

No. \_\_\_\_\_

IN THE

SUPREME COURT OF THE UNITED STATES

DONALD C. MARRO, PETITIONER

vs.

CAESAR'S ENTERTAINMENT OPERATING COMPANY, RESPONDENT

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ON PETITION FOR A WRIT OF CERTIORARI TO  
THE SEVENTH CIRCUIT COURT OF APPEALS

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PETITION FOR A WRIT OF CERTIORARI

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## **I. QUESTIONS PRESENTED**

1. Does it violate equal protection and access, is it a property deprivation (i.e., the civil action for damages) and FRBP and 28 USC 158 violation when a Bankruptcy Court Clerk effectively closes the Clerk's Office and the court it serves to timely receipt of USPS mail filings..
2. Is it a further property deprivation (i.e., of the Caesar's bankruptcy settlement distribution) when a Bankruptcy Court Clerk precludes appeal of an expunged bankruptcy claim by effectively closing the Clerk's Office and the court it serves to timely receipt of USPS mail filings.
3. Is it a breach of accepted judicial practice to deny jurisdiction and yet to decide the central issue on appeal, i.e., the basis on which jurisdiction was denied.
4. Is it a further breach of accepted judicial practice for pro se status and/or to allow the demonization of a pro se litigant so as to blind the courts to a factual predicate that amounts to a legal absurdity and memorializes constitutional deprivations

## II. LIST OF PARTIES

All Parties appear in the caption of the case on the cover page.

## III. OPINIONS BELOW

Petitioner seeks certiorari to review judgment dismissing the Appeals below.

## IV. JURISDICTION

### A. District Court Jurisdictional Statement

The Bankruptcy Court had jurisdiction of this Respondent's voluntary petition for Chapter 11 bankruptcy under 28 USC 1334(a) and 1334(b). The District Court had jurisdiction of Petitioner's Appeal of the Bankruptcy Court judgment expunging his bankruptcy claim under 28 USC 1334(a) and 28 USC 158, case no. 1:16-cv-10582.

### B. Seventh Circuit Appellate Jurisdictional Statement

Appeal of the District Court order was taken pursuant to 28 USC 158(d)

### C. Filing Dates

On 10/25/17, the District Court (N.D. Ill.) denied Reconsideration of dismissal. Not until 11/6/17 did the District Court mail its Order to Marro.

On 11/17/17, Marro filed Notice of Appeal to the Seventh Circuit, case no. 17-3401.

### D. Supreme Court Jurisdiction

The Seventh Circuit denied Petitioner's Motions for Rehearing on February 2, 2018.

The jurisdiction of this Court is invoked under 28 USC 1254.

## V. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

### Amendments

Amendment V: "nor be deprived of life, liberty, or property, without due process of law

Statutes: 28 USC 2075, 42 USC 1982.

Rules: FRBP 5001(a) and (c), 5005, 8002(a)(1) and (d), 8011(a)(1) and (c), 9006(a)(3) and (e), 9006(b), 9007, and 9030

## **VII. STATEMENT OF THE CASE**

Marro appealed a Bankruptcy Court Order (No. Dist. Ill.) expunging his claim against Respondent (“CEO C”) to U.S. District Court (No. Dist. Ill.)

Although unauthorized by Rule, statute or law and unannounced, the Northern District of Illinois Bankruptcy Court Clerk (“Clerk”) refuses to allow USPS mail deliveries to its office during that Bankruptcy Court's business day.

Instead, the Clerk pays the delivering Chicago Post Office to hold mail received after the Clerk's early morning pickup but during the Court's business day for Clerk pickup early the next morning, before the start of the Court's next business day.

Notice of Appeal was due 11/10/16, was sent overnight mail by Marro on 11/9, was received at the delivering Chicago Post Office at 9:58 A.M. on 11/10 and was held there on the Clerk's behalf until the Clerk made its routine and pre-arranged pickup the next business day, 11/14/16, after the 11/11 holiday and weekend.

Marro challenged the policy and docketing error with the Clerk and Bankruptcy Court Chief Judge but both refused relief, the former acknowledging the policy but without making a correction and the latter treating Marro's request for relief as improper ex parte communication.

CEO C moved to dismiss Marro's Appeal both in District and the 7<sup>th</sup> Circuit on timeliness grounds and repeatedly demonized Marro as vexatious.

Meantime, Marro moved in Bankruptcy Court to Lift the Automatic Stay for an Adversary Proceeding and to Petition the District Court under 28 USC 158(d)(2).

Motion and Petition were denied, appealed and appeal unopposed by CEO C.

## VIII. REASONS TO GRANT THIS PETITION

### A. Departure from Accepted Practice

Certiorari is warranted when a court below has so far departed from accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power.

A policy closing a Bankruptcy Court to papers timely filed is such a departure.

So is the Bankruptcy Court Chief Judge's failure of ministerial duty and under FRBP. In his ministerial capacity, the Chief Judge received a report of the Clerk's *ultra vires* mail policy, paid no mind to the report and the error memorialized, and failed to treat it as a Motion to Enlarge Time under 8002(d) or 9006(b).

So is allowing demonization of a pro se litigant.

So is failing to properly apply case law in the context of a fact predicate that results in a legal absurdity contradicting wholesale the FRBP and Constitution.

### B. Petitioner warrants and is entitled constitutionally to this Relief

No precedent, statute or FRBP permits: (a) a Clerk to delay a timely Notice of Appeal ("Notice") filing by closing its Office to USPS mail during normal hours on a business day, or to order a mailed Notice and all mail be sequestered, then wrongly docket Notice and refuse correction; or (b) a Chief Judge to ignore such conduct, not investigate and/or correct, and not treat such as a timely Motion to Enlarge Time.

Absent Certiorari, the Clerk's policy closing the Bankruptcy Court to timely filed papers is validated, legitimized, and deprives Marro of constitutional protections.

Absent Certiorari, CEOC's use of the Clerk's constitutionally defective policy is validated and legitimized.

**C. Constitutional deprivations must be remedied**

Due process denial and property deprivation occur when a Clerk prevents timely filing and equal protection is denied when courts misapply case law by disregarding (because the litigant is pro se or for any reason) a fact predicate to make a ruling.

Existence of a right implies existence of all necessary and appropriate remedies.

42 USC1982. *Sullivan v. Little Hntg Pk.*, 90 S.Ct. 400, 396 U.S. 229 (1969)

**D. FRBP/FRAP 27 were ignored: Circuits are divided**

Rulings below ignored FRBP 5001(a) and (c), 5005 (courts always open), FRBP 9030 (limit jurisdiction) and 28 USC 2075.

As to FRAP 27, District Court dismissal and 7<sup>th</sup> Circuit affirmance did not just adjudicate jurisdiction but took jurisdiction to rule on issues on appeal, i.e., did and may a Clerk sequester mail from and/or close a court to mail filers during normal hours on an open court day.

Further, grounds for dismissssal are not in the cases that courts below cited to uphold the jurisdictional challenge here. The case law was misapprehended, as was the fact predicate warranting jurisdiction. The cases relied on below for declining jurisdiction always examined fact predicates, and here did not.

**1. FRBP 8002(a) was met, precluding dismissal below**

The FRBP 8002(a) requirement that Notice was received in 14 days was met but for a Clerk's closing of a court to mail filers and sequestering their mailed filings. The instant Appeal was timely.

**2. Authorities were misapprehended, precluding dismissal below**

But for a Clerk closing the Court to mail filers and improperly sequestering their filings, the instant Appeal was timely and prosecuted *in the manner directed*.

*Bowles v. Russell*, 551 U.S. 205 (2007) announced "when an appeal has ~~not~~ been prosecuted *in the manner directed*, within the time limited by the acts of Congress, it must [*not*] be dismissed for want of jurisdiction." (*edits and emphasis supplied*) "[F]ederal appellate courts have a special obligation to consider their own jurisdiction and that of lower courts." (*Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534 (1986); *Filer v. Donley*, 690 F.3d 643 (5th Cir.2012)). Carefully considering a fact predicate warranting jurisdiction is part of that special obligation.<sup>1</sup>

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1) While factually distinguishable, *Felix v. Felix*, 2009 WL 3711483 (E.D. La 2009, 09-6262), *Kontrick v. Ryan*, 540 U.S. 443 (2004), *Bowles v. Russell*, 551 U.S. 205 (2007), *Reed Elsevier, Inc. v. Muchnick*, 130 S. Ct. 1237 (2010) uniformly illustrate that the fact predicate cannot be ignored.

**E. The 7th Circuit Ruling illustrates errors of law and Circuit divide**

Authorities used by lower courts have fact predicates warranting jurisdictional dismissal under FRBP 8002 and 28 USC 158 but the fact predicate here manifestly does not, and was not examined critically or shown to be unpersuasive.<sup>2</sup>

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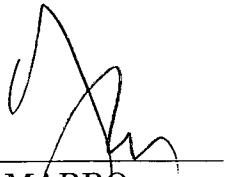
2) *In re: Sobczak-Slomczewsk*, 826 F.3d 429 (7th Cir. 2016) is the only case the 7<sup>th</sup> Circuit cited. The District Court Order dismissing for lack of jurisdiction cites other cases that are not 7th Circuit or higher and which hold that Notice must be *received* by the Clerk, and that mail date, postal error and pro se status don't matter. First, Notice was received by the Clerk pursuant to its sequester and hold policy, then incorrectly docketed. Next, the Clerk's Office was inaccessible, making receipt on 11/14/16 timely under FRBP 9006(a)(3); FRBP 8002(a)(1), 8011(a)(1) and (c), 9006(a)(3) and (e), 9007, and 9030, as does 28 USC 2075. Last, it wasn't postal error but *ultra vires* Clerk policy that was responsible.

**F. Public Policy**

Judicial economy is ill-served when rulings of courts below require suit against the Clerk for relief. And further, Marro was properly before courts below by his timely filed Notice of Appeal on the Bankruptcy Court denial of his Lift Motion and Petition to Certify Questions to this Court, an Appeal unopposed by CEOC

Certiorari should be granted.

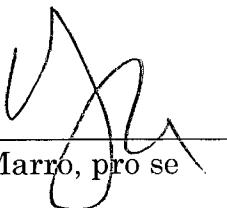
Dated: April 30, 2018

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Certificate of Compliance

The Petition complies with Rule 33 having a word count of 1,404

Dated: April 30, 2018

by:   
Donald C. Marro, pro se

Proof of Service

Respondent, who accepted email service hereof, was served by email this date. The Court was mailed this Petition on this date.

Dated: April 30, 2018

by:   
Donald C. Marro

Counsel for Respondent

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