

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

NELSON ABARCA,

Petitioner,

v.

STEPHEN D'ILIO, et al.,

Respondents.

Civil Action No. 14-5158 (MAS)

MEMORANDUM AND ORDER

This matter has come before the Court on the Petition for Writ of Habeas Corpus of Petitioner Nelson Abarca, for relief under 28 U.S.C. § 2254. The Court previously dismissed the Petition as time-barred, but afforded Petitioner thirty days to submit valid arguments, supported by evidence, as to why the Petition should be construed as timely. Presently before the Court is Petitioner's letter, alleging that he "enclose[s] proof of service and dates in which [he] mailed and ex[h]aused all of my appeal[s], this proving that [he is] not time barred." (Pet.'s Letter, 1, ECF No. 10.) The Court construes the letter as a motion to reopen.

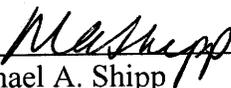
However, the Court has reviewed the enclosures, and all Petitioner attaches to his letter are several mailing and copy receipts related to the instant Petition; indeed, all of the receipts show dates in August and September of 2014, around the time when the instant Petition was filed. (*See* Pet.'s Letter 2-8.) In the prior order, the Court did not question when the Petition was actually filed—the Court found that the Petition was filed on August 15, 2014, (Order 4, Sept. 9, 2016, ECF No. 9), which was the date Petitioner himself dated the original Petition, (*see* Pet. 17, ECF No. 1). Instead, the Court found that the Petition should have been filed on or before July 28, 2014, so the Petition was filed past the statute of limitations. (Order 4, Sept. 9, 2016.) As

Petitioner does not submit any valid reasons why the Petition should be construed as timely, the Court denies the motion to reopen.

IT IS therefore on this 26 day of October, 2016,

ORDERED that Petitioner's letter, ECF No. 10, construed as a motion to reopen, is hereby **DENIED**; and it is further

ORDERED that the Clerk shall serve a copy of this Order upon Petitioner by regular mail.



Michael A. Shipp
United States District Judge