

No. _____

**In The
Supreme Court of the United States**

DONALD DALLAS,
Petitioner,

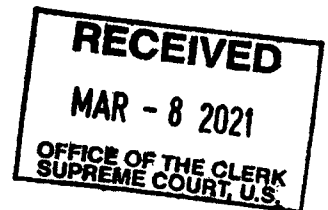
v.

WARDEN,
Respondent.

On Petition for a Writ of Certiorari to the United
States Court of Appeals for the Eleventh Circuit

MOTION TO FILE OUT OF TIME PETITION

CHRISTINE A. FREEMAN
Executive Director
ALLYSON R. DULAC
Counsel of Record
FEDERAL DEFENDERS
FOR THE MIDDLE DISTRICT OF ALABAMA
817 S. Court Street
Montgomery, Alabama 36104
(334) 834-2099
Allyson_dulac@fd.org



March 5, 2021

MOTION TO FILE PETITION FOR WRIT OF CERTIORARI OUT OF TIME

Petitioner Donald Dallas electronically filed his Petition for Certiorari on February 26, 2021, but did not submit the paper copies to the Court via Federal Express until February 27, 2021, one day later. Mr. Dallas respectfully requests that the Court accept the late filing. Undersigned counsel contacted counsel for the State of Alabama and provided a copy of the motion, inquiring whether the State has an opposition to this motion. Undersigned counsel can report that the State takes no position on the motion.

BACKGROUND

Mr. Dallas was convicted and sentenced to death in Alabama. He has sought relief in both the state and federal courts with rehearing denied at the United States Court of Appeals for the Eleventh Circuit on September 29, 2020. Pursuant to this Court's Order dated March 19, 2020, Mr. Dallas' petition for writ of certiorari was due on February 26, 2021. On February 26, 2021, undersigned counsel electronically filed Mr. Dallas' Motion for Leave to Proceed *In Forma Pauperis*, Petition for Writ of Certiorari, the Appendix, and the Certificate of Service. Attached Exhibit A. The paper copies were sent by Federal Express on February 27, 2021. Attached Exhibit B.

On March 3, 2021, undersigned counsel was contacted by a clerk of this Court who advised that the petition was filed out of time and would be returned. For the

following reasons, Mr. Dallas requests that the Court grant this Motion and direct the Clerk to file the Petition for Writ of Certiorari out of time.

ARGUMENT

This Court has long recognized that “death is different.” *See, e.g., Monge v. California*, 524 U.S. 721 (1998) (observing that “the death penalty is unique ‘in both its severity and its finality’ ”); *Ford v. Wainwright*, 477 U.S. 399, 411 (1986) (“[E]xecution is the most irremediable and unfathomable of penalties; ... death is different.”). Mr. Dallas is a condemned indigent person. He is unable to advocate for himself and must rely on counsel’s assistance. Here, a mistake was made. This error should not preclude Mr. Dallas from having this Court consider the last known opportunity he has for judicial review of his unconstitutional conviction and death sentence. Undersigned counsel respectfully requests that this Court consider equity and the ends of justice when it reviews this motion.

On March 16, 2020, the Executive Director of the Federal Defenders for the Middle District of Alabama issued a directive closing the office, directing nearly all staff to work from home, and limiting fieldwork, effective March 17, 2020. On April 30, 2020, the Alabama Department of Public Health issued an order mandating that all individuals minimize all travel outside the home, and advising employers to minimize employee travel. The Federal Defender has continued that directive, which remains in effect as of this filing. The COVID19 pandemic impedes the ability to engage in the

direct person to person supervision that would take place under ordinary circumstances. Both attorneys and staff have been working from their homes; as such, communications are typically by electronic mail or video conference. On the evening of February 26, 2021, this was no different. Staff were not working in the same building, but from separate locations, and were communicating by email.

After undersigned counsel received the notice of electronic filing from this Court on February 26, she notified the Dallas case team. The paralegal on the case contacted the undersigned to see how service on the State of Alabama would be perfected. Undersigned counsel advised that she would send the documents via electronic mail to the Assistant Attorney General. The paralegal responded "I am preparing the physical copies for the mail." Attached Exhibit C.

Based on this unambiguous representation, undersigned counsel believed that the paralegal would be placing the documents that were electronically filed with the Court in the United States Mail - to the Court - on February 26, 2021. That did not happen. Without conferring with counsel and despite prior specific training on the Supreme Court's filing rules and deadlines, the paralegal elected to delay the mailing until the next day. Thus, the paper copies were not placed in the mail until the next day. Counsel did not learn of this error until the call from the Supreme Court clerk. Upon learning of the error, counsel conferred with the paralegal and notified her supervisor. Disciplinary sanctions are imposed.

Mr. Dallas seeks an equitable remedy from this Court. In considering this Court's jurisprudence and the Federal Rules of Civil Procedure 60(b)(1), this Court should find excusable neglect exists here. Excusable neglect is generally an "equitable inquiry" based upon the particular circumstances of the case. *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380 (1993). In *Pioneer*, the Court considered Rule 60(b)(1) and observed that "for purposes of Rule 60(b), 'excusable neglect' is understood to encompass situations in which the failure to comply with a filing deadline is attributable to negligence." *Id.* at 394. The ordinary meaning of "neglect" is "to give little attention or respect" to a matter, or, closer to the point for our purposes, "to leave undone or unattended to *esp[ecially] through carelessness.*" *Pioneer*, 507 U.S. at 388. (citing Webster's Ninth New Collegiate Dictionary 791 (1983) (emphasis added)). The Court identified four factors pertinent to the determination: "the danger of prejudice to the [opposing party], the length of the delay and its potential impact on the judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." *Id.* at 395.

First, the State was served with all the pleadings on February 26, 2021, and would not be prejudiced by the Court accepting those pleadings as timely. Second, the length of the filing delay was minimal; less than 24 hours after the February 26, 2021 filing deadline, the documents were addressed and postmarked to the Court and, again, less than 36 hours from notification from the Court of this filing error, the instant Motion

was filed. Third, Mr. Dallas submits that the reason for the delay was one far beyond his control. A misrepresentation made to and reasonably relied upon by his counsel should not be attributable to Mr. Dallas because this Court should, as Congress contemplated in the Federal Rules of Civil Procedure that the lower courts could, accept late filings caused by inadvertence, mistake, or carelessness. Here, given the circumstances where counsel and staff are currently working from home and communication being less than ideal, the undersigned asks this Court to consider the mistake as excusable. Finally, Mr. Dallas at all times has acted in good faith, having timely electronically filed and timely served the documents at issue.

CONCLUSION

For the foregoing reasons, Mr. Dallas respectfully requests this Court grant the Motion and direct the Clerk to file the Petition for Certiorari out of time.

Respectfully submitted this 5th day of March 2021.

/s/ Allyson R. duLac

ALLYSON R. DULAC

Counsel of Record

FEDERAL DEFENDERS FOR THE
MIDDLE DISTRICT OF ALABAMA

817 S. Court Street

Montgomery, AL 36104

(334) 834-2099

Allyson_duLac@fd.org

EXHIBIT A

Shawn M Robinson

From: efilingsupport@supremecourt.gov
Sent: Friday, February 26, 2021 4:20 PM
To: Allyson duLac
Subject: Your Electronic Filing record has been submitted.

Your Petition for a Writ of Certiorari has been submitted. It will be reviewed once the hard copy is received. If you are not expecting this email, please contact the Supreme Court Electronic Filing Support Group at eFilingSupport@supremecourt.gov.

EXHIBIT B

ORIGIN ID:MGMA (334) 834-2099
CHRISTI MURPHY-THOMAS
FEDERAL DEFENDERS MIDDLE DIST AL
817 SOUTH COURT STREET
MONTGOMERY, AL 36104
UNITED STATES US

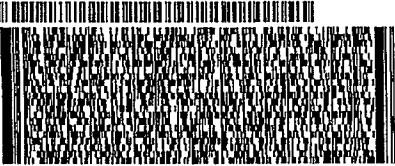
SHIP DATE: 27FEB21
ACTWGT: 5.00 LB
CAD: 104786582/INET4340
BILL SENDER

TO SCOTT S. HARRIS, CLERK OF COURT
SUPREME COURT OF THE UNITED STATES
1 FIRST STREET, NE

WASHINGTON DC 20543

(202) 479-3211 REF: DONALD DALLAS
INV: DEPT:

68DJC67AF6VA



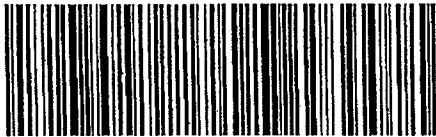
1 of 6

MON - 01 MAR 8:30A
FIRST OVERNIGHT

TRK# 7730 2166 5588
0201
MASTER

X1 RDVA

20543
DC-US IAD



After printing this label:

1. Use the 'Print' button on this page to print your label to your laser or inkjet printer.
2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

Warning: Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number.

Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com. FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$1,000, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see current FedEx Service Guide.

ORIGIN ID:MGMA (334) 834-2099
CHRIST MURPHY-THOMAS
FEDERAL DEFENDERS MIDDLE DIST AL
817 SOUTH COURT STREET

SHIP DATE: 27FEB21
ACT WGT: 5.00 LB
CAD: 104786827MNET4340

MONTGOMERY AL 36104
UNITED STATES US

BILL SENDER

TO
**SCOTT S. HARRIS, CLERK OF COURT
SUPREME COURT OF THE UNITED STATES
1 FIRST STREET, NE**

WASHINGTON DC 20543

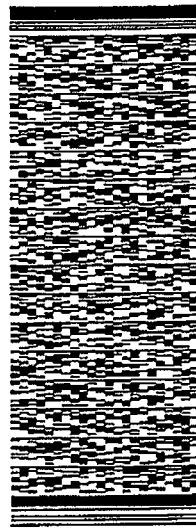
REF: DOW/D DALLAS

PO:

DEPT:

(202) 479-3211

NY:



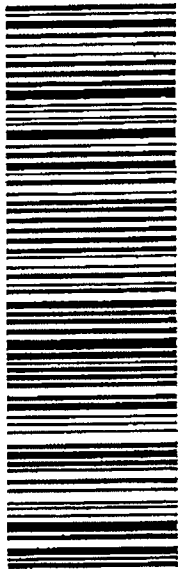
2 of 6

MPS# **7730 2166 5761**

Mst# 7730 2166 5588

0201

**MON - 01 MAR 8:30A
FIRST OVERNIGHT**



X1 RDVA

DC-US

**20543
IAD**

After printing this label:

1. Use the 'Print' button on this page to print your label to your laser or inkjet printer.
2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

Warning: Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number.

Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com. FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$1,000, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see current FedEx Service Guide.

ORIGIN ID: MAGMA (334) 834-2099
CHRIST MURPHY-THOMAS
FEDERAL DEFENDERS MIDDLE DIST AL
817 SOUTH COURT STREET
MONTGOMERY, AL 36104

SHIP DATE: 27FEB21
ACTWGT: 5.00 LB
CAD: 1047863021NET14340

UNITED STATES US

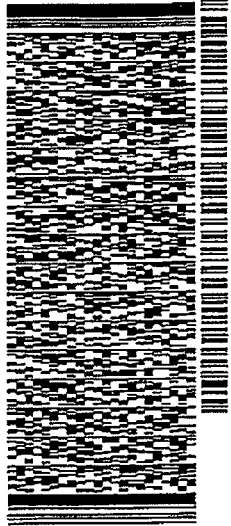
BILL SENDER

TO SCOTT S. HARRIS, CLERK OF COURT
SUPREME COURT OF THE UNITED STATES
1 FIRST STREET, NE

WASHINGTON DC 20543

REF: DONALD DALLAS

PC: DEPT:



56D.3IC87AFE4A

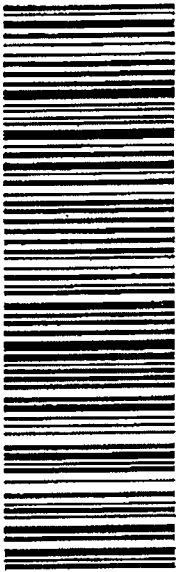
3 of 6

MP# 7730 2166 5474

Mst# 7730 2166 5588

0201

MON - 01 MAR 8:30A
FIRST OVERNIGHT



X1 RDVA

DC-US IAD 20543

After printing this label:

1. Use the 'Print' button on this page to print your label to your laser or inkjet printer.
2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

Warning: Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number.

Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com. FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$1,000, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see current FedEx Service Guide.

ORIGIN: DAKOTA (334) 834-2099
CHRISTOPHER THOMAS
FEDERAL DEFENDERS MIDDLE DIST AL
817 SOUTH COURT STREET

SHIP DATE: 27E921
ACT WGT: 5.60 LB
CAD: 104780302NET4340

UNITED STATES

BILL SENDER

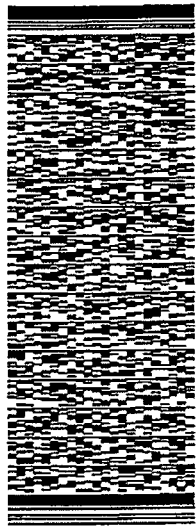
TO
SCOTT S. HARRIS, CLERK OF COURT
SUPREME COURT OF THE UNITED STATES
1 FIRST STREET, NE

WASHINGTON DC 20543

REF: DONALD DALYAS

(202) 479-3211
NY
PC

DEPT:



4 of 6

MPS# **7730 2166 5485**
Mst# 7730 2166 5588

0201

MON - 01 MAR 8:30A
FIRST OVERNIGHT

X1 RDVA

DC-US
20543 IAD



After printing this label:

1. Use the 'Print' button on this page to print your label to your laser or inkjet printer.
2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

Warning: Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number.

Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com. FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$1,000, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see current FedEx Service Guide.

ORIGIN ID:MGMA (334) 834-2089
CHRISTI MURPHY-THOMAS
FEDERAL DEFENDERS MIDDLE DIST AL
817 SOUTH COURT STREET

SHIP DATE: 27FEB21
ACTWGT: 5.00 LB
CAD: 104786582/NET4340

MONTGOMERY, AL 36104
UNITED STATES US

BILL SENDER

TO **SCOTT S. HARRIS, CLERK OF COURT**
SUPREME COURT OF THE UNITED STATES
1 FIRST STREET, NE

98L00874F54

WASHINGTON DC 20543

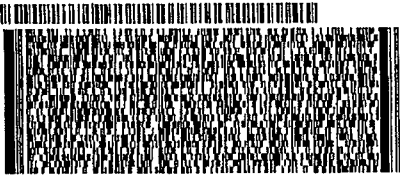
(202) 478-3211

REF: DONALD DALLAS

INV:

PO:

DEPT:



5 of 6

MON - 01 MAR 8:30A

FIRST OVERNIGHT

MPS#

0263

7730 2166 5496

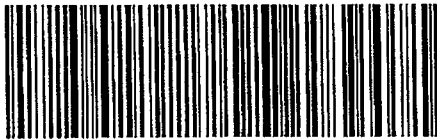
0201

Mstr# 7730 2166 5588

20543

X1 RDVA

DC-US IAD



After printing this label:

1. Use the 'Print' button on this page to print your label to your laser or inkjet printer.
2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

Warning: Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number. Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com. FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss, and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$1,000, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see current FedEx Service Guide.

ORIGIN ID:NGMA (334) 834-2099
CHRISTI MURPHY-THOMAS
FEDERAL DEFENDERS MIDDLE DIST AL
817 SOUTH COURT STREET
MONTGOMERY, AL 36104

SHIP DATE: 2/25/21
ACT/WT: 5.00 LB
CAD: 1047668921NET4340

UNITED STATES US

BILL SENDER

TO
SCOTT S. HARRIS, CLERK OF COURT
SUPREME COURT OF THE UNITED STATES
1 FIRST STREET, NE

WASHINGTON DC 20543

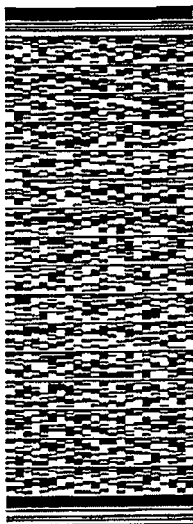
REF: DONALD DALLAS

PO:

DEPT:

(202) 479-3211

NY:



56D3IC87AFE4A

6 of 6

RPS# 7730 2166 6128

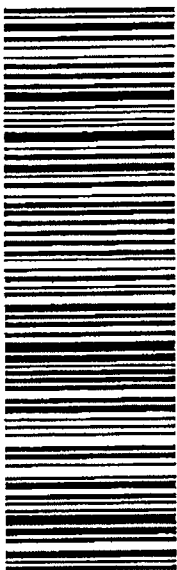
Mst# 7730 2166 5588

0201

MON - 01 MAR 8:30A
FIRST OVERNIGHT

X1 RDVA

DC-US
IAD
20543



After printing this label:

1. Use the 'Print' button on this page to print your label to your laser or inkjet printer.
2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

Warning: Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number.

Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com. FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$1,000, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see current FedEx Service Guide.

EXHIBIT C

Shawn M Robinson

From: Christi Murphy-Thomas
Sent: Friday, February 26, 2021 5:35 PM
To: Allyson duLac
Subject: RE: Your Electronic Filing record has been submitted.
Attachments: Dallas Appendix.pdf; Petition for Writ of Cert.pdf; SCOTUS Certificate of Service.pdf; SCOTUS Motion for IFP.pdf

I am preparing the physical copies for the mail.

From: Allyson duLac <Allyson_duLac@fd.org>
Sent: Friday, February 26, 2021 5:34 PM
To: Christi Murphy-Thomas <Christi_Murphy-Thomas@fd.org>
Subject: RE: Your Electronic Filing record has been submitted.

If you send me the final filed version of all the documents filed in an email, I will send it to him with a note.

Thank you!

From: Christi Murphy-Thomas <Christi_Murphy-Thomas@fd.org>
Sent: Friday, February 26, 2021 5:20 PM
To: Allyson duLac <Allyson_duLac@fd.org>
Subject: RE: Your Electronic Filing record has been submitted...

Are you going to email the documents to Henry Johnson? Or me?

From: Allyson duLac <Allyson_duLac@fd.org>
Sent: Friday, February 26, 2021 4:52 PM
To: Leslie Smith <Leslie_Smith@fd.org>; Amy Fly <Amy_Fly@fd.org>; Sara Romano <Sara_Romano@fd.org>; Christi Murphy-Thomas <Christi_Murphy-Thomas@fd.org>
Subject: FW: Your Electronic Filing record has been submitted.

Dallas cert petition is filed

From: efilingssupport@supremecourt.gov <efilingssupport@supremecourt.gov>
Sent: Friday, February 26, 2021 4:20 PM
To: Allyson duLac <Allyson_duLac@fd.org>
Subject: Your Electronic Filing record has been submitted.

Your Petition for a Writ of Certiorari has been submitted. It will be reviewed once the hard copy is received. If you are not expecting this email, please contact the Supreme Court Electronic Filing Support Group at eFilingSupport@supremecourt.gov.