

No. \_\_\_\_\_

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IN THE  
**Supreme Court of the United States**

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DWAIN COLLYMORE  
*Petitioner,*

vs.

UNITED STATES,  
*Respondent.*

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

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**TO ASSOCIATE JUSTICE SONIA SOTOMAYOR: MOTION  
FOR PERMISSION TO FILE PETITION FOR CERTIORARI  
ON OCTOBER 29, 2021**

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**AFFIDAVIT IN SUPPORT OF MOTION FOR PERMISSION TO FILE  
PETITION FOR CERTIORARI ON OCTOBER 29, 2021**

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Pursuant to Rules 13.5, 21 and 22 of the United States Supreme Court, undersigned counsel submits the following affidavit in support of Collymore's Motion for Permission to File Petition for Certiorari on October 29, 2021.

1. On May 20, 2021, a three-judge panel of the Second Circuit issued a summary order affirming the judgment of the district court. *See United States v. Collymore*, 856 Fed. App'x 345 (2d Cir. 2021). On June 6, 2021, Mr. Collymore filed a petition for rehearing and suggestion for rehearing *en banc*. The Second Circuit denied his petition on July 22, 2021. This Court has jurisdiction to review the Second Circuit's decision pursuant to 28 U.S.C. § 1254.

2. After denial of the petition for rehearing, the undersigned calculated the due date for filing a petition for *certiorari* and put the date in her electronic calendar.

3. The undersigned entered October 30, 2021, into her calendar as the filing deadline. The undersigned noted that the due date was a Saturday and understood that the ultimate deadline would be Monday, November 1, 2021.<sup>1</sup>

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<sup>1</sup> If the due date falls on a Saturday, Sunday, federal holiday, or day the Court is closed, it is due the next day the Court is open. Sup. Ct. R. 30.1.

4. The undersigned prepared the petition today, October 29, 2021. In preparing the petition, the undersigned realized that she entered the wrong filing date in her calendar. Ninety days from July 22, 2021, is October 20, 2021—not October 30, 2021, as the undersigned had previously believed. As such, the petition was due nine days ago.

5. The undersigned checked the Court’s orders related to COVID-19, and because Mr. Collymore’s petition for rehearing was decided three days after July 19, 2021, the additional time (150 days instead of 90 days) provided to file a petition for *certiorari* does not apply to this filing.

6. The undersigned informed Mr. Collymore that she would file a petition for *certiorari* on his behalf. Mr. Collymore is serving a sentence of 525 months.

7. In over twenty years of federal appellate practice, the undersigned has never missed a filing deadline before this Court.

8. A delay of nine days due to counsel’s inadvertent oversight will not impact judicial review of Mr. Collymore’s claims or overburden the Court. The issues raised by Mr. Collymore are the same as those raised in *United States v. Taylor*, 979 F.3d 203 (4th Cir. 2020), *cert. granted*, No. 20-1459.

9. There is no danger of prejudice to opposing counsel if the Court grants this relief.

10. The undersigned has acted in good faith and is very sorry for this administrative oversight.

11. Collymore's petition for certiorari is submitted today with this motion for the Court's review.

DATED at Burlington, Vermont this 29th of October, 2021.



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Michelle Anderson Barth

CJA Attorney for Dwaine Collymore