

**UNITED STATES DISTRICT COURT
IN THE
SOUTHERN DISTRICT OF FLORIDA**

**ROGERIO CHAVES SCOTTON,
Petitioner,**

CASE NO: 17-cv-62428-KMW

Vs.

**UNITED STATES OF AMERICA,
Respondent.**

**PETITIONER'S MOTION TO REQUEST EXTENTION OF TIME TO
RESPOND TO THE MAGISTRATE RECOMMENDATION REPORT
FOR GOOD CAUSE AND AN ORDER TO COMPLE THE CLERK'S
OFFICE TO RELEASE ALL CJA VOUCHERS.**

Comes now, the Petitioner Rogério Chaves Scotton, by and through pro se, respectfully moves this Court with this motion to request extension of time to respond to the Magistrate Judge Reid recommendation report for good cause.

In support of this motion, the Petitioner states as follows:

As an initial matter, Scotton respectfully request, as a prose litigant, that this Court construe his motion liberally pursuant to HAINES vs. KERNER, 404 U.S. 519, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972), accepts all factual allegations contained herein and as detailed under this application as true, and evaluates all reasonable inferences derived from those facts in the light most favorable to Scotton. TANNENBAUM vs. UNITED STATES, 148 F.3d 1262 (11th Cir. 1998). Indeed, Scotton reminds the Court that this is a prose motion that should be deserving of the less stringent standard of consideration mandated under UNITED STATES vs. JONES, 125 F.3d 1418, 1428 (11th Cir. 1997), and the Court “must look beyond the labels of petition filed by prose detainees to interpret them under whatever statute would provide relief”. MEANS vs. ALABAMA, 209 F.3d 1241, 1242 (11th Cir. 2000) (per curiam); ANDREW vs. UNITED STATES, 373 U.S. 334, 337-38, 83 S. Ct. 1236, 10 L. Ed. 2d 383(1963). “[A]djudication upon the underlying merits of claims is not hampered by reliance upon the titles Petitioners put upon their documents”. (quotation omitted). This practice acknowledges the importance of allowing meritorious claims to be heard and decided regardless of mere pleading defects introduced by legally unsophisticated litigants, as this one filed by the Petitioner.

I. RELEVANT BACKGROUND

On December 11, 2017, the Petitioner submitted to this Court his memorandum of law pursuant to 28 U.S.C. § 2255 requesting justice to be done. His substantial claims were wrongfully and unlawful denied on December 28 ,2017 by Judge Federico Moreno.

The Petitioner filed four different motions requesting this Court to correct the error under CASTRO vs UNITED STATES, 540 U.S. 375 (2003). All four motion were ignored and wrongfully denied without further explanation from this Court. (see Scotton vs. United States, case no: 12-CR-60049-KMW docket report). Scotton Appeal this Court wrongful and unlawful decision.

On April 7, 2019, 18 months later from this Court denial, the three Judges panel from the Eleventh Circuit Court of Appeals issued an order (NOT PUBLISH) and vacated and remanded Judge Federico Moreno wrongful and unlawful order denying the Petition his section 2255. The government concedes that this Court erred, and the government had waived any other arguments it may have to affirm the dismissal of Petitioner's motion on other ground.

The Appeals Court conclude that this Court recharacterized two previous motion filed by the Petitioner, however, on both times it did so without giving the Petitioner the warnings required under CASTRO vs. UNITED STATES, 540 U.S. 375, 124 S. Ct. 786 (2003).

On April, 29, 2019, this Court re-opened the Petitioner section 2255 and order the Petitioner to amend his memorandum of law, recuse Judge Moreno from the case pursuant to 28 U.S.C. § 455 because his impartiality in this case and under all his order denial have been reasonably questioned.

On or about May 27, 2020, the prosecutor submitted a 91-page response to the Petitioner's substantial claims filed under his section 2255 and have provided to this Court more smoke and mirrors in attempted to undermine the Petitioner constitutional claims.

On December 14, 2020, Magistrate Judge Lisette Reid submitted her recommendation report and asked this Court to deny the Petitioner's requests for justice by misleading all his substantial constitutional claims filed. In fact, the Magistrate herself stated under the motion that both attorneys Doakes and Adelstein advise this Court that they have gone to jail to review discovery

with the Petitioner. NOT truth. Thus, NO EVIDENCE IS PROVIDED TO SUPPORT THE MAGISTRATE CLAIM OR even TO SUPPORT THE ATTORNEYS CLAIMS. However, trial transcripts review that during the course of Petitioner' trial, all prosecutor CDs discovery were proved to be, in fact, blank (empty). (See DE-511 pg 42, DE-511 pg 126, DE-511 pg 128, and DE-470 pg 90-91); (See also, DE-51 130-132, DE-470 pg 93).

Therefore, the magistrate judge statement as well as Attorney's Doakes and Adelstein statement suggests of reviewing CDs discovery is absurd and is, without any doubt complete false.

Furthermore, the Petitioner have requested this Court on numerous occasions for the CJA vouchers which containing the attorneys claims of alleged legal services provided to the Petitioner, requesting compensation. All requests made by the Petitioner was completely ignored by this Court. Thus, Magistrate Judge response to the Petitioner motion requesting CJA vouchers, was that Petitioner should not file a motion requesting public record and thus, informed that such public records must be requested from the clerks' office.

Moreover, the upon his release from prison, the Petitioner has inquired on this public record on numerous occasions by email, notice, phone and by his US citizen friend that have walked inside the clerk's office requesting said documents. This public record was not provided.

On December 12, 2020, Chief Deputy Clerk, Kevin Kappes email the Petitioner and states as follows:

IN CONSIDERATION OF THIS COURT'S DENYING YOUR REQUESTS FOR COPIES OF THE CJA VOUCHERS, THE CLERK'S OFFICE IS WITHOUT AUTHORITY TO RELEASE THESE DOCUMENTS WITHOUT FURTHER COURT ORDER. (SEE EXHIBIT 1).

This despite that magistrate Judge Reid herself informed the Petitioner to request said public records to the clerk office. (see Scotton vs. US 12-Cr- 60049 and 12-CV-62428 Magistrate order).

Thus, the Petitioner was denied his first amend rights to obtain public records which would

contradicts the Magistrate Judge statements made under her report recommendation and would prove fraud conducted by the court appointed attorneys against the tax payers.

**II. PETITION REQUEST OF EXTENSION OF TIME TO RESPOND THE
MAGISTRATE RECOMMENDATION REPORT IN THE INTEREST OF JUSTICE**

The Petitioner Scotton seeks an extension of time for 30 days to submit his objections to the magistrate recommendation report for good cause because, 1) the delays caused by this court, 2) the failure to provide public records, 3) the fact that the Petitioner are not represented by a lawyer, 4) he was unlawfully deported to Brazil with the clothing on his back which give him lack and limitation to access this court and 5) because the difficulty of research cases law and access his case material and records which is currently not with him in Brazil. The Petitioner also ask the Court for consideration on facts that things are very difficulties since this COVID pandemic toke place.

Furthermore, the recommendation report has raised new questions which the Petitioner will need proper time to appropriately respond. Particularly as the issue of this looming deadline and the effect of the delay in this case cause by the court's own errors as well as the unlawful denial of this section 2255 around December 28, 2017, which is known to all parties. Against this background and all facts in this single defendant case, a 14 days deadline allowed for response to such recommendation report and respond to new claims non disputed by the Petitioner is under his previous filing is total unreasonable.

The Petitioner has shown diligence, in which should satisfy this Court on all elements. As noted elsewhere. The Petitioner have sought numerous public records and evidence under this section 2255 for some time. Petitioner current efforts—to obtain records and his numerous motions

to compel, and subsequent efforts to render the production usable--are adequate. Accordingly, the Petitioner motion for extension of time is should be GRANTED.

The Petitioner contends that Rule 6 of the Federal Rules of Civil Procedure provides in relevant part that:

When an act may or must be done within a specified time, the court may, for good cause, extend the time:

(A) . . . if a request is made, before the original time or its extension expires; or

(B) on motion made after the time has expired if the party failed to act because of excusable neglect.

Fed. R. Civ. P. 6(b)(1)(A), (B). Since the Petitioner have filed his motion for an extension of time prior to the deadline for filing response to the Magistrate report and have shown good cause, this motion should get granted. See Fed. R. Civ. P. 6(b)(1)(A).

Rule 6 does not define "good cause," but commentators have noted that a party must provide some sort of justification for the extension. See Moore's Fed. Pract. - Civil § 6.06[2]; Wright & Miller, 4B Fed. Pract. & Proc. § 1165; see also Kerns v. Board of Commissioners of Bernalillo County, No. CIV 07-771, 2010 U.S. Dist. LEXIS 40403, 2010 WL 1632732, *5 (D.N.M. Mar. 31, 2010) ("Good cause, necessary for an extension of time under rule 6(b)(1)(A), generally means a substantial reason amounting in law to a legal excuse for failing to perform an act required by law.") (citation omitted). Also, a "court generally will find good cause and grant the extension unless the moving party has been negligent, lacked diligence, acted in bad faith, or abused the privilege of prior extensions." Moore's Fed. Pract. - Civil § 6.06[2]; Wright & Miller, 4B Fed. Pract. & Proc. § 1165 ("[A]n application for the enlargement of time under Rule 6(b)(1) normally will be granted in the absence of bad faith on the part of the party seeking relief or prejudice to the

adverse party."). The "good cause" standard therefore "is a non-rigorous standard that has been construed broadly." Ahanchian v. Xenon Pictures, Inc., 624 F.3d 1253, 1259 (9th Cir. 2010).

This Court should conclude that Petitioner are entitled to an extension of time.

III. ORDER TO COMPEL THE CLERK OF THE COURT TO RELEASE ALL ATTORNEYS CJA VOUCHERS

The Petitioner contends that his First Amend rights are violated. On numerous occasions, the Petitioner has filed in this Court motions and notices requesting the CJA vouchers from all the Court appointed attorneys appointed to this case. All request for public records was ignored and denied.

The Magistrate Reid made a claim under her recommendation report that the Petitioner had inappropriate behavior with all attorney which is totally false and without a merit. Hence, refuse to release the CJA vouchers or to show any substantial evidence to supports such hearsay statement and the others false allegations.

The Petitioner contends that on many occasions his friend went to Court in order to file a motion for the Petitioner who is currently in Brazil, to change address his address at case file and to request case status. The Clerk began to ask him numerous questions and refuse to docket said motions, stating that he need to leave the motion with him. No copy of theses motions or receipt have been given to Mr. Arce.

On another occasion around December of this 2020, Mr. Arce returned to the Southern District of Florida, Miami division to inquire why those motions were not docket and further provide for the clerk of the court another copy of said motions and requesting that said motion be filed.

More questions were asked to Mr. Arce and he was again instructed to leave the documents with the clerk without been given any confirmation of filing or receipt. (See exhibit 2 Arce Affidavit).

Pursuant to section 3006A(4)(A), this Court should unseal any and all CJA vouchers as well as release a copy to the Petitioner without further delay. So, the question and the false allegations stated under this case be resolve for once and for all.

The Magistrate has further used the same absurd false statement which once also used by Judge Rosebaum. Alleging that the Petitioner didn't cooperate with the Court appointed attorneys and further that the Petitioner became verbally abused to attorneys. There is no one single evidence EVER SHOW by any attorney or even by this Court that could show that such allegation was truth. Rather this is the typically cover-up of such corrupted and evil legal system. In reality, any defendant that choose to fight this corruption legal system qualifies as a defendant that do not cooperate with the lawyers. And here in this case could not be different. All attorney has constantly requesting the *Petitioner to plead guilty* despite his innocence. Since Petitioner have not agreed with this corruption and since he choose to not waive his rights and to keep his dignity and morals, he became the cancer and the blinding of the corrupted legal system.

Nonetheless, I am hereby again to exercise my rights and to requesting the Court to release the CJA vouchers and the others public records already requested. As the clerk stated, he could not release said documents without this Court order even though, Judge Reid instructed the Petitioner to request such to the Clerk's office.

Accordingly, and for all of the reason and case, facts submitted with this motion, and in the interest of justice, the Petitioner Rogerio Chaves Scotton now, requests the Court to grant this

motion in total, grant him 30 days extension of time to respond to the recommendation report and order the Clerk of this Court to unseal and release all CJA vouchers without further delay.

Wherefore, in the interest of justice and fairness, the Appellant prays for the reasons stated above, that this Court grant him his motion.

Scotton submits this motion in good faith and the interest of justice.

Respectfully Submitted,

ROGERIO CHAVES SCOTTON
5201 BLUE LAGOON DRIVE, STE 800
MIAMI, FL 33126

PROOF OF SERVICE

I Rogerio Chaves Scotton, do certify that on this December 19, 2020, I have served the attached change notice (which is under the Petitioner's constitutional rights) on the Southern District of Florida in the above proceeding. I have served this motion via, United States Postal Service (USPS) certified mail as well as in the personal in the clerk's office.

Respectfully Submitted,

ROGERIO CHAVES SCOTTON
5201 BLUE LAGOON DRIVE, STE 800
MIAMI, FL 33126

EXHIBIT 1

Clerk's office email sent to Scotton inquiring the Court's approval to release the CJA vouchers.

The screenshot shows an Outlook email window titled "RE: CJA Vouchers - Message (HTML)". The interface includes a ribbon with various actions like "Ignore", "Delete", "Archive", "Reply", "Forward", "Meeting", "Idbook drive lic...", "To Manager", "Team Email", "Reply & Delete", "Create New", "Move", "OneNote", "Actions", "Mark Unread", "Follow Up", "Tags", "Translate", "Find", "Related", "Select", "Read Aloud", "Speech", and "Zoom".

The email header shows it is from Kevin Kappes <Kevin_Kappes@flsd.uscourts.gov> to 'rogerioscotton50@gmail.com' with the subject "RE: CJA Vouchers". A timestamp indicates it was forwarded on 12/11/2020 at 1:54 PM.

The email body contains the following text:

Good morning Mr. Scotton,

In consideration of this Court's rulings denying your requests for copies of the CJA vouchers, the Clerk's Office is without authority to release these documents without further court order.

Respectfully,

Kevin Kappes
Chief Deputy Clerk - Administration
United States District Court for the Southern District of Florida
400 N. Miami Avenue, Room 08N09

From: rogerioscotton50@gmail.com <rogerioscotton50@gmail.com>
Sent: Tuesday, December 08, 2020 3:01 PM
To: Kevin Kappes <Kevin_Kappes@flsd.uscourts.gov>
Subject: CJA Vouchers

CAUTION - EXTERNAL:

Hi Mr. Kappes, I would like to know if will be possible to obtain all CJA vouchers submitted by all court appointed attorney inquiring compensation for legal services provide to me.
Thank You,


Rogerio Scotton
(561) 403 0061
(954) 522 1100

The Windows taskbar at the bottom shows the time as 1:58 PM on 12/11/2020.

EXHIBIT 2

Mr. Marco Arce Affidavit.

MARCO ARCE AFFIDAVIT

AFFIDAVIT

I Marco Arce, being duly [sworn/affirmed] according to law deposes and says that all statement made under this instrument is the truth and that the facts set forth in the foregoing are also true and correct upon my personal knowledge and/or to the best of my information and belief.

On two occasions I went to the Southern District Court, Miami Division in order to serve two petitions made by Mr. Scotton to the Clerk's office.

On both occasion I have receive hostile treatment, asked why I was helping Mr. Scotton and what was my interesse on the case as well as to Mr. Scotton.

I thoroughly believe now that Mr. Scotton has been for all this time deprived to fair legal process and have his constitutional rights violated.

I have also request from the Clerk's office a copy of all CJA vouchers that Mr. Scotton inquired under his notice and on many occasions. I was given frivolous excuse and told to live the Court House.

I have not been provided with Mr. Scotton motions back, nor said motions were filed in court.

I have also today December 19, 2020 mailed this affidavit which is attached to Mr. Scotton motion for extension by certified US mail.

[Signature of Affiant]

Name of Affiant: _____

On December 19, 2020, before me, the undersigned affiant Marco Arce, personally appeared with his Florida drive license number: _____ to be the person whose name is subscribed to this instrument and acknowledge that he executed the same for the purpose therein contained.

In witness whereof, I hereunto set my hand and official seal.

[Signature of official administering oath]

Notary Public

My commission expires: