

CASE NO. _____

IN THE
SUPREME COURT OF THE
UNITED STATES

OLASEBIKAN AKINMULERO

Pro Se

Petitioner

v.

UNITED STATES DEPARTMENT OF HOMELAND SECURITY/
U.S. SOLICITOR GENERAL,

Respondents

MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF CERTIORARI OUT OF
TIME

On Writ of Certiorari of The
United States Court of Appeals
For

UNITED STATES COURT OF APPEALS FOR NINTH CIRCUIT

MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF CERTIORARI OUT OF TIME

Pursuant to Supreme Court Rule 14.5, Petitioner respectfully moves this Court for leave to file a Petition for a Writ of Certiorari after the time prescribed by Rule 13.

1. Background

Petitioner is a *pro se* litigant who timely sought review in the Ninth Circuit Court of Appeals from a judgment of the U.S. District Court for the Western District of Washington. Petitioner then timely filed a petition for rehearing or rehearing en banc with the Ninth Circuit, which was ultimately denied. However, Petitioner did not receive actual notice of the Ninth Circuit's order denying rehearing, (Per Docket sheet according to Supreme Court clerk's office statement to me over the phone), dated **May 6, 2025**, until the issuance of the formal mandate on **May 14, 2025**.

As a *pro se* litigant not registered for electronic filing in the Ninth Circuit (as permitted under Circuit Rule 25-5), Petitioner relied entirely on mail for all court communications. No physical copy of the May 6, 2025, order was received by the Petitioner, and thus Petitioner calculated the deadline to file a petition for writ of certiorari from the issuance of the mandate (May 14, 2025), not the unrevealed May 6th denial.

Petitioner mailed the petition for writ of certiorari on or around **August 6, 2025**, and it was received by the Supreme Court on **August 9, 2025**—five days after the 90-day deadline from May 6, 2025.

2. Argument

A. Good Cause Exists for the Delay

Supreme Court Rule 13.5 permits the Court to entertain a motion to file out of time "for good cause shown." Petitioner respectfully submit that good cause exists in this case.

Petitioner had no notice or knowledge of the May 6th, 2025, order denying rehearing, and as a non-electronic filer, had no access to the docket unless by mail. See *Baldwin County Welcome Center v. Brown*, 466 U.S. 147, 151 (1984) ("Procedural requirements established by Congress for gaining access to the federal courts are not to be disregarded by courts out of a vague sympathy for particular litigants.") However, where a litigant, --especially a pro se party—has no notice of a final order, courts may allow equitable tolling. See *Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89, 96 (1990) (equitable tolling may be appropriate where a party "has been induced or tricked by his adversary's misconduct into allowing a filing deadline to pass" or due to "other extraordinary circumstances").

Here, the extraordinary circumstance is that Petitioner never received notice of the critical order and acted diligently upon receiving the mandate. Given Petitioner's pro se status and lack of access to PACER or ECF notifications, reliance on the mandate date was reasonable.

B. Pro Se Litigants Filing by Paper Should Not Be Penalized

Petitioner followed the Ninth Circuit's rules regarding paper filing. Ninth Circuit Rule 25-5 allows pro se litigants to file and receive documents by paper. The lack of

delivery of the May 6, 2025, denial through mail deprived Petitioner of timely notice, causing an honest and unavoidable miscalculation of the certiorari deadline.

Dismissing a petition under such circumstances would impose an unreasonable burden on a party without electronic access and who diligently complied with every other procedural rule.

C. This Court Retains Discretion and Has Granted Similar Relief

This Court retains discretion to grant leave to file out of time where warranted. In *Bowles v. Russell*, 551 U.S. 205 (2007), the Court underscored the importance of filing deadlines but also acknowledged its own authority to grant relief where justice so requires. Rule 13.5 is intended to allow precisely this kind of relief when a delay results from lack of notice or clerical error.

3. Relief Requested

For the foregoing reasons, Petitioner respectfully requests that the Court grant leave to file the Petition for Writ of Certiorari out of time, pursuant to Supreme Court Rule 13.5.

Respectfully submitted,



Olasebikan Akinmulero

1131 Rainier Avenue

#308

Everett, WA 98201

2068590212

Dated: August 28, 2025

**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001**

August 15, 2025

Olasebikan Akinmulero
1131 Rainier Ave
Apt. 308
Everest, WA 98201

RE: Akinmulero v. Dept. of Homeland Security, et al.
USCA9 No. 23-35364

Dear Mr. Akinmulero:

The above-entitled petition for a writ of certiorari was postmarked August 9, 2025 and received. The papers are returned for the following reason(s):

The petition is out-of-time. The date of the lower court judgment or order denying a timely petition for rehearing was May 6, 2025. Therefore, the petition was due on or before August 4, 2025. Rules 13.1, 29.2 and 30.1. When the time to file a petition for a writ of certiorari in a civil case (habeas action included) has expired, the Court no longer has the power to review the petition.

The time for filing a petition for a writ of certiorari is not controlled by the date of the issuance of the mandate. Rule 13.3.

Your check in the amount of \$300.00 is returned.

Sincerely,
Scott S. Harris, Clerk

By:

Lisa Nesbitt
(202) 479-3015

Enclosures