

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Fernando Diaz Rodriguez,

Petitioner,

v.

United States of America,

Respondent.

On Petition for a Writ of Certiorari
to the First Circuit Court of Appeals
Appeal No. 22-1109

MOTION FOR EXTENSION OF TIME TO FILE PETITION

Fernando Diaz Rodriguez requests an extension of time by 60 days to file his petition for a writ of certiorari. Mr. Diaz is proceeding as a pro se federal prisoner in this proceeding, and is untrained in the law. His issue on certiorari, however, is complex and demands extra time for him to prepare his petition.

Diaz is hampered by the meager resources available to him in prison: an outdated, limited, and often closed electronic law library; a 1984 typewriter; and an inmate clerk who, despite good intentions, can't tell the difference between the words "council" and "counsel." It is a pathetic situation, but the only one Diaz has to work with.

Diaz's issues have merit, however, and the extended time will allow him to properly prepare his petition. The additional time will also allow him to avoid the problems at the prison associated with the upcoming holidays, such as the prison staff taking more time off and being unavailable to permit Diaz the access to the materials he needs.

Diaz therefore respectfully requests this court enlarge the time for him to file his petition by 60 days.

Respectfully submitted by Fernando Diaz Rodriguez on November 8, 2023:

Fernando Diaz Rodriguez
Reg. No. 35397-069, Unit B-3
Federal Correctional Complex
P.O. Box 1031 (Low Custody)
Coleman, Florida 33521-1031

United States Court of Appeals For the First Circuit

No. 22-1109

FERNANDO DIAZ-RODRIGUEZ,

Petitioner - Appellant,

v.

UNITED STATES,

Respondent - Appellee.

Before

Barron, Chief Judge,
Lynch and Howard, Circuit Judges.

JUDGMENT

Entered: August 14, 2023

Petitioner Fernando Diaz-Rodriguez seeks a certificate of appealability ("COA") as to the district court's denial of his motion pursuant to 28 U.S.C. § 2255. We assume, in petitioner's favor, that this appeal properly encompasses the denial of petitioner's § 2255 motion and the denial of petitioner's motion for reconsideration. We have considered the substantive arguments offered in petitioner's COA application. See Peralta v. United States, 597 F.3d 74, 84 (1st Cir. 2010) ("Having failed to request a COA as to those issues in either the district court or the court of appeals, Peralta has waived his right to appellate review of those issues."). The district court's denial of relief as to the claim petitioner presses was neither debatable nor wrong, see Slack v. McDaniel, 529 U.S. 473, 484 (2000) (COA standard), and, more generally, petitioner has not "made a substantial showing of the denial of a constitutional right" with his application for COA, 28 U.S.C. § 2253(c)(2).

With his COA application, petitioner challenges the district court's rejection of his challenge to his 18 U.S.C. § 924(c) conviction undergirded by the predicate crime of aiding and abetting Hobbs Act robbery, 18 U.S.C. §§ 1951 & 2. In support of that claim, petitioner cites United States v. Davis, 139 S. Ct. 2319 (2019) (deeming unconstitutionally vague the § 924(c) residual clause), and United States v. Taylor, 142 S. Ct. 2015 (2022) (attempted federal Hobbs Act

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PROOF OF SERVICE

I, Fernando Diaz Rodriguez, do swear and declare that on this date, November 8, 2023, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR EXTENSION OF TIME TO FILE PETITION on each party in the above proceeding or that party's counsel by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid.


The names and addresses of those served are as follows:

United States Supreme Court, Office of the Clerk, 1 First Street, N.E.,
Washington, D.C. 20543.

Solicitor General of the United States, Room 5616, Department of Justice, 950
Pennsylvania Avenue, N.W., Washington, D.C. 20530-0001.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 8, 2023.


Fernando Diaz Rodriguez

