

No. 18-6277

18-9482

IN THE  
SUPREME COURT OF THE UNITED STATES

**ORIGINAL**

Jorge A Rubio Prose — PETITIONER  
(Your Name)

vs.

**FILED**  
**MAY 10 2019**  
OFFICE OF THE CLERK  
SUPREME COURT, U.S.

Tina RAburn R/n ET AL — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The United STATES COURT OF APPEALS for The Sixth Circuit  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jorge A Rubio 111504

(Your Name)

mccX P.o.Box 2000

(Address)

WARBURG, Tennessee 37887

(City, State, Zip Code)

n/a

(Phone Number)

QUESTION(S) PRESENTED

1. WHETHER A FEDERAL COURT OF APPEALS HAS JURISDICTION UNDER U.S.C. 28 § 2107 TO REVIEW AN ORDER DENYING LEAVE TO PROCEED IN FORMA PAUPERIS UNDER SECTION 31915 G
2. WHETHER THE DENIAL OF A TIMELY REQUEST FOR LEGAL COPIES IS SUBJECT TO THE EXCEPTION OF EQUIitable TOLLING.

## LIST OF PARTIES

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

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Angela Jones, Health Services Administrator (HSA);  
Robert Trotter Shift Supervisor, CoreCivic, formerly,  
Correction Corporation of America (CCA)

## Corporate Disclosure Statement

CoreCivic, is a corporation that profit from annual source of prison contract which generates more than \$1.5 billion dollars in revenue in a fiscal year.

The defendant's CoreCivic is the largest prison contractor in the United States. Publicly owns more than 10% percent of the corporation stock. CoreCivic manages nearly seventy (70) facilities around the nation, and supports correction and rehabilitation.

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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

## JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was February 13, 2019.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.  
 An extension of time to file the petition for a writ of certiorari was granted to and including NA (date) on NA (date) in Application No. A \_\_\_\_\_.  
The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.  
The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.  
 An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A \_\_\_\_\_.  
The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U. S. C. § 2107

(A) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, NO APPEAL SHALL BRING ANY JUDGMENT, ORDER OR DECREE IN AN ACTION, SUIT OR PROCEEDING OF A CIVIL NATURE BEFORE A COURT OF APPEALS FOR REVIEW UNLESS NOTICE OF APPEAL IS FILED, WITHIN THIRTY DAYS AFTER THE ENTRY OF SUCH JUDGMENT, ORDER OR DECREE.

## STATEMENT OF THE CASE

ARTICLE III, § 2 OF THE CONSTITUTION EXTENDS THE "JUDICIAL POWER" OF THE UNITED STATES TO ONLY "CASES AND CONTROVERSIES" AT THE SAME TIME. CONGRESS HAS GRANTED THE COURTS OF APPEALS JURISDICTION OF APPEALS FROM ALL FINAL DECISIONS OF THE DISTRICT COURTS OF THE UNITED STATES; 28 U.S.C. § 2107(A) AT ISSUE HERE IS WHETHER THE NOTICE OF APPEAL IS CONSIDERED TIMELY UNDER THE DOCTRINE OF EQUITABLE TOLLING, THEREBY PROVIDING THE SIXTH CIRCUIT WITH JURISDICTION IN THIS CASE TO REVIEW THE DISTRICT COURT'S ORDER DENYING LEAVE TO PROCEED IN FORMA PAUPERIS UNDER 28 U.S.C. § 1915(G).

ON OCTOBER 9, 2018, THE PETITIONER FILED A § 1983 COMPLAINT FOR TWO SEVERE INJURIES AT THE HAND OF PRISON OFFICIALS (1) WHEN PRISON MEDICAL PROVIDERS ADMINISTERED THE WRONG MEDICATION THAT RESULTED IN SEVERE INJURY, AND (2) WHEN THE DEFENDANTS SEND HIM A MILK CONTAMINATED AS AN ATTEMPT TO KILL HIM IN RETALIATION FOR EXERCISING THE FIRST AMENDMENT RIGHT TO REDRESS, ON OCTOBER 12, 2018, THE DISTRICT COURT FOUND THAT THIS CASE DOES NOT COME WITHIN THE EXCEPTION OF 28 U.S.C. § 1915(G). AND DISMISSED THE CASE WITHOUT PREJUDICE AND GAVE TWENTY-EIGHT (28) DAYS TO FILE A MOTION TO RE-OPEN THE CASE ACCOMPANIED BY FULL PAYMENT OF THE \$400 CIVIL FILING FEE, TO CONSIDER THE MERITS OF THE COMPLAINT.

## REASONS FOR GRANTING THE PETITION

The United States Court of Appeals has decided an important question of federal law in a way that conflicts with relevant decisions of this court, specifically, dismissed the appeal for lack of jurisdiction holding that compliance with § 2107 is a mandatory jurisdiction prerequisite that the court may not waive or extend. The Sixth Circuit misread Bowles as modifying section § 2107(a). This interpretation is simply incorrect, and is irreconcilable with this court's decision in Hender-  
son v shinseki 562 U.S. 428, 131 S. Ct. 1197, 179 L. Ed 2d 159 (2011); ArbAugh v. Y&H Corp. 546 U.S. 500, 516 (2006); Reed Elsevier, Inc. v. Muchnick, 130 S. Ct. 1237, 1244 (2000);

The decision of the Court of Appeals, if left unresolved, will foster continued confusion in other states, and prisoners proceeding pro se around the nation, indeed there is now a split of authority among the states regarding Bowles affect the time limit filing deadlines as jurisdictional.

The principal of statutory construction govern whether a statutory provision is jurisdictional in restricting a court's adjudicatory power in other words congressional intent is dispositive, see Reed Elsevier 130 S. Ct. at 1243, 1244, Bowles v Russell 551 U.S. 205, 212-13 (2007); ArbAugh v Y&H Corp. supra 546 U.S. at 515-16, quoting Kontrick v Ryan 540 U.S. 443, 452-53 (2004)

ALL INDICIA OF CONGRESSIONAL INTENT CONFIRM THAT SECTION 2107(A) DOES NOT LIMIT THE JURISDICTION OF THE FEDERAL COURTS OF APPEALS, OF COURSE IF LEGISLATURE CLEARLY STATES THAT A LIMITATION SHALL COUNT AS JURISDICTIONAL THEN COURTS AND LITIGANT WILL BE DULY INSTRUCTIVE. Reed Elsevier 130 S. CT. AT 1244, QUOTING Arbaugh 546 U.S. AT 515-16, FILINGS DEADLINE ARE CLAIM-PROCESSING RULES Henderson 562 U.S. AT 435-36, 131 S. CT. AT 1202-03,

TO DETERMINE WHETHER A TIME LIMIT IS JURISDICTIONAL, THIS COURT INQUIRES WHETHER CONGRESS HAS CLEARLY STATED THAT THE RULE IS JURISDICTIONAL; ABSENT SUCH A CLEAR STATEMENT COURTS SHOULD TREAT THE RESTRICTION AS NONJURISDICTIONAL IN CHARACTER. Sebelius v. Auburn Reg'l Med. Ctr 133 S. CT. 817, 824 (2013); QUOTING Arbaugh 546 U.S. AT 515-516,

THIS COURT HAS REPEATEDLY CLARIFIED THAT NONSTATUTORY DEADLINES THAT APPEAR SOLELY IN A COURT-PROMULGATED RULE CANNOT OPERATE TO DEPRIVE A COURT OF JURISDICTION IN KonTrick v. Ryan 540 U.S. 443 (2004). THE COURT ADDRESSED WHETHER A CREDITOR'S UNTIMELY OBJECTION TO A DEBTOR'S DISCHARGE UNDER FEDERAL RULES OF BANKRUPTCY PROCEDURE DEPRIVED A BANKRUPTCY COURT OF JURISDICTION TO ADJUDICATE THE CREDITOR'S OBJECTION. KonTrick 540 U.S. AT 446-47. THE COURT CONCLUDED THAT THE LATE FILINGS DID NOT DEPRIVE THE BANKRUPTCY COURT OF JURISDICTION. ID. AT 448-52, IMPORTANT TO THE COURT'S ANALYSIS WAS THE FACT THAT NO STATUTE SPECIFIES A TIME LIMIT FOR FILING A COMPLAINT

OBJECTIONS TO THE DEBTOR'S OBJECTION ID AT 448, IN CONCLUDING THAT THE NONSTATUTORY TIME LIMIT AT ISSUE WAS NONJURISDICTIONAL. THE COURT SPECIFIED THAT ONLY CONGRESS MAY DETERMINE A LOWER FEDERAL COURT'S SUBJECT-MATTER JURISDICTION ID AT 452 (CITING U.S. CONST. ART. III § 1). THE COURT THEREFORE RECOGNIZED THAT COURT-PREScribed RULES OF PRACTICE AND PROCEDURE FOR CASES IN THE FEDERAL DISTRICT COURTS AND COURTS OF APPEALS DO NOT CREATE OR WITHDRAW FEDERAL JURISDICTION ID AT 453

THE DOCTRINE OF EQUITABLE TOLLING PERMITS A COURT TO DEEM A LATE FILED NOTICE OF APPEAL TIMELY WHEN PRINCIPLES OF EQUITY WOULD MAKE THE RIGID APPLICATION OF A LIMITATION PERIOD UNFAIR. MILLER V. NEW JERSEY STATE DEPARTMENT OF CORRECTIONS, 145 F.3d 616, 618 (3d CIRCUIT 1998). IN SUCH CASES, THE POLICY OF REPOSE REFLECTED IN LIMITATION PERIODS, DESIGNED TO PROTECT DEFENDANTS, IS OUTWEIGHED BY THE INTERESTS OF JUSTICE THAT REQUIRE VINDICATION OF THE PETITIONER'S RIGHTS. BURMETT V. NEW YORK CENTRAL R.R. CO. 380 U.S. 424, 428 (1965).

EQUITABLE TOLLING IS A LONGSTANDING AND WIDESPREAD PRACTICE. AND LIMITATION PERIODS IN FEDERAL STATUTES ARE PRESUMPTIVELY SUBJECT TO TOLLING UNLESS TOLLING WOULD BE INCONSISTENT WITH CONGRESSIONAL INTENT. IRWIN V. DEPARTMENT OF VETERANS AFFAIRS 498 U.S. 89, 95-96 (1990); IN DECIDING WHETHER EQUITABLE TOLLING IS AVAILABLE UNDER A PARTICULAR STATUTE, COURTS OFTEN PHRASE THE ISSUE AS WHETHER THE LIMITATION CONSTITUTES OR IS ANALOGOUS TO A STATUTE OF LIMITATIONS, IN WHICH CASE TOLLING IS AVAILABLE.

ON NOVEMBER 8, 2018, MR RUBIN SENT A REQUEST TO CORRECTIONAL CLERICAL OFFICER (CCO) JEWELL FOR LEGAL COPIES TO SEND IT TO THE COURT BEFORE THE DEADLINE. THE REQUEST WAS SENT BACK. APPENDIX C

on November 12, 2018, Mr Rubio send another request to (CCO) Jewell, and he specified today is my deadline, before (CCO) Jewell responded go to the Legal Aide in the library on November 19, 2018. Appendix D

On November 14, 2018, Mr Rubio filled out another request urging (CCO) Jewell to make copies of his legal papers, and Mr Rubio was told that (CCO) Jewell does not work today, and Correctional Officer C/O Loving made two copies of his legal papers Appendix E

On November 15, 2018, Mr Rubio deposited in the institutional mailbox the notice of appeal, witnessed by Pod Officer Lynch. Appendix F

#### CONCLUSION

For the foregoing reasons this case is subject to the equitable tolling. And:

The petition for a writ of certiorari should be granted.

Respectfully submitted,

George A Rubio

Date: MAY 13, 2019