

SUPREME COURT OF THE UNITED STATES

CASE NO. _____

[USCA2 No. 19-2987]

Joseph Jordan, petitioner-movant,

v.

United States, respondent.

VERIFIED
EMERGENCY MOTION FOR ACCEPTANCE OF
PETITION FOR A WRIT OF CERTIORARI

NOW comes Joseph Jordan, a citizen of the United States of America, to request that this Honorable Court accept his Petition [for a writ of certiorari] as timely filed on "January 3, 2022" (as postmarked), and as is, without additional copies. In support of this request, he states the following under the penalty of perjury - pursuant to 28 USC Section 1746:

1. After convictions for non-violent obstruction of justice, based entirely on speech that, but for defense counsel's errors, should have been constitutionally protected, Mr. Jordan was sentenced to 40 years in prison (Case no. 08-cr-0124 S.D.N.Y.).
2. His timely filed motion to vacate, pursuant to Section 2255, raised IAC claims, including that his trial counsel (a) failed to inform him of the available affirmative defense (under Section 1512(e)) before his right to testify (in support of it) was waived, (b) failed to argue or otherwise advance the affirmative (or any other) defense after invoking it (at sidebar), and telling the judge (correctly) that record evidence supported it, and (c) failed to request (as a fallback) an LIO instruction on witness harassment (after the prosecution argued in support of that lesser offense).

3. Following denial of his Section 2255 motion, and denial of a COA, Mr. Jordan sought rehearing in the Second Circuit (case no. 19-2987), and also sought - from the Supreme Court additional time to file a petition for certiorari. The Supreme Court responded (promptly) telling him, by letter dated April 26, 2021, that he had:

"150 days from the date of the lower court order denying a timely petition for rehearing/reconsideration to file [his] petition for certiorari."

See EXHIBIT A (Letter of Supreme Court Clerk).

4. The Second Circuit denied Mr. Jordan's petition for rehearing on August 6, 2021. See EXHIBIT B (Order). And thus Mr. Jordan believed that he had "150 days" (EXH. A) from "August 6, 2021" (EXH. B), i.e., until January 3, 2022, to file his petition for certiorari with the Supreme Court.

5. Concerned that even 150 days would not be enough time given that he was incarcerated, without counsel, and - owing to the Covid-19 pandemic, and "lock down" status at the prison - without access to a law library, and certain of his stored legal documents, Mr. Jordan mailed a second motion for an extension of time - requesting "60 days" in addition to the "150 days" that the Supreme Court had told him that he had. See EXHIBIT C (handwritten motion).

6. Without notice of any decision on his second motion for an extension, Mr. Jordan proceeded as if he had to meet the deadline of "150 days" as instructed by the Supreme Court Clerk. See EXHIBIT A (letter of clerk). He succeeded in doing so, and his petition for certiorari, received by the Supreme Court on "January 11, 2022," was postmarked "January 3, 2022" - See EXHIBIT D (copy made by Supreme Court) - which was within the "150 days" that he had been told that he had to file it. See EXHIBIT A (letter of the Clerk).

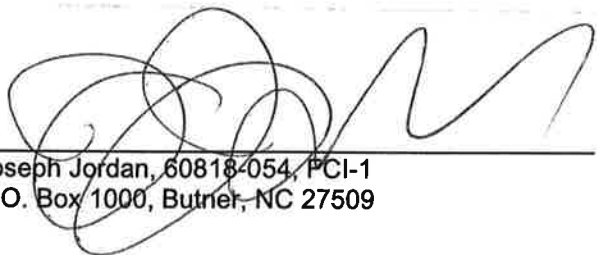
7. But by letter dated "January 14, 2022," the Supreme Court clerk - that had told Mr. Jordan that he had "150 days" (following denial of his motion for rehearing in the lower court) to file his petition for certiorari in the Supreme Court - informed him that his petition (that was filed within that "150 days") was "out-of-time, and thus would not be accepted. See EXHIBIT E (letter of clerk). (Apparently, without notice to Mr. Jordan, the time to file had been reduced between the date that the Supreme Court clerk had told him that he had "150 days" and the date that his petition was mailed!)
8. During the period between being informed (by the Supreme Court clerk) that he had "150 days" to file his petition, and the date he mailed it, Mr. Jordan had no access to the Supreme Court's website, no access to a law library, no access to an attorney, and no notice from any entity that the time to file had been reduced. And he never received notice of a decision on his motion for an extension.
9. Of course, Mr. Jordan had no reason to believe that the time to file his petition with the Supreme Court would be reduced: (a) he was told that he had "150 days" to do so (EXH. A); (b) at the time he was told that he had "150 days" he was NOT told that that might change; (c) he received no further notice from the court; and (d) the pandemic was still ongoing!
10. After all, the Supreme Court (itself) told him in writing, without conditions, that he had "150 days" (EXH. A), and he filed his petition within that "150 days" (EXH. D & E). He diligently sought to meet (and did meet) that deadline. That the Supreme Court - at some point after he was told that he had "150 days" - reduced the time to 90 days should have no effect on the deadline that he had already been given - even if Rule 13 was jurisdictional, which it is not. *Schacht v. United States*, 398 U.S. 58, 63-64 (1970). In other words, the notice that he had "150 days" should be considered tantamount to a notice that an extension of 60 days had been granted.
11. Moreover, and (again) even if Rule 13 is jurisdictional, it still allows "90 days," plus up to an additional

"60 days" (for a total of "150 days") to file a petition for certiorari. And, even if the notice that Mr. Jordan had "150 days" to file his petition (EXH. A) is not tantamount to an order allowing that much time, he also had submitted (by First-Class postage prepaid U.S. mail) a motion for an additional "60 days" (mailed and dated "August 17, 2021") in accordance with Rule 13.5, and his petition (addressed to the Supreme Court) was postmarked "January 3, 2022." In other words, whether he is allowed "150 days" (that he was informed that he had), or "90 days" plus "60 days" (as allowed by the rules), his petition was timely, and should be accepted.

Thus, in the interest of justice, due process, and fairness, this Court should accept Mr. Jordan's petition for a writ of certiorari that it received on "January 11, 2022" (EXH. E), and which was postmarked "January 3, 2022" (EXH. D), within the "150 days" that he was told (by this Court) that he had to file it (EXH. A).

The foregoing is true and correct, as stated under penalty of perjury on this date.

Date: 4/29/22

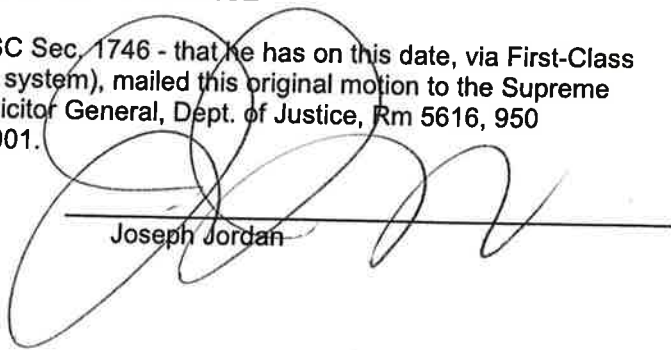


Joseph Jordan, 60818-054, PCI-1
P.O. Box 1000, Butner, NC 27509

CERTIFICATE OF MAIL & SERVICE

The undersigned hereby certifies - pursuant to 28 USC Sec. 1746 - that he has on this date, via First-Class Postage Prepaid, U.S. mail (using the institution mail system), mailed this original motion to the Supreme Court of the United States, and a true copy to the Solicitor General, Dept. of Justice, Rm 5616, 950 Pennsylvania Ave. N.W., Washington, D.C. 20530-0001.

Date: 7/29/22



Joseph Jordan