

THE SUPREME COURT OF THE UNITED STATES

Caesar Mark Capistrano
Appellant

v.

Case No.

UNITED STATES OF AMERICA
Appellee

MOTION FOR EXTENSION OF TIME-TO-FILE
PETITION FOR CERTIORARI

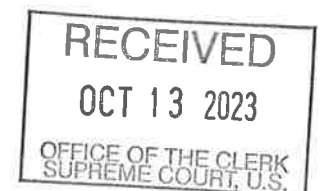
To The Honorable Samuel J. Alito, Associate Justice of the Supreme Court:

Now comes Appellant/Petitioner/Movant in Propria persona Doctor Caesar Mark Capistrano (Dr. Capistrano), and requests this most Honorable Court to reset his 90-day time limitation to file the Petition for Certiorari in United States v. Capistrano et al., 2023 US App LEXIS 19003 (CA5 7/25/23) or to extend the deadline for filing the Petition from the time the United States Court of Appeals for the Fifth Circuit (the Fifth Circuit) reaches the decision to either formally deny in writing, Dr. Capistrano's Petition for Rehearing, Hearing En Banc (the Petition), or when the Panel or the En Banc Court delivers its Opinion.

Evenmore, the Petition must have a denial for cause other than the time bar because the claim that it was timely filed could be affirmatively confirmed by factual evidence, according to accepted controlling rules and statute that govern timeliness of its submission.

Dr. Capistrano now recites the following declarations in support of the Motion for Extension of Time (The Motion):

1. The instant Petition for Rehearing, Hearing En Banc was mailed using the designated legal mail receptacle of this Federal Correctional



Institution-Fort Dix's institutional postal mail system on August 7, 2023, within the 14-day time limit stipulated by Fed. R. App. P. Rule 40. (see Exhibit 1)

2. Deputy Clerk Mary Frances Yeager (Deputy Clerk Yeager) of the Fifth Circuit Office of the Clerk sent a letter to district court Clerk Karen Mitchell dated August 16, 2023 that states "the judgment issued as the mandate as to [Dr.] Capistrano..." (see Exhibit 2)

3. A subsequent letter dated August 17, 2023, in response to a Notice to the Court with a Motion for Vacatur of Clerk Lyle W. Cayce's Orders on six (6) various Motions that were all disposed of by him exceeding all the bounds of his authority, was received on August 24 2023. This letter states that "the mandate issued on August 16, 2023 and the case is closed. We are not taking any action on this Motion." (see Exhibit 3)

4. Dr. Capistrano immediately sent correspondence on August 24, 2023, with copies to each one of the 3-Judge panel who heard the Case, noticing and reminding Deputy Clerk Yeager that the Petition was mailed on August 7, 2023, and per relevant rules and statute, including the "prison mailbox rule", Fed. R. App. P. 4(c)(1)(A)(i) and 28 USC §1746, the Petition is deemed timely filed and therefore, the case can not be closed by the Fifth Circuit until and after the Petition is either granted or denied. (see Exhibit 4)

5. A third letter from Deputy Clerk Yeager dated August 23, 2023 was received on August 29, 2023 that declares "The time for filing a petition for rehearing under Fed. R. App. P. 40 has expired. We will not take action on your petition." (see Exhibit 5)

6. Another correspondence (with copies to everyone involved in the case), was written on August 29, 2023 and addressed to the writing Judge, The Hon. Patrick E. Higginbotham, informing him of Dr. Capistrano's disagreement with Deputy Clerk Yeager, citing all the relevant rules and statute governing the "prison mailbox rule", specifically Fed. R. App. P. 25(a)(2)(A)(iii) for incarcerated

filers, that deemed the Petition timely filed. (see Exhibit 6)

7. Yet a fourth letter from Deputy Clerk Yeager arrived, informing Dr. Capistrano that Judge Higginbotham has granted Appellant Bubu, a co-appellant in the same case, a lengthy extension to file her petition for rehearing/rehearing en banc until September 29, 2023 in an Order dated August 24, 2023. All the while, answering in silence all of Dr. Capistrano's concerns, inquiries, and assertions. (see Exhibit 7) This DOUBLE STANDARD seriously and negatively impacts the "fairness, integrity, and public perception of judicial proceedings."

8. A Motion to Direct the Clerk of Court to Accept and Docket the Petition as Timely Filed (The Motion to CA5) was mailed and therefore filed on September 9, 2023. (see Exhibit 8) As of this writing, the Office of the Clerk has not acknowledged nor docketed the filing of either the Petition nor the Motion to CA5.

9. Another fifth letter dated August 31, 2023 from Deputy Clerk Yeager, that required a transit time of eighteen (18) days, was received on September 18, 2023 (see Exhibit 9), where she insists that "the issuance of the Court's mandate was proper because the Petition was not timely", that it "was due physically at their Office on August 8, 2023 but was received on August 21, 2023." Dr. Capistrano again, is an incarcerated litigant who has no control over when or how the legal mail here at this institution is collected, processed, stored, and delivered to the United States Postal Service. The Petition, according to Deputy Yeager is 13 days late from her calculations based on her August 8, 2023 deadline, in blissful ignorance and abject disregard of the "prison mailbox rule", Fed. R. App. P. 4(c)(1)(A)(i), 28 USC §1746, as well as Fed. R. App. P. 25(a)(2)(A)(iii) specifically addressing incarcerated filers. In comparison, the Petition reached their Office in record time of 13 days rather than the 18 days for her letter to arrive at this institution, and while she is not, thankfully, even incarcerated in

an institution herself.

10. Dr. Capistrano pleads that: since his Petition is deemed timely filed, per all controlling rules and statute previously enumerated, a clear timeline be established for filing, should it become a recourse, the Petition for Certiorari. Supreme Court Rules rigidly instructs that a 90-day time limitation is calculated from the day the Panel Rehearing Opinion or the En Banc Court Opinion is delivered and filed, or if a Panel Rehearing or a Rehearing En Banc is denied, that the date of such Denial of Petition commences the time constraints.

Absent any clarification from the Panel or from the Clerk, it appears that it is the undisclosed intention of the Fifth Circuit to set the date of July 25, 2023 Opinion as the start of the 90-day limitation. This is a serious manifest injustice and is extremely prejudicial to Dr. Capistrano and his Appeal.

11. Even moreso, Dr. Capistrano again reminds the Honorable Court that he is a pro se appellant/petitioner/litigant who, aside from having the [A]ssistance of Counsel on direct appeal guaranteed under the Constitution, which was unjustly, unfairly, and abruptly terminated by the Clerk of Court on March 11, 2022 upon the grant of his pro se status, (see Exhibit 10) also suffers the hardships and difficulties of imprisonment. The Criminal Justice Act-Appointed Appellate Attorney could have assisted in a multitude of fashion (i.e. preparation, research, transcription, publication) at various stages of development and perfection of the appeal.

Prisoners are allowed 2 hours in the morning, 2 hours in the afternoon, and almost never in the evening nor the weekends, (when not locked down days on end in their living quarters for any reason, real or imagined, by prison personnel), to perform legal research, craft their challenges and arguments, then use the antiquated manual typewriters.

Instead of utilizing his precious time perfecting his appeal in the likelihood that a Petition for Certiorari is to be undertaken, all his time and

effort over the past two (2) months were expended on correspondence and Motions seeking clarification and decision regarding the timeliness of the Petition submitted to the Fifth Circuit.

WHEREFORE, Premises considered, Appellant/Movant Dr. Capistrano prays that this most Honorable Court GRANTS this Motion and extends the time-to-file the petition for certiorari, considering all the declaratory statements enumerated above.

Further, that the Honorable Court REAFFIRMS that since the Petition for Rehearing, Hearing En Banc is deemed timely filed on August 7, 2023, the Fifth Circuit shall produce either a dated Opinion from the Panel Rehearing or from the En Banc Court, OR, a Letter of Denial of the Petition. From this dated document shall be based, the computation of the 90-day time limitation to file a petition for certiorari.

Further, that the Honorable Court GRANTS, and Dr. Capistrano shall gratefully accept, the re-appointment of another CJA-Appointed Appellate Attorney who shall not be representative counsel, but shall render assistance in the preparation, development, and perfection of his Appeal at the various stages of its progression.

Further, that the Honorable Court ORDERS the Fifth Circuit to GRANT him the same enlargement of time extended pro forma to co-appellant Bubu and her counsel to submit any amendment, addendum, revision, or supplement if he so chooses.

Further, that he be granted any and all other relief that he may be entitled to.

Dated: September 21, 2023

Respectfully submitted,



CAESAR MARK CAPISTRANO
PRO SE APPELLANT/MOVANT
5756 HARTFORD & POINTVILLE RD
JOINT BASE MDL, NJ 08640

CERTIFICATE OF SERVICE

Appellant/Movant in Propria persona Doctor Caesar Mark Capistrano caused on this day, the 21st of September 2023, to be sent using the designated receptacle, via the institutional legal mail postal system, first class postage pre-paid, provided him by the staff here at Joint Base MDL, New Jersey's FCI-Fort Dix, a True and Correct Original 5-page Record with ten (10) exhibits containing a total of 35 pages, as attachments; Or, a True and Correct Original Copy of the Record, to the Supreme Court of the United States, and to the Solicitor General of the United States, at the below listed names and addresses. This Motion has thus been deemed filed on the same day as per Fed. R. App. P. 4(c)(1)(A)(i) and 28 USC §1746; further, that this declaration was made under penalty of perjury.

Scott S. Harris, Clerk
Robert Meek, Deputy Clerk

Office of the Clerk
Supreme Court of the United States
One Columbus Circle, NE
Washington, DC 20543-0001

Solicitor General of the United States
Room 5614
Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dated: September 21, 2023

Signature: 

CAESAR MARK CAPISTRANO
PRO SE APPELLANT/LITIGANT
5756 HARTFORD & POINTVILLE RD
JOINT BASE MDL, NJ 08640

**Additional material
from this filing is
available in the
Clerk's Office.**