

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ABRAHAM PORTNOV,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 1:20-cv-01611 (UNA)
)	
U.S. DEPARTMENT OF JUSTICE, <i>et al.</i> ,)	
)	
Defendants.)	

MEMORANDUM OPINION

This matter is currently remanded to this Court from the United States Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”), *see* Ord. (D.C. Cir. Feb. 8, 2021), ECF No. 8, on a limited basis. Specifically, this Court shall render findings as to (1) whether the District Court received Plaintiff’s mailed Notice of Appeal before the August 28, 2020 deadline, *see* Fed. R. App. P. 4(a)(B)(ii)–(iv), and (2) if the Court determines that the Notice of Appeal *was not* received before the deadline, whether Plaintiff’s responses to the D.C. Circuit’s Order to Show Cause, together with the Notice of Appeal, should be construed as a motion for extension of time to file a notice of appeal under Fed. R. App. P. 4(a)(5) and, (3) if so, whether the motion should be granted. Ord. at 1 (emphasis added). The Court need only address the first question, as it finds Plaintiff’s evidence persuasive that his Notice of Appeal was received prior to the August 28, 2020 deadline.

This matter was dismissed by Memorandum Opinion, ECF No. 4, and Order, ECF No. 5, on June 29, 2020, and copies of those documents were mailed to the *pro se* Plaintiff at his address of record on the same date, *see id.* On September 10, 2020, the Clerk of Court docketed Plaintiff’s Notice of Appeal, ECF No. 6. The Notice of Appeal consists collectively of four total documents:

(1) a single-sheet template form notice of appeal (“Form Notice”), directed to the District Court (signed and dated August 5, 2020), *id.* at 1; (2) an appeal “complaint” directed to the D.C. Circuit (“Appeal Complaint”) (signed and dated August 5, 2020), *id.* at 2; (3) an untitled supplemental pleading (“Untitled Pleading”), directed to the D.C. Circuit (signed and dated August 17, 2020), *id.* at 3, and; (4) a single undated envelope, *id.* at 4. These documents are jointly filed as a single docket entry. *See generally*, ECF No. 6. The Form Notice and Appeal Complaint are concomitantly date-stamped as received by the Clerk on September 3, 2020, *id.* at 1, and the Untitled Pleading contains its own date-stamp of September 3, 2020, *id.* at 3.

On September 11, 2020, the D.C. Circuit issued an Order to Show Cause why the appeal, seemingly filed beyond the 60-day period provided by *see* Fed. R. App. P. 4(a)(B)(ii)–(iv), should not be dismissed as untimely. *See* Dkt. No. 20-5278 at Show Cause Ord., (D.C. Cir. Sept. 11, 2020). On September 15, 2020, Plaintiff filed a timely Initial Response, *see id.* at Response (“Response”), which he then supplemented on September 28, *see id.* at Response (“Supp. I”), and October 5, 2020, *see id.* at Supplement (“Supp. II”).

In these submissions, Plaintiff argues that he mailed the Form Notice and Appeal Complaint together on August 5, 2020 and then later, on August 17, 2020, he mailed the Untitled Pleading. *See* Response at 1; Supp. I at 1; Supp. II at 2. As proof, he attaches receipts from the Canadian Postal Service, which corroborate this contention. *See* Supp. I at 2. He deduces that the August 5th mailing must have been timely received by the District Court but, for some reason, remained undocketed, and once the Court received the August 17th supplement, the Clerk must have docketed both sets of submissions all together, and mistakenly attributed the latter receipt date to all of the submissions. *See id.* at 1; Response at 1; Supp. II at 2. He also contends that there should exist somewhere in the courthouse a second envelope, which would prove that he

submitted his Form Notice and Appeal Complaint both separately and earlier than the latter submission. *See* Supp. I at 1; Supp. II at 2.

The Court currently has no record of this second envelope and, at this juncture, cannot determine with absolute certainty that the Form Notice and Appeal Complaint were received in advance of the Untitled Pleading. Notwithstanding, because Plaintiff has undoubtedly shown that he did, in fact, mail his submissions on different dates, and most importantly, that he mailed the Form Notice on August 5, 2020, *see* Response I at 1; Supp. I at 1–2; Supp. II at 2, well in advance of his appeal deadline, all which is substantially convincing. The Court also finds that there was most likely some confusion regarding the Clerk’s dates of receipt, inadvertently caused by Plaintiff’s successive filings, and his apparent attempts to also submit scanned copies of myriad submissions to the Clerk by email, *see* Response I at 1; Supp. I at 1.

For all of these reasons, the Court concludes that Plaintiff’s Notice of Appeal, or his Form Notice (and Appeal Complaint), was timely received before the August 28, 2020 deadline, and it recommends that it be construed accordingly.

Date: March 12, 2021

/s/
AMIT P. MEHTA
United States District Judge