

JEFFREY MILLER 07A6870  
DOWNSTATE CORRECTIONAL FACILITY  
BOX F RED SCHOOLHOUSE ROAD  
FISHKILL, NEW YORK 12524

AUGUST 6, 2019

SUPREME COURT OF THE UNITED STATES  
OFFICE OF THE CLERK  
WASHINGTON, DC, 20543

Re: MILLER v. GRAHAM  
USCA2 #18-2598

Dear Mr. Harris:

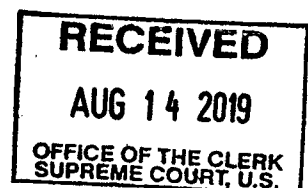
Petitioner is filing with you, by way of this letter, a motion to Direct the Clerk to File Out-Of Time; along with Petitioner's original motion for leave to proceed IN FORMA PAUPERIS, and application for a writ of Certiorari. There is indeed cause to grant Petitioner permission to File Out-Of-Time. Petitioner contends that this motion should be granted for the following reasons:

1. According to the "Procedures Following the Court's Decision" outlined in the instructions sent to Petitioner by the United States Court of Appeals for the Second Circuit this writ was timely submitted. Page three of these instructions inform that:

1. After a pro se application for a Certificate Of Appealability (COA), and motion to proceed In Forma Pauperis (IFP) is denied;
2. the appellant "may file a petition asking that the panel of three Judges rehear the case;
3. once the panel of three Judges denies the petition the appellant may file a motion to rehear en banc;
4. the Circuit Court's jurisdiction ends when the case is mandated. See Attachment A.

Petitioner, in no uncertain terms, followed the aforementioned protocol. See Attachment B.

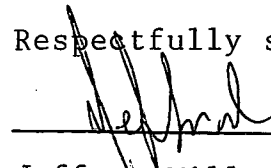
In response to Petitioner's request that Second Circuit rehear the case en banc dated April 18, 2019, the Court informed Petitioner that it no longer had jurisdiction over his case. Moreover, that jurisdiction ended on March 21, 2019, when the case




was mandated. See Atteachment C.

Nothing in THESE INSTRUCTIONS informs a pro se appellant that a case being mandated does not amount to a final judgment or decree; nor that the April 18, 2019, letter from the Second Circuit is not the final judgment or determination in Petitioner's case in the US Court of Appeals. In either case Petitioner's writ of Certiorari, postmarked June 17, 2019, had been submitted within the ninety day time limit. Lastly, Petitioner's case involves significant public policy concerns, and raises questions of exceptional importance. Petitioner's lay-person status should be taken into consideration. For the reasons stated above Petitioner humbly requests that this motion be granted, and that his application for writ of Certiorari is presented for consideration.

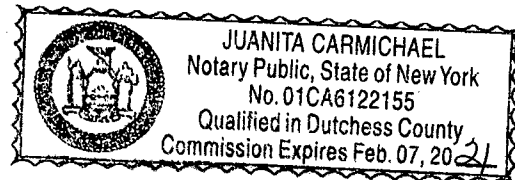
Respectfully submitted,

  
Jeffrey Miller 07A6870 Pro se

Affirmed before me this  
6 day of August 2019

  
\_\_\_\_\_

NOTARY PUBLIC



ATTACHMENT A ATTACHMENT A ATTACHMENT A ATTACHMENT A ATTACHMENT A

# HOW TO APPEAL AS A PRO SE PARTY TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Revised 7-14

## INTRODUCTION

The Court has prepared materials to assist a pro se party who has a case pending in the Court. This document describes general information for pro se cases. In addition, there are instructions for each type of case that can be appealed - Civil, Criminal, Agency, and Prisoner Claims. Also, there are forms that a pro se party must submit to the Court to proceed with the appeal. The instructions and forms are available on the Court's website [www.ca2.uscourts.gov](http://www.ca2.uscourts.gov). One copy of the Instructions and forms are sent by mail to the pro se party at the beginning of the case. Use these materials to prepare the appeal.

A pro se party is a person who is not represented by an attorney. An incorporated business, including a corporation held by one person, may not appear as a pro se party in this Court. A corporation must be represented by counsel in order to participate in an appeal.

If a lawyer files a case on his or her own behalf as a pro se matter, the Court will treat the case as a counseled appeal. Accordingly, the lawyer must seek admission to this Court, register as Filing User to file all documents electronically, and file an acknowledgment and notice of appearance.

Every person who files a case in this Court must follow the Federal Rules of Appellate Procedure ("FRAP"), the Court's Local Rules ("LR") and applicable statutes and case law. FRAP, the LRs, and all relevant Court forms are available on the Court's website [www.ca2.uscourts.gov](http://www.ca2.uscourts.gov).

If a question arises in this case, first check the instructions. If the answer does not appear in the instructions, call the case manager assigned to your case. The name and contact information is on the docketing notice sent to each party at the beginning of the case.

## STARTING THE CASE

A pro se party appealing from a district court decision must file a notice of appeal and pay the docket fee or file for *in forma pauperis* ("IFP") status in the district court as described in the Instructions for the type of case being appealed. The pro se party is called the "appellant" in such matters.

A pro se party challenging an administrative agency final decision must file a petition for review and pay the docket fee or file for IFP status in the Court of Appeals, as described in the instructions for Agency cases. The pro se party is called the "petitioner" in such matters.

A pro se appellant or petitioner must file Form B or Form D-P. A pro se party does not file Form C or C-A, however, because a case that involves a pro se party is not eligible for the pre-argument mediation process known as CAMP.

In a case in which the appellant or petitioner is pro se, the district court clerk or agency files the

record on appeal, including the transcript if required. Note that in an appeal from the district court decision, if the case requires a transcript and IFP status is not granted, the appellant must pay for the transcript.

Within 14 days of receiving the Court of Appeals docketing notice, a pro se party must file with the Court an Acknowledgment and Notice of Appearance Form according to the directions provided in the Instructions.

A pro se party who does not immediately notify the Court when contact information changes will not receive notices, documents and orders filed in the case. A pro se party who is permitted to file documents electronically in CM/ECF must notify the Court of a change to the user's mailing address, business address, telephone number, or e-mail. To update contact information, a Filing User must access PACER's Manage My Appellate Filer Account, <https://www.pacer.gov/psco/cgi-bin/cmecf/ea-login.pl>. The Court's records will be updated within 1 business day of a user entering the change in PACER.

A pro se party who is not permitted to file documents electronically must notify the Court of a change in mailing address or telephone number by filing a letter with the Clerk of Court.

### **DISCLOSURE OF ATTORNEY ASSISTANCE**

At any point during the case, a pro se party who submits a paper that an attorney has drafted in whole or substantial part must include at the beginning of the paper the following statement: "This document was drafted in whole, or substantial part, by an attorney." Unless the Court orders otherwise, the pro se party does not have to disclose the attorney's identity and address.

### **PROCEDURES FOR FILING A BRIEF AND APPENDIX**

Within 14 days after the appellant or petitioner receives the completed transcript or certifies that no transcript will be ordered in the case, the appellant must file with the Court a scheduling notification advising the Court when appellant or petitioner's brief and appendix will be filed. LR 31.2.

The instructions explain how to file the scheduling notification, prepare the brief and appendix, and file the documents with the Court.

It is important to file the brief and appendix by the date given in the scheduling notification. The Court does not grant requests to extend the time to file a brief or appendix unless the reason for the request is extraordinary.

### **PROCEDURES FOR ORAL ARGUMENT**

Within 14 days after the last appellee or respondent's brief is filed, each party, including a pro se party, must file with the Court an Oral Argument Statement. LR 34.1(a).

The Court may choose to determine any case on the submission of the briefs, i.e., without oral argument. When the Court decides to hear an appeal on submission, the clerk informs the parties.

Certain types of immigration appeals are routinely determined by the Court on submission of the briefs.

Each set of instructions explains the Court's practices regarding oral argument.

### **PROCEDURES FOLLOWING THE COURT'S DECISION**

When the Court issues (1) an opinion pursuant to which a final judgment is entered or (2) a summary order and judgment disposing of the appeal, a party may file a petition asking that the panel of three judges rehear the case. A party also may file a petition for rehearing en banc which asks that all the active judges on the Court rehear the case.

When the Court disposes of an appeal by a final three-judge order without entry of a separate judgment, a party may file a motion for panel reconsideration and a motion for reconsideration en banc. See LR 40.2. The motion must comply with the requirements for filing a petition for rehearing or rehearing en banc.

Also, within 14 days after the Court files the decision in a case, the winning party may seek costs of bringing or defending the appeal against the losing party. If the United States is a party in the case, costs may be assessed only if authorized by law.

Within 90 after the Court files the judgment or denies a petition for rehearing, a party may file a petition for a writ of certiorari with the United States Supreme Court.

The Court's authority to handle a case, called jurisdiction, ends when the Court issues the mandate to the district court or agency. The mandate usually issues either 21 days (52 days in a civil case if the United States is a party) after the decision is filed or, if a petition for rehearing is filed, 7 days after the petition for rehearing is denied.

Each of these procedures is explained in the instructions.

ATTACHMENT B

ATTACHMENT B

ATTACHMENT B

ATTACHMENT B

ATTACHMENT B

E.D.N.Y.-Bklyn  
14-cv-5901  
Matsumoto, J.

United States Court of Appeals  
FOR THE  
SECOND CIRCUIT

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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 24<sup>th</sup> day of January, two thousand nineteen.

Present:

Amalya L. Kearse,  
Dennis Jacobs,  
Robert D. Sack,  
*Circuit Judges.*

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Jeffery Miller,

*Petitioner-Appellant,*

v.

18-2598

Howard Graham,

*Respondent-Appellee.*

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Appellant, pro se, moves for a certificate of appealability and in forma pauperis status. Upon due consideration, it is hereby ORDERED that the motions are DENIED and the appeal is DISMISSED because Appellant has not "made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c); *see also Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court

A circular seal of the United States Court of Appeals for the Second Circuit is stamped over the signature. The seal contains the text "UNITED STATES", "SECOND CIRCUIT", and "NEW YORK, N.Y." around the perimeter.





**United States Court of Appeals for the Second Circuit  
Thurgood Marshall U.S. Courthouse  
40 Foley Square  
New York, NY 10007**

**ROBERT A. KATZMANN**  
CHIEF JUDGE

Date: April 18, 2019  
Docket #: 18-2598pr  
Short Title: Miller v. Graham

**CATHERINE O'HAGAN WOLFE**  
CLERK OF COURT

DC Docket #: 14-cv-5901  
DC Court: EDNY (BROOKLYN)  
DC Judge: Matsumoto

Dear Jeffrey Miller,

This is to acknowledge receipt of your motion requesting rehearing en banc in the case referenced above. The Court has already denied your previous request for reconsideration of the same order on March 14, 2019, and the case was mandated on March 21, 2019. Because we no longer have jurisdiction of this case your motion for rehearing en banc may not be entertained, and it is hereby returned.

Very truly yours,  
Catherine O'Hagan Wolfe,  
Clerk of Court

  
The signature is written in cursive over a circular official seal of the United States Court of Appeals for the Second Circuit.

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

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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 14<sup>th</sup> day of March, two thousand and nineteen,

Present: Amalya L. Kearse,  
Dennis Jacobs,  
Robert D. Sack,

Circuit Judges,

---

Jeffrey Miller,

Petitioner - Appellant,

v.

Howard Graham,

Respondent - Appellee.

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**ORDER**

Docket No. 18-2598

Appellant Jeffrey Miller filed a motion for reconsideration and the panel that determined the motion has considered the request.

IT IS HEREBY ORDERED, that the motion is denied.

For The Court:

Catherine O'Hagan Wolfe,  
Clerk of Court

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