NO:

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2017

JAUMON LEWIS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI FROM THE JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

TO THE HONORABLE CLARENCE THOMAS, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE ELEVENTH CIRCUIT

Pursuant to Supreme Court Rules 13.5, 22, and 30.3, Jaumon Lewis respectfully requests a thirty-day extension of time, to and including May 23, 2018, within which to file a petition for a writ of certiorari from the judgment of the

United States Court of Appeals for the Eleventh Circuit. Mr. Lewis has not previously sought an extension of time from this Court.

Mr. Lewis is filing this Application at least ten days before the filing date, which is April 23, 2018. *See* S.Ct. R. 13.5. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1).

In 2011, Mr. Lewis was convicted in the Southern District of Florida on charges of being a felon-in-possession of a firearm in violation of 18 U.S.C. §922(g)(1). He was sentenced as an Armed Career Criminal to a term of 180 months imprisonment, based in part on his prior Florida conviction for "felony battery" which the district court held was a "violent felony." After this Court's decision in *Johnson v. United States*, 135 S.Ct. 2551 (June 26, 2015), declaring the ACCA's residual clause void for vagueness, Mr. Lewis moved to vacate his ACCA sentence, arguing that he no longer had three qualifying "violent felonies" as predicates, because – *inter alia* – his felony battery conviction was not a "violent felony" within the elements clause. The district court denied that motion and also denied Mr. Lewis a certificate of appealability ("COA").

Mr. Lewis appealed that denial to this Court. And on April 17, 2017, the Court GVR'd the case for further consideration in light of the Acting Solicitor General's position that Mr. Lewis had sufficiently established that that issue was reasonably debatable in light of the Eleventh Circuit panel's decision in *United States v. Vail-Bailon*, 838 F.3d 1091, 1093-1098 (11th Cir. 2016) (holding that Florida felony battery by touching did not meet the elements clause), even though

that decision had been vacated pending rehearing en banc, and was then awaiting a decision from the full court.

On August 25, 2017, the Eleventh Circuit issued its en banc decision in *Vail-Bailon,* holding that Florida battery categorically qualified as a crime of violence under the Guidelines. *United States v. Vail-Bailon,* 868 F.3d 1293 (11th Cir. 2017 (en banc). Thereafter, on January 23, 2018, the Eleventh Circuit denied Petitioner a COA, finding he had failed to make the requisite showing to justify the grant of a COA, since the issue he raised as the basis for the COA was "now settled" in the Circuit. *Lewis v. United States,* Slip op. (Jan. 23, 2018) (No. 16-11494).

A copy of the opinion is attached as Exhibit A hereto.

Undersigned counsel will not have sufficient time to file the petition for writ of certiorari for Mr. Lewis by April 23rd due to other case responsibilities including *Stokeling v. United States, cert. granted,* ___ S.Ct. ___, 20108 WL 1568030 (April 2, 2018) (No. 17-5554).

No party will be prejudiced by the granting of a thirty-day extension.

Since the time within which to file a petition for writ of certiorari in this case will expire on April 23, 2018, unless extended, Mr. Lewis respectfully requests that an order be entered extending his time to file a petition for writ of certiorari by thirty days, to and including May 23, 2018.

Respectfully submitted,

MICHAEL CARUSO
FEDERAL PUBLIC DEFENDER

By: ______________________

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April 9, 2018

Exhibit A

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 16-11494-C

JAUMON R. LEWIS,

Petitioner - Appellant,

versus

UNITED STATES OF AMERICA,

Respondent - Appellee.

Appeal from the United States District Court
for the Southern District of Florida

ON REMAND FROM THE SUPREME COURT OF THE UNITED STATES

ORDER:

Jaumon R. Lewis moves for a certificate of appealability (COA) in order to appeal the denial of his 28 U.S.C. § 2255 motion. This motion is before the Court after the United States Supreme Court vacated our previous denial of Lewis's motion for a COA on April 17, 2017. Lewis seeks a COA to challenge whether his conviction for felony battery under Florida law qualifies as a "crime of violence" for purposes of a sentencing enhancement under the Armed Career Criminal Act, § 2L1.2 of the United States Sentencing Guidelines. The Supreme Court vacated our

previous denial of Lewis's motion because, at that time, that same issue was before this Court en banc in *United States v. Vail-Bailon*, 868 F.3d 1293 (11th Cir. 2017) (en banc).

On August 25, 2017, this Court issued its decision in *Vail-Bailon*. We held "that Florida battery does categorically qualify as a crime of violence under § 2L1.2 of the [Sentencing] Guidelines." *Id.* at 1295. Thus, the issue Lewis raises as the basis for granting him a COA is now settled in this Circuit.[1] Lewis has therefore failed to make the requisite showing needed to justify the grant of a COA. *See Slack v. McDaniel*, 529 U.S. 473, 484, 120 S. Ct. 1595, 1604 (2000).

Appellant's motion for a COA is accordingly DENIED.

/s/ Gerald Bard Tjoflat
UNITED STATES CIRCUIT JUDGE

[1] The second issue raised by Lewis in his motion for a COA—whether his conviction for aggravated assault with a firearm under Florida law qualifies as a crime of violence under the ACCA—also fails to meet the *Slack* standard.