

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

MARC AND TYRONE STEPHENS,
Plaintiffs-Appellants,
v.

CITY OF ENGLEWOOD,
ENGLEWOOD POLICE DEPARTMENT,
DET. MARC MCDONALD,
DET. DESMOND SINGH,
DET. CLAUDIA CUBILLOS
DET. SANTIAGO INCLE JR.,
AND DET. NATHANIEL KINLAW,
Individually and in official capacity
NINA C. REMSON ATTORNEY AT LAW,
LLC, AND COMET LAW OFFICES, LLC
Defendants-Appellees

CASE No. 16-1868
D. N.J No. 2:14-cv-05362-WJM-MF

**PLAINTIFFS' MOTION FOR
RECONSIDERATION TO COMPEL
CONFIRMATION OF ECF EVIDENCE
ON COURT RECORD
AND MOTION TO EXTEND TIME TO
FILE PETITION FOR REHEARING**

INTRODUCTION

On **June 26, 2017**, the court denied my Motion to Compel Confirmation of ECF Evidence on Court Record, “It is denied to the extent it seeks to compel confirmation of ecf evidence”. “Appellants’ request to compel ECF evidence is denied without prejudice to raising these issues in a petition for rehearing”, **Document: 003112659726**. I ask that the court please reconsider their decision for the following reasons:

ARGUMENT

I. The Judge in District court, and now a three Judge Panel, are stating that we did not submit evidence

Court clerks have a general duty to maintain papers filed with them. The court stated that our evidence was on record before the Panel reviewed the briefs, “[F]or appeals from the district court, please keep in mind that the entire district court record is transmitted to the court of appeals and is available for the court's review”, **Document: 003112369595, page 6**. Yet, All judges are stating that they did not see any evidence, which is clearly on record. **This is causing prejudice, and is violating our rights to due process**. We have pointed to the evidence in our opposition briefs, and motion for reconsideration briefs, **ECF 85**. Which presents our evidence in detail, and address the courts opinion with specificity.

II. It does not prejudice the defendants to confirm our evidence on ECF, and the court may suspend the rules pursuant to FRAP RULE 2 in order to prevent manifest injustice.

FRAP RULE 2 states, “On its own or a party's motion, a court of appeals may—to expedite its decision or for other good cause—suspend any provision of these rules in a particular case and order proceedings as it directs”. The rule contains a general authorization to the courts to relieve litigants of the consequences of default where manifest injustice would otherwise result. (“In the interest of expediting decision, or for other good cause shown, a court

of appeals may ... suspend the requirements or provisions of any of these rules in a particular case"); see, e.g., *United States v. Babwah*, 972 F.2d 30, 35 (2d Cir.1992); "Nevertheless, we will review an issue not properly presented if a failure to do so would result in manifest injustice", *United States v. Loya*, 807 F.2d 1483, 1487 (9th Cir.1987) at 1487; *United States v. Anderson*, 584 F.2d 849, 853 (6th Cir.1978)". **Frank v. US, 78 F. 3d 815 - Court of Appeals, 2nd Circuit 1996 at 833.** "We are inclined to overlook a party's failure to properly raise an issue on appeal if manifest injustice would otherwise result. *Frank v. United States*, 78 F.3d 815, 833 (2d Cir. 1996), vacated on other grounds, 521 U.S. 1114 (1997); *United States v. Babwah*, 972 F.2d 30, 34-35 (2d Cir. 1992). **McCarthy v. Securities and Exchange Commission, Court of Appeals, 2nd Circuit 2005.**

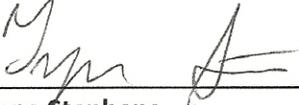
We properly raised our issues on appeal and presented the evidence via ECF, and the Judges and defendants are stating we did not, **Document: 003112616686**. In order to prevent manifest injustice, we are respectfully requesting confirmation of our evidence in ECF before we submit our Petition for Rehearing, **Document: 003112615887**.

III. Motion for Extension of Time to File Petition for Rehearing pending decisions.

Appellant Marc Stephens respectfully request an extension of time for filing a petition for rehearing pending the decision. Order received June 26, 2017, and the time to file the petition is July 26, 2017. This motion is not to hamper the proceedings or cause prejudice to defendants.

Respectfully Submitted,

Dated: June 30, 2017



Tyrone Stephens
Plaintiff, pro se



Marc Stephens
Plaintiff, pro se

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of May, 2017, I mailed a copy to the Clerk who will file using the CM/ECF system, which will then send a notification of such filing to the following:

Marc Mory, Esq. (via e-mail)
Adam Kenny, Esq. (via e-mail)
Marc Pakrul, Esq. (via e-mail)
Tyrone Stephens, Appellant (via email)