

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ARTHUR LOPEZ,

Petitioner,

Case No. 17-cv-1088-pp

v.

UNITED STATES OF AMERICA,

Respondent.

**ORDER GRANTING PETITIONER'S MOTION TO WITHDRAW PETITION
(DKT. NO. 16) AND DEEMING PETITION WITHDRAWN**

On August 8, 2017, the court opened this case with a document it had received from the petitioner titled "Petition Under the All Writs Act (Audita Querela) 18 U.S.C. § 1651, Pursuant to the U.S. Supreme Court's Decision in *United States v. Morgan*, 346 U.S. 502 (1954)." Dkt. No. 1. The same day, the court entered an order dismissing the case as untimely, finding that the petitioner had used "inventive captioning" to avoid the statute of limitations. Dkt. No. 2. The petitioner appealed. Dkt. No. 4.

While the appeal was pending, the petitioner filed a motion for clarification. Dkt. No. 13. Citing *Castro v. United States*, 540 U.S. 375, 377 (2003), the petitioner pointed out that the court had recharacterized his petition as a motion to vacate, set aside or correct sentence under 28 U.S.C. §2255 without giving him the opportunity to withdraw it (and avoid later losing his opportunity to file such a motion due to the prohibitions against second or successive petitions). Dkt. No. 13.

Finding that the petitioner was correct, and that the court had erroneously recharacterized his petition without giving him a chance to withdraw it, the court granted the petitioner's motion to correct and gave him the opportunity to withdraw the petition to avoid having the court recharacterize the petition. Dkt. No. 15. The petitioner now has timely filed a motion to withdraw the petition. Dkt. No. 16.

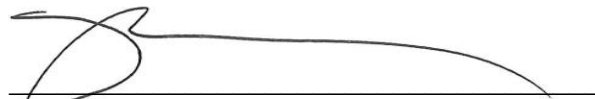
The court **GRANTS** the petitioner's motion to withdraw the petition. Dkt. No. 16.

The court **ORDERS** that the Petition Under the All Writs Act (Audita Querela) 18 U.S.C. § 1651, Pursuant to the U.S. Supreme Court's Decision in United States v. Morgan, 346 U.S. 502 (1954), originally filed in Case No. 99-cr-209, dated by the plaintiff on May 13, 2017 and utilized to open the current case, is deemed **WITHDRAWN**.

The court **ORDERS** that if the petitioner files a petition under 28 U.S.C. §2255, the above-described petition will *not* constitute a petition under 28 U.S.C. §2255 for the purposes of considering whether the future petition is second or successive.

Dated in Milwaukee, Wisconsin this 23rd day of March, 2021.

BY THE COURT:



HON. PAMELA PEPPER
Chief United States District Judge