

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

ANDREW CHARLES BEARD,
Defendant-Petitioner,
vs.

UNITED STATES OF AMERICA,
Plaintiff-Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

APPLICATION TO JUSTICE GORSUCH TO CONFIRM
DEADLINE TO FILE PETITION FOR WRIT OF CERTIORARI
IS JULY 16 2025, OR ALTERNATIVELY, TO EXTEND TIME
TO FILE PETITION FOR CERTIORARI (Sup.Ct.R.13.5)

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RELIEF SOUGHT

Petitioner, Andrew Charles Beard, requests Justice
Gorsuch (or J. Sotomayer, J. Breyer, or J. Kagan) confirm
the filing deadline for a petition for writ of certiorari to
United States Court of Appeals for the Fifth Circuit in the
matter of United States v. Beard, No. 23-10594, is on
July 16, 2025 (90-days after denial of Petitioner's motion
for reconsideration of the Appeals Court order to dismiss
the appeal). Alternatively, Petitioner requests leave to
extend the time to file a petition for certiorari for
a period of 60-days.

BACKGROUND

For over 150-years, the Supreme Court has held whenever a defendant's guilty plea admits to facts that do not constitute a crime against the laws of the Commonwealth, the defendant is entitled to be discharged. This follows the basic premise that a guilty plea — even one containing a waiver — cannot bar a constitutional challenge to the very power of the government to bring the defendant into court, no matter how validly his factual guilt is established. Applicable here, Petitioner brought such a constitutional challenge — both in District Court and on direct appeal to the Fifth Circuit Court of Appeals. Respondent, on direct appeal only, sought to enforce Petitioner's

plea waiver. The Fifth Circuit Court of Appeals — without opinion or review of Petitioner's opposition — granted summary dismissal (which directly contradicts 150-years of Supreme Court precedent). This extension request follows.

In 2022, Petitioner plead guilty in federal court to cyberstalking resulting in death (18 USC § 2261A(2)) and using a firearm in relation to a "crime of violence" (18 USC § 924(c)). The § 924(c) was expressly premised on cyberstalking as the predicate "crime of violence".

Petitioner's plea agreement set forth specific terms — including several categories of rights he agreed to waive, along with some he retained the right to appeal. (i.e. the guarantee that information he provided could not be used to increase his sentence, and an ineffective

assistance of counsel claim). The agreement said nothing about the right to challenge on direct appeal the constitutionality of the statute of conviction.

Afterwards, the Supreme Court decision in United States v. Taylor, 596 U.S. 845 (2022) ("no element of attempted" to commit a crime qualifies as a "crime of violence" under §924(c)) was released, and Petitioner challenged in district court that his §924(c) offense was unconstitutional — because cyberstalking is not categorically a "crime of violence". At sentencing, the court overruled his unconstitutional §924(c) claim, and the Government (Respondent) breached the plea agreement to advocate for an increased sentence. The district court subsequently sentenced Petitioner to 525-months incarceration —

120 months of which were for the §924(c) conviction, and 68-175 months of which attributable to Respondent's breach. Roughly 20-years now hangs in the balance.

Petitioner timely raised his claims on direct appeal to the Fifth Circuit Court of Appeals. Unfortunately, the court appointed appellate attorney refused to consult with Petitioner and sought summary dismissal through an Anders brief. Fortunately, Petitioner requested to proceed "pro se" before the Anders, and the Fifth Circuit Court of Appeals denied the Anders as "moot" — since a genuine "non-frivolous" issue exists as to whether cyberstalking qualifies as a crime of violence under §924(c)(3)(A). By October 2024, Petitioner timely filed his pro se Appellant brief, in forma pauperis.

In December 2024, Respondent filed a late-hour motion to dismiss the appeal, pressing — among other things — enforcement of Petitioners plea agreement to bar all claims.

Despite being on 24-hour lockdown Special Housing Unit ("SHU") custody — with zero access to law library or his necessary legal documents — Petitioner timely mailed

a motion in response on January 3, 2025. His response opposed enforcement of the waiver since Respondent

deliberately breached the agreement, and because his unconstitutional 3924(cc) conviction claim cannot be

barred by a waiver. What happened next is best shown

in the chronological "Judgments Below", and is best

summerized as a complete denial of Petitioner's ability

to have his claims heard in the Fifth Circuit Appeals Court.

GROUND FOR RELIEF

Judgments Below -

1. May 24, 2023: In the United States District Court for the Northern District of Texas, Petitioner was convicted of one count cyberstalking resulting in death (18 U.S.C. § 2261A(2)(A) and (B)), and one count using, carrying, brandishing, or discharging a firearm in relation to a crime of violence (18 U.S.C. § 924(c)(1)(A)). A true and correct copy of this conviction is attached to this motion as Exhibit "A" ^①. See also District Court Docket 92-J&C.

In district court, Petitioner preserved — among other things — a constitutional claim that cyberstalking does not qualify as

^① Many Exhibit #'s and Docket #'s are items currently unavailable because they are delayed in shipping. See Exhibit "B" — Inmate Request Forms.

a crime of violence under § 924(c)'s elements clause;

to which the court overruled. See Dist. Dkt. — —

Objections to PSR; Dist. Dkt. 110 — Sentencing Transcript.

2. June 1, 2023: Petitioner duly appealed this conviction

to United States Court of Appeals for the Fifth Circuit, and

was assigned an appellate attorney. Dist. Dkt. 94 —

Notice of Appeal.

3. December 4, 2023: After appellate attorney refused

to discuss appeal merits, petitioner requested to

proceed "pro se", and attorney filed an Anders brief.

See Appeals Court Docket 29 — Motion to Strike Anders;

also App. Dkt. 27 — Anders Brief.

4. July 23, 2024: Fifth Circuit Appeals Court ruled

Petitioner "unequivocally" requested to proceed pro se.

before Anders was filed, and denied Anders as "moot", because there exists "non-frivolous" grounds whether cyberstalking qualifies as a crime of violence under § 924(c)(3)(A). See App.Dkt. 81 and 127 - Court Orders.

5. October 29, 2024: Petitioner timely submitted an Appellant Brief. See App.Dkt. 120 - Appellant Brief (App.Dkt. 89).

6. December 27, 2024: The Government (Respondent) filed a late-hour motion to dismiss appeal. App.Dkt. 138 - United States' Motion to Dismiss Appeal. ②

7. January 3, 2025: (and again on January 27th and February 7th) Petitioner timely mailed a motion in response

② Appellee brief originally due in November, see App.Dkt 119 - Court Notice, but Respondent requested - and was granted - leave for "filing appellee's ... brief" only. App.Dkt. 133 - Court Memo. Instead, Respondent filed a motion insisting dismissal of all claims, based on enforcing plea agreement waiver. App.Dkt. 138. (Respondent did not challenge, in district court, enforcing the waiver)

to Respondent's motion to dismiss appeal. See Exhibit

"C" — Motion In Response; also App. Dkt. 159 — Clerk Notice

(where circuit clerk fails to receive or file motion until March 5, 2025).

8. January 27, 2025: Petitioner mails motion to join appeal claims with co-conspirator Holly Ann Elkins appeal in the matter of United States v. Elkins, No. 24-10753

See Exhibit "D" — Motion for Joint Review; also App. Dkt. 159 (circuit clerk fails to receive/file motion until March 5, 2025).

9. February 14, 2025: Fifth Circuit Appeals grants

Respondent's motion to dismiss appeal, and orders summary dismissal (without review of Petitioner's response motion, joinder motion, or appellant brief). See App. Dkt. 156 — Order.

Deadline to file petition for certiorari is May 15, 2025.

10. February 19, 2025: Petitioner timely mailed a motion to reconsider Fifth Circuit Appeals Court order to dismiss his appeal. See Exhibit - "E" - Motion to Reconsider; also App.Dkt.159 - Clerk Notice (clerk filed late; May 5, 2025)

11. March 5, 2025: Five-days after deadline to file the reconsideration motion, the circuit clerk finally entered Petitioner's motion for reconsideration (mailed February 19th)

— along with his motion in response to motion to dismiss

the appeal (mailed January 3rd, 27th and February 7th),

and his motion for joint review with co-conspirator's

appeal (mailed January 27th). See App.Dkt.159 - Clerk

Notice (clerk held "NO ACTION TAKEN", "because

reconsideration is out of time and case is closed"). ③

③ App.Dkt.159 shows clerk filed all three motions — which were mailed weeks apart — as one filing. Clerk delayed filing.

12. March 10, 2025: Fifth Circuit Appeals Court's

mandate was issued. App.Dkt. 158 - Court Mandate.

13. March 13, 2025: Petitioner timely e-files ⁽⁴⁾ a letter

to appeals court, requesting reconsideration of clerk's action

to take "no action" on his motion to reconsider (Exhibit "C").

See Exhibit "F" - Email Letter to Court (arguing all filings

in App.Dkt. 159 are timely under Fed.R.App.P. 25(a)(2)(A)(iii)

inmate filing rule); see also Fed.Cir.R. 45(a) ("An un-

represented party may file an informal motion for reconsideration

... in the form of a letter").

14. March 12, 2025: Petitioner re-files his original

⁽⁴⁾ Due to ongoing issues with lost/delayed mail filings to circuit clerk — and the clerk's inability to follow Rule 25(a)(2)(A)(iii) prison mailbox rule — Petitioner's family e-mailed his court filings to the Appeals Court pro se efile box. (This letter was never entered into the docket).

February 19th motion to reconsider the order to dismiss (Exhibit "E"), and relabels it as an "out of time" motion to reconsider. See App.Dkt.160 - Out of Time Reconsideration.

15. March 31, 2025: In addition to the reconsideration motion, Petitioner e-filed a motion to recall mandate, or alternatively, for leave to file an out of time petition for rehearing and rehearing en banc. See Exhibit "G" - Motion to Recall with Petition for Rehearing.

16. April 1, 2025: The circuit clerk held "[n]o action will be taken ... on the out of time rehearing received [Exhibit "G"] because it is not allowed". See Exhibit "H" - Clerk Letter; App.Dkt.164 - Clerk Note.

17. April 14, 2025: Following up on the undocketed court letter (Exhibit "F"), Petitioner mailed and e-filed

a motion to reconsider clerk's "NO ACTION TAKEN"

for docket 159 (motion to reconsider dismissal order),

and for docket 164 (motion to recall or petition for rehearing).

See Exhibit "I" - Motion to Reconsider Clerk Action;

see also 5th Cir. R. 27.1 ("The clerk's action is subject to

review by a single judge upon a motion for reconsideration").

18. April 17, 2025: Fifth Circuit Court of Appeals

denied Petitioner's "motion for leave to file out of time

the motion for reconsideration". See Exhibit "J" -

Court Order; App. Dkt. 169 - Court Order. New deadline

to file a petition for certiorari is now July 16, 2025

(90-days after appellate court denied reconsideration

of the matter). Sup. Ct. R. 13.3.

19. April 27, 2025: Circuit clerk held "NO ACTION TAKEN" on Petitioner's motion to reconsider clerk's action in Exhibit "I", "because motion to file out of time reconsideration was denied" and motion to recall is "unnecessary", See App.Dkt. 170-Notice.

20. April 30, 2025: Petitioner e-files a letter to the circuit clerk, requesting his motion to reconsider clerk action be reviewed by a circuit judge — pursuant to 5th Cir.R.27.1. See Exhibit "K" — Letter to Clerk.

⊛ May 22, 2025: Court Order denying Motion to file rehearing out of time. See App.Dkt. 177; See Exhibit "L".

Jurisdiction —

21. The Supreme Court has jurisdiction over this matter because 28 U.S.C. §1254 (i) and 28 U.S.C. §2106 gives it jurisdiction over a criminal appeal of a final judgment or order of the United States Court of Appeals.

Reasons Why July 16 2025 Deadline Applies -

22. Under Supreme Court Rule 13, the time for filing a petition for writ of certiorari in this matter expires:

(a) May 15, 2025 ("90 days after entry of the order" to dismiss Petitioner's appeal, see Sup.Ct.R.13.1) or

(b) July 16, 2025 (90 days after "the lower court appropriately entertains [Petitioner's] untimely petition for rehearing", Sup.Ct.R.13.3). Petitioner asks

the Court to confirm the July 16th deadline to file

— or alternatively — to grant a 60-day extension

from the May 15th deadline.

23. After Fifth Circuit Court of Appeals ordered a

summary dismissal of his appeal, Petitioner filed both

a motion to reconsider (Exhibit "E") and a petition

for rehearing (Exhibit "G"). The court accepted the motion to reconsider (App.Dkt.160)^⑤, but — under local rule — held the petition for "rehearing is not allowed on this type of ruling". See Exhibit "G"; also App.Dkt.164; 5th Cir.R.35 I.O.P.^⑥ Then, on April 17 2025, the court denied Petitioner's "motion for leave to file out of time the motion for reconsideration". See

⑤ (Exhibit "E") vs. (App.Dkt.160): From the prison SHU, Petitioner mailed his motion to reconsider (Exhibit "E") on February 19, 2025 — nine days before deadline. Circuit clerk wrongly entered it as "filed" March 5, 2025 — five days after deadline. See App.Dkt.159 (holding "NO ACTION TAKEN" because motion is "out of time"). Then, stuck in transit, Petitioner has his family e-file the same Exhibit "E" motion — relabeling it as an "out of time" motion to reconsider (App.Dkt.160).

⑥ See e.g. Hernandez v. Garland, 2025 U.S. App. LEXIS 229 (5th Cir 2025) ("Treating [inmates pro se] petition for rehearing en banc as a motion for reconsideration (5th Cir.R.35 I.O.P.)"); United States v. Lander, 2024 U.S. App. LEXIS 5761 (5th Cir. 2024) (same).

Exhibit "J"; App. Dkt. 169. ^⑦ Since the petition for rehearing was "not allowed" under circuit rules, the motion to reconsider — not determined until April 17th — should be considered the "appellate court's final adjudication [to] mark the time from which the period allowed for a certiorari petition began to run". Hibbs v. Winn, 542 U.S. 88, 97-98 (2004) (holding a cert. petition as timely under 28 U.S.C. § 2101(c) and Sup. Ct. R. 13.3 because "appellate court's final adjudication" of the matter started the 90-day clock just "as a timely filed rehearing petition" would); see also In re King, 2023 U.S. App. LEXIS 1198 (11th Cir. 2022) ("A reconsideration motion is analogous to a petition for panel rehearing... Fed. R. App. P. 40(a)(2)").

^⑦ Petitioner did not file "for leave to file out of time", he simply re-filed his motion to reconsider — which made no out of time claims

Alternatively, Need For 60 Day Extension —

24. Alternatively, if the Court determines a May 15, 2025 deadline is procedurally correct, Petitioner timely requests a 60-day extension of time to file a petition for writ of certiorari. See Sup.Ct.R. 13.5 (application for extension must be filed 10-days before petition is due, and extension sought shall not exceed 60-days).

25. Currently, all of Petitioner's legal documents — required for this extension application and a petition for certiorari — are still in transit to Tucson, USP. See Exhibit "B" — Inmate Form; see also Sup.Ct.R. 14.1(i)(i-vi) (petitioner's must include copies of all "relevant" material); see e.g. *Johnson v. California*, 541 U.S. 428, 431-32 (2004) (holding failure to follow Sup.Ct.R. 14.1(i) was "[p]art of the

problem" that "might have been more evident", had all the relevant documents been included in petition for cert.).

Petitioner's relevant documents — still in transit — have been accumulated over several years of this case's proceeding, and would cost a substantial amount to replace by May 15th. Petitioner is a pro se indigent inmate who is requesting to proceed in forma pauperis.

To demand him to bear the substantial cost of replacing these documents, immediately after he arrived at Tucson (but his documents have not), is unjust. See e.g. Pierce v. Underwood, 487 U.S. 552, 557, 564 (1988) (holding under the Equal Access to Justice Act, a court must not order payments of expenses if "circumstances make an award unjust"); see also e.g. Rowland v. California Mens

Colony, 501 U.S. 194, 204 (1993) (noting "an affidavit is sufficient which states that one cannot because of his poverty pay or give security for the costs" of the court) (internal edits omitted). A 60-day extension will allow enough time for the documents to arrive, or for Petitioner to seek replacements from the lower court.

26. The extension will also allow time for the Fifth Circuit Court of Appeals to make a final decision in Petitioner's motion to reconsider clerk actions. See Exhibit "K" - Court Letter; App. Dkt. 170; also 5th Cir. R. 27.1.

This motion addresses the prison mailbox rule under Fed.

R. App. P. 25(a)(2)(A)(iii) (inmate filings deposited in the institutions mailbox, on or before deadline, are timely filed)

— to which Petitioner's filings comply with. If successful,

Petitioner's out of time reconsideration motion would become timely, and its merits reviewed by the court.

See e.g. Johnson, 541 U.S. at 432 (holding it "behooves ... both petitioner and respondent to assure themselves that the decision for which review is sought is indeed a 'final judgment'" (internal edits omitted)).

27. Finally, the 60-day extension will allow time for the Fifth Circuit Court of Appeals to make its final determination in the matter of United States v. Elkins, 24-10753 — which involves Petitioner's later indicted and convicted co-conspirator, Holly Ann Elkins, appeal.

Two of Elkins' claims are identical to the claims

Petitioner brings to this Court for review:

(1) whether cyberstalking resulting in death qualifies under §924(c)'s "crime of violence" definition, and

(2) whether cyberstalking exceeds Congress' Commerce

Clause powers. See Exhibit "D" — Motion for Joint Review;

see also Elkins Appeal Docket _____ — Appellant Brief.

Since Petitioner's claims were wrongly dismissed based

on timeliness — and not on the merits — it is in the

Court's interest to grant an extension until the lower

court makes an informed opinion in the matter. See e.g.

United States v. Durham, 2024 U.S. App. LEXIS 18267 (4th

Cir. 2024) (granting to place in abeyance pending Supreme

Court's decision in Delligatti v. United States, No. 23-

825 (determining "whether a crime that requires proof

of bodily injury or death, but can be committed by failing

to take action, [is a crime of violence]")). The

Supreme Court has since determined Delligatti v.

United States — 2025 U.S. LEXIS 1072 (2025) — and

will likely be incorporated into the Fifth Circuit Appeals

Court decision in United States v. Elkins appeal.

See e.g. Lawrence v. Chatter, 516 U.S. 163, 169 (1996)

(granting GVR because "'intervening factors' must be

extended to include ... Supreme Court decisions rendered

so shortly before the lower court's decision ... had the

'opportunity' to apply them"). Rushing certiorari, just

before lower court makes a determination of the matter

in a co-conspirator's case, would be unjust and a waste

of judicial economy / efficiency. See e.g. Zafiro v. United

States, 506 U.S. 534, 540 (1993) (holding there is a strong

preference in joint trials of defendant's to promote judicial economy and the interests of justice); also

Johnson v. Manhattan Ry. Co., 289 U.S. 479, 496-97 (1933)

(holding "consolidation is permitted as a matter of convenience and economy in administration"); also

Fed. R. App. P. 3(b)(2) ("when the parties have filed separate timely notices of appeal, the appeals may be joined or consolidated"). Thus, justice and the

inconvenience/cost of piecemeal review of Petitioner's and Elkins' similar claims, warrant an extension.

28. In conclusion for the application to confirm

—or alternatively extend→ the deadline to file

a petition, Petitioner prays this Court grant a

January 16 2025 deadline to file his certiorari petition.