

United States Court of AppealsFIFTH CIRCUIT
OFFICE OF THE CLERKLYLE W. CAYCE
CLERKTEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

P

January 22, 2020

#182157
Mr. Ruben Orlando Benitez
South Mississippi Correctional Facility
22689 Highway 63 N., P.O. Box 1419
Building D-1, B Zone
Leakesville, MS 39451-0000

No. 19-60113 Ruben Benitez v. Jeffrey Atkins
USDC No. 1:17-CV-233

Dear Mr. Benitez,

We received your "Motion Pursuant to Federal Rules of Civil Procedures Rule 60(b) 1,2,3,4 & 6." We are taking no action because the case is closed in this court. Additionally, filings in this court are governed strictly by the Federal Rules of Appellate Procedure, not the Federal Rules of Civil Procedure.

Sincerely,

LYLE W. CAYCE, Clerk



By: Allison G. Lopez, Deputy Clerk
504-310-7702

cc: Mr. Stephen R. Graben

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19-60113
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

August 30, 2019

Lyle W. Cayce
Clerk

RUBEN ORLANDO BENITEZ,

Plaintiff - Appellant

v.

JEFFREY ATKINS,

Defendant - Appellee

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 1:17-CV-233

Before KING, GRAVES, and WILLETT, Circuit Judges.

PER CURIAM:*

The district court dismissed Ruben Benitez's action against Jeffrey Atkins. Benitez appeals, arguing that the district court should have granted his motion to remand to state court or granted his motions for summary judgment. For the reasons explained below, we AFFIRM.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Orders on Motions

1:17-cv-00233-HSO-RHW Benitez v.
Atkins CASE CLOSED on 01/29/2019

CLOSED,APPEAL,JURY,REMOVAL,RHW

APPENDIX
C
109

U.S. District Court**Southern District of Mississippi****Notice of Electronic Filing**

The following transaction was entered on 3/19/2019 at 11:16 AM CDT and filed on 3/19/2019

Case Name: Benitez v. Atkins

Case Number: 1:17-cv-00233-HSO-RHW

Filer:

WARNING: CASE CLOSED on 01/29/2019

Document Number: 86

Docket Text:

ORDER granting [85] Motion for Leave to Appeal in forma pauperis. See Order for details.

Signed by District Judge Halil S. Ozerden on 3/19/19. (JCH)

1:17-cv-00233-HSO-RHW Notice has been electronically mailed to:

Stephen R. Graben-Federal Gov stephen.graben@usdoj.gov, CaseView.ECF@usdoj.gov, deborah.bradford@usdoj.gov, renee.yancey@usdoj.gov

1:17-cv-00233-HSO-RHW Notice has been delivered by other means to:

Ruben Orlando Benitez
#182157
South MS Correctional Facility
Building D-1, B Zone, Bed 194
P.O. Box 1419
Leakesville, MS 39451

The following document(s) are associated with this transaction:

Document description: Main Document

Original filename: n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1081288797 [Date=3/19/2019] [FileNumber=5174794-0
] [0f1d80e7c68de5ceb9d017ad5e806555c08d69555bcf26188ead4a25cf636fe052
3088e5acf56058593cb93f393abba635428f525376c9e2186dc5661068d7f]]

1/29/2019
APR 1 2019
D

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

RUBEN ORLANDO BENITEZ	§	PLAINTIFF
	§	
	§	
v.	§	Civil No. 1:17cv233-HSO-RHW
	§	
	§	
JEFFERERY ATKINS	§	DEFENDANT

FINAL JUDGMENT

In accordance with the Court's Order entered herewith,

IT IS, THEREFORE, ORDERED AND ADJUDGED that, this civil action
is DISMISSED WITH PREJUDICE.

SO ORDERED, this the 29th day of January, 2019.

Halil Suleyman Ozerden

HALIL SULEYMAN OZERDEN
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

Ruben Orlando Benitez

Plaintiff

vs.

Civil Action No. 1:17-cv-233-HSO-RHW

Jefferey Atkins

Defendant

Supplemental Response to Plaintiff's Request for Admission

Defendant Jeffrey Atkins,¹ acting by and through his undersigned attorney, supplements his response to Plaintiff Ruben Orlando Benitez's Request for Admission,² which he served this day, as follows:

✓**Request for Admission No. 1:** Did Defendant receive/possess the summons and complaint on August 1, 2017 through U.S. Mail?

Supplemental Response: Yes.

✓**Request for Admission No. 2:** Did Defendant sign or return the acknowledgement included in the mailing by its required date of August 8, 2017?

Supplemental Response: No.

¹ Defendant Jeffrey Atkins's first name is misspelled as "Jefferey" in the Complaint.

² Defendant supplements his response due to the denial of Plaintiff's request that this action be remanded to state court. *See Memorandum Opinion and Order Denying Plaintiff's [4] Motion to Rescind Removal Notice* entered this day in this action.

APPENDIX
2 PGS
E

Request for Admission No. 3: Did Defendant respond to the summons and complaint within the required date of September 7, 2017: thirty (30) days after the required date of the acknowledgment?

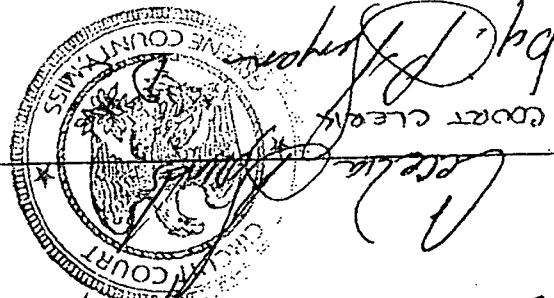
Supplemental Response: Defendant objects to this request on the ground that following the removal of this action and the subsequent orders of this Court he was not required to respond to the complaint on or before September 7, 2017. Defendant admits that he has timely responded to the complaint in accordance with the orders of this Court.

✓**Request for Admission No. 4:** Did Defendant possess the knowledge, skills, and ability to understand the clear directions of the summons and all processes thereof?

Supplemental Response: Defendant admits he understood the directions contained in the summons. Defendant objects to this request as it relates to "all processes thereof" on the ground that it is unclear what Plaintiff is referring to as "all processes thereof." Plaintiff has not defined or described what he means by the term "all processes thereof." The request is therefore vague and confusing.

✓**Request for Admission No. 5:** Did Defendant seek legal representation being fully aware of the serious allegations posed?

Supplemental Response: Defendant admits that he sought and obtained legal representation in this matter. Defendant denies the remaining statements contained in this request.



ALL DAY OF May 2017.

ISSUED UNDER MY HAND AND THE SEAL OF SAID COURT THIS THE

AFTERNOON.

YOU MUST ALSO FILE THE ORIGINAL OF YOUR RESPONSE WITH
THE CLERK OF THIS COURT WITHIN A REASONABLE TIME
THE COMPLAINT.

AGAINST YOU FOR THE HARM OF OTHER THINGS DEMANDED IN
COMPLAINT OF A JUDGMENT BY DEFALCATION WILL BE ENTERED,
(30) DAYS FROM THE DATE OF DELIVERY OF THIS SUMMONS AND
3451, YOUR RESPONSE MUST BE MAILED OR DELIVERED WITHIN
THE PLAINTIFF, WHOSE ADDRESS IS P.O. BOX 1419 LEAKESVILLE, MS
WITTEN RESPONSE TO THE COMPLAINT TO ROBERT DELAND BENNETT,
YOU ARE REQUIRED TO MAIL OR MAIL DELIVER A COPY OF A
ACTION TO PROTECT YOUR RIGHTS.

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS
NOTICE TO DEFENDANT
IS IMPORTANT AND YOU MUST TAKE IMMEDIATE

TO: JEFFREY ATKINS

THE STATE OF MISSISSIPPI

SUMMONS

DEFENDANT

JEFFREY ATKINS

NO. 0017-06368

VERSES

PLAINTIFF

ROGER DELAND BENNETT

IN THE JUDICIAL COURT OF LEE COUNTY, MISSISSIPPI.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

Ruben Orlando Benitez

Plaintiff

vs.

Civil Action No. 1:17-cv-233-HSO-RHW

Jefferey Atkins

Defendant

Answer to Complaint

Defendant Jeffrey Atkins ("Atkins"), acting by and through his undersigned attorney, answers the Complaint of Plaintiff Ruben Orlando Benitez ("Benitez") as follows:

Defenses

1. This Court lacks jurisdiction over the subject matter of this action.
2. This Court lacks jurisdiction over the person of Atkins.
3. This action should be dismissed for improper or insufficient process.
4. This action should be dismissed for improper or insufficient service of process.
5. The Complaint fails to state a claim upon which relief can be granted.
6. Atkins is absolutely immune from personal liability for monetary damages.
7. Atkins is judicially immune from personal liability for monetary damages.

1 Pd 6
INDEX

AUG. 23, 2017

APPENDIX
FOGS
†

TO: JEFFREY ATKINS, DEPUTY CLERK
UNITED STATES SUPREME COURT
1 FIRST STREET
WASHINGTON, D.C. 20543

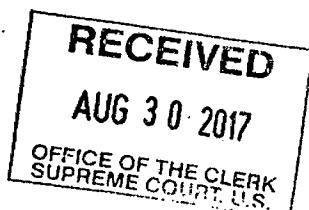
FROM: RUBEN ORLANDO BENITEZ
MDOC #182157
SMCI
BUILDING D-1 B-ZONE Bed 194
P.O. Box 1419
LEAKESVILLE, MS. 39451.

SUB: 2017-063 (2)

GREETINGS. BENITEZ HAS TRIED TO SERVE THE DEFENDANT, JEFFREY ATKINS WITH A KNOWN ADDRESS OF 1 FIRST STREET WASHINGTON, DC 20543 WITHOUT SUCCESS IN THE FOLLOWING TWO (2) FORMS:

1. SERVICE TO BE MADE BY CONSTABLE
 - A. SUMMONS & COMPLAINT SENT BY REGISTERED MAIL
 - B. A. NATHUM RECEIVED & SIGNED FOR MAILING
2. BY MAIL DIRECTLY TO DEFENDANT
 - A. MRCP RULE 4(c) 3(A)
 - B. MRCP RULE 4(c) 5

BENITEZ NOW REQUESTS THIS COURT TO COMMAND CONSTABLE A. NATHUM TO SERVE THE SUMMONS & COMPLAINT, WHICH IS IN HIS POSSESSION, ON THE



DEFENDANT JEFFREY ATKINS PURSUANT TO MRCP RULE 4(c) 3(c) THUS REQUIRING PAYMENT OF SERVICE BY THE SERVED PARTY.

IT IS MOST EVIDENT THAT THE DEFENDANT IS WELL AWARE OF THE SUMMONS & COMPLAINT AND HAS CHOSEN TO NOT COMPLY WITH THE CONTENTS THEREOF.

AS AN INDIGENT PRO SE PRISONER WITH NO AVAILABLE RESOURCES, BENITEZ IS AT A GREAT DISADVANTAGE IN HAVING THE SERVICE PROCESS COMPLETED WITHIN THE SUBSCRIBED TIME FRAME. BENITEZ PLACES HIMSELF AT THE MERCY OF THIS COURT IN REQUESTING THIS COMMAND TO THE CONSTABLE A. NATHUM.

IN THE ALTERNATIVE, RENDER A DEFAULT BY DEFENDANT JEFFREY ATKINS AND ISSUE AN ORDER REQUIRING THE FULL PAYMENT OF DAMAGES IN THE FOLLOWING INCREMENTS AND PERSONS INDICATED BELOW:

9 x \$100,000⁰⁰ CERTIFIED CHECKS
PAYABLE TO: MARIANNE BENITEZ
1791 NW 96 TERR
BUILDING 4 UNIT O
PEMBROKE PINES, FL 33024

4 x \$100,000⁰⁰ CERTIFIED CHECKS
PAYABLE TO: KRISTALYN BENITEZ
1791 NW 96 TERR
BUILDING 4 UNIT O
PEMBROKE PINES, FL 33024

4 x \$100,000⁰⁰ CERTIFIED CHECKS
PAYABLE TO: JAZMIN ROSA
1791 NW 96 TERR
BUILDING 4 UNIT 0
PEMBROKE PINES, FL 33024

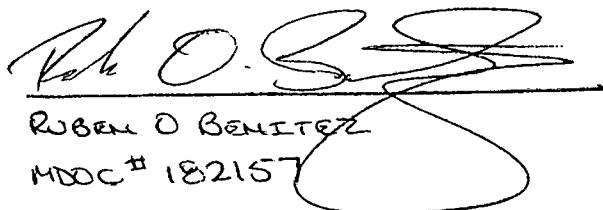
3 x \$100,000⁰⁰ CERTIFIED CHECKS
PAYABLE TO: BENITO BENITEZ
CALLE HAWAII
AD-13 CAGUAS NORTE
CAGUAS, PUERTO RICO 00725

3 x \$100,000⁰⁰ CERTIFIED CHECKS
PAYABLE TO: ANA BENITEZ
CALLE HAWAII
AD-13 CAGUAS NORTE
CAGUAS, PUERTO RICO 00725

3 x \$100,000⁰⁰ CERTIFIED CHECKS
PAYABLE TO: RUBEN ORLANDO BENITEZ
1791 NW 96 TERR
BUILDING 4 UNIT 0
PEMBROKE PINES, FL 33024

BENITEZ WILL AUDIT THE RESPONSE FROM THE COURT
BEFORE ATTEMPTING TO HAVE A FAMILY MEMBER TRAVEL
TO WASHINGTON, DC TO SERVE THE SUMMONS & COMPLAINT
OR IF PERMITTED, TO SEND THE SUMMONS & COMPLAINT
VIA ELECTRONIC MEANS IF ALLOWED.

VERY RESPECTFULLY SUBMITTED,


RUBEN O BENITEZ
MDOC # 182157

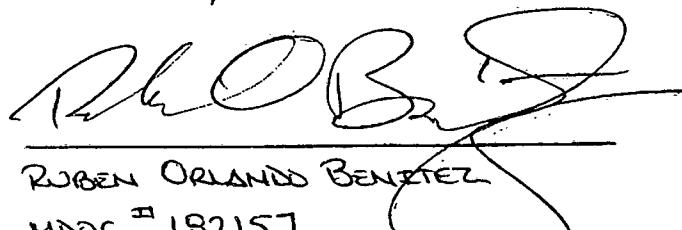
CERTIFICATE OF SERVICE

I RUBEN ORLANDO BENITEZ DO HEREBY CERTIFY
THAT I HAVE CAUSED THIS DAY TO BE MAILED BY
MDOC ILAP A REQUEST FOR ASSISTANCE BY US MAIL
POSTAGE PREPAID TO THE FOLLOWING:

HON. CECELIA BOUNDS, CLERK
GREENE COUNTY CIRCUIT COURT
P.O. BOX 310
LEAKESVILLE, MS 39451

JEFFREY ATKINS, DEFENDANT
1 FIRST STREET
WASHINGTON, D.C. 20543

DONE THIS THE 23rd DAY OF AUGUST, 2017


RUBEN ORLANDO BENITEZ

MDOC # 182157

SMCI

BUILDING D-1 B-ZONE BED 194

P.O. BOX 1419

LEAKESVILLE, MS 39451

IN THE CIRCUIT COURT OF GREENE COUNTY MISSISSIPPI

RUBEN ORLANDO BENITEZ

PLAINTIFF

VERSUS

No. 2017-063 (2)

JEFFREY ATKINS

DEFENDANT

NOTICE

TO: JEFFREY ATKINS

THE ENCLOSED SUMMONS AND COMPLAINT ARE SERVED PURSUANT TO RULE 4(c)(3) OF THE MISSISSIPPI RULES OF CIVIL PROCEDURE.

YOU MUST SIGN AND DATE THE ACCOMPANYING ACKNOWLEDGEMENT.

IF YOU DO NOT COMPLETE AND RETURN THE FORM TO THE SENDER WITHIN 20 DAYS OF THE DATE OF MAILING SHOWN BELOW, YOU MAY BE REQUIRED TO PAY ALL EXPENSES INCURRED IN SERVING A SUMMONS AND COMPLAINT. A SASE IS ENCLOSED FOR USE IN RETURNING THE ACKNOWLEDGEMENT OF RECEIPT AND SUMMONS.

IF YOU DO COMPLETE AND RETURN THIS FORM, YOU MUST RESPOND TO THE COMPLAINT WITHIN 30 DAYS OF THE DATE OF YOUR SIGNATURE. IF YOU FAIL TO DO SO, JUDGEMENT BY DEFAULT WILL BE TAKEN AGAINST YOU FOR THE FULL RELIEF DEMANDED IN THE COMPLAINT.

I DECLARE THAT THIS NOTICE AND ACKNOWLEDGEMENT OF RECEIPT OF SUMMONS AND COMPLAINT WAS MAILED ON THIS THE 19th DAY OF JULY, 2017.

Rubén Benítez

SERIALIZED AND SUBSCRIBED BEFORE

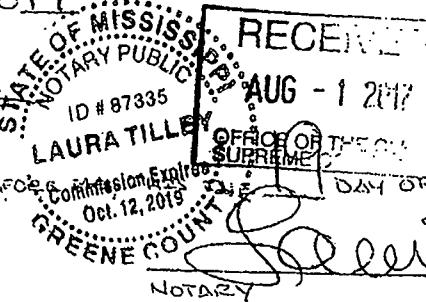


Exhibit 1

ROBERT O. BERNSTEIN
P.O. BOX 1419
LEAVESVILLE, MS 39451

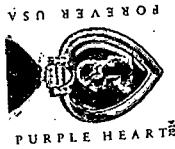
"RESTRICTED DELIVERY"

"Return Receipt Requested"

"RESTRICTED DELIVERY"

JEFFREY ATKINS
DEPUTY CLERK
UNITED STATES SUPREME COURT
1 FIRST STREET
WASHINGTON, D.C.

20543



RUBEN ORLANDO BEUTTERZ
#182157
SFC
BUILDING D-1 B-ZONE BED 144
P.O. BOX 1419
LENOREVILLE, MS 39451



U.S. Department of Justice

United States Attorney
Southern District of Mississippi

*Stephen R. Grabin
Assistant United States Attorney
E-mail address: stephen.grabin@usdoj.gov*

September 8, 2017

Sent via E-mail

The Honorable Robert H. Walker
United States Magistrate Judge
Dan M. Russell, Jr. United States Courthouse
2012 15th Street, Suite 870
Gulfport, Mississippi 39501

Re: *Ruben Orlando Benitez*
v.
Jefferey Atkins
Civil Action No. 1:17-cv-233-LG-RHW

Dear Judge Walker:

Pending before Your Honor is Defendant's Motion for Extension of Time to File Answer or Present Other Defenses (Doc. 2), which was filed in the above-referenced civil action on August 30, 2017. Plaintiff Ruben Orlando Benitez, acting *pro se*, has now responded in opposition to the motion. *See* Amendment to Motion to Rescind Removal Notice (Doc. 4-1 at pp. 5-9). The Defendant does not intend to file a reply to Plaintiff's response and therefore again respectfully requests this Court to enter an order granting Defendant's motion.

Sincerely,

Harold Brittain
Acting United States Attorney

Other Documents1:17-cv-00233-HSO-RHWBenitez v. Atkins

JURY,NO_CMC,REMOVAL,RHW

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—**U.S. District Court****Southern District of Mississippi****Notice of Electronic Filing**

The following transaction was entered on 12/18/2017 at 1:31 PM CST and filed on 12/18/2017

Case Name: Benitez v. Atkins

Case Number: 1:17-cv-00233-HSO-RHW

Filer: Ruben Orlando Benitez

Document Number: 35

Docket Text:

AFFIDAVITS of Krystalyn Marie Benitez, Jazmin Rosa, and Marianne Benitez by Ruben Orlando Benitez. (Attachments: # (1) Envelope)(JCH)

1:17-cv-00233-HSO-RHW Notice has been electronically mailed to:

Stephen R. Graben-Federal Gov stephen.graben@usdoj.gov, CaseView. ECF@usdoj.gov, deborah.bradford@usdoj.gov

1:17-cv-00233-HSO-RHW Notice has been delivered by other means to:

Ruben Orlando Benitez
#182157
South MS Correctional Facility
Building D-1, B Zone, Bed 194
P.O. Box 1419
Leakesville, MS 39451

The following document(s) are associated with this transaction:

Document description: Main Document

Original filename: n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1081288797 [Date=12/18/2017] [FileNumber=4763486-0] [7f785543948301364b096d2086284366898931931ab93bcc663bad939d89978d1e2cef5839421d234fef8d10c02abd560bfa2a3221270571a2b4ccd911194020]]

Document description: Envelope

Original filename: n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1081288797 [Date=12/18/2017] [FileNumber=4763486-1] [a08a0ced4ad4d5da92ee53b17899dc6616df22a7f6104bb0f940df4dab1086cd3e706b050949ac0c662bc798b668466763b913577e5a364c1defa17b849d0493]]

FLORIDA SHORT-FORM INDIVIDUAL ACKNOWLEDGMENT

F.S. 695.25

State of Florida

County of Broward

The foregoing instrument was acknowledged
before me this 6th day
Date

of December, 2017,
Month Year

by Krystelyn Benitez,
Name of Person Acknowledging

who is personally known to me or who
has produced Drivers License

Type of Identification

as identification.


BDJ

*Signature of Notary Public*Bruce Davenport*Name of Notary Typed, Printed or Stamped*

Place Notary Seal/Stamp Above

Notary Public — State of Florida

OPTIONAL

*Though this section is optional, completing this information can deter alteration of the document
or fraudulent reattachment of this form to an unintended document.*

Description of Attached DocumentTitle or Type of Document: Cert. of Service

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

In the U.S D District court southern District of Mississippi

Ruben Orlando Benitez Plaintiff

Versus No 1:17-CV-00233-HSO-RHW

Jeffery Atkins Defendant

I, Krystalyn Marie Benitez being the daughter of one Ruben Orlando Benitez, MDOC #182157

Which is the plaintiff in a civil action against one Jeffery Atkins under case No 1:17-cv-00233-HSO-RHW

In the U.S. District Court Southern District of Mississippi, Do Hereby provide this affidavit in regards to

My personal account of a telephone conversation held between plaintiff Benitez and defendant Atkins

Which took place in late September / early October of 2016 to wit:

Telephone conversation

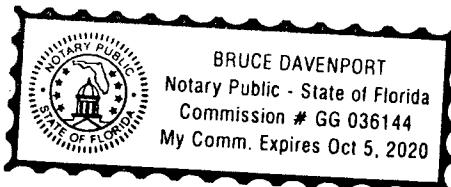
I telephonically witnessed Jeffrey Atkins tell my father , Ruben Orlando Benitez MDOC # 182157,that He was going to close my father's case in the United States Supreme Court . Jeffrey Atkins did not give an explanation why but he did tell my father that no relief would be given to him. Jeffrey Atkins did not say that a judge made the decision and he was the one saying these things.

Respectfully Submitted,



Sworn to and subscribed before me, this the 00 day of December 2017

Notary



Certificate of service

I Krystalyn M. Benitez Being the daughter of Ruben Orlando Benitez, MDOC #182157, do hereby certify that I have caused this day to be mailed by U.S. mail postage prepaid a true and correct copy of this affidavit to the following :

Hon. Clerk of court
U.S. Dist. CT SO. Dist. of MS
2012 15TH STREET
SUITE 403
Gulfport, MS 39501

Stephen R. Graben
Assistant U.S Attorney
1575 20TH Avenue
Gulfport, MS 39501

Hon. Hail S. Ozerden
U.S. District Judge
Dan M. Russell, JR. U.S. Court house
2012 15TH STREET
Gulfport, MS 39501

Ruben O Benitez
MDOC#182157 SMCI D-1 #194
P.O. Box 1419
Leakesville, MS 39451

Done this the 06 day of December, 2017

FLORIDA SHORT-FORM INDIVIDUAL ACKNOWLEDGMENT

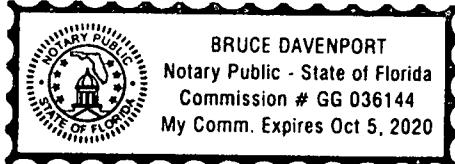
F.S. 695.25

State of Florida

County of Broward

The foregoing instrument was acknowledged
before me this 6th day
of December, 2017,
by Jazmin Rosa,
Name of Person Acknowledging

who is personally known to me or who
has produced Drivers License

Type of Identification

as identification.

BD
Signature of Notary PublicBruce Davenport

Name of Notary Typed, Printed or Stamped

Place Notary Seal Stamp Above

Notary Public — State of Florida

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document
or fraudulent reattachment of this form to an unintended document.

Description of Attached DocumentTitle or Type of Document: Certificate of Service

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

In the U.S D District court southern District of Mississippi

Ruben Orlando Benitez Plaintiff

Versus No 1:17-CV-00233-HSO-RHW

Jeffery Atkins Defendant

I, Jazmin Rosa being the daughter of one Ruben Orlando Benitez, MDOC #182157

Which is the plaintiff in a civil action against one Jeffery Atkins under case No 1:17-cv-00233-HSO-RHW

In the U.S. District Court Southern District of Mississippi, Do Hereby provide this affidavit in regards to

My personal account of a telephone conversation held between plaintiff Benitez and defendant Atkins

Which took place in late September / early October of 2016 to wit:

Telephone conversation

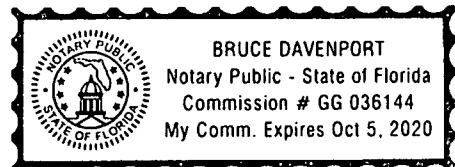
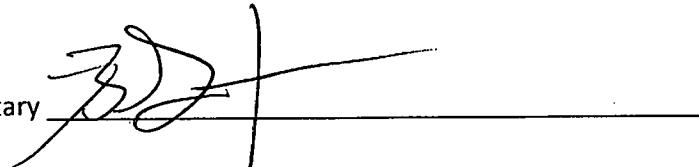
In the referenced conversation I heard/witnessed Mr. Atkins tell my dad, Ruben Orlando Benitez MDOC#182157, that he would not allow my dad to get any relief from the United States Supreme Court and that Atkins was going to close the case to make sure of it. Mr. Atkins never said that a judge was the one making the decisions Mr. Atkins was very rude and short with the conversation.

Respectfully Submitted,



Sworn to and subscribed before me, this the 00 day of December 2017

Notary



Certificate of service

I Jazmin Rosa Being the Daughter of Ruben Orlando Benitez, MDOC #182157, do hereby certify that I have caused this day to be mailed by U.S. mail postage prepaid a true and correct copy of this affidavit to the following :

Hon. Clerk of court
U.S. Dist. CT SO. Dist. of MS
2012 15TH STREET
SUITE 403
Gulfport, MS 39501

Stephen R. Graben
Assistant U.S Attorney
1575 20TH Avenue
Gulfport, MS 39501

Hon. Hail S. Ozerden
U.S. District Judge
Dan M. Russell, JR. U.S. Court house
2012 15TH STREET
Gulfport, MS 39501

Ruben O Benitez
MDOC#182157 SMCI D-1 #194
P.O. Box 1419
Leakesville, MS 39451

Done this the 06 day of December, 2017

FLORIDA SHORT-FORM INDIVIDUAL ACKNOWLEDGMENT

F.S. 695.25

State of Florida

County of BrowardThe foregoing instrument was acknowledged
before me this 7th day
Dateof December, 2017,
Month Yearby Marianne Benitez,
Name of Person Acknowledgingwho is personally known to me or who
has produced Illinois driver'slicense
Type of Identification

as identification.



Signature of Notary Public

Vanessa Nuñez

Name of Notary Typed, Printed or Stamped

Place Notary Seal Stamp Above

Notary Public — State of Florida

OPTIONAL*Though this section is optional, completing this information can deter alteration of the document
or fraudulent reattachment of this form to an unintended document.***Description of Attached Document**Title or Type of Document: Certificate of ServiceDocument Date: 12/7/17 Number of Pages: 1Signer(s) Other Than Named Above: NO other signers.

In the U.S D District court southern District of Mississippi

Ruben Orlando Benitez Plaintiff

Versus No 1:17-CV-00233-HSO-RHW

Jeffery Atkins Defendant

I, Marianne Benitez being the spouse of one Ruben Orlando Benitez, MDOC #182157

Which is the plaintiff in a civil action against one Jeffery Atkins under case No 1:17-cv-00233-HSO-RHW

In the U.S. District Court Southern District of Mississippi, Do Hereby provide this affidavit in regards to

My personal account of a telephone conversation held between plaintiff Benitez and defendant Atkins

Which took place in late September / early October of 2016 to wit:

Telephone conversation

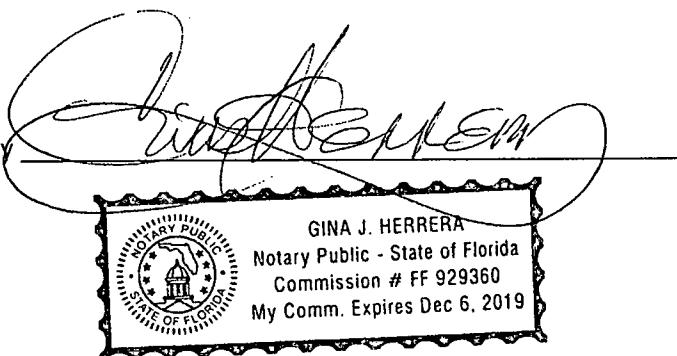
During the conversation held on a telephone on late September / early October I personally heard / witnessed Atkins tell plaintiff Benitez that Benitez "Would not" receive any relief from the U.S. Supreme Court in reference to a filed and Docketed WRIT OF CERTIORARI . I also personally heard/ witnessed defendant Atkins tells plaintiff Benitez that he (ATKINS) was going to close the case of Benitez In the U.S. Supreme Court to ensure no further review would be possible. The conversation was brief and defendant Atkins never provided a reason or explanation for stating he (ATKINS) was going to personally close the case without a judicial review.

Respectfully Submitted,



Sworn to and subscribed before me, this the 21 day of December 2017

Notary



Certificate of service

I, Marianne Benitez, Being the W SPouse of Ruben Orlando Benitez, MDOC #182157, do hereby certify that I have caused this day to be mailed by U.S. mail postage prepaid a true and correct copy of this affidavit to the following :

Hon. Clerk of court
U.S. Dist. CT SO. Dist. of MS
2012 15TH STREET
SUITE 403
Gulfport, MS 39501

Stephen R. Graben
Assistant U.S Attorney
1575 20TH Avenue
Gulfport, MS 39501

Hon. Hail S. Ozerden
U.S. District Judge
Dan M. Russell, JR. U.S. Court house
2012 15TH STREET
Gulfport, MS 39501

Ruben O Benitez
MDOC#182157 SMCI D-1 #194
P.O. Box 1419
Leakesville, MS 39451

Done this the 07 day of December, 2017



IN THE U.S. DISTRICT COURT SOUTHERN DISTRICT OF MISSISSIPPI

RUBEN ORLANDO BENITEZ

PLAINTIFF

VERSUS

NO. 1:17-cv-00233-HSO-RHW

JEFFREY ATKINS

DEFENDANT

EXHIBIT
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OBJECTION

TO THE DENIAL

OF ENTRY OF DEFAULT

COMES NOW, PRO SE, INDIGENT PRISONER PLAINTIFF
RUBEN ORLANDO BENITEZ, FILING THE FOLLOWING
OBJECTION TO THE COURT'S DENIAL OF ENTRY OF
DEFAULT AGAINST DEFENDANT JEFFREY ATKINS IN
THE ABOVE STYLED COURT AND CAUSE NUMBER.
PRO SE BENITEZ PROVIDES THE FOLLOWING, FULLY
DETAILED OBJECTION TO WIT:

STATEMENTS OF CASE

ON AUGUST 01, 2017 DEFENDANT JEFFREY ATKINS

WAS SERVED WITH SUMMONS AND COMPLAINT BY
U.S. MAIL PURSUANT TO FRCP RULE 4(c)(3)(A) AS
ADMITTED BY DEFENDANT ON THE RESPONSE TO THE
"REQUEST FOR ADMISSIONS" SERVED ON THE DEFENDANT.

ON AUGUST 29, 2017 THE DEFENDANT [ATTORNEY
THEREOF] REMOVED THE CIVIL ACTION FROM THE
GREENE COUNTY CIRCUIT COURT, WHERE IT WAS
INITIATED, TO THIS THE U.S. DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI. THE REMOVAL
WOULD "ONLY" EXTEND THE DEADLINE, OF THE
ANSWERS TO THE COMPLAINT, TO SEPTEMBER 05, 2017
WITHOUT ANY ACTION BY THE COURT.

ON AUGUST 30, 2017 DEFENDANT [ATTORNEY
THEREOF] SUBMITS A MOTION FOR AN EXTENSION
OF TIME IN HOPES OF EXTENDING THE NEWLY
ESTABLISH DATE OF SEPTEMBER 05, 2017 BY THE
REMOVAL PURSUANT TO FRCP RULE 81(e)(2).

ON SEPTEMBER 05, 2017 THE DEFENDANT [ATTORNEY
THEREOF] "DOES NOT" SUBMIT THE ANSWERS REQUIRED
PURSUANT TO FRCP 81(c)(2), AS PROVIDED BY THE
RECORD, THUS ESTABLISHING A DEFAULT.

ON SEPTEMBER 06, 2017 THE DEFENDANT [ATTORNEY
THEREOF] "DOES NOT" SUBMIT THE ANSWERS NOR
HAS THE COURT GRANTED AN EXTENSION.

ON SEPTEMBER 07, 2017 THE DEFENDANT [ATTORNEY
THEREOF] "DOES NOT" SUBMIT THE ANSWERS NOR
HAS THE COURT GRANTED AN EXTENSION.

ON SEPTEMBER 08, 2017 THE DEFENDANT [ATTORNEY
THEREOF] "DOES NOT" SUBMIT THE ANSWERS NOR
HAS THE COURT GRANTED AN EXTENSION.

ON SEPTEMBER 09, 2017 THE DEFENDANT [ATTORNEY
THEREOF] "DOES NOT" SUBMIT THE ANSWERS NOR
HAS THE COURT GRANTED AN EXTENSION.

ON SEPTEMBER 10, 2017 THE DEFENDANT [ATTORNEY
THEREOF] "DOES NOT" SUBMIT THE ANSWERS NOR

HAS THE COURT GRANTED AN EXTENSION.

ON SEPTEMBER 11, 2017 THE DEFENDANT [ATTORNEY
THEIR] "DOES NOT" SUBMIT THE ANSWERS. HOWEVER,
THE COURT "ACTS" AND ISSUES AN ORDER ELEVEN
(11) DAYS "AFTER" THE ORIGINAL TIME DEADLINE
AND SIX(6) DAYS "AFTER" THE EXTENSION EXPIRED
OF FRCP RULE 81(c)(2).

OBJECTION

THE COURT PROVIDED FRCP RULE 6(b)(1)(A) AS
THE 'RELEVANT LEGAL AUTHORITY' FOR THE DENIAL
OF A PERFECTED "APPLICATION TO CLERK FOR ENTRY OF
DEFAULT." THE RULE PROVIDES THE FOLLOWING:

"WHEN AN ACT MAY OR MUST BE DONE
WITHIN A SPECIFIED TIME, THE COURT MAY,
FOR GOOD CAUSE, EXTEND THE TIME."

PRO SE BENITEZ DOES NOT OBJECT TO THE
CAPTION EXPRESSED ABOVE. HOWEVER, PART (A) OF
THE RULE SERVES MORE AS A DAMOCLEAN ASPECT

AS IT PROVIDES:

"WITH OR WITHOUT MOTION OR NOTICE
IF THE COURT ACTS,..." "BEFORE" THE ORIGINAL
TIME OR ITS EXTENSION EXPIRES..."

THUS THE SAME 'RELEVANT LEGAL AUTHORITY' THE COURT
USES TO DENY THE APPLICATION SUBMITTED BY PRO SE
BENITEZ AS A PROCRUSTEAN BED, IS THE VERY SAME
'RELEVANT LEGAL AUTHORITY' IN WHICH THIS COURT
HAS "FITTED" TO ITS OWN BED. THE RULE CALLS
FOR THE EXTENSION OF TIME TO BE GRANTED "BEFORE"
THE ORIGINAL TIME [AUGUST 30, 2017] OR ITS EXTENSION
EXPIRES [SEPTEMBER 05, 2017]. AS AN OBJECTION TO THE
ORDER, THERE IS NO FEDERAL OR MISSISSIPPI STATE
RULE THAT ALLOWS FOR AN ACTION TO BE SUSPENDED/
STAYED WITHOUT THE GRANTING OF AN EXTENSION
"ON OR BEFORE" THE DEADLINE DATE OF THE
ACTION.

THEREFORE, PRO SE INDEBTED PRISONER PLAINTIFF

RUBEN ORLANDO BENITEZ, OBJECTS TO THE DENIAL
ON THE APPLICATION TO CLERK FOR ENTRY OF DEFAULT
AS THE APPLICATION WAS SUBMITTED WITHIN THE
CONSTRAINTS OF FRCP 55(a) WITH THE SUPPORTING
INFORMATION REQUIRED BEING MADE IN GOOD FAITH
AND THE MISAPPLICATION OF FRCP RULE 6(b)(1)(A)
BY THIS COURT.

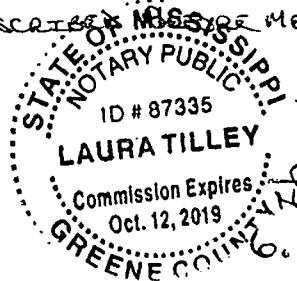
WHEREFORE PREMISES CONSIDERED, PRO SE INDIGENT
PRISONER PLAINTIFF RUBEN ORLANDO BENITEZ, REQUEST
THIS COURT TO RESCIND THE ORDER ISSUED FEBRUARY
07, 2018 AND COMPEL THE CLERK OF THE COURT TO
ENTER AN ORDER OF DEFAULT AGAINST DEFENDANT
JEFFREY ATKINS IN CAUSE NO. 1:17-CV-00233-HSO-RHW.

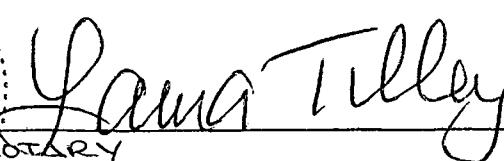
VERY RESPECTFULLY SUBMITTED,



RUBEN ORLANDO BENITEZ
MDOC # 182157

SWORN TO AND SUBSCRIBED BEFORE ME, THIS THE 15 DAY OF FEBRUARY, 2018





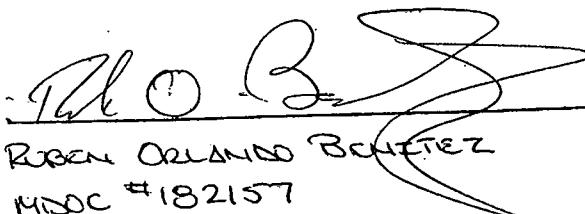
CERTIFICATE OF SERVICE

I, RUBEN ORLANDO BENITEZ, PRO SE INDIGENT
PRISONER PLAINTIFF, DO HEREBY CERTIFY THAT I HAVE
THIS DAY CAUSED TO BE MAILED BY MDOC ILAP, THIS
OBJECTION, BY U.S. MAIL POSTAGE PREPAID, A TRUE AND
CORRECT COPY OF THE FOREGOING INSTRUMENT TO THE
FOLLOWING:

HONORABLE CLERK OF THE COURT
U.S. DISTRICT COURT SOUTHERN DISTRICT OF MISSISSIPPI
2012 15TH STREET
SUITE 403
GULFPORT, MS 39501

STEPHEN R. GRABEN
ASSISTANT UNITED STATES ATTORNEY
1575 20TH AVENUE
GULFPORT, MS 39501

DONE THIS THE 15TH DAY OF FEBRUARY, 2018


RUBEN ORLANDO BENITEZ
MDOC #182157

SMCI
BUILDING D-1 B-ZONE BED 194
P.O. Box 1419
LEAKESVILLE, MS 39451

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Ruben Benitez, proceeding pro se, is an inmate serving a life sentence for murder in the state of Mississippi. After unsuccessfully appealing through the Mississippi state court system, Benitez sought review of his sentence and conviction in the United States Supreme Court by filing a petition for a writ of certiorari. Concurrent with his petition, Benitez filed a motion for leave to proceed in forma pauperis. The Court denied Benitez's motion. Around two weeks later, Benitez filed an "Application to Individual Justice Supreme Court of the United States for Fifth District," which was docketed as a motion for reconsideration of the Court's denial of Benitez's motion to proceed in forma pauperis. The Court denied that motion as well and thereafter closed the case.

Feeling aggrieved, Benitez filed suit in Mississippi state court against Jeffrey Atkins, an employee of the Office of the Clerk of the Supreme Court of the United States. Benitez alleged that Atkins denied him due process and engaged in "conspiracy" and "intimidation" in the course of handling Benitez's motion for leave to proceed in forma pauperis. Atkins removed the case to federal court under 28 U.S.C. §§ 1442(a)(3) and 1446, which allow for the removal of certain cases brought against federal officers. Following removal, Atkins timely requested a 30-day extension of time to file an answer, which the district court granted. Around the same time, Benitez filed a "Motion to Rescind Removal Notice," which the district court treated as a motion to remand and denied. Benitez also filed a motion for summary judgment. Atkins then filed another timely motion for an extension, this time for seven days, which the district court again granted. Seven days later, Atkins filed his answer. Benitez then filed a document entitled "Redintragation [sic] of Summary Judgment." Benitez's motion for summary judgment and subsequent filing both stated in essence that Atkins failed to respond to the summons and complaint and that judgment should therefore be awarded in

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

Ruben Orlando Benitez

Plaintiff

vs.

Civil Action No. 1:17-cv-233-HSO-RHW

Jefferey Atkins

Defendant

Answer to Complaint

Defendant Jeffrey Atkins ("Atkins"), acting by and through his undersigned attorney, answers the Complaint of Plaintiff Ruben Orlando Benitez ("Benitez") as follows:

Defenses

1. This Court lacks jurisdiction over the subject matter of this action.
2. This Court lacks jurisdiction over the person of Atkins.
3. This action should be dismissed for improper or insufficient process.
4. This action should be dismissed for improper or insufficient service of process.
5. The Complaint fails to state a claim upon which relief can be granted.
6. Atkins is absolutely immune from personal liability for monetary damages.
7. Atkins is judicially immune from personal liability for monetary damages.

IN THE U.S. DISTRICT COURT SOUTHERN DISTRICT OF MISSISSIPPI

RUBEN ORLANDO BENITEZ

PLAINTIFF

VERSUS

NO. 1:17-CV-00233-HSO-RHW

JEFFREY ATKINS

DEFENDANT

RESPONSE TO

ANSWER TO COMPLAINT

COMES NOW, PRO SE INDIGENT PRISONER PLAINTIFF,
RUBEN ORLANDO BENITEZ, WITHOUT THE ASSISTANCE OR
BENEFIT OF COUNSEL, FILING THIS RESPONSE TO WRIT:

JURISDICTION AND VENUE

THIS COURT LACKS JURISDICTION AS THE ASSISTANT
UNITED STATES ATTORNEY STEPHEN R. GRABEN, REPRESEN-
TING DEFENDANT JEFFREY ATKINS, HAS ELUCIDATED
IN PRESENTING HIS DEFENSE. THE LACK OF SUCH
ALSO ESTABLISHES IMPROPER VENUE.

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RESPONSE

THE DEFENDANT [ATTORNEY THEREOF] POSES THE FOLLOWING DEFENSE:

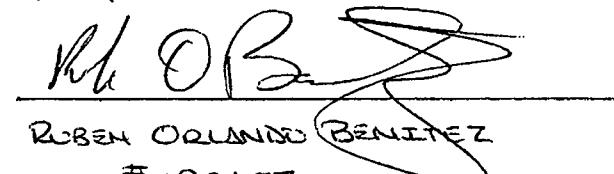
1. "THIS" COURT LACKS JURISDICTION OVER THE SUBJECT MATTER OF THIS ACTION

PRO SE INDIGENT PRISONER PLAINTIFF RUBEN ORLANDO BENITEZ DOES NOT CONTEST "THIS" DEFENSE AS IT HAS BEEN THE PRINCIPLE OPPOSITION TO THE "REMOVAL" OF THIS CIVIL ACTION FROM THE GREENE COUNTY CIRCUIT COURT TO "THIS" DISTRICT COURT, THE DEFENSE PRESENTED BY THE ASSISTANT UNITED STATES ATTORNEY STEPHEN R. GRABEN, APPOINTED BY THE DEPARTMENT OF JUSTICE TO DEFEND JEFFREY ATKINS WHICH IS AN EMPLOYEE OF THE UNITED STATES SUPREME COURT, ESTABLISHES THE REST OF THE DEFENSES AS MOOT AS THE DEFENSE ILLUSTRATED CONCEDES TO CIVIL CASE NO. 1:17-CV-00233-HSD-RHW IS TO BE REMANDED TO

THE GREENE COUNTY CIRCUIT COURT FOR DETERMINA-
TION / DAMAGES. MOREOVER, ASSISTANT UNITED STATES
ATTORNEY MUST WITHDRAWAL FROM HIS APPOINTMENT
OF REPRESENTING DEFENDANT JEFFREY ATKINS.

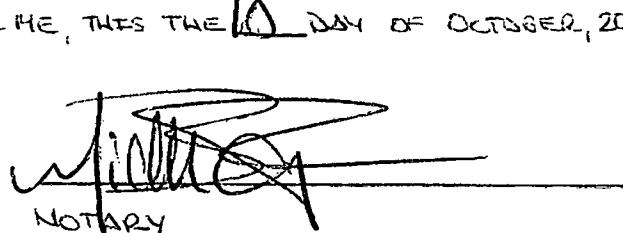
WHEREFORE, THE DEFENDANT [ATTORNEY THEREOF],
RECIPRICATING HIS REPRESENTATION, VINDICATES
PRO SE INDIGENT PRISONER PLAINTIFF RUBEN ORLANDO
BENITEZ THROUGH HIS DILIGENCE IN OBTAINING A
TOTAL OF THREE (3) EXTENSIONS OF TIME IN THE
DEVELOPMENT OF THIS MOST ABERATIONAL DEFENSE.

VEY RESPECTFULLY SUBMITTED


RUBEN ORLANDO BENITEZ
MDOC # 182157
SMCI
BUILDING D-1 B-ZONE BED 194
P.O. BOX 1419
LEAKESVILLE, MS 39451

SWORN TO AND SUBSCRIBED BEFORE ME, THIS THE 18 DAY OF OCTOBER, 2017




MICHEL BOLGER
NOTARY

CERTIFICATE OF SERVICE

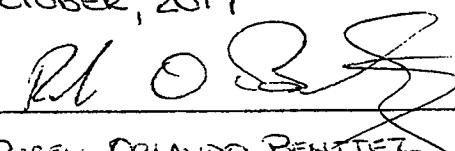
I ROBEN ORLANDO BENITEZ, PRO SE INDIGENT
PRISONER PLAINTIFF, DO HEREBY CERTIFY THAT I HAVE
THIS DAY, CAUSED TO BE MAILED BY MDOC ILAP, THIS
RESPONSE TO ANSWER TO COMPLAINT, BY U.S. MAIL
POSTAGE PREPAID A TRUE AND CORRECT COPY OF THE
FOREGOING INSTRUMENT TO THE FOLLOWING:

HONORABLE CLERK OF THE COURT
U.S. DISTRICT COURT SOUTHERN DISTRICT OF MISSISSIPPI
2012 15TH STREET
SUITE 403
GULFPORT, MS 39501

STEPHEN R. GRABEN
ASSISTANT UNITED STATES ATTORNEY
1575 20TH AVENUE
GULFPORT, MS 39501

HONORABLE HALIL S. OZERDEN
UNITED STATES DISTRICT JUDGE
DAN M. ROSSELL, JR. UNITED STATES COURTHOUSE
2012 15TH STREET
GULFPORT, MS. 39501

DONE THIS THE 18TH DAY OF OCTOBER, 2017



ROBEN ORLANDO BENITEZ

MDOC # 182157

SMCI

BUILDING D-1 B-ZONE BED 194
P.O. BOX 1419
LEAVESVILLE, MS 39451

AFFIDAVIT

Due to Covid-19 the Southern Mississippi Correctional Institution (SMCI) was placed on lockdown. During the lockdown no contact was allowed between essential security staff and inmates. This would include the staff of the Inmate Legal Assistant Program (ILAP). Therefore, all mailings to the Court were made in a very limited matter and only if accompanied with an order signed by a Court Judge.

Respectfully, Inmates had no other recourse than to wait until the lockdown was lifted to submit documents through no fault of their own.

Respectfully Submitted,

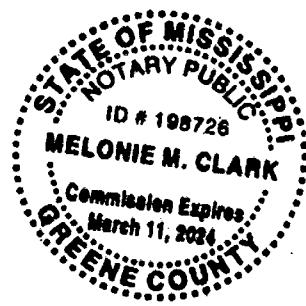
Ruben O'Nando Benitez

MDOC # 182157

Sworn to and subscribed before me, this the 25 day of June, 2020



Notary



**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001**

July 13, 2020

Ruben Orlando Benitez
#182157
Southern Mississippi Corr. Fac.
P.O. Box 1419
Leakesville, MS 39451

RE: Benitez v. U.S. Court of Appeals 5th Cir.
USCA5 No. 19-60113

Dear Mr. Benitez:

The above-entitled petition for writ of certiorari was originally postmarked March 27, 2020 and received again on July 7, 2020. The papers are returned for the following reason(s):

The notarized affidavit or declaration of indigency does not comply with Rule 39 in that question #3 was not answered. Please complete all questions even if not applicable.

It is unclear on whether the petitioner is filing a petition for a writ of certiorari or a petition for an extraordinary writ of habeas corpus/mandamus/prohibition. Please correct with the proper cover of your petition.

Please correct and resubmit as soon as possible. Unless the petition is submitted to this Office in corrected form within 60 days of the date of this letter, the petition will not be filed. Rule 14.5.

A copy of the corrected petition must be served on opposing counsel.

Sincerely,
Scott S. Harris, Clerk
By:

Susan Frimpong
(202) 479-3039

Enclosures

**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001**

August 31, 2020

Ruben Orlando Benitez
#182157
Southern Mississippi Corr. Fac.
P.O. Box 1419
Leakesville, MS 39451

RE: Benitez v. U.S. Court of Appeals 5th Cir.
USCA5 No. 19-60113

Dear Mr. Benitez:

The above-entitled petition for an extraordinary writ seeking unspecified relief was received on August 31, 2020. The papers are returned for the following reason(s):

You must specify the type of relief being sought. Rule 20.

Please be advised that the cover of the petition must correlate with the filing in this Court. The petitioner must specify whether the petition for extraordinary writ pertains to a writ of habeas corpus, a writ of mandamus, a writ of prohibition, or a writ of mandamus/prohibition.

The petition does not show how the writ will be in aid of the Court's appellate jurisdiction, what exceptional circumstances warrant the exercise of the Court's discretionary powers, and why adequate relief cannot be obtained in any other form or from any other court. Rule 20.1.

A copy of the corrected petition must be served on opposing counsel.

Sincerely,
Scott S. Harris, Clerk
By:

Susan Frimpong
(202) 479-3039

Enclosures