

21-8252

No. _____

FILED

MAR 17 2022

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

ISAAC JUDE RODRIGUEZ — PETITIONER
(Your Name)

vs.

DAVID SHINN, DIRECTOR — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ISAAC J. RODRIGUEZ ADC#133705
(Your Name)

A.S.P.C.-YUMA; PO. BOX 8909
(Address)

SAN LUIS, AZ 85349
(City, State, Zip Code)

(Phone Number)

RECEIVED

JUN 10 2022

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

WHETHER THE COURT OF APPEALS FAIRLY CONCLUDED THAT PETITIONER'S MOTION FOR CERTIFICATE OF APPEALABILITY WAS FILED UNTIMELY OR NOT WITHIN THE JURISDICTIONAL TIME LIMIT.

WHETHER THE REASON FOR PETITIONER NOT FILED TIMELY MOTION FOR CERTIFICATE OF APPEALABILITY WAS EXCUSABLE NEGLIGENCE.

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:

RELATED CASES

- RODRIGUEZ V. SHINN, ET AL., NO. 2:20-CV-00847, U.S. DISTRICT COURT FOR THE DISTRICT OF ARIZONA. JUDGEMENT ENTERED MAY, 10 2021.
- RODRIGUEZ V. SHINN, ET AL., NO. 21-16049, U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT. JUDGEMENT ENTERED NOV. 17, 2021.

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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 A 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☒ is unpublished.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 B 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☒ is unpublished.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☐ is unpublished.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 9-16-2021.

☐ 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: 11-17-2021, and a copy of the order denying rehearing appears at Appendix C.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including 6-3-2022 (date) on 4-4-2022 (date) in Application No. 21 A 448.

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

THE DISTRICT COURT AND THE U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT DENIED PETITIONER'S REQUEST FOR CERTIFICATE OF APPEALABILITY. IN HOHN V. U.S., 524 U.S. 236 (1998) THIS COURT HELD THAT, PURSUANT TO 28 U.S.C. § 1254 (1), THE UNITED STATES SUPREME COURT HAS JURISDICTION, ON CERTIORARI, TO REVIEW A DENIAL OF A REQUEST FOR CERTIFICATE OF APPEALABILITY BY A CIRCUIT JUDGE OR A PANEL OF A FEDERAL COURT OF APPEALS.

- THE RIGHT OF A STATE PRISONER TO SEEK FEDERAL HABEAS CORPUS RELIEF IS GUARANTEED IN 28 U.S.C. § 2254. THE TIME FOR APPEAL TO COURT OF APPEALS IS SET FORTH IN 28 U.S.C. § 2107 AND RULE 4(a)(1)(A). FED. R. OF APP. PROC.
- FED. R. OF APP. PROC. 4(a)(5)(A)(ii). THE DISTRICT COURT MAY EXTEND THE TIME TO FILE A NOTICE OF APPEAL IF, REGARDLESS OF WHETHER ITS MOTION IS FILED BEFORE OR DURING THE 30 DAYS [AFTER] THE TIME PRESCRIBED BY THIS RULE 4(a) EXPIRES, THAT PARTY SHOWS EXCUSABLE NEGLIGENCE OR GOOD CAUSE. [2002 AMENDMENTS]
- FED. R. OF CIV. PROC. 6(a)(1). COMPUTING TIME TO EXCLUDE THE DAY OF THE EVENT THAT TRIGGERS THE PERIOD.
- FED. R. OF CIV. PROC. 6(b)(1). WHEN AN ACT MAY OR MUST BE DONE WITHIN A SPECIFIED TIME, THE COURT MAY, FOR GOOD CAUSE, EXTEND THE TIME, WITH OR WITHOUT MOTION OR NOTICE IF THE COURT ACTS, OR IF A REQUEST IS MADE, BEFORE THE ORIGINAL TIME OR ITS EXTENSION EXPIRES.
- NINTH CIRCUIT PRECEDENT RULE 22-1(d). STATES, IF THE DISTRICT COURT DENIES A (COA) AS TO ALL ISSUES, APPELLANT MAY FILE A REQUEST FOR A (COA) IN THE COURT OF APPEALS WITHIN 35-DAYS OF THE FILING OF... THE DISTRICT COURT'S DENIAL OF A (COA) IN FULL, WHICHEVER IS LATER.

STATEMENT OF THE CASE

ON MAY 10, 2021, THE U.S. DISTRICT COURT CLERK ENTERED JUDGEMENT DENYING PETITION FOR WRIT OF HABEAS CORPUS. (APPENDIX B)

ON JUNE 10, 2021, AND JUNE 11, 2021, PETITIONER REQUIRED ACCESS TO THE PRISON LAW LIBRARY TO PROPERLY PREPARE AND MAKE SUFFICIENT COPIES TO TIMELY FILE MOTION FOR (COA) WITH THE COURT. HOWEVER, THE LAW LIBRARY WAS CLOSED FOR HEALTH REASONS DUE TO COVID VACCINATION SHOTS CONDUCTED AT SUCH TIME OR OTHERWISE NO LIBRARY STAFF ON DUTY. AS SUCH, PETITIONER WAS NOT PROVIDED ACCESS TO THE LAW LIBRARY. (APPX. E AT 2; EXH. A AT 2)

THE FOLLOWING WEEK, WHICH WAS THE NEXT WORK DAY, MONDAY, JUNE 14, 2021, I WAS PROVIDED ACCESS TO THE PRISON LAW LIBRARY AND DILIGENTLY FILED MOTION FOR (COA) WITH INSTITUTIONS MAIL AND PROPERTY DEPARTMENT PRISON OFFICIALS THEREAFTER. (APPX. C AND E AT 3)

ON JUNE 22, 2021, THE CLERK OF THE U.S. COURT OF APPEALS ISSUED ORDER, REQUESTING PETITIONER TO SHOW CAUSE WHY (COA) SHOULD NOT BE DISMISSED FOR FAILING TO DEPOSIT OR FILE NOTICE OF APPEAL WITHIN 30-DAYS AFTER ENTRY OF THE DISTRICT COURT'S JUDGEMENT PURSUANT TO FED. R. OF APP. PROC. 4(G)(1)(A). (APPENDIX D AND E AT 2; EXH. A AT 2)

ON JULY 14, 2021, PETITIONER FILED MEMORANDUM OF LAW AND DECLARATION IN SUPPORT OF TIMELY FILING MOTION FOR COA. (APPX. E)

ON SEPTEMBER 16, 2021, THE U.S. COURT OF APPEALS ISSUED ORDER, DENIED REQUEST FOR CERTIFICATE OF APPEALABILITY DUE TO UNTIMELY FILED NOTICE OF APPEAL AND NO FILED EXTENSION OF TIME WITHIN THE JURISDICTIONAL TIME LIMIT. (APPENDIX A)

ON SEPTEMBER 28, 2021, PETITIONER FILED MOTION FOR REHEARING PURSUANT TO FED. R. OF APP. PROC. 40. (APPENDIX E)

ON NOVEMBER 17, 2021, CIRCUIT JUDGES NGUYEN AND FORREST ISSUED ORDER, DENIED MOTION FOR RECONSIDERATION. (APPENDIX F)

REASONS FOR GRANTING THE PETITION

FED. R. OF APP. PROC. 4(a)(5)(A)(ii). PERMITS THE DISTRICT COURT TO EXTEND THE TIME TO FILE A NOTICE OF APPEAL DURING THE 30-DAYS FOLLOWING THE EXPIRATION OF THE ORIGINAL DEADLINE IF THE MOVANT SHOWS EITHER EXCUSABLE NEGLIGENCE OR GOOD CAUSE. [2002 AMENDMENTS]

PETITIONER IS A LAYMAN OF THE LAW WITH NO FORMAL EXPERIENCE AND IS PROCEEDING PRO SE. AN APPELLANT SEEKING AN CERTIFICATE OF APPEALABILITY IS REQUIRED TO UNDERSTAND AND FOLLOW THE FEDERAL RULES OF CIVIL PROCEDURE, THE FEDERAL RULES OF APPELLATE PROCEDURE AND THE NINTH CIRCUIT COURT OF APPEALS RULES, COLLECTIVELY. THESE RULES AND PROCEDURES CAN EASILY DRAW CONFUSION AND BE MISUNDERSTOOD BY ANY LAYPERSON, LET ALONE A PERSON WHO IS INCARCERATED AND PROCEEDING PRO SE.

ON MAY 10, 2021, THE U.S. DISTRICT COURT CLERK ENTERED JUDGEMENT DENYING PETITION FOR WRIT OF HABEAS CORPUS. (APPX. B) THEREFORE, PETITIONER WAS REQUIRED TO FILE NOTICE OF APPEAL ON OR BEFORE JUNE 9, 2021, IN ACCORDANCE WITH FED. R. OF APP. PROC. 4(a)(1)(A).

HOWEVER, PETITIONER ASSERTS, HE MISUNDERSTOOD THE COURT RULES AND PROCEDURES, AND MISTAKENLY RELIED UPON NINTH CIRCUIT PRECEDENT RULE 22-1(D), TO TIMELY FILE MOTION FOR CERTIFICATE OF APPEALABILITY WITHIN 35-DAY DEADLINE. (APPENDIX E, EXH. A AT 4; EXH. B AT 4)

ON JUNE 10, 2021, AND JUNE 11, 2021, PETITIONER REQUIRED ACCESS TO THE PRISON LAW LIBRARY TO PROPERLY PREPARE AND MAKE SUFFICIENT COPIES TO TIMELY FILE MOTION FOR (COA) WITH THE U.S. COURT OF APPEALS. (APPENDIX E AT 2; EXH. A) HOWEVER, DUE TO COVID VACCINE SHOTS CONDUCTED AT SUCH TIME, THE ENTIRE PRISON UNIT WAS ON LOCKDOWN FOR HEALTH REASONS, INCLUDING

THE PRISON LAW LIBRARY. THE FOLLOWING DAY, ON FRIDAY, JUNE 11, 2021, THE LAW LIBRARY WAS CLOSED ENTIRELY OR OTHERWISE NO LIBRARY STAFF ON DUTY. (APPENDIX H) AS SUCH, PETITIONER WAS NOT PROVIDED ACCESS TO THE LAW LIBRARY TO PROPERLY PREPARE AND FILE MOTION FOR CERTIFICATE OF APPEALABILITY.

FED. R. OF CIV. PROC. 6(a)(1)(C). COMPUTING TIME TO INCLUDE THE LAST DAY OF THE PERIOD, BUT IF THE LAST DAY IS A SATURDAY, SUNDAY, OR LEGAL HOLIDAY, THE PERIOD CONTINUES TO RUN UNTIL THE END OF THE NEXT DAY THAT IS NOT A SATURDAY, SUNDAY, OR LEGAL HOLIDAY. SEE LEWIS V. ALEXANDER, 987 F.2d 392, 396-97 (6TH CIR. 1993) (PETITIONER, WHO HAD FILED UNTIMELY APPEAL FROM DENIAL OF HABEAS CORPUS RELIEF, COULD OBTAIN RELIEF UNDER FED. R. CIV. PROC. 60(B)(1), BECAUSE PETITIONER'S COUNSEL HAD EXERCISED "DUE DILIGENCE" (AS REQUIRED BY CIVIL RULE 60(B)(1)) IN ATTEMPTING TO COMPLY WITH APPLICABLE TIME CONSTRAINTS NOTWITHSTANDING COUNSEL'S ERROR IN [M]ISREADING DATE-STAMP ON NOTICE OF APPEAL).

THE FOLLOWING WEEK, WHICH WAS THE NEXT WORKDAY, MONDAY, JUNE 14, 2021, I WAS PROVIDED ACCESS TO THE PRISON LAW LIBRARY AND DILIGENTLY FILED MOTION FOR (COA) WITH THE INSTITUTIONS MAIL AND PROPERTY DEPARTMENT PRISON OFFICIALS THEREAFTER. (APPENDIX C AND E AT 3)

PETITIONER HAD ATTEMPTED TO COMPLY WITH NINTH CIRCUIT PRECEDENT RULE 22-1 (D) WHICH PETITIONER MISTAKENLY MISREAD AS A 35-DAY DEADLINE TO REQUEST FOR A (COA). (APPENDIX E, EXH. A AT 4; EXH. B AT 4)

ON JUNE 22, 2021, THE CLERK OF THE U.S. COURT OF APPEALS

ISSUED ORDER, REQUESTING PETITIONER TO SHOW CAUSE WHY (COA) SHOULD NOT BE DISMISSED FOR FAILING TO DEPOSIT OR FILE NOTICE OF APPEAL WITHIN 30-DAYS AFTER ENTRY OF THE DISTRICT COURT'S JUDGEMENT. FED. R. OF APP. PROC. 4(a)(1)(A).

FED. R. OF APP. PROC. 4(d), IF A NOTICE OF APPEAL IN EITHER A CIVIL OR A CRIMINAL CASE IS MISTAKENLY FILED IN THE COURT OF APPEALS, THE CLERK OF THAT COURT MUST NOTE ON THE NOTICE THE DATE WHEN IT WAS RECEIVED AND SEND IT TO THE DISTRICT CLERK. THE NOTICE IS THEN CONSIDERED FILED IN THE DISTRICT COURT ON THE DATE SO NOTED. ADDITIONALLY, FED. R. OF APP. PROC. 4(a)(5)(A) WAS AMENDED IN 2002 TO MAKE CLEAR THAT THE PROCEDURE FOR EXTENDING TIME UPON A SHOWING OF "EXCUSABLE NEGLIGENCE OR GOOD CAUSE" APPLIES "REGARDLESS OF WHETHER... [THE EXTENSION] MOTION IS FILED BEFORE OR DURING THE 30 DAYS [AFTER THE [EXPIRATION OF THE ORIGINAL APPEAL TIME]]."

HOWEVER, U.S. DISTRICT COURT CLERK PROVIDED NO INSTRUCTIONS NOR APPLICABLE RULES EXPLAINING TO FILE NOTICE OF APPEAL WITHIN 30 DAYS PURSUANT TO FED. R. OF APP. PROC. 4(a)(1)(A), OR ADVISED PETITIONER OF THE FED. R. OF APP. PROC. 4(a)(5) OPTION UPON RECEIPT OF AN UNTIMELY NOTICE OF APPEAL FILED WITHIN THE 30-DAY GRACE PERIOD. SEE *HOUSTON V. LACK*, 487 U.S. 269 (1988) (NOTING THAT, IN ADDITION TO SYSTEMATIC IMPEDIMENTS PRO SE PRISONER ENCOUNTERED IN ATTEMPTING TO FILE TIMELY NOTICE OF APPEAL, DISTRICT COURT [FAILED] TO ADVISE PRISONER THAT NOTICE WAS FILED [ONE DAY AFTER EXPIRATION OF ORIGINAL 30-DAY FILING PERIOD]), ADVISORY COMMITTEE NOTES TO FED. R. OF APP. PROC. 4

("FAILURE OF THE COURT OF APPEALS TO APPLY RULE 4(a)(5)(A) AS WRITTEN HAS ALSO CREATED TENSION BETWEEN THAT RULE AND RULE 4(b)(4)) 2002 AMENDMENTS.

PETITIONER'S MOTION FOR CERTIFICATE OF APPEALABILITY WAS FILED [ONE] DAY LATE. LIBERALLY CONSTRUED, APPELLANT'S PRO SE MOTION TO EXTEND TIME FOR FILING A REQUEST FOR A CERTIFICATE OF APPEALABILITY (COA), FILED IN THE NINTH CIRCUIT COURT OF APPEALS JUNE 14, 2021, EVIDENCES AN INTENT TO APPEAL AND COMPLIES WITH FED. R. OF APP. PROC. 3. THUS, IT IS PROPERLY CONSIDERED THE FUNCTIONAL EQUIVALENT OF A NOTICE OF APPEAL. SEE SMITH V. BARRY, 502 U.S. 244, 248-49 (1992)

(TREATING AN INMATE'S INFORMAL APPELLATE BRIEF AS A FUNCTIONAL EQUIVALENT OF A NOTICE OF APPEAL); ANDRADE V. CALIFORNIA, 276 F.3d 243, 252 (9TH CIR. 2001) (TIMELY PRO SE MOTION FOR EXTENSION OF TIME TO APPEAL MAY BE CONSIDERED THE FUNCTIONAL EQUIVALENT OF A NOTICE OF APPEAL), REV'D. ON OTHER GROUNDS LOCKYER V. ANDRADE, 538 U.S. 63 (2002).

ON JULY 14, 2021, PETITIONER FILED MEMORANDUM OF LAW AND DECLARATION IN SUPPORT OF TIMELY FILING MOTION FOR COA. (APPX. E) PETITIONER EXPLAINED THAT HE MISTAKENLY RELIED UPON NINTH CIRCUIT PRECEDENT RULE 22-1(D) TO TIMELY FILE MOTION FOR (COA) AND WAS OTHERWISE NOT PROVIDED ACCESS TO THE LAW LIBRARY. (ID. AT EXH. A AT 4; EXH. B AT 4)

WHEN 9TH CIRCUIT RULE 22-1(D) IS INTERPRETED, THE LANGUAGE IS AMBIGUOUS AS SUCH:

¹ [I]F THE DISTRICT COURT DENIES A (COA)

AS TO ALL ISSUES, APPELLANT MAY FILE A REQUEST

FOR A (COA) [I]N THE COURT OF APPEALS
[W]ITHIN 35-DAYS OF THE FILING OF... THE
DISTRICT COURT'S DENIAL OF A (COA) IN [F]ULL.

THE SEVENTH CIRCUIT ADDRESSED THE CONCERNS WHETHER
SIMPLE MISCALCULATION OF DUE DATE FOR FILING OF NOTICE
OF APPEAL, RATHER THAN PLAUSIBLE MISCONSTRUCTION OF LAW
OR RULES, DOES NOT ESTABLISH EXCUSABLE NEGLIGENCE. (CANBE V.
STOTLER & CO., 913 F.2d 1204 (7TH CIR. 1990). SEE ALSO UNITED
STATES V. KADEN, 819 F.2d 813, 23 (7TH CIR. 1987) ("THERE WAS GOOD
REASON FOR DISTRICT COURT'S GRANT OF EXTENSION OF TIME IN
WHICH TO FILE NOTICE OF APPEAL FROM CRIMINAL CONVICTION...
WHERE APPELLANT WAS PRISONER WHO HAD FILED NOTICE OF APPEAL
ON HIS OWN BEHALF, HE FILED THAT NOTICE WITHIN 'FORTY-DAY
OUTER LIMIT' OF RULE 4(b)").

ACCORDING TO THE SIXTH CIRCUIT, PRO SE PETITIONER,
WHOSE "EFFORT TO FILE A TIMELY NOTICE OF APPEAL WAS
THWARTED BY GUARDS AT THE PRISON WHERE SHE WAS INCARCERATED"
AND WHOSE "NOTICE WAS FILED [ONE DAY LATE]," IS GRANTED
RULE 60(b)(6) RELIEF OF VACATUR OF JUDGEMENT DENYING
HABEAS CORPUS PETITION-ALONG WITH RE-ENTRY OF JUDGEMENT-
"THEREBY STARTING ANEW THE 30-DAY PERIOD UNDER RULE 4(a)(1)(A)
IN WHICH TO FILE A NOTICE OF APPEAL". TANNER V. YUKINS, 776
F.3d 434, 436, 443-44 (6TH CIR. 2015)

PETITIONER ALSO ARGUED THAT THE ALLEGED STATE
IMPEDIMENT OF ENTIRE PRISON UNIT ON LOCKDOWN DUE TO COVID
VACCINE SHOTS PREVENTED HIM FROM ACCESSING THE PRISON
LAW LIBRARY TO MAKE SUFFICIENT COPIES TO PROPERLY

PREPARE AND FILE MOTION FOR CERTIFICATE OF APPEALABILITY WITH THE 9TH CIRCUIT COURT OF APPEALS. (APPX. E)

PRISONERS MUST RELY EXCLUSIVELY UPON THE PRISON LAW LIBRARY TO MAKE COPIES.

THE NINTH CIRCUIT HAS ADDRESSED ISSUES REGARDING DELAY IN FILING COURT DOCUMENTS DUE TO STATE IMPEDIMENTS. *HENDON V. LAMARQUE*, 2001 U.S. APP. (9TH CIR. 2001) (REVERSING DISMISSAL OF PETITION AS UNTIMELY AND REMANDING TO DISTRICT COURT FOR "APPROPRIATE DEVELOPMENT OF THE RECORD" REGARDING PETITIONER'S REQUEST FOR EQUITABLE TOLLING BASED ON "SERIES OF BACK-TO-BACK PRISON LOCKDOWNS AND PLACEMENTS IN ADMINISTRATIVE SEGREGATION [THAT] RESULTED IN LONG-TERM DENIAL OF ACCESS TO PRISON LAW LIBRARIES AND PERSONAL LEGAL MATERIALS."); *SCHINKEL V. KRAMER*, 34 FED. APPX. 257, 258-59, 2002 U.S. APP. (9TH CIR. 2002) (REVERSING DISMISSAL OF PETITION AS UNTIMELY AND REMANDING TO DISTRICT COURT FOR "FACTUAL INQUIRY INTO PETITIONER'S ALLEGATIONS REGARDING LACK OF PRISON LAW LIBRARY ACCESS AND A DETERMINATION OF WHETHER EQUITABLE OR STATUTORY TOLLING IS APPROPRIATE.") SEE ALSO *SOSSA V. DIAZ*, 729 F. 3d 1235 (9TH CIR. 2013) ("SOSSA SUFFICIENTLY ALLEGED THAT HE WAS PRECLUDED FROM FILING HIS HABEAS PETITION BECAUSE OF HIS INABILITY TO UTILIZE THE PRISON'S LAW LIBRARY AND OTHER RESOURCES SUCH THAT FURTHER DEVELOPMENT OF THE RECORD IS WARRANTED TO ADDRESS THIS ISSUE.")

ON SEPTEMBER 16, 2021, THE 9TH CIRCUIT COURT OF APPEALS ISSUED ORDER, DENIED REQUEST FOR CERTIFICATE OF APPEALABILITY DUE TO UNTIMELY FILED NOTICE OF APPEAL AND NO

FILED EXTENSION OF TIME WITHIN THE JURISDICTIONAL TIME LIMIT. (APPX. A)

ON SEPTEMBER 28, 2021, PETITIONER FILED MOTION FOR REHEARING PURSUANT TO FED. R. OF APP. PROC. 40, ARGUING THE SAME ISSUES RAISED IN APPELLANT'S MEMORANDUM OF LAW AND DECLARATION IN SUPPORT OF TIMELY FILING MOTION FOR (COA) (APPX. E)

ON NOVEMBER 17, 2021, CIRCUIT JUDGES NAUYEN AND FORREST ISSUED ORDER, DENIED MOTION FOR RECONSIDERATION. (APPX. F)

THEREAFTER, PETITIONER PERSISTED TO SEEK DISCLOSURE OF A.S.P.C.-YUMA (CHEYENNE UNIT) DAILY ADMINISTRATIVE LOG SHEETS OF THE PRISON UNIT LAW LIBRARY, AND SUBSEQUENTLY PROVIDED WITH AN COPY OF (ADC) INMATE LETTER RESPONSE FROM (C.O.3) ROSARIO ANAYA, WHO IS EMPLOYED BY ARIZONA DEPARTMENT OF CORRECTIONS AS A COUNSELOR AT CHEYENNE UNIT, INFORMING PETITIONER THAT SHE HAS REVIEWED THE LIBRARIANS AVAILABILITY FOR JUNE 10, 2021 AND JUNE 11, 2021, AND CONFIRM THAT ON THOSE DAYS, THE LIBRARIANS WERE [N]OT AT THE CHEYENNE UNIT DUE TO ADMINISTRATIVE REASONS. (APPX. G)

PETITIONER PUTS FORTH THREE REASONS SO THIS COURT MAY CONSIDER TO EXCUSE HIS LATE FILING OF MOTION FOR CERTIFICATE OF APPEALABILITY. ONE, PETITIONER'S ERROR IN MISREADING 9TH CIRCUIT PRECEDENT RULE 22-1(D) OF 35 DAYS TO TIMELY FILE NOTICE OF APPEAL IN ATTEMPTING TO COMPLY WITH RULES AND PROCEDURES. TWO, THE 9TH CIRCUIT

COURT OF APPEALS ISSUED ORDER TO SHOW CAUSE WHY (COA) SHOULD NOT BE DISMISSED FOR UNTIMELINESS. (APPX. D)

HOWEVER, THE DISTRICT COURT NOR THE 9TH CIRCUIT PROVIDED PETITIONER WITH NOTIFICATION OF FED. R. OF APP. PROC. 4(a)(5)(A) OR APPLIED RULE 4(a)(5)(A) IN THIS CASE AND GIVE THEREIN, INSTRUCTIONS OF FILING FOR EXTENSION OF TIME DURING THE 30 DAYS FOLLOWING THE EXPIRATION OF THE ORIGINAL DEADLINE BASED ON EXCUSABLE NEGLECT. FED. JUDICIARY ADVISORY COMMITTEE [2002 AMENDMENTS]. THREE, PETITIONER WAS FURTHER DELAYED IN DILIGENTLY FILING NOTICE OF APPEAL DUE TO THE CIRCUMSTANCE OF STATE IMPEDIMENT OF NO ACCESS TO PRISON LAW LIBRARY DURING JUNE 10, 2021, AND JUNE 11, 2021. (APPX. G)

APPLYING PROVISIONS OF FED. R. OF CIV. PROC. 6(a)(1)(C), AND FED. R. OF APP. PROC. 4(a)(5)(A), PETITIONER'S MOTION FOR CERTIFICATE OF APPELLABILITY FILED ON JUNE 14, 2021, WAS UNTIMELY BY ONE DAY SINCE CLERK OF DISTRICT COURT ENTERED JUDGEMENT ON MAY 10, 2021, AND EXCLUDING DAY OF ENTRY OF JUDGEMENT PURSUANT TO RULE 6(a)(1)(C), 30-DAY CLOCK UNDER FED. R. OF APP. PROC. 4(a)(1)(A) COMMENCED ON MAY 11, 2021.

ALTHOUGH PETITIONER MISSED FILING DEADLINE BY JUST ONE DAY AND ABSENCE OF BAD FAITH BY PETITIONER, AND FED. R. OF APP. PROC. 4(a)(5)(A) ALSO GAVE DISTRICT COURTS AUTHORITY TO GRANT RELIEF FROM JUDGEMENT WHERE GROUNDS OTHER THAN LACK OF NOTICE SUPPORTED MOTION, MISAPPLICATION OF THE LAW IS REASON TO EXTEND TIME TO

APPEAL. HAVING THE SUPREME COURT DECIDE THE QUESTIONS INVOLVED IS ALSO A MATTER OF PUBLIC IMPORTANCE AS WELL BECAUSE THE PUBLIC BELIEVES THAT COURT'S WILL ALWAYS FOLLOW THE LAW AND FED. R. OF APP. PROC. 4(a)(5)(A) REFLECTS A PUBLIC POLICY TO PROVIDE A FAIR PROCESS OF EXCUSABLE NEGLECT FOR APPELLANTS WHO MAY BE AT FAULT BASED ON THEIR IGNORANCE OF THE LAW.

THEREFORE, THE NINTH CIRCUIT COURT OF APPEALS DECISION IS IN CONFLICT WITH OTHER CIRCUITS DECISIONS, CLEARLY ERRONEOUS AND INCONSISTENT WITH FED. R. OF APP. PROC. 4(a)(5)(A), AND IS IN CONFLICT WITH PRIOR NINTH CIRCUIT PANEL DECISIONS AS WELL.

PETITIONER'S MISAPPLICATION OF NINTH CIRCUIT PRECEDENT RULE 22-1(D), TO TIMELY FILE MOTION FOR CERTIFICATE OF APPEALABILITY WITHIN 35-DAY DEADLINE, WHICH HE RELIED UPON ATTEMPTING TO COMPLY WITH RULES AND PROCEDURES, CAUSED PETITIONER TO MISCALCULATE FILING DEADLINE. PETITIONER IS PROCEEDING PRO SE, IS A LAYMAN OF THE LAW WITHOUT ANY FORMAL LEGAL EXPERIENCE, AND HIS IGNORANCE OF THE LAW CONSTITUTES EXCUSABLE NEGLECT.

WHEREFORE, PETITIONER ASKS THIS HONORABLE COURT TO ORDER VACATUR OF JUDGEMENT DENYING MOTION FOR CERTIFICATE OF APPEALABILITY AND ALLOW PETITIONER TO RE-FILE NOTICE OF APPEAL.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

 _____

Date: JUNE 3, 2022