No. 03-67

In The

Supreme Court of the United States

OCTOBER TERM, 2003

IMARI ABUBAKARI OBADELE AND
KURATIBISHA X ALI RASHID
Petitioners

v.

UNITED STATES
Respondent

On Petition For A Writ Of Certiorari
To The United States Court of Appeals
For the Federal Circuit
Record No. 02-5134

Petition For A Writ of Certiorari

Counsel For Petitioners	**Respondents**
Milton R. Henry, P14884	**Civil Rights Division,**
Counsel of Record	**U.S. Department of Justice**
2560 Vhay Lane	Steven J. Abelson, Attorney
Bloomfield Hills, Michigan	Commercial Litigation Branch
48304 And	Attn: Classification Unit
4860 Crown Avenue	5th Floor, 1100 L. Street, N.W.
Baton Rouge, Louisiana 70811	Washington, D.C. 20530
Telephones: 248 646-3103	Telephone: 202 514-4325
225 357-0851	Facsimile 202 514-7969
Facsimile: 248 642-3054	

[Counsel for petitioners listed on inside front cover.]

Counsel For Petitioners

Milton R. Henry, *Counsel of Record*
(P14884)
2560 Vhay Lane
Bloomfield Hills, MI 48304
And 4860 Crown Avenue
Baton Rouge, LA. 70811
Telephones: 248 646-3103
And 225 357-0851
Facsimile: 248 642-3054

Imhotep Alkebu-lan (10592)
Post Office Box 31107
Jackson, MS 39286
Telephone: 601 353-4455

Marion Overton White (13428)
516 East Landry Street
Opelousas, LA 70570
Telephone: 337 948-8296

Jeffrey L. Edison (P25912)
2100 Cadillac Tower
Detroit, MI 48226
Telephone: 313 964-0400

The Questions Presented for Review

The Petitioners have argued that, except for race, their deprivations of liberty meet the requirements of the *Civil Liberties Act of 1988,* amended in 1992, established for persons of Japanese ancestry and their spouses to receive $20,000 each in reparations for deprivations of liberty. An Administrative Record (*AR)* was developed in the Office of Redress Administration (ORA) in the Civil Rights Division of the U.S. Justice Department by these agencies and by the Petitioners unsuccessfully seeking reparations payments.

1. When the Courts below failed to evaluate Petitioners' essential pleading that Petitioners had suffered a major deprivation of liberty because of the United States' prevention of their use of the right to political self-determination, as descendants of persons held as slaves and freed by the Thirteenth Amendment, did these Courts unconstitutionally violate the Petitioners' Fifth Amendment equal-protection rights, approving an illegal *quota* for Japanese and their spouses, and engaging in an abuse of discretion and the *racial politics,* condemned by *Richmond v. Croson* and *Aderand v. Pena,* thereby degrading justice possibilities for 40-million Black people in the United States?

2. Whether, faced with a case and controversy properly before them, essential to determining whether the residuals of slavery and post-slavery racial discrimination qualified as *liberty deprivations* for the Petitioners, within the meaning of the U.S. Constitution and the Civil Liberties Act, the Courts below trampled the U.S. domestic and international law rights guaranteed to the Petitioners and the 40-million persons in the United States similarly situated.

3. Whether, when the Courts below failed to apply the test of "justification" set out in *Adarand v. Pena* (1995), for cases dealing with government-imposed racial discrimination, these Courts created the necessity for this Court to exercise its supervisory powers to prevent further mis-interpretations of the *Adarand* strict scrutiny rule, bad precedents, and miscarriages of justice?

PARTIES TO THE PROCEEDING

The following individuals and entities are parties to the proceeding in the court below:

Counsel for Petitioners on Appeal

Maynard M. Henry, Sr. #36247
Patrick Henry Cappell & Lewis, L.L.P.
6377 Little River Turnpike
Alexander, Virginia 22312 (703) 256-7754

For The United States On Appeal

Robert D. McCallum, Jr.
Assistant Attorney General

David M. Cohen, Director

Robert E. Kirschman, Jr.
Assistant Director

Steven J. Abelson, Attorney
Commercial Litigation Branch
Civil Division Department of Justice
Attn: Classification Unit
5th Floor, 1100 L St., N.W., Washington, D.C. 20530
Tele: (202) 514-4325 Facsimile: (202) 514-7969

Of Counsel:
Tink D. Cooper, Attorney
Civil Rights Division, Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530

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Table of Cited Cases

Citations of Opinion & Judgment From Lower Courts

Judgment (Without Opinion) from The United States Court of Appeals for the Federal Circuit, 11 April 2003. #02-5134 *Obadele v. United States.*

Obadele v. United States, 52 Fed.Cl. 432 (2002). The United States Court of Federal Claims.

Jurisdiction

The Judgment of the U.S. Court of Appeals for the Federal Circuit was entered on April 11, 2003. There was no application for a hearing *en banc*. The Court does not normally grant an *en banc* hearing where the panel has issued no opinion.

The statutory provisions which confer on this Court jurisdiction to review on a writ of certiorari the judgment in question are 28 U.S.C., Sec. 1254(1) and 28 U.S.C., Sec. 2101(c).

Constitutional Provisions, Treaties And Statutes Involved

United States Constitution

Article IV, Sec. 2, Par. 3 of the U.S. Constitution states:
"No person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due."

First Amendment, U. S. Constitution provides that "Congress shall make no law ... abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances." History makes clear that "the people" referred to in this Amendment during slavery were White people. Even at the time of the *Thirteenth Amendment* (December 1865), which ended slavery, converting the Afrikan into 5/5ths a person, rather than 3/5ths, it remained problematical whether the Free Afrikan could enjoy First Amendment rights. Because, however, the Afrikan in America, here as the result of kidnapping and force, was "lawfully" on U.S. territory and free – and NOT a U.S. citizen – he/she was clearly entitled to hold status plebiscites to determine, petitioning the United States government, whether he or she wished to go to Africa or somewhere else, whether to be a U.S. citizen (if invited to be one), or whether to create a country of their own in North America in areas where they had lived for a long time as majority populations.

The Fifth Amendment provides, *inter alia,* that "no person" shall be deprived of life, liberty, or property without due process of law.

The Ninth Amendment: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." This supports international law rights and human rights for New Afrikans after the Thirteenth Amendment.

Treaties

International Covenant on Civil and Political Rights (Ratified by United States 1 June 1992) Provides for political self-determination rights. Article One, paragraph 1 states: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." This provision finds support in the Ninth Amendment to the U.S. Constitution. The 1984 International Law Conference at Lagos, Nigeria, defined "a people" for purposes of the Covenant on Civil and Political Rights and related uses as follows. "The term 'people' denotes a social entity possessing a clear identity and its own characteristics;"

Statutes *These Statutes are in the Appendix*

Civil Liberties Act of 1988, 50 USC app. 1989.
102 STAT. 903, Public Law 100-383
Civil Liberties Act Amendments, 50 USC app.
1989b note. 106 STAT. 1167 (1992)

Statement of The Case

On 10 August 1988, the U.S. Congress enacted the *Civil Liberties Act of 1988*, 50 USC app. 1989 (Public Law 100-383, 102 Stat. 903). Under this act Congress apologized to Japanese U.S. citizens and resident aliens and acknowledged "the fundamental injustice of the evacuation, relocation, and internment of United States citizens and permanent residents of Japanese ancestry during World War II." The Act also provided that $20,000 each would be provided to eligible Japanese. A second major purpose of the Act was to "make restitution to Aleut residents of the Pribilof Islands and the Aleutian Islands west of Unimak Island, in settlement of United States obligations in equity and at law" for "injustices suffered and unreasonable hardships endured while these Aleut residents were under United States control during World War II" *etc.*

On 27 September 1992 Congress amended the *Civil Liberties Act of 1988,* to provide, *inter alia,* that "a spouse or a parent of an individual of Japanese ancestry" was eligible for $20,000 payments the same as eligible Japanese, and that "A claimant may seek judicial review of a denial of compensation under this section solely in the United States Claims Court, which shall review the denial upon the administrative record and shall hold unlawful and set aside the denial if it is found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *Civil Liberties Act Amendments of 1992,* 50 USC app. 1989b note. (Public Law 102-371. 106 Stat. 1167)

This Amendment was recommended to Congress by the U.S. Justice Department, the agency responsible for administering the Act, on the basis that by making only persons of Japanese ancestry, who had been interned, eligible for redress White and other spouses who were also interned with their Japanese spouses, to maintain their families, were unfairly excluded.

To carry out duties under the Act, the Justice Department created under its Civil Rights Division an "Office of Redress Administration," the *ORA*. Three persons, who would become plaintiffs in a suit filed in the U.S. Court of Federal Claims on 5 February 1999, sent letters to the ORA requesting payments under the Civil Liberties Act and urging the ORA and "the Attorney General to seek Congressional extensions and new appropriations under the Civil Liberties Act of 1988, as appropriate to provide additional funds for all those New Afrikans similarly situated." *Administrative Record* (AR), pages 8-10. These persons were: Imari Abubakari Obadele, Ph.D., of Texas; Kuratibisha X Ali Rashid, of Florida, and Kalonji Tor Olusegun of Washington, D.C. In his opinion filed at the conclusion of the case in the lower court, the United States Court of Federal Claims, *Obadele v.United States,* 52 Fed.Cl., 4432 (2002), Chief Judge Baskir wrote:

> "Each plaintiff filed his initial claim with the ORA before the ten-year anniversary of the Act, although all were very close to the sunset date (Dr. Obadele on August 3, Mr. Rashid on August 4 and

> Mr. Olusegun on the Fund's expiration date, August 10, 1998.) Their claims were not rejected as untimely. Dr. Obadele's claim was denied prior to the termination date. Dr. Obadele formally appealed through administrative channels and his appeal was processed to a decision." 52 Fed.Cl, at 439

Under date of 5 February 1999, ORA Administrator DeDe Greene mailed to Dr. Obadele a final denial letter. AR 89-91. The letter said: "One of the threshold criteria of the Act requires that an individual be of Japanese ancestry, or the spouse or parent of an individual of Japanese ancestry." None of the three claimants argued that description. The letter also stated:

> "You have claimed various types of deprivations; however, none of your losses were [*sic*] as a result of Executive Order 9066 or any other related Federal government action. Thus, any deprivations sustained by you are not losses covered by the Act because your losses were not Federal government action 'respecting the evacuation, relocation, and internment' program."

Significantly the provision of the Act to which Administrator Greene refers does not limit the deprivations to only acts by officials related to Executive Order 9066 but extends to deprivations by

> "(III) any other Executive order, Presidential proclamation, law of the United States, directive of the Armed Forces of the United States, or other action taken by or on behalf of the United States or its agents,

> representatives, officers or employees, respecting the evacuation, relocation, or internment of individuals solely on the basis of Japanese ancestry; or ***" 50 USC app., 1989b-7, Sec. 108. Definitions.

As indicated the three plaintiffs filed suit in the Court of Federal Claims, and the decision of the Court is found at *Obadele v. U.S.*, 52 Fed. Cl., 444. The Court wrote:

> "The Government's motion to dismiss, based upon lack of subject-matter jurisdiction and failure to state a claim upon which relief can be granted is DENIED. Upon exercising our jurisdiction to review the record in this matter, we find the decision of the ORA in denying Plaintiffs' claims for restitution under the Civil Liberties Act of 1988 is supported by the administrative record, and is not arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with law. Accordingly, Defendant's motion for judgment upon the administrative record is GRANTED."

A three-judge panel of the United States Court of Appeals for the Federal Circuit heard brief oral arguments on 9 April 2003, and issued a decision without opinion on 11 April 2003. The decision stated: **Judgment** On Appeal from the UNITED STATES COURT OF FEDERAL CLAIMS in Case No(s) 99-CV-195 This CAUSE having been heard and considered, it is ORDERED and ADJUDGED: Per Curiam (Clevenger, Schall, and Dyk, Circuit Judges). AFFIRMED. See Fed. Cir.R.36.

Thus, the issues for substantive appeal and the basis for the issuance of a Writ of Certiorari are found in the opinion of the U.S. Court of Federal Claims *Obadele v. United States,* 52 Fed. Cl. 432 (2002).

Basis For Federal Jurisdiction in The Court Of First Instance

This grant of jurisdiction is found in the *Civil Liberties Act Amendments of 1992.*, 50 USC app. 1989b note, Section 4 (b)(h) JUDICIAL REVIEW. –

> "(1) REVIEW BY THE CLAIMS COURT. – A claimant may seek judicial review of a denial of compensation under this section solely in the United States Claims Court, which shall review the denial upon the administrative record and shall hold unlawful and set aside the denial if it is found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."

Issues Appropriate for Issuing the Writ

A. ***A Crucial Matter of First Impression.*** In the opinion below the Court of Federal Claims dismissed with bare comment and no legal discussion the claim of the Petitioners that the United States government had denied their exercise of their right to self-determination. Clearly this assertion was a central element in proving denial of the Petitioners' fundamental liberty, as well as that of all those similarly situated.

At page 434, Chief Judge Baskir wrote: "***Except*** for their allegation that they are descendants of persons who were 'confined, held in custody, relocated or otherwise deprived of liberty or property,' Plaintiffs Obadele, Rashid, and Olusegun do not fall within any category of individuals explicitly afforded relief under the Act." (*Emphasis added.*) The "except for" discarding of the petitioners' argument at this point, without more – such as an examination of the allegations/evidence – suggests an unconstitutional crossing of the line barring racial politics.

Just before the Civil War Chief Justice Taney had the unpleasant task of telling his fellow citizens that neither Dred Scott nor any enslaved or free New Afrikan could be considered a U.S. citizen in terms of the U.S. Constitution – and that if persons desired to extend citizenship to persons of African descent, the process could occur by changing the Constitution by methods described therein. *Dred Scott v. Sandford,* 60 U.S. (19 How.) 397 (1857), at 426. After the Civil War, the Court spoke mightily three times, before 1954, with respect to liberty rights of people of African descent.

The *Civil Rights Cases,* 109 U.S. 3 (1883), held that the 14th Amendment did not protect the "social" rights of New Afikans, such as the right to visit restaurants and theatres. *United States v. Cruikshank,* 92 U.S. 542 (1876) held that the federal government would not protect New Afrikans against murderous violence perpetrated by ordinary White civilians. One hundred years of lynching of the Petitioners' ancestors and class, followed.

In *Plessy v. Ferguson,*163 U.S. 537 (1896) this Court held that imposing the indignity of racially segregated public facilities and services upon the class and ancestors of the Petitioners was constitutional. One year after *Plessy v. Ferguson,* this Court in *United States v. Wong Kim Ark,*169 U.S. 649, at 693 undertook to explain how the U.S. Government could *impose* U.S. citizenship upon the kidnapped people without their consent: "The Fourteenth Amendment affirms the ancient and fundamental rule of citizenship by birth within the territory, in the allegiance and under the protection of the country ..." But there was no protection of New Afrikans by the U.S. Government before or after *Wong Kim Ark,* in law or practice, until after the Civil Rights and Voting Rights acts of 1964 and 1965. This was twenty years *after* the relevant timeframe in the Civil Liberties Act. During the Civil Liberties Act's timeframe the Petitioners suffered Government-imposed indignities – including deprivations of self-determined liberty.

Mr. John Shattuck, Assistant U.S. Secretary of State for Human Rights, in his Preface to the United States Report to the United Nations Human Rights Committee, September 1994, wrote:

> "Over the course of its history, America has experienced egregious human rights violations in this ongoing American struggle for justice, such as the enslavement and disenfranchisement of African Americans and the virtual destruction of many Native American civilizations.

> "The profound injustices visited on African Americans were only partially erased after the Civil War (1861-1865), and then a century later by the civil rights movement of the 1950s and 1960s ..."

When the Courts below acted as if the Petitioners had not cited the deprivation by the United States of their right to political self-determination, in making their case of liberty deprivations, these Courts damaged the Petitioners and all the 40-million similarly situated persons in the United States who seek justice in a forum – Civil Liberties Act litigation - where sovereign immunity is not a bar. Those courts closed the court doors to persons who are descendants of persons kidnapped from Africa, enslaved, and, after slavery, denied important rights by government until 40 years ago, a time when the Petitioners were teenagers. The fact that this issue is of *First Impression* in this Court is a reason not to ignore it but to compel the lower courts to explore it, abandoning any taint of racial politics, the "popular" belief that reparations should be paid to Indians, Japanese, and Eskimos but not to New Afrikans.

Also, a constitutionally impermissible result of the lower Courts' action is to convert an act of Congress into a "quota" for Japanese and their spouses. Government-imposed racial quotas did not just become unconstitutional in June 2003 (*Grutter v. University of Michigan,* No. 02-241). They became so in 1978 in *Regents of the University of California v. Bakke,* 438 U.S. 265. The Fifth Amendment still stands as a guarantee of equal protection under the laws for individuals (and, through individuals, *groups)*.

On 1 June 1992 the first President George Bush signed and issued a proclamation of ratification for "The International Covenant On Civil and Political Rights." This proclamation firmly moved the United States into the present era where conquering states have formally acknowledged the fundamental human rights of conquered people, like Indians and New Afrikans. In Article One, first paragraph, this treaty, now part of the supreme law of the land, states: *All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*

In the opinion below the Court does recognize that " ... Plaintiffs base their claims upon the enslavement of their ancestors and the continuing failure of the United States to recognize African-Americans' right to self-determination following the abolition of slavery." 52 Fed.Cl., at 434. But this essential pleading is not addressed further.

Importantly, in the Administrative Record, page 65, there is a U.S. Department of State document which Dr. Obadele was required to fill out by the Port Director at Dulles Airport as he returned from overseas 5 September 1989, using a passport issued by the Provisional Government of the Republic of New Afrika. The port authorities refused to permit entry with his passport and provided admission only on their judgment that since Dr. Obadele was born in Philadelphia, Pennsylvania, he could be admitted as a "USC" (United States citizen). This was a U.S. officer acting outside of the World War II timeframe, but teachers and

other government officials, within the timeframe – President Franklin Roosevelt and Congresses – supported the same denial of self-determination rights of Dr. Obadele and those similarly situated. AR, page 66.

Equally as important page 63 of the AR is a form issued by the ORA to Dr. Obadele which he executed. The form is entitled "Evacuation/Relocation Information." Question (1) is: "Provide your address immediately prior to evacuation or relocation below." Dr. Obadele's answer is: "Street and city are unknown because the relocation began with the forcible relocation of my forebears from Afrika beginning before 1865, under U.S. law, for purposes of enslavement and dehumanization under British and U.S. law, contrary to their human rights. Until today the U.S. has not repaired this human relocation and retention in the U.S." Question (2) asks "Where were you located to?" Answer: "As a result of the relocation and retention in the U.S. of my forebears, i was born at 1130 Dorrance Street, Philadelphia, Pennsylvania." The case of *Douglas Ishida v. The United States,* 59 F.3d 1224 (1995) is important here.

Mr. Douglas Ishida was born in Ohio in November 1942, *after* his parents had "voluntarily" relocated from California in anticipation of being involuntarily relocated. The ORA deemed both parents to be eligible under the Civil Liberties Act and awarded them compensation. "In 1992, however, the ORA denied [Douglas] Ishida's claim for compensation under the Act, concluding that he was not eligible because his 'losses were not the result of government

action as defined in the Act and the implementing regulations ...' The Assistant Attorney General for Civil Rights subsequently affirmed the ORA's denial ..." 59 F.3d, at 1228. The U.S. Court of Appeals for the Federal Circuit then "Reversed" the Court of Federal Claims and the ORA, finding that Mr. Ishida "was, by being excluded from his family home, deprived of liberty as a result of the specified laws and orders. Therefore, We conclude that Ishida is entitled to compensation under the Act." 59 F.3d, at 1234.

Once relocated, as Mr. Ishida was by the relocation of his forebears, Mr. Rashid and Dr. Obadele suffered further deprivations of liberty.

B. *Other Deprivations of Liberty Improperly Dismissed*

On AR pages 24-26 Dr. Obadele, addressing the Assistant Attorney General in a *Statement of Facts and Law,* during his Administrative appeal, wrote:

> "12. Dr. Obadele and his family suffered damage through the 'education' imposed on him in the public schools of Philadelphia, Pennsylvania, pursuant to the practice of Pennsylvania and United States officials, under color of law, in two outstanding ways. (A) These officials conspired to make him and others similarly situated believe that the enslavement of New Afrikans in the United States was not a violation of human rights by demanding that students honor such Whites as Thomas Jefferson and George Washington who together held over two

hundred people in slavery, thus sowing the implication that the enslavement of Afrikan people was unimportant and non-criminal and that Black life is not of value and not to be respected; thus, further, contributing to violence among young people in communities where Dr. Obadele, his family, and others similarly situated live today.

"(B) Secondly the said officials, under color of law, refused to teach and honor the armed struggle of the ancestors of Imari Obadele and other New Afrikans who took up arms against American oppression, in a situation where he and other students were being taught to honor Whites who took up arms to 'fight for freedom,' thus fueling the racist calumny that of all the oppressed peoples in the world, New Afrikans in the United States never took up arms to fight for our own freedom, thus further fueling the concept of New Afrikan racial inferiority, and defaming and damaging Dr. Obadele and those similarly situated.

"The failure of these officials to include in public school courses and in most college courses, before, during, and after the relevant timeframe of the Civil Liberties Act of 1988 the fact that the kidnapped people held as slaves in the United States, and their progeny, including Dr. Obadele and those

similarly situated, have the right to self-determination damaged Dr. Obadele and those similarly situated by depriving them for various time periods of the political and legal knowledge and tools to attempt to hasten the end of what the *Adarand* court saw in 1995 as 'the unhappy persistence of both the practice and the lingering effects of racial discrimination against minority groups in this country.' *Adarand,* [515 U.S., at 237]."

On page 24 of the AR, Dr. Obadele indicates damage to him by the racist managers at Campbell Soup Co. "in 1944-1947."

C. *The Court of Appeals For The Federal Circuit Has Created An Adarand Principle At Variance with The Supreme Court And Requires Correction To Prevent Courts from Following It.*

In the *Adarand* case the Justices took time to make clear that, as Judge Baskir put it, "all race-based classifications by any level of government, must survive strict scrutiny." Obadele v. U.S., 52 Fed.Cl, at 443. But the trial court, supported without reservation by the United States Court of Appeals for the Federal Circuit, applied only part of the *Adarand* standard and related explanation. Judge Baskir rested only upon the *Adarand* statement that race-based eligibility guidelines "are constitutional only if they are narrowly tailored measures that further compelling governmental interests." *Obadele v. U.S., id.* But the Court below, following Judge Baskir's interpretation of the

standard for approving the race-based exclusiveness accorded in his decision to Japanese and non-Japanese spouses and children only, failed to apply the further specifics set out by *Adarand.*

> "The principle of consistency simply means that whenever the government treats any person unequally because of his or her race, that person has suffered an injury which falls squarely within the language and spirit of the Constitution's guarantee of equal protection. It says nothing about the ultimate validity of any particular law; that determination is the job of the court applying strict scrutiny. The principle of consistency explains the circumstances in which the injury requiring strict scrutiny occurs. The application of strict scrutiny, in turn, determines whether a compelling governmental interest justifies the infliction of that injury." *Adarand v. Pena,* 515 U.S., at 229-230, and at 224.

Neither Court below provided any examination to determine if the injury to the petitioners was "justified."

This is bad law. And because the appeals court has embraced it, the spread of this bad law could be extensive. Our petition requests the Supreme Court to exercise its supervisory powers and reverse the Appeals Court's distortion of *Adarand,* preventing the present and future harmful interpretations, precedents, and miscarriages of Justice.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

CERTIFICATE OF SERVICE

The undersigned, acting for and on behalf of or being one of the attorneys for Petitioners IMARI A. OBADELE and KURATIBISHA X ALI RASHID, hereby certifies that on July 8, 2003, he served the following Respondents the foregoing Petitioners' Petition for Writ of Certiorari and Appendix on all parties to this appeal by mailing copies thereof by first class mail, postage prepaid, addressed to their attorney, as follows:

ATTY. STEVEN J. ABELSON
Trial Attorney
DEPARTMENT OF JUSTICE
1100 L. STREET, N.W., Room 11042
Washington, D.C. 20005

and by filing 40 copies each of the Petition for Writ Of Certiorari and the supporting Appendix with the Clerk of Court for the United States Supreme Court by *Federal Express* at the Supreme Court of the United States, 1 First Street, NE, Washington, D.C. 20543

Imari A. Obadele, Ph.D.
4860 Crown Avenue, Rear
Baton Rouge, Louisiana 70811
Telephone: (225) 357-0851
Fax: (225) 357-0856
Email: ImariOne@aol.com