

IN THE
UNITED STATES SUPREME COURT

22-5971

No. _____

ORIGINAL

FILED
OCT 24 2022

OFFICE OF THE CLERK
SUPREME COURT, U.S.

JOSEPH MICHAEL LADEAIROUS
Pro-se petitioner

V.

MERRICK B. GARLAND, U.S. ATTORNEY GENERAL and
MICHAEL HOROWITZ, U.S. INSPECTOR GENERAL
Respondent

On petition for writ of certiorari to the
United States Court of Appeals for the District of Columbia

PETITION FOR WRIT OF CERTIORARI

Joseph Michael Ladeairous

#1433027

Augusta Correctional Center
1821 Estaline Valley Road
Craigs以来 Virginia 24430

QUESTIONS PRESENTED

Petitioner submits this writ of certiorari to the United States Supreme Court concerning the United States Court of Appeals for the District of Columbia overlooking the long held precedent that, due to Covid-19 pandemic restrictions shutting down the prison law library, petitioner's denial of meaningful access to the prison law library was the denial of petitioner's access to the court.

LIST OF PARTIES

[X] All parties appear in the caption of the case on 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;

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner prays for review of the judgment below by writ of certiorari

OPINIONS BELOW

The following writ of certiorari concerns cases from federal courts;

The opinions of the U.S. Court of Appeals for the District of Columbia appears in appendix A.

The opinion of the U.S. District Court for the District of Columbia appears in appendix B.

JURISDICTION

The following writ of certiorari concerns cases from a federal court;

The date on which the U.S. Court of Appeals for the District of Columbia decided petitioner's case on August 5, 2022.

A timely petition for rehearing en banc was denied by the U.S. Court of Appeals for the District of Columbia on August 31, 2022 and a copy of the order denying rehearing en banc appears at appendix C

The jurisdiction of this court is invoked under § 28 U.S.C. 1254(1).

CONSTITUTION AND STATUTORY PROVISIONS INVOLVED

The first Amendment of the United States Constitution which guarantee's that "Congress shall make no law respecting an establishment of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for the redress of grievances".

STATEMENT OF THE CASE

The petitioner, Joseph Michael Ladeairous, brought forth a federal civil action in the United States District Court for the District of Columbia against the United States Attorney General Merrick B. Garland and the United States Inspector General Michael Horowitz for declaratory and injunctive relief concerning abuses sustained while subjected to Foreign Intelligence Surveillance Act (F.I.S.A. 50 U.S.C. §1801-1885) investigations and surveillances when interacting and supporting Irish republican organizations in the United States and Ireland that the United States Government has placed terror labels upon.

This case has a long history that began in 2013 with the adjudication on its merits being precluded when petitioner's legal mail to the district court disappeared. On appeal, the court of appeals would dismiss the case without prejudice. (**Ladeairous v. Holder** 574 Fed. Appx. 3 (2014)). Upon refiled this civil action, a long legal battle then took place over the Prison Litigation Reform Act (P.L.R.A.) 28 U.S.C. §1915(g) three strike rule, further impeding this civil action from being adjudicated on its merits. However, the petitioner would ultimately prevail over the matter allowing this civil action to move forward. (**Ladeairous v. Sessions** 884 F.3d 1172 (2018))

On February 24th 2021 the district court would finally adjudicate on the merits of petitioner's claim. This was almost ten years after its initial filing. Even though it was at the pleading stage and before discovery, the district court dismissed petitioner's claim for being so meritless the court lacked jurisdiction. Thus, granting respondent's motion to dismiss.

On May 10th 2021 petitioner submitted a notice of appeal.

On June 2nd 2021 the court of appeals informed petitioner that petitioner's notice of appeal had not been received until May 17th 2021 and beyond the 60 day period permitted by the Federal Rules of Appellate Procedure (F.R.A.P) Rule 4(a)(B)(iii) to submit a notice of appeal. The court of appeals then ordered petitioner to show cause as to why petitioner's appeal should not be dismissed as untimely. The court of appeals also ordered petitioner to either pay the court filing fee or submit a motion to leave to proceed in forma pauperis. All of which had to be submitted no later than July 2nd 2021.

On June 23rd 2021 petitioner submitted a reply to the court's show cause order and a motion to leave to proceed in forma pauperis.

On July 12th 2021 the court of appeals granted petitioner's in forma pauperis.

On November 8th 2021 the court of appeals appointed a amicus curiae to raise the issue if petitioner's reply to the court's show cause order and notice of appeal can be considered a F.R.A.P. Rule 4(a)(5) and Rule 4(a)(6) motion.

On November 12th 2021 the court of appeals ordered the amicus and petitioner to submit an appellate brief no later than January 7th 2022.

On December 20th 2021 petitioner submitted an appellate brief to the court of appeals.

On January 14th 2022 the amicus curiae submitted its appellate brief.

On March 29th 2022 the respondents submitted their brief.

On April 14th 2022 petitioner submitted a reply brief.

On April 15th 2022 the amicus submitted a reply brief.

On May 13th an oral argument was held on the matter.

On August 5th 2022 the court of appeals dismissed petitioner's

appeal as untimely.

On August 12th 2022 petitioner submitted a petition for rehearing en banc.

On August 31st 2022 the court of appeals denied petitioner's petition for rehearing en banc.

Therefore, petitioner brings forth this writ of certiorari.

ARGUMENT

To begin, this writ of certiorari concerns a matter of constitutional significance due to the United States Court of Appeals for the District of Columbia dismissing petitioner's appeal as untimely when petitioner did not submit a Federal Rule of Appellate Procedure Rule 4(a)(5) or Rule 4(a)(6) motion.

To explain, as mentioned, on May 4th 2021 petitioner received the district court's February 24th 2021 decision dismissing petitioner's civil action by mail. Although, unbeknownst to petitioner, this was beyond the 60 day time limit to file a timely notice of appeal pursuant to F.R.A.P. Rule 4(a)(B)(iii). In fact, it was the 67th day. At this very same time our nation was in the grips of the Covid-19 pandemic. When, due to social distancing mandates of the prison petitioner is being held, all access to anywhere in the prison was restricted. This included the law library which had already been shut down the year prior on March 30th 2020. (See; Appendix D) The law library would reopen on October 15th 2021. However, this would be months after petitioner received the district court's decision. (See; Appendix E) It would be shut down again shortly thereafter, on January 4th 2022, due to a resurgence of Covid cases. (See; Appendix F) Then resume again to date on April 4th 2022. (See; Appendix G)

This was almost two full years after its initial closing. During this two year period the only legal assistance afforded a prisoner was to submit a request to prison staff. This request was limited to a specific case, law, or rule. Then the law library supervisor or clerk would print the specific legal material needed. Which was then given back to staff to be given to the prisoner. With any court deadlines taking precedent. (See; Appendix D)

To argue, the petitioner fails to see how petitioner was expected to have known what was required of petitioner after receiving the district courts decision passed the 60 day time limit to file a notice of appeal, which turned out to be a F.R.A.P. 4(a)(6) motion, without access to a law library. Also, how could have petitioner utilized the prison's alternative to the law library's specific case, law, or rule type of assistance without any prior knowledge of the information that is needed. Especially knowing a F.R.A.P. Rule 4(a)(6) motion is not usually required in the appeal process in the first place. Plus, had petitioner known to request the information of F.R.A.P. Rule 4(a)(6) motion. Then, petitioner would have known a F.R.A.P. Rule 4(a)(6) motion needed to be submitted and done just that with the requesting of such information then being pointless. Not to mention, due to social distancing mandates, the prison's alternative required the requested information to be detoured before a prisoner receives the requested information. (See; Appendix D) Therefore, even if petitioner did somehow have some preconceived notion of Rule 4(a)(6), which petitioner did not, and waited to receive the requested information before submitting the motion. Petitioner would have needed to receive the requested information of Rule 4(a)(6), write the motion, and then submit the motion, all within the 14 days that F.R.A.P. Rule 4(a)(6)(B) allows after petitioner

received the district court's decision. Knowing that it took from May 4th 2021 to May 10th 2021 just for petitioner to obtain a notary public for petitioer's notice of appeal, as noted in the district court's ruling. The prison's alternative left much to be desired if anything at all.

As a result, having no access to the prison law library and the prison's specific case, law, or rule alternative erased any resemblance of such legal assistance being "meaningful". Which this court has held "meaningful access to the courts is the touchstone".(Lewis v. Casey 518 U.S. 343 (1996) Also, a law library's meaningfulness is never more necessary then in a case such as this that concerns a rare legal requirement. Truth is, the law library being closed and the prison's alternative was not just deficient or subpar but left petitioner legally stranded. In fact, petitioner's case fits the very example this court gave to "demonstrate that the alleged shortcomings in the law library or legal assistance program" hindered petitioner. Which, like this case, is when a prisoner's complaint is "dismissed for failure to satify some technical requirement which, because of the deficiencies in the prison's assistance facilities, he could not have known".(Id; 518 U.S. at 351) Even more, this court has said "an inmate must show that the alleged inadequacies of a prison's library facilities or legal assistance program caused him actual injury. Yet again, petitioner's case fits the example this court gave when it said actual injury can be "the inability to meet a filing deadline".(Id 518 U.S. at 348) Which, as in this case, petitioner could have and would have submitted a F.R.A.P. Rule 4(a)(6) motion had petitioner been enlightened of the rules existance with access to a law library. Once more, this court has said "a prison law library gives the means to ensure a reasonably adequate opportunity to present

claimed violation of fundamental constitutional rights to the court".
(Id; 518 U.S. at 351) However, due to the prison law library being closed and the prison's specific case, law, or rule type of assistance, petitioner was not given a reasonably adequate opportunity to do anything other than request for information already known.

Moreover, why has the court of appeals exempt petitioner from suffering the effects of the Covid-19 pandemic? Especially, since other courts have taken notice. Such as a Ninth Circuit Court when it said "the extraordinary circumstances of the Covid-19 pandemic is ongoing".

(Dunn v. Bacc 2020 U.S. Dist. Lexis 86453 (May 18, 2020) Also, a Fourth Circuit Court would state that "since the onset of the world wide Covid-19 pandemic the ordinary course of business in every arena has been interrupted or delayed".(Corpral v. Weber 2021 U.S. Dist. Lexis 131184 (July 14, 2021) Even more, a Second Circuit Court would say "many facilities continue to institute lock downs, rendering conditions of incarceration harsher and more punitive then they would have been in the absence of the pandemic".(U.S. v. Campbell 2022 U.S. Dist. Lexis 109793 (June 21, 2022) As well as a Eighth Circuit Court when it stated "from early 2020 our nation has been fighting to contain Covid-19. Prisons did not escape this battle".(Barnes v. Byers 2022 U.S. Dist. Lexis 87949 (May 16, 2022) More still, a Third Circuit Court stated that "certain circumstances involve defendants who had been pursuing their rights diligently and would have timely filed if not for external obstacles caused by Covid-19".(U.S. v. Henry 2020 U.S. Dist. Lexis 234135 (Dec 14, 2020) Not to mention, this court would say "It has long been said that a society's worth can be judged by taking stock of its prisons, that is all the truer in this pandemic, where inmates everywhere have been rendered vulnerable and often powerless".(Valentine v. Collier 590 U.S. 1598 (2020)

Nevertheless, in light of all just mentioned, the court of appeals held petitioner accountable for receiving mail late, failing to fulfill a legal requirement that is not usually required, with absolutely no access to a law library, all during a world halting pandemic.

Therefore, and because of the reasons just outlined, the petitioner asks this court to grant this writ of certiorari due to the court of appeals violation of petitioner's First Amendment right of the U.S. Constitution to petition the government for the redress of grievances.

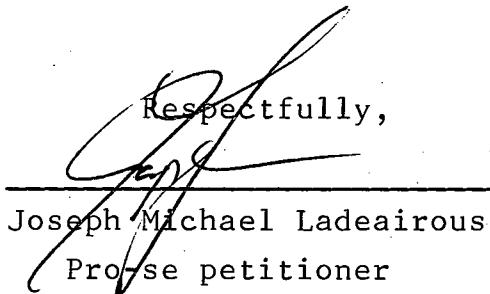
CONCLUSION

WHEREFORE, Joseph Michael Ladeairous, petitioner of this writ of certiorari before this most honorable court prays, that for the reasons set forth in petitioner's writ of certiorari, this court may grant petitioner's writ of certiorari.

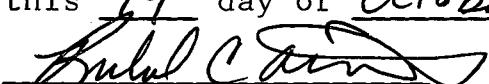
October 14, 2022

Joseph Michael Ladeairous
Augusta Correctional Center
1821 Estaline Valley Road
Craigsvalle Virginia 24430

Respectfully,


Joseph Michael Ladeairous
Pro se petitioner

Subscribed and sworn to befor me
this 19 day of October, 2022


Notary public

My commission expires on; 8/31/24

