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VIA REGULAR MAIL

May 20, 2022

Scott S. Harris, Clerk
Supreme Court of the United States
1 First Street, NE
Washington, DC 20543

RE: Komatsu v. New York
USCA2 No. 20-3676

Mr. Harris:

This is a letter motion to request retroactive authorization to have the petition for a writ of certiorari that I mailed on 5/1/22 to the U.S. Supreme Court's clerk's office within the applicable deadline for doing so about the appeal that I commenced that is referenced above to be immediately accepted and filed out-of-time by clerk's office for the U.S. Supreme Court for proper consideration on the merits by the U.S. Supreme Court as to whether grant my petition for a writ of certiorari.

I'm submitting this letter in accordance with information that I received from Lisa Nesbitt of the U.S. Supreme Court on 5/17/22 during a telephone call that I had with her that I legally recorded on audio. I'm also submitting this letter motion in response to the correspondence that I received from her in the mail that is dated 5/11/22 about this petition for a writ of certiorari.

The first screenshot shown below is from the e-mail message that I sent on 12/28/21 at 5:53 am to the e-mail address of prosecases@ca2.uscourts.gov that the clerk's office for the U.S. Court of Appeals for the Second Circuit ("Second Circuit") uses to receive and process submissions from pro se litigants who pursue appeals that are filed with the Second Circuit. The information in that subject field shown in that screenshot and the first PDF file that I attached to that e-mail make crystal clear that I timely submitted a petition for rehearing en banc to the Second Circuit just 8 days after the Second Circuit issued its 12/20/21 order in Komatsu v. City of New York, No. 20-3676 (2d Cir. Dec. 20, 2021).

The letter dated 5/11/22 that I received from Ms. Nesbitt about this petition for a writ of certiorari falsely states, "The date of the lower court judgment or order denying a timely petition for rehearing was December 20, 2021". Contrary to that false remark, the Second Circuit absolutely did not issue any order nor decision on 12/20/21 that denied a petition for rehearing partly because I hadn't submitted such a petition to it until 12/28/21 when I then requested rehearing en banc. Proper attention to detail is crucial. I indisputably have that partly about this

petition for a writ of certiorari in stark contrast to the clerk's office for the U.S. Supreme Court. The lack of proper attention by that clerk's office is highly alarming for obvious reasons and is a clear and substantial violation of my First and Fourteenth Amendment rights of access to the courts, due process, and equal protection.

From: Towaki Komatsu <towaki_komatsu@yahoo.com>
Subject: Re: Petition for rehearing en banc to the Second Circuit for Komatsu v. City of New York, No. 20-3676
Date: December 28, 2021 at 5:53:54 AM EST
To: prosecases@ca2.uscourts.gov

See attached.



T-1080 form with 12-23-21 peti...v-6510.pdf
417 KB



12-28-21 Certificate of Service by...-3676.pdf
224 KB



12-28-21 Certificate of Service by...-3676.pdf
226 KB



12-23-21 Certificate of Service by...-3676.pdf
224 KB



12-23-21 Certificate of Service for...-3676.pdf
224 KB

Regards,

Towaki Komatsu

Tel: 347-316-6180

The next screenshot is from the "Motion Information Statement" form (T-1080 form) that **a)** the Second Circuit requires me to submit to it for motions that I submit to it for appeals and **b)** corresponds to information that appears in the upper-left area on the first page of the first PDF file shown in the preceding screenshot. The information in this screenshot further confirms that my 12/28/21 submission to the Second Circuit for Komatsu v. City of New York, No. 20-3676 (2d Cir. 1/30/22) was a timely petition for rehearing en banc that I submitted to the Second Circuit.

Docket Number(s): 20-3676

Motion for: granting me a rehearing en banc with an oral arguments hearing in response to

this Court's 12/20/21 order that affirmed the district court's dismissal of the district court action only

after this Court first prejudicially deprived me of my right to an oral arguments hearing for this appeal

Scott v. Harris, 550 U.S. 372, 127 S. Ct. 1769, 167 L. Ed. 2d 686 (2007) coincidentally has your first and last names in the caption for that relevant and controlling U.S. Supreme Court decision that states the following:

“When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.”

This excerpt applies to the material fact that the record is 100% on my side in regards to proving that I timely submitted petitions for both **a)** rehearing en banc to the Second Circuit on 12/28/20 that I discussed above and **b)** a writ of certiorari to the U.S. Supreme Court in response to the Second Circuit’s 12/20/21 and 1/30/22 orders in Komatsu v. City of New York, No. 20-3676 (2d Cir. 1/30/22) and the 10/22/20 dismissal order in Komatsu v. City of New York, No. 20-cv-6510 (LLS)(S.D.N.Y. Oct. 22, 2020).

The following plain text is part of the section that is entitled “Rule 13. Review on Certiorari: Time for Petitioning” that appears between the bottom of page 13 and top of page 14 in the PDF file that corresponds to the report that is entitled “Rules of the Supreme Court of the United States” that the U.S. Supreme Court published that is available at <https://www.supremecourt.gov/ctrules/2019RulesoftheCourt.pdf>:

“But if a petition for re-hearing is timely filed in the lower court by any party, or if the lower court appropriately entertains an untimely petition for rehearing or *sua sponte* considers rehearing, the time to file the petition for a writ of certiorari for all parties (whether or not they requested rehearing or joined in the petition for rehearing) runs from the date of the denial of rehearing or, if rehearing is granted, the subsequent entry of judgment.”

The operative sentence fragments from the preceding rule that confirm that the U.S. Supreme Court’s clerk’s office were required to accept and promptly file the petition for a writ of certiorari that I mailed to it that was postmarked 5/1/22 state the following by virtue of the material fact that I timely filed my petition for rehearing to the Second Circuit on 12/28/21 that it thereafter implicitly denied on 1/31/22:

“if a petition for re-hearing is timely filed in the lower court by any party,” “the time to file the petition for a writ of certiorari” “runs from the date of the denial of rehearing”

The next screenshot is from the bottom of the one-page order that the Second Circuit issued on 1/31/22 for this appeal. It clearly confirms that the Second Circuit then denied my request for leave to file an oversized petition for rehearing among other requests for relief that I submitted to it. My petition for a writ of certiorari about this is challenging the validity of the Second Circuit’s **a)** denial of what it elaborated about in this screenshot as well as **b)** its findings in its 12/20/21 order for this appeal. As a reminder, my petition for rehearing en banc for this appeal that I submitted to it for this appeal was timely submitted to the Second Circuit just 8 days

after it issued its 12/20/21 order. The fact that I didn't have authorization from the Second Circuit then to submit that petition as an oversized motion because I inadvertently overlooked the fact as a pro se litigant that I needed that authorization is totally irrelevant. All that matters is that I timely submitted it to the Second Circuit. My submission of it then tolled the deadline for me to submit a timely petition for rehearing en banc to it. I thereafter did so again on 1/13/22 while seeking to have the Second Circuit retroactively accept my 12/28/21 submission to it as an oversized motion.

Appellant, pro se, moves for (1) leave to file an oversized petition for rehearing of 21 pages (5,220 words), (2) for the Court to take judicial notice of certain facts; (3) for monetary sanctions against Defendants Steven Banks, Ann Marie Scalia, Urban Pathways, Inc., and the City of New York; (4) for injunctive relief against Defendants Urban Pathways, Inc. and Ann Marie Scalia; and (5) for an order directing the New York City Department of Social Services and Department of Homeless Services to provide Appellant with records and evidence.

IT IS HEREBY ORDERED that the motion is DENIED.

If personnel who work for the clerk's office for the U.S. Supreme Court continue to refuse to file my petition for a writ of certiorari for this appeal and/or otherwise not do so expeditiously, they would be flagrantly violating the following findings from *Alabama Association of Realtors v. Department of Health and Human Services*, 594 S. Ct. (U.S., August 26, 2021) that the U.S. Supreme Court issued while also violating my First and Fourteenth Amendment rights:

"our system does not permit agencies to act unlawfully even in pursuit of desirable ends."

Also, though whoever wrote the 5/11/22 letter to me from the clerk's office for the U.S. Supreme Court about my petition for a writ of certiorari for this appeal claimed in that letter that the Second Circuit issued an order on 1/21/22 in *Komatsu v. City of New York*, No. 20-3676 (2d Cir. 1/30/22), that was another false statement by that letter's writer by virtue of the fact that the Second Circuit did not issue any order on 1/21/22 in that appeal. A review of the docket sheet for that appeal confirms this.

On 1/7/22, I submitted a letter motion to the Second Circuit for *Komatsu v. City of New York*, No. 20-3676 (2d Cir. 1/30/22) in which I requested to be granted retroactive authorization to file an oversized motion to be granted rehearing en banc for that appeal and that would be applicable to a subsequent motion that I would submit in that appeal to act in place of my 12/28/21 timely petition for rehearing en banc. The following is a relevant screenshot from my 1/7/22 letter motion to the Second Circuit for that appeal that confirms this:

Attn: Clerk of the Court
United States Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square
New York, New York 10007

Re: Request to retroactively file an oversized petition for rehearing for Komatsu v. City of New York, No. 20-3676

Friday, January 7, 2022

Dear Clerk of the Court,

This letter is in response to a notice dated 12/28/21 that I received from your court about this appeal. In that notice, I was made me aware that I inadvertently filed an oversized petition for rehearing to this Court for this appeal because its page length and number of words exceeded restrictions set in FRAP 35(b)(2). I seek retroactive authorization to file an oversized petition for rehearing to this Court for this appeal that may possibly exceed the page length of the petition for rehearing that I filed with this Court on 12/28/21. On 12/28/21, U.S. District Judge Edgardo

On 1/30/22, the Second Circuit arbitrarily and capriciously denied the motion that I submitted to it on 1/13/22 in Komatsu v. City of New York, No. 20-3676 (2d Cir. 1/30/22) that the next screenshot from page 1 that motion confirms was partly to have the Second Circuit retroactively accept the oversized petition for rehearing en banc that I timely filed in that appeal on 12/28/21.

Docket Number(s): 20-3676

Motion for: retroactively accepting the oversized petition for rehearing en banc

that I filed for this appeal on 12/28/21 and granting me the

additional relief that I specified in the attached supporting affirmation

Set forth below precise, complete statement of relief sought:

I seek for this Court to retroactively accept the oversized petition for rehearing en banc

that I filed for this appeal on 12/28/21 and grant me the

additional relief that I specified in the attached supporting affirmation

that includes a request for sanctions due to harassment by some of the

appellees.

In conclusion and to reiterate, the submission of my petition for a writ of certiorari for this appeal needed to be mailed to the clerk's office for the U.S. Supreme Court within 90 days from the Second Circuit's 1/30/22 order that both denied my request to have it a) retroactively accept my 12/28/21 oversized motion for my timely petition for rehearing en banc for Komatsu v. City of New York, No. 20-3676 (2d Cir. 1/30/22) and b) grant me rehearing en banc about that. This means that the deadline that I had for that expired at the end of 5/1/22. I met that deadline by my submission of my petition for a writ of certiorari on 5/1/22 to the clerk's office for the U.S. Supreme Court. The following excerpt from Prince v. Stewart, 580 F.3d 571 (7th Cir. 2009) cites the U.S. Supreme Court's decision in Baldwin County Welcome Center v. Brown, 466 U.S. 147, 104 S. Ct. 1723, 80 L. Ed. 2d 196 (1984) and confirms that I did everything that I needed to do to have the clerk's office of the U.S. Supreme Court accept and promptly file my petition for a writ of certiorari that warrants immediate reversal of the clerk's office's decision not to file my petition for a writ of certiorari:

- a. "Equitable tolling is properly invoked in any case in which "the court has led the plaintiff to believe that she had done everything required of her," Baldwin County Welcome Center v. Brown, *supra*, 466 U.S. at 151, 104 S. Ct. 1723, 80 L.Ed.2d 196 or has "misled a party regarding the steps that the party needs to take to preserve a claim."'"

- b. "In this case, by granting the plaintiff's initial motion to reopen, the district court lulled him into thinking he didn't have to refile his complaint; and lulling a pro se litigant provides a valid basis for invoking equitable tolling to stop the running of the statute of limitations"

My petition for a writ of certiorari is not a fetus to be unlawfully aborted by the U.S. Supreme Court's personnel that recently chose to flagrantly violate its own procedures by allowing other highly controversial information to leak out too. Do not abort your duty to fully comply with my First and Fourteenth Amendment rights.

Regards,

/s/ Towaki Komatsu

Towaki Komatsu