

QUESTION(S) PRESENTED

My question is; Does Proof of: (1) Prison mail Log; (2) Prisoner declaration; (3) officer who received Document from Prisoner for mailing, acknowledgement of receiving documents, are This 3 sufficient Evidence To Satisfy The Prison Mailbox Rule Announced in Houston v. Lack 487 U.S. 266, 270 (1988) or is not as how Ninth Circuit Announced in This Current Case?

In my Motion for reconsideration dated 7-11-2019 I cited Douglas v. Noelle 567 F.3d 1163 (9th Cir 2009) and Huizar v. Carey 273 F.3d 1220 (9th Cir 2001). This 2 Cases Supported The fact That Houston v. Lack does Apply on Circumstances as in my Case. The facts are basically stated on my Mot for reconsideration (Exhibit E). Such Circumstances say That as long as Plaintiff presents as evidence his own declaration and his Prison Log Numbers revealing date mail was given to officer for mail-out, it should be sufficient for Documents To be Considered even though documents never make it To Court.

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:

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A Initial order of Ninth Cir Court Filed 12-6-2018

APPENDIX B Petitioner Answer To Order

APPENDIX C Respondent Motion To Dismiss Appeal as untimely

APPENDIX D Dismissal order of 9th Cir (filed 6-27-19)

APPENDIX E Petitioner Motion for Reconsideration, Filed (7-11-19)

APPENDIX F Denying Mot. for Reconsideration, Filed (Oct-31-2019)

Appendix G - Mail Log of Prison records of date NOA sent out

Appendix H - Evidence of officer Walker receiving NOA on such date

Appendix I - USPS Tracking Numbers of OB of NOA sent out

Appendix J - Petitioner declaration as Proof of NOA been sent out

Appendix K - NOA (Letter) dated 11-30-19

Appendix L - Motion To add Attached Evidence - sent (3-4-19)

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>Houston v. Lack</u> 487 U.S. 266 (1988)	_____
<u>Coldwell v. Amend</u> 30 F.3d 1199 (9th Cir 1994)	_____
<u>Huizar v. Carey</u> 273 F.3d 1220 (9th Cir 2001)	_____
<u>Douglas v. Noelle</u> 567 F.3d 1103 (9th Cir 2009)	_____

STATUTES AND RULES

Fed. Rules, Civ. Proc. 4(c)

OTHER

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 E 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 _____ 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 June 27-2019 (Appendix D)

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: 10-31-2019, and a copy of the order denying rehearing appears at Appendix F.

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. § 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 _____.

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

- 1) Due Process - 14th Amendment of U.S. Constitution.
- 2) Fed. R. Civ. P. 4(c)

Statement Of The Case

The 9th Cir Initial order dated 12-6-19 (App-A) requested for Petitioner To Fix discrepancy's or submitt evidence To support That Notice of Appeal was submitted timely within 30 days after 10-26-18. And since Petitioner undated Notice of Appeal was received by Dist Court on 11-30-18 it was late. 9th Cir requested for Petitioner To submitt declaration of when NOA was submitted.

9th Cir Court realize That what They Consider it was a NOA was actually a letter requesting To know an update of NOA Submitted 3 months before, see (Appendix - K) for such reason On pg 2 of order, Court asked for Petitioner To submitt a declaration of date NOA was submitted previously.

9th Cir Also Asked for Petitioner To signed The Letter That was Treated as NOA which Petitioner did just That (Appendix K).

On 12-12-18 Petitioner Filed an Answer To The order (Appendix - B). On That Answer Petitioner declared under Penalty of Perjury That NOA (Letter) received in Dist Court on 11-30-18 was given To Prison officer For Mail Out on 11-25-18. Petitioner also submitted Proof of Supervisor Prison Mail Room Asserting and sending Petitioner The Copy of Prison Log dates and Proof revealing That on 8-23-18 The NOA at opening Brief was sent in 3 envelopes To 9th Cir Court of Appeals Thru via Mail of P.S. P.S. providing petitioner with Tracking Numbers, see (Appendix G).

Petitioner Also signed The NOA of 11-30-18 as how Court requested it (Appendix - K).

On 1-18-19 - Respondent file it's Brief (Appendix C). There he Alleged That everything regarding NOA of 8-23-18 should not be believe because nothing on The dockets reveal a NOA file on That month (Appendix - C pg 10). What Respondent fail To see Is That The brief and NOA was sent To 9th Cir and not To Dist Court. And According To (Fed. R. Civ. P. 4(d); (e)) even if sent To 9th Cir it's still Consider Filed.

On 3-4-19 - Petitioner Submitted Motion To add Attachment That reveal how petitioner did send ~~the~~ NOA of Brief on 8-23-18 (Appendice L), Such Evidence was what I submitted here on (Appendice G, ^HI).

On 6-27-19 - Court file an order Dismissing Case (Appendix - D)

On 7-11-19 - Petitioner file Mot For Reconsideration⁽¹⁾. On This Motion I Re-submitted Evidence OF Appendix G, H, ~~I~~. Appendix G and ^IH is evience of mail Supervisor Asserting with U.S.P.S Tracking # and Prison Mail Log That on 8-23-18 3 Envelopes were sent To 9th Cir which Corroborated The Contents of The letter send To Dist Court about concern of The Arrival of NOA send on 8-23-18 (Appendix K). Besides Those evidence Petitioner also send The proof That The Letter that was received on Dist Court in 11-30-18 (Courts were Treating it as NOA) was given To officer for Mail out on 11-25-18 (Appendix H).

In Support of Petitioner Contention of Evidence Petitioner Cited on Mot For Reconsideration Case (Douglas v. Noelle 567 F.3d 1103 (9th 2009) were Court held That "a declaration is not necessary when evidence of Prison Log's reveal Inmate mail been sent on purported date of filing". It also cited (Huizar v. Carey 273 F.3d 1220 (9th Cir 2001) where Court held That Inmate Documents are Consider filed on date given To officer even if Documents never make it To Court (id at 1223).

On 10-31-19 Court Granted even a Supplemental Motion Petitioner filed after The Mot For Reconsideration. On Such Motion I ask Court For clerk To look on my other Cases if The Documents (NOA) That Suppose To go To This Current Case could have go to another case⁽²⁾. Court responded stating That nothing was found. And it denied Mot. For Reconsideration. (Appendix - F)

(1) (Appendix E)

(2) Regarding Docs of 8-23-18.

REASONS FOR GRANTING THE PETITION

The Mail box Rule is already law and well established in case (Houston v. Lack 487 U.S. 266, 270 (1985)). All I want is for Appeal Court to allow my Notice of Appeal be consider timely. Appeal Court didn't consider timely my NOA, and didn't explain why. My contention is that it should have been consider timely because I presented sufficient evidence to prove I send it timely, according to "Prison Mailbox".

I presented evidence proving I presented two NOA prior to 11-27-18 which is timely. I presented on (Exhibit G) evidence of a statement of Prison supervisor mailroom asserting the sending of mail log to me. The Prison log reveals the 3 documents went out on 8-23-18 to 9th Cir Court of Appeals. But for unknown reason this 3 packe never made it to 9th Cir Court of Appeals. An Court of Appeals ignored that this evidence is sufficient to satisfy Mail Box Rule Announce in (Houston v. Lack, supra). It basically ignores such rule.

I also presented on (Exhibit H) evidence that officer Walker received my request letter on 11-25-18. The letter is a letter where I was requesting to District Court to know if my NOA was ever received by Court in 8-23-18. This letter is the one 9th Cir Court told me to sign the letter. It was also the letter been treated as my NOA, see (Exhibit A) (Exhibit C pg 16). Court of Appeals didn't explain how this evidence didn't reveal sufficient to satisfy that my documents were consider timely when I gave such letter on 11-25-18 to officer for mail out.

I would like Court to reverse Court of Appeals decision. Reversed because its decision is contrary to the Mail box Rule & law announced in (Houston v. Lack supra).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Raul Arellano

Date: 1-20-2020