. No. 45 supporting Doc. No. 39 and Doc. No. 44 supporting Doc. No. 40), it is hereby ORDERED AND DECREED that each petition is DENIED.

E.D.Pa.,2000.

Abu-Jamal v. Horn

Not Reported in F.Supp.2d, 2000 WL 1100784
(E.D.Pa.)

END OF DOCUMENT