

AFFIDAVIT OF SERVICE

STATE OF New York))
County of Dutchess) S.S.:

I, Benjamin Ayala, having been duly sworn and say: that on the 15 day of April, 2021, I have placed: [1] a Verified Petition for a Writ of Certiorari, (dated Dec.19, 2019; [2] a Cover Letter addressed to Hon. Scott S. Harris, Esq., Clerk of the Court, United States Supreme Court; having placed such in sealed envelopes addressed to the following parties:

Hon. Scott S. Harris, Esq..
Clerk of the Court
United States Supreme Court
U.S. Supreme Court Bldg.
1 First Street, N.E.
Washington, D.C. 20543.

Eric Gonzalez, Esq.
Acting Kings County District Attorney
Renaissance Plaza
350 Jay Street
Brooklyn, N.Y. 11201.

Having placed the above addressed legal parcels in a United States postal box, her at the Green Haven Correctional Facility, P.O. Box 4000. Stormville. N.Y. 12582. for service thereto by way of United States postal service.

Respectfully Deposed,

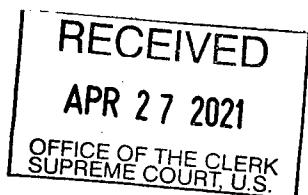
Benjamin Ayala

Mr. Benjamin Ayala, Pro-Se
Green Haven Corr. Fac.
P.O. Box 4000
Stormville, N.Y. 12582.

Sworn to and subscribed before me
this 15 day of April, 2021.

P. Leon McNeil

NOTARY PUBLIC



No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

BENJAMIN AYALA, PETITIONER

VS.

NEW YORK, RESPONDENT

PROOF OF SERVICE

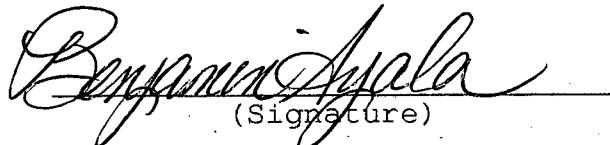
I, Benjamin Ayala, do swear or declare that on this date, April 15, 2021, as required by Supreme Court Rule 29, I have served the enclosed MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS and PETITION FOR WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every person required to be served, by depositing an envelope containing the above documents in the United States mail property addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within three (3) calendar days.

The names and addresses of those served are as follows:

Supreme Court of the United States U.S. Supreme Court Building 1 First Street, N.E. Washington, D.C. 20543	Mr. Eric Gonzalez Kings County District Attorney 350 Jay Street Brooklyn, NY 11201
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I declare under penalty of Perjury that the foregoing is true and correct.

Executed on April 15, 2021


(Signature)

BENJAMIN AYALA
DIN 05A0302
Green Haven Correctional Facility
P.O. Box 4000
Stormville, NY 12582

April 14, 2021

Mr. Scott S. Harris
Clerk of the Court
Supreme Court of the United States
United States Supreme Court Building
1 First Street, N.E.
Washington, D.C. 20543

**RE: RESUBMISSION OF PETITION FOR
WRIT OF CERTIORARI
PEOPLE v. AYALA
NEW YORK INDICTMENT NUMBER 8275/03**

Dear Mr. Harris:

This letter is written to this Court in regards to a letter I wrote on February 8, 2021 about my previous submission for a petition for a Writ of Certiorari (Exhibit A: Petitioner's Correspondence to the Court dated February 8, 2021).

On March 8, 2021, the Court responded to my inquiry and requested a copy of the judgment, which attached the latch and commenced a time toll, allowing for resubmission of my application within sixty (60) days (Exhibit B: Court's Correspondence to Petitioner dated March 8, 2021).

In response to your inquiry, I am seeking a Writ of Certiorari from the New York State Court of Appeal decision rendered on September 24, 2019 (Exhibit C: Decision and Order from the New York State Court of Appeals). My original petition for Writ of Certiorari was submitted to this Court on December 19, 2019. This was just shy of the ninety (90) days time limit set by statute (Exhibit D: Certificate of Service dated December 19,

2019; Inmate Disbursement Form submitted for Proof of Postage Payment dated December 19, 2019).

As stated in my previous correspondence to this Court, it is my understanding that a petition for a Writ of Certiorari was timely filed "if it is submitted within 90 days of the judgment from which the writ is sought (Penry v. Texas, 515 US 1304, 1304-05 [1995]). In such, I respectfully infer that the Court's determination, rendered on January 4, 2021, dismissing my application for a lack of jurisdiction may have been reached in error and request a reconsideration of the matter at hand (Exhibit E: Court's Correspondence to Petitioner dated January 4, 2021). Petitioner hopes and prays to comply with this Court's rules and regulations, as well as your instructions. Petitioner believes all papers are in order as per your request.

If this Court requires any other document, please feel free to contact at the above-captioned address. Furthermore, can you please acknowledge the receipt of this correspondence, as Green Haven Correctional Facility has a history of losing legal mail or sending it late to the court. Thank you for your time and attention in this matter.

Respectfully,



Benjamin Ayala

cc: file

EXHIBIT A

PETITIONER'S CORRESPONDENCE
TO THE COURT DATED
FEBRUARY 8, 2021

Mr. Benjamin Ayala
Din. 05-A-0302
Green Haven Corr. Fac.
P.O. Box 4000
Stormville, NY 12582

February 8, 2021

Mr. Scott S. Harris
Clerk of the Court
Supreme Court of the United States
U.S. Supreme Court Bldg.,
1 First Street, N.E.,
Washington, DC 20543

Re: Resubmission of Petition for Writ of Certiorari

Dear Sir:

Greetings! On December 19, 2019, I submitted a Petition for a Writ of Certiorari in the furtherance of the Court's appellate jurisdiction pursuant to 28 U.S.C. § 1257(a).

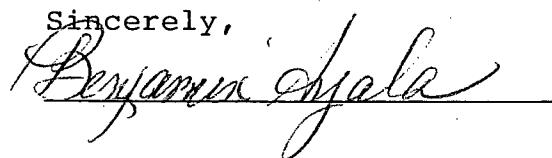
It was my understanding that I had 90 days from the denial of my direct appeal, by the New York State Court of Appeals to do so (see Penry v. Texas, 515 U.S. 1304, 1304-1305 [1995]), and as such said petition was submitted in a timely manner (see Inmate Disbursement Form, dated December 19, 2019 and annexed as Exhibit A hereto).

On the 13th day of January 2021, the Court wrote back and advised me that the Court lacked jurisdiction over my application (see January 13, 2021, correspondence from the Court found as Exhibit B annexed hereto).

I feel there may have been a mistake in the processing of my application, so I am respectfully submitting a second copy for your review and determination as I did not receive back my previously submitted petition with your correspondence and I would sincerely appreciate your assistance in the filing and reconsideration of my application for a writ of certiorari.

If you can please contact me at the above entitled addressed with your decision in this matter it would be truly appreciated.

Sincerely,



Benjamin Ayala

cc: file

EXHIBIT B

COURT'S CORRESPONDENCE TO
PETITIONER DATED
MARCH 8, 2021

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

March 8, 2021

Benjamin Ayala
#05-A-0302
Green Haven Correctional Facility
P.O. Box 4000
Stormville, NY 12582

RE: Ayala v. New York
NYSC No. (?)

Dear Mr. Ayala:

The above-entitled petition for writ of certiorari was postmarked February 9, 2021 and received March 8, 2021. The papers are returned for the following reason(s):

Your case must first be reviewed by a United States court of appeals or by the highest state court in which a decision could be had. 28 USC 1254 and 1257.

The notarized affidavit or declaration of indigency does not comply with Rule 39 in that question #5 was not answered. Please answer all questions even if not applicable.

The lower court opinion(s) must be appended.

It is impossible to determine the timeliness of the petition without the lower court opinions.

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

EXHIBIT C

DECISION AND ORDER FROM
THE NEW YORK STATE
COURT OF APPEALS

State of New York

Court of Appeals

BEFORE: LESLIE E. STEIN, Associate Judge

THE PEOPLE OF THE STATE OF NEW YORK,

BENJAMIN AYALA,

-against-

Respondent,

Appellant.

**ORDER
DENYING
LEAVE**

Appellant having applied for leave to appeal to this Court pursuant to Criminal Procedure Law § 460.20 from an order in the above-captioned case;*

UPON the papers filed and due deliberation, it is

ORDERED that the application is denied.

Dated:

September 24, 2019

at Albany, New York



Associate Judge

*Description of Order: Order of the Appellate Division, Second Department, dated May 15, 2019, denying defendant's application for a writ of error coram nobis.

EXHIBIT D

CERTIFICATE OF SERVICE
DATED DECEMBER 19, 2019

INMATE DISBURSEMENT FORM
SUBMITTED FOR PROOF OF
SERVICE DATED
DECEMBER 19, 2019

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

BENJAMIN AYALA, PETITIONER
VS.
NEW YORK, RESPONDENT

PROOF OF SERVICE

I, Benjamin Ayala, do swear or declare that on this date, December 19, 2019, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every person required to be served, by depositing an envelope containing the above documents in the United States mail property addressed to each of them and with first-class postage pre-paid, or by delivery to a third-party commercial carrier for delivery within three (3) calendar days.

The names and addresses of those served are as follows:

Supreme Court of the United States
U.S. Supreme Court Building
1 First Street N.E.
Washington, DC 20543

Eric Gonzalez, Esq.
District Attorney of Kings County
Renaissance Plaza
350 Jay Street
Brooklyn, NY 11201-2908

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 19, 2019.


(Signature)

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION
DISBURSEMENT OR REFUND REQUEST

54118
CELL LOCATION

NAME BENJAMIN AYALA

DATE DECEMBER 19 2019

CODE TYPE

INMATE NUMBER

0540302

"SHORT NAME"

BAYA

FIRST INITIAL
FIRST 3 OF LAST NAME

CHECK/ORDER NUMBER

RIGHT ADJUSTED WITH LEADING ZEROS

COMMISSARY PRODUCT GROUP

AMOUNT \$

14925

SENT TO CODE
(SEE TABLE B-6)

ITEM
DESCRIPTION

LEGAL MAIL

~~PLEASE USE 5 ALLOTTED
LEGAL MAIL STAMPS~~

LAST NAME	FIRST NAME	MI	SUFF
<u>SUPREME COURT OF THE UNITED STATES</u>			
ADDRESS	APT. NO.		
<u>U.S. SUPREME COURT BUILDING / 1 FIRST ST NE</u>			
CITY	STATE	ZIP CODE	
<u>WASHINGTON</u>	<u>DC</u>	<u>20543</u>	

APPROVED

DATE 12/20/19

APPROVED

DATE 12/20/19

FORM 2706 (7/11)

Original - Business Office

Yellow - Approving Office

Pink - Inmate

I HEREBY ACKNOWLEDGE EXPENDITURE OF THE
AMOUNT TO BE DEDUCTED FROM MY INMATE
ACCOUNT.

Benjamin Ayala
(INMATE SIGNATURE)

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION
DISBURSEMENT OR REFUND REQUEST

54118
CELL LOCATION

NAME BENJAMIN AYALA

DATE DECEMBER 19 2019

CODE TYPE

INMATE NUMBER

0540302

"SHORT NAME"

BAYA

FIRST INITIAL
FIRST 3 OF LAST NAME

CHECK/ORDER NUMBER

8.30

RIGHT ADJUSTED WITH LEADING ZEROS

COMMISSARY PRODUCT GROUP

AMOUNT \$

14925

SENT TO CODE
(SEE TABLE B-6)

ITEM
DESCRIPTION

LEGAL MAIL

~~PLEASE USE 5
ALLOTTED LEGAL
MAIL STAMPS~~

LAST NAME	FIRST NAME	MI	SUFF
<u>BONZALEZ</u>			
ADDRESS	APT. NO.		
<u>350 1st Street</u>			
CITY	STATE	ZIP CODE	
<u>BROOKLYN</u>	<u>NY</u>	<u>11201-3300</u>	

APPROVED

DATE 12/20/19

APPROVED

DATE 12/20/19

I HEREBY ACKNOWLEDGE EXPENDITURE OF THE
AMOUNT TO BE DEDUCTED FROM MY INMATE
ACCOUNT.

(INMATE SIGNATURE)

EXHIBIT E

COURT'S CORRESPONDENCE
TO PETITIONER DATED
JANUARY 4, 2021

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

January 13, 2021

Benjamin Ayala
#05-A-0302
Green Haven Correctional Facility
P.O. Box 4000
Stormville, NY 12582

RE: Ayala v. New York
Letter

Dear Mr. Ayala:

In reply to your letter or submission, received January 4, 2021, I regret to inform you that the Court is unable to assist you in the matter you present.

Under Article III of the Constitution, the jurisdiction of this Court extends only to the consideration of cases or controversies properly brought before it from lower courts in accordance with federal law and filed pursuant to the Rules of this Court.

Please be advised the Court does not retain any documents that are not filed by the Court.

Your papers are herewith returned.

Sincerely,
Scott S. Harris, Clerk
By:

Susan Frimpong
(202) 479-3039

Enclosures