

No. 22-7313

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

APR 11 2023

OFFICE OF THE CLERK

RAKIM MOBERLY — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT (No. 22-5611)
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

RAKIM MOBERLY (Register No. 22784-032)

(Your Name)

U.S. Penitentiary Lompoc
3901 Klein Blvd.

(Address)

Lompoc, California 93436

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

1) Did the Petitioner's Letter to the District Court Clerk, which stated:

"5:19-Cr-136-DCR

Dear Court Clerk 6/30/22

I received the decision from the court today. [Record No. 68] I did not receive a service copy of the governments response [Record No. 65] Please, send me a copy of the government's response for appeal purposes

Rakim Moberly # 22784-032

USP Lompoc

8901 Klein Blvd

Lompoc, CA 93436;"

qualify as a Notice of Appeal, pursuant to Federal Rules of Appellate Procedure, Rule 3?

2) If the Petitioner's Letter should have been determined to act as a Notice of Appeal; and was received by the District Court Clerk, within 14-days of the District Court's final order, was it timely filed, pursuant to Federal Rules of Appellate Procedure, Rules 4(b) and 4(c)?

3) Was the District Court and Court of Appeals justified in dismissing the Petitioner's ^{Appeal} as untimely, pursuant to a Motion to Dismiss from the Respondent, without assessing the standards identified in Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership, 507 U.S. 380 (1993); and Stutson v. United States, 516 U.S. 193 (1996)?

4) Does the Sixth Circuit Court of Appeals' standard for "excusable neglect," as set forth in its circuit precedent: Proctor v. Northern Lakes Community Mental Health, 560 Fed. Appx. 453, 458 (6th Cir. 2014) that "ignorance of the rules or mistakes in construing the rules do not usually constitute excusable neglect," limits and misinterprets the scope of this Court's interpretation of "excusable neglect," as it pertains to pro se criminal defendants, rather than attorneys?

5) If the Petitioner made a timely Notice of Appeal, would the lower courts be required to review his Compassionate Release/Reduction in Sentence Motion under this Court's standards, announced in Concepcion v. United States, (No. 20-1650)

142 S. Ct. 2389, 213 L.Ed 2d 731 (2022), United States v. Carter, 44 F.4th 1227 (9th Cir. 2022)(noting that Concepcion abrogated United States v. Kelley, 962 F.3d 470, 475 (9th Cir. 2020), which had held that the First Step Act did not authorize a district court to consider post-conviction legal changes outside of Sections 2 and 3 of the Fair Sentencing Act)?

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:

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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 _____ 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 _____ to the petition and is

reported at 2022 U.S. Dist. LEXIS 109368; 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 January 27, 2023.

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: N/A, 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 N/A (date) on N/A (date) in Application No. N/A A N/A.

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

Federal Rules of Appellate Procedure, Rule 3

Appeal as of Right--How Taken

(a) Filing the Notice of Appeal.

(1) An appeal permitting by law as of right from a district court to a court of appeals may be taken only by filing a notice of appeal with the **district clerk** within the time allowed by Rule 4....

(2) An appellant's failure to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for the court of appeals to act as it considers appropriate, including dismissing the appeal....

(c)

(1) The notice of appeal must:

(A) Specify the party...taking the appeal by naming each one in the caption or body of the notice....

(B) designate the judgment, order, or part thereof being appealed; and

(C) name the court to which the appeal is taken.

(2) A *pro se* notice of appeal is considered filed on behalf of the signer... unless clearly indicated otherwise....

(4) An appeal must not be dismissed for informality of form or title of the notice of appeal or for failure to name a party whose intent to appeal is otherwise clear from the notice

Federal Rules of Appellate Procedure, Rule 4

Appeal as of Right -- When Taken

(b) Appeal in a Criminal Case.

(1) Time for Filing a Notice of Appeal.

(A) In a criminal case, a defendant's notice of appeal must be filed in the district court within 14 days after the later of:

(1) the entry of either the judgment or order being appealed....

(4) Motion for Extension of Time. Upon a finding of neglect

or good cause, the district court may--before or after the time has expired, with or without motion and notice--extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b)

....

(c) Appeal by an Inmate Confined in an Institution.

(1) If a institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this Rule (4)(c)(1).

If an inmate files a notice of appeal in either a civil or criminal case, the notice is timely if deposited in the institution's internal mail system on or before the last day for filing and:

(A) It is accompanied by ...

(ii) evidence (such as a postmark or date stamp) showing that the notice was so deposited and that postage was prepaid....

STATEMENT OF THE CASE

Petitioner **Rakim Moberly** (hereafter "Petitioner") pleaded guilty with intent to distribute fentanyl, possessing a firearm in furtherance of a drug trafficking crime, and possessing a firearm by a convicted felon. Petitioner was sentenced to 128 months imprisonment on May 8, 2020. (APPENDIX B, pg.1) . Moberly filed a motion for compassionate release on May 27, 2022, which was denied on June 21, 2022. (APPENDIX B, pg.1).

Thereafter, Petitioner mailed a letter to the District Court Clerk's Office, stating:

"Dear Court Clerk, 6/30/22
I received the decision from the court today. (Record No. 68) I did not receive a service copy of the government's response (Record No. 65). Please, send me a copy of the government's response for appeal purposes. Thank you, #22784-032
Rakim Moberly
USP Lompoc
3901 Klein Blvd
Lompoc, CA 93436." (APPENDIX K) (emphasis added).

Petitioner mailed his letter on June 30, 2022, and the Court interpreted that letter to have been mailed on July 5, 2022 (APPENDIX B, pg.1), indicating that he received the court's order but not a copy of the United States' response to his motion for compassionate release. (APPENDIX B, pg1) . Moberly signed and mailed his notice of appeal on July 13, 2022, eight days after the fourteen-day deadline and before the additional thirty-day period, requiring the defendant to show "excusable neglect or good cause" for an extension, pursuant to Fed. R. App. P. 4(b)(1)(A). (APPENDIX 6,p2). Petitioner identified his intent to appeal in the letter.

The district court clerk responded to Petitioner's letter, by stating:

"....Docket Text: CLERK'S VIRTUAL NOTICE TO Rakim Moberly re (67) RESPONSE, (70) Letter: The copies requested require a fee of 50 cents per page to be paid in advance. The total pages requested is 7 and the amount due is \$3.50. Please make your check or money order payable to Clerk, United States District Court. cc: Rakim Moberly by US Mail (JER) 5:19-cr-00136-DCR-MAS-1 Notice has been electronically mailed to: Cynthia T. Rieker, AUSA Rajbir Datta, AUSA" (APPENDIX P pg. 10)

The United States moved to dismiss Petitioner's appeal as untimely, and the United States Court of Appeals for the Sixth Circuit remanded the matter "for the limited purpose of allowing the district court to determine whether Petitioner's could show excusable neglect or good cause warranting an extension of the appeal

period." **(APPENDIX A pgs. 1-2)**

The district court, on remand, construed Petitioner's Notice of Appeal, as a request for an extension of time to file an appeal. Upon consideration of the Petitioner's showing of reason for "excusable neglect or good cause" to excuse his delayed filing, the district court denied Petitioner's notice of appeal, construed as a motion for an extension of time, concluding in summary: "Moberly's filing was not prevented by forces beyond his control, and his stated reason for the delay does not amount to excusable neglect." **(APPENDIX B pgs. 2-4)**

Upon return from the district court, the Sixth Circuit Court of Appeals GRANTED the government's motion to dismiss and DISMISSED Petitioner's appeal, by stating in relevant part:

"The government filed a motion to dismiss for Moberly's failure to file a timely notice of appeal. However, when a criminal defendant files a notice of appeal 'after the fourteen -day appeal period but within the next thirty days' and the district court finds 'excusable neglect or good cause' pursuant to Rule 4(b)(4), it may treat a notice of appeal as a request for an extension of time to file an appeal. Payton, 979 F.3d at 390. So by an earlier order, we deferred ruling on the government's motion to dismiss and remanded for the district court to determine whether Moberly's untimely filing was due to excusable neglect or good cause. On remand, the district court determined that Moberly had not demonstrated that circumstances beyond his control affected his ability to file a timely notice. The district court therefore denied his request for an extension. The deadline for a defendant to file a notice of appeal under Rule 4(b)(1)(A) is not jurisdictional. See Payton, 979 F.3d at 390; United States v. Brown, 817 F.3d 486, 489 (6th Cir. 2016); United States v. Gaytan-Garza, 652 F.3d 680, 681 (6th Cir. 2011)(per curiam). But it is a mandatory claims-processing rule; if the government raises the issue of timeliness, we must enforce the deadline. See Payton, 979 F.3d at 390; Gaytan-Garza, 652 F.3d at 681. The government has properly raised the timeliness issue by filing a motion to dismiss. Moberly's failure to file a timely notice of appeal deprives this court of jurisdiction. It is therefore ordered that the government's motion to dismiss is GRANTED and this appeal is DISMISSED. ENTERED BY ORDER OF THE COURT Deborah S. Hunt, Clerk"

(APPENDIX A pgs.1-2).

REASONS FOR GRANTING THE PETITION

This matter deals with importance of Courts of Appeals' handling of pro se inmate's Notice of Appeals, when they alert district courts of their intention to appeal the decisions of the district courts. When the district court fail to comprehend the intentions of pro se inmates, it has the ability to cause unnecessary dismissals of appeals in the Court of Appeals, which was not intended by this Court's rationales in Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership, 507 U.S. (1993); and further clarified in Stutson v. United States, 516 U.S. 193 (1996).

The Petitioner, in this matter, filed a Motion for Compassionate Release/ Reduction In Sentence in the district court [APPENDIX L & N] The district court issued an adverse decision against the Petitioner [APPENDIX E]. When the Petitioner received the adverse decision from the district court, he wrote a letter to the district court clerk, which stated:

"5:19-CR-136-DCR
Dear Court Clerk 6/30/22
I received the decision from the court today. [Record No. 68] I did not receive a service copy of the governments response [Record No. 65] Please, send me a copy of the government's response for appeal purposes
Rakim Moberly #22784-032
USP Lompoc
8901 Klein Blvd
Lompoc, CA 93436"

[APPENDIX K]. The Petitioner's Letter identified his intention to appeal, but believed that he needed to receive the Respondent's Response [APPENDIX K] to perfect his appeal. The district court's decision identified the use of the Respondent's Response in its decision [APPENDIX E pgs. 2-3], for which Petitioner was clueless of its contents. Upon receiving the decision of the district court, the Petitioner, without delay, informed the district court clerk of his dilemma and disadvantage of his ability to appeal the decision of the district court. [APPENDIX K].

The Petitioner subsequently filed a formal "Notice of Appeal" [APPENDIX J].

The Sixth Circuit accepted the Petitioner's Appeal, and the Respondent filed a "Motion to Dismiss" the Petitioner's appeal on the basis that his "notice of Appeal" was untimely filed [APPENDIX H]. Because the Respondent raised the issue in the Sixth Circuit that the Petitioner "filed an untimely notice of appeal seeking to appeal the district court's order denying his motion for compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A)," [APPENDIX H pg. 1][APPENDIX C]; the Court is pointed to the Respondent's identification of Petitioner's letter to the district court clerk, in its Motion to Dismiss, which states:

"Moberly also sent the district court a letter dated June 30, 2022, acknowledging that he had received 'the decision from the court' on that same date. [R. 70: Letter at 369.] Notably, this date--June 30, 2022--falls well-within the fourteen-day window Moberly had to file a timely notice of appeal. [See R. 68: Opinion and Order at 365 (dated June 21, 2022).]Regardless, 'Rule 4(b)(4) authorizes the district court to extend the time in which a party may appeal for up to thirty days from the end of the fourteen-day appeal period provided in Rule 4(b)(1)(A).' Payton, 979 F.3d at 390. Thus, if a defendant 'files a notice of appeal after the expiration of the appeal period provided for in Rule 4(b)(1)(A), but before the end of the additional thirty-day period, the district court should treat the notice as a request for an extension of time to file.' Id. Because Moberly's notice was filed after the fourteen-day appeal period but within the next thirty days, this Court may remand the case 'to the district court for the limited purposes of allowing the court to determine whether [Moberly] has shown excusable neglect or good cause warranting an extension of the appeal period.' Id."

[APPENDIX H pgs. 3-4]. The purpose of identifying the Respondent's position in the Sixth Circuit, is to identify that the Respondent: 1) identified the Petitioner's letter, without commenting upon the portion that stated: "Please, send me a copy of the government's response for appeal purposes;" and 2) Pioneer Investment Services Co v. Brunswick Associates Limited Partnership, Id.; and Stutson v. United States, Id. [APPENDIX H]. Nowhere, doing the lower proceedings, did the Respondent identify or comment upon the Petitioner's failure to receive its Response that was filed in the district court. Compare [APPENDIX H] and [APPENDIX B].

After remand from the Sixth Circuit, Petitioner accepted the opportunity to identify why his appeal was not untimely [APPENDIX F]. This Court established six (6) factors that are to be used in determining "excusable neglect." Pioneer,

507 U.S. at 395; Stutson, at 516 U.S. at 195-197. This Court's balancing factors include: 1) the danger of prejudice to the nonmoving party, 2) the length of the delay and its potential impact on judicial proceedings, 3) the reason for the delay, 4) whether the delay was within the reasonable control of the moving party, and 5) whether the late-filing party acted in good faith. Id.

The district court ruled adversely to the Petitioner's reasons in showing "good cause" or "excusable neglect." [APPENDIX B] [APPENDIX F pgs. 3-8].

When assessing the district court's determination concerning the Pioneer factors, the Order indicates that the district court knew of such factors, but did not engage in such analysis, against circuit precedent, by not assessing Petitioner's Letter, in whole, by stating:

"The record demonstrates that Moberly wrote and dated a letter stating that he received the decision from the Court on June 30, 2022. The letter is postmarked July 5, 2022, indicating that Moberly could have filed a notice of appeal in a timely fashion using the prison's mailing system....In summary, Moberly's filing was not prevented by forces beyond his control, and his stated reason for the delay does not amount to excusable neglect."

[APPENDIX B pgs. 3-4, 5] Most concerning is the district court statements about the Petitioner's failure to receive the Respondent's response to his Motion for Compassionate Release, which stated:

"Moberly asserts two reasons for his failure to file a notice of appeal within the fourteen-day period: (1) he did not receive the United States' response to his compassionate release motion before he received the Court's order; and (2) the prison's 'mailing system presented difficulties in receiving mail in a timely manner.' [Record No. 75] But the date Moberly received the government's response, if at all, is irrelevant because the operative document is this court's order, not the United States' response to his motion for compassionate release....Moberly next contends that the prison's 'mailing system presented difficulties in receiving mail in a timely manner.' [Record No. 75] '[W]hen a moving party contends that a circumstance outside his control prevented him from filing a timely notice of appeal, he must provide details about that prohibitive circumstance'In this case, Moberly has not indicated how the prison's mailing system prevented his filing.

[APPENDIX B pg. 3] (citations omitted).

Additionally, this Court is alerted to the district court's use of a Sixth Circuit precedent, which is inconsistent with the holding of Pioneer. The district

court stated:

"The Sixth Circuit has 'adopted the maxim that "[i]gnorance of the rules or mistakes in construing the rules do not usually constitute excusable neglect.' Proctor, 560 F. App'x at 458 (quoting Nicholson, 467 F.3d at 527)."

[APPENDIX B pgs. 2-3]. Such holding by the Sixth Circuit is not in harmony with this Court's rationale in Pioneer. In dicta, this Court gave some guidance regarding the definition of "excusable neglect" within the context of Rule 6(b)(1)(B) of the Federal Rules of Civil Procedure:

"Although inadvertance, ignorance of the rules, or mistakes construing the rules do not usually constitute 'excusable' neglect, it is clear that 'excusable neglect' under Rule 6(b) [of the Federal Rules of Civil Procedure] is a somewhat 'elastic concept' and is not limited strictly to omissions caused by circumstances beyond the control of the movant. Thus, it appears that 'excusable neglect' under Rule 6(b) is a somewhat 'elastic concept' and is not limited strictly to omissions caused by circumstances beyond the control of the movant."

Pioneer, 507 at 392 (footnote omitted). Thus, it appears that "excusable neglect" under Rule 6(b) could be stretched enough to include inadvertance, ignorance of the rules and mistakes construing the rules. See, Produce Alliance, LLC, et al, v. Fresh America Corporation, 2003 U.S. Dist. LEXIS 11610 (N.D. Tex., July 8, 2003) ("Rather ;the word...encompasses both simple, faultless omissions to act, and more commonly, omissions caused by carelessness.'") Therefore, the district court's use of the "Sixth Circuit's maxim," failed to take in consideration that the Petitioner's letter fell within the 14-day period of Federal Rules of Appellate Procedure, Rule 4(b)(1)(A). And more importantly, there was an unmistakable clarity as to the Petitioner's desire to appeal the matter to the court of appeals, before the formal notice of appeal was filed within the 30 day period of the same rules.

Additionally, the Sixth Circuit stated:

"On remand, the district court determined that Moberly had not demonstrated that [circumstances beyond his control affected his ability to file a timely notice.] The district court therefore denied his request for an extension. The deadline for a defendant to file a notice of appeal under Rule 4(b)(1)(A) is not jurisdictional.... But it is a mandatory claims-processing rule; if the government raises the issue of timeliness, we must enforce the deadline...The government has properly raised the timeliness issue by filing a motion to dismiss. Moberly's failure to file a timely notice of appeal deprives this court

of jurisdiction."(bracket and emphasis added)(citations omitted)

[APPENDIX A pg. 2] In coming to this decision, the Sixth Circuit failed to adhere to its own precedents and guidance, in United States v. Dotz, 455 F.3d 644, 647 (6th Cir. 2006), which stated:

"This court has made clear that a document that clearly indicates an intent to appeal may suffice as notice, so long as it is filed within the 40-day window and contains most of the necessary elements required for a formal notice of appeal as specified in Rule 3 of the Federal Rules of Appellate Procedure. United States v. Howe, 548 F.2d 1271, 1273 (6th Cir. 1977)(treating a motion for extension of time as a notice of appeal where it was timely filed and indicated a clear intent to appeal)."

Id. See also, United States v. Douglas, 746 Fed. Appx. 465, 467 (6th Cir. 2018)(loss of legal paperwork did not constitute good cause because an appeal "requires no legal form" and defendant could have appealed by "simply writing a letter"); United States v. Woods, 2020 U.S. Dist. LEXIS 156775 ("However, the Sixth Circuit 'has made clear that a document that clearly indicates an intent to appeal may suffice as notice, so long as it is filed within the 40-day window and contains most of the necessary elements required for a formal notice of appeal....'").

As identified in the Sixth Circuit's United States v. Dotz, when the Petitioner's letter [APPENDIX K] clearly indicated an intent to appeal, and was followed by a formal notice of appeal within 30-days, such letter was within the 14-day period allowed for appealing the district court's order denying his motion for compassionate release/reduction in sentence. Id. at 647.

As seen in the present case, the district court entered its Order, denying the Petitioner's request for compassionate release, on June 21, 2022. His normal 14-day appeal period, prescribed by Rule 4(b)(1)(A)(i) expired on July 5, 2022. The district court docket shows that the district court clerk received the Petitioner's letter on July 12, 2022, with the Letter postmarked for July 5, 2022. Because of the July 4, 2022 Holiday falling on a Monday, the Petitioner's efforts of giving prison officials his Letter on June 30, 2022 did not deny the court to construe that his Letter was filed on July 5, 2022 (the last day for filing.) The Petitioner does not negate the fact that he received the district court's Order on June 30,

2022, nine (9) days after the district court issued its denial on June 21, 2022. The July 5, 2022, 14-day expiration date is set forth in Federal Rules of Appellate Procedure, Rule 26 (setting forth the criteria for computing periods of time that take into account weekends and holidays). The 30-day maximum extension, if granted for excusable neglect or good cause, would have expired on July 21, 2022. The Petitioner's Letter and Formal Notice of Appeal were well within that time period, as revealed by the district court docket entries [APPENDIX P].

Lastly, the Court is pointed to the facts that the Respondent failed to provide the Petitioner with a copy of its Response to his MOTion for Compassionate Release/Reduc: In Sentence. When the Petitioner brought the issue to the attention of the Sixth Circuit, the respondent subsequently claimed that the Petitioner's Notice of Appeal was late, without denying or admitting that it supplied the Petitioner with a copy of its Response.

The Sixth Circuit, nor did the district court on remand, cause the Respondent to provide the Petitioner with a copy of its REsponse. In the Petitioner's Brief, in the Sixth Circuit, nearly every page reminds that Court that the Petitioner did not receive the Respondent's Response. [APPENDIX I]. There is nothing in the record in the Court of Appeals, nor the district court, that identifies what the Respondent's position is, concerning this serious allegation (which would make the Respondent's Response a *ex parte* communication in the district court). See Norris v. Growse, 2011 U.S. Dist. LEXIS 130761 (E.D. Ky. Nov. 10, 2011) ("Norris simply claims that counsel for the United States failed to serve him with pleadingsCheryl Morgan's statement that she sent these filings to plaintiff on the dates certified and that they had not been returned to her as being undeliverable mail...."); Moore v. Mitchell, 531 F. Supp. 2d 845, 908-909 (6th Cir. 2008) ("Nonetheless, the Sixth Circuit 'has not concealed its strong disapproval' of *ex parte* communication in criminal cases, 'reasoning that giving the government private access to the ear of the court is not only 'a gross breach of the appearance of justice,' but also a 'dangerous procedure.'").

In closing, the district court reached the merits of the Petitioner's claims in his Motion for Compassionate Release, despite the Respondent alleging that the Petitioner had not exhausted his Administrative Remedies, pursuant to 18 U.S.C. § 3582(c)(1)(A). [APPENDIX L pgs. 3-4][APPENDIX E pgs.2-7] During the pendency of this matter in the lower courts, this Court issued its ruling in Concepcion v. United States, (No. 20-1650), 142 S. Ct. 2389, 213 L.Ed 2d 731 (2022). Neither the district court, nor the Sixth Circuit evaluated Petitioner's claims under the guidance of Concepcion, after such case was decided. Upon a favorable ruling by this Court, any remand would necessarily require the lower courts to follow this Court's directions in such case. An appropriate statement concerning Concepcion would announce the appropriate measures to be taken upon remand.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Rakim Moberly I

Date: April 11, 2023

Rakim Moberly
Register Number: 22784-032
United States Penitentiary Lompoc
3901 Klein Blvd.
Lompoc, California 93436

With pro bono legal assistance from Iran Ketchup, 82262-020, who has obtained a profound respect for this gentleman, who has transformed his life and behavior for the good of society and himself, (pursuant to the Federal Bureau of Prisons' Program Statement 1315.07, Legal Activities, Inmate).