

IN THE
SUPREME COURT OF THE UNITED STATES

RICHARD MORALES,
Petitioner,

v.

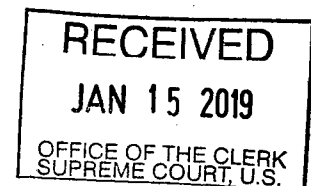
Case No. USCA2# 18-2296

UNITED STATES OF AMERICA,
Appellant.

**MOTION TO DIRECT THE CLERK OF THE COURT TO FILE
THE PETITION FOR WRIT OF CERTIORARI OUT-OF-TIME**

COMES NOW, Richard Morales, pro-se (Hereinafter "Petitioner" or "Morales"), who humbly pleads this Honorable Court direct the Clerk of the Court to file out-of-time the Motion for writ of certiorari in the above captioned case for the following reasons:

1. On November 17, 2018, Morales received the letter and enclosed materials from the Office of the Clerk indicating that the petition for writ of certiorari in the above captioned case that was postmarked November 8, 2018, was received by the Clerk but not filed as it was deemed to have been submitted out-of-time.
2. According to that letter, the petition was returned unfiled based on the determination that the judgment from the court below was filed on August 8, 2018, rendering the 90-day period for filing a writ of certiorari expired on November 6, 2018. See Letter at Exhibit 1.
3. Due to more than a little confusion on the part of the office of the clerk of the court for the Second Circuit Court of Appeals, the date that the judgment of the court below was actually filed was not accessible to Morales with the exercise of due diligence until it was received by United States Postal Service mail on August 15, 2018. See Memorandum at Exhibit 2.



4. As explained in the petition for writ of certiorari, Morales wrote two letters and made several phone calls to the circuit court clerk's office in attempts to determine the status of the decision of the court below, and was repeatedly told that the decision was pending. See Petition for Writ of Certiorari, enclosed for consideration to be filed out-of-time.

5. In fact, the decision had actually been handed down on March 19, 2018. However, the decision was evidently docketed in such a way so as to not be readily accessible to the clerk. Morales continued making inquiries by phone as late as August 3, 2018, when he was informed that a decision was forthcoming.

6. Thus, it would have been impossible for the Petitioner to have received notice of the re-docketing and filing of the judgment on USCA2# 18-2296 denying the motion to recall the mandate in order to begin preparing the instant petition for writ of certiorari until the decision was actually received through normal USPS mail procedures on August 15, 2018. Cf. Exhibit 2.

7. It must be noted that USP Lewisburg has adopted the practice of treating any correspondence not bearing the name of an attorney followed by the title "attorney at law" as "Not Legal" mail. This includes mail from an office of the clerk of the court. The office of the Clerk of the Supreme Court of the United States is no exception. As a consequence, rather than receiving the judgment within 24 hours of delivery to the institution through a unit team member whereupon it is opened in the presence of the Petitioner according to BOP policy for handling of legal mail, the mail received from the Clerk of the Court was sorted as regular mail and opened, inspected, and read in the mailroom as though coming from an unverifiable and possibly dubious source. Due to the heightened scrutiny of an SMU facility, this process can result in a delay of up to (5) working days.

8. Moreover, as a federal inmate proceeding pro-se, the Petitioner is unavoidably and routinely disadvantaged by the inaccessibility of electronic filing, creating an unfairness in pleading that is systemic. Whereas it is common for the government's attorneys to enjoy the entire preparation period provided by statute, incarcerated litigants proceeding pro-se enjoy no such consideration, routinely losing weeks of preparation time in both the notification and filing processes as a result of necessarily relying on the USPS (now aptly dubbed "snail mail").

9. While it is true that the "mailbox rule" made effective by Houston v. Lack, 101 L.Ed.2d 245 (1988), grants considerable leave in mitigating any unfairness in the **filing** process, no such mitigation is afforded in the **notification** process. Thus, in this case, Morales' preparation time--and by extension his access to the courts--was unfairly burdened by the delays in the notification process.

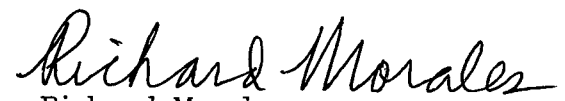
10. Accordingly, considering Morales' due diligence, the unavoidable delay in the notification process, and the complex legal arguments and procedures inherent in preparing a coherent brief, Petitioner, a member of the Work Cadre at USP Lewisburg and a layman to the law, certainly needed the full window of preparation time afforded the government's attorneys who are notified immediately by means of the court's electronic filing system.

In conclusion, for the aforementioned reasons, Morales humbly prays this Court direct the Clerk to file the enclosed petition for writ of certiorari out-of-time.

I do hereby state and affirm under penalty of perjury that the foregoing statements are true and correct.

Executed on: December 27, 2018

Respectfully submitted


Richard Morales, pro-se
Reg. No. 11859-014
USP Lewisburg (Work Cadre)
P.O. Box 1000
Lewisburg, PA 17837

**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 8th day of August, two thousand and eighteen.

Richard Morales,

Petitioner - Appellant,

v.

United States of America,

Respondent - Appellee.

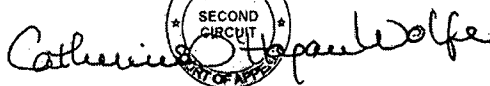

ORDER

Docket No. 18-2296

On March 12, 2018, Appellant filed a motion to recall the mandate in his appeal docketed under 04-0858. The Court denied the motion to recall the mandate on March 19, 2018. On August 7, 2018, the Clerk's Office migrated the appeal in 04-0858 to the CM/ECF database and assigned a new docket number, 18-2296. The Court having denied the motion to recall the mandate and no other motions remain pending, it is hereby ORDERED that this case is administratively closed.

For the Court:

Catherine O'Hagan Wolfe,
Clerk of Court

**Additional material
from this filing is
available in the
Clerk's Office.**