

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

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

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JAWAN FORTIA,  
*Petitioner,*  
v.

UNITED STATES OF AMERICA,  
*Respondent.*

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**MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS**

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Pursuant to Rule 39 and 18 U.S.C. § 3006A(d)(7), Petitioner Jawan Fortia asks leave to file the accompanying Application to Extend the Deadline to File a Petition for Certiorari without prepayment of costs and to proceed in forma pauperis. Petitioner was represented by counsel appointed under the Criminal Justice Act, 18 U.S.C. § 3006A (b) and (c), both in the United States District Court for the Eastern District of Louisiana and on appeal to the United States Court of Appeals for the Fifth Circuit. *See United States v. Wilson, et al.*, No. 2:14-cr-131, Dkt. 64 (E.D. La. Aug. 29, 2014) (attached hereto); *United States v. McLaren, et al.*, No. 17-30524 (5th Cir. Oct. 11, 2017) (attached hereto).

WHEREFORE, Petitioner respectfully moves this Honorable Court for leave to proceed *in forma pauperis* and to file the accompanying Application to Extend the Deadline to File a Petition for Certiorari without prepayment of costs.

Respectfully submitted this 26th day of November, 2021.

/s/ Celia C. Rhoads  
CELIA C. RHOADS  
Assistant Federal Public Defender  
*Counsel of Record*  
Office of the Federal Public Defender  
500 Poydras Street, Suite 318  
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New Orleans, Louisiana 70130  
(504) 589-7930  
celia\_rhoads@fd.org

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA

CR.NO. 14-131 N

VERSUS

**ORDER**

JAWAN FORTIA

Appointing Counsel

Substituting Counsel For:

Ratifying Prior Service

Extending Appointment For Appeal

CHARGE: VIOLATIONS OF THE FEDERAL CONTROLLED SUBSTANCES ACT AND  
THE FEDERAL GUN CONTROL ACT

FELONY     MISDEMEANOR

The defendant, having satisfied this Court that he/she: (1) is financially unable to employ counsel, and  
(2) does not wish to waive counsel, and because the interests of justice so require, the Federal Public  
Defender named below is hereby appointed to represent this defendant in the above designated case until  
relieved by order of the District Court:

**CLAUDE J. KELLY, FEDERAL PUBLIC DEFENDER, HALE BOGGS FEDERAL BLDG.,  
RM 318, 500 CAMP ST, NEW ORLEANS, LA 70130 PHONE: (504)589-7930**

Federal Public Defender is appointed for the limited purpose of:

It appearing to the Court that although the defendant is financially unable to employ counsel, he/she is  
totally indigent.

IT IS FURTHER ORDERED that the defendant pay to the Clerk, U. S. District Court for services of  
counsel, the total amount of \$ \_\_\_\_\_ to be paid within 10 working days  
or by \_\_\_\_\_.

IT IS FURTHER ORDERED that the defendant is to pay to the Clerk, U.S. District Court, for services  
of counsel, \$ \_\_\_\_\_ per month. This amount is to be paid, beginning on \_\_\_\_\_, 20\_\_\_\_,  
until further orders of the Court.

Dated at New Orleans, Louisiana, on AUGUST 29, 2014



UNITED STATES MAGISTRATE JUDGE

Copy to Financial Unit Clerk (*Only if defendant is ordered to pay*)

FINANCIAL AND PAYMENT INFORMATION					
IN SUPPORT OF A REQUEST FOR AN INDIGENT DEFENDANT OR OTHER COURT SERVICES (MOTION TO PAY ATTORNEY FEES)					
Rev. 5-93					
IN UNITED STATES <input type="checkbox"/> MAGISTRATE <input type="checkbox"/> DISTRICT <input type="checkbox"/> APPEALS COURT or <input type="checkbox"/> OTHER PANEL (Specify below)					
IN THE CASE					
V.S. _____		FOR _____		LOCATION NUMBER _____	
AT _____					
PERSON REPRESENTED (Show your full name)					
Jawan Fortia					
CHARGE/OFFENSE (describe if applicable & check box →) <input checked="" type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor					
DOCKET NUMBERS					
Magistrate					
District Court					
Court of Appeals					
EMPLOYMENT					
Are you now <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Am Self-Employed					
Name and address of employer: _____					
IF YES, how much do you earn per month? \$ _____					
IF NO, give month and year of last employment How much did you earn per month? \$ _____					
If married is your Spouse employed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					
IF YES, how much does your Spouse earn per month? \$ _____					
If a minor under age 21, what is your Parents or Guardian's approximate monthly income? \$ _____					
ASSETS					
OTHER INCOME					
Have you received within the past 12 months any income from a business, profession or other form of self-employment or in the form of the form of rent payments, interest, dividends, retirement or annuity payments, or other sources? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					
RECEIVED SOURCES					
IF YES, GIVE THE AMOUNT RECEIVED & IDENTIFY THE SOURCES \$ _____					
CASH					
Have you any cash on hand or money in savings or checking accounts? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No IF YES, state total amount \$ _____					
PROPERTY					
Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					
IF YES, GIVE THE VALUE AND \$ DESCRIBE IT					
VALUE DESCRIPTION					
OBLIGATIONS & DEBTS					
DEPENDENTS					
MARITAL STATUS <input checked="" type="checkbox"/> SINGLE <input type="checkbox"/> MARRIED <input type="checkbox"/> WIDOWED <input type="checkbox"/> SEPARATED OR <input type="checkbox"/> DIVORCED					
Total No. of Dependents <input checked="" type="checkbox"/>					
List persons you actually support and your relationship to them					
DEBTS & MONTHLY BILLS (LIST ALL CREDITORS, INCLUDING BANKS, LOAN COMPANIES, CHARGE ACCOUNTS, ETC.)					
APARTMENT OR HOME: Creditors Total Debt Monthly Paymt.					
\$ _____ \$ _____					
\$ _____ \$ _____					
\$ _____ \$ _____					
\$ _____ \$ _____					
I certify under penalty of perjury that the foregoing is true and correct. Executed on (date) <u>8/29/14</u>					
SIGNATURE OF DEFENDANT (OR PERSON REPRESENTED) 					

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

UNITED STATE OF AMERICA	*	CRIMINAL ACTION
	*	
VERSUS	*	CASE NO.: 14-131
	*	
JAWAN FORTIA	*	SECTION: "N"
	*	
	*	

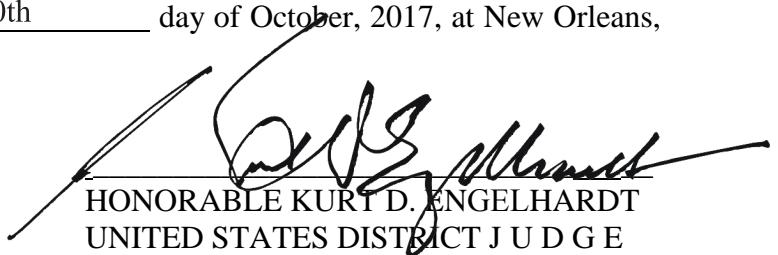
**ORDER**

Considering the foregoing (Rec. Doc. 767):

**IT IS ORDERED**, that PAUL C. FLEMING,, JR., be removed as counsel of record for defendant, JAWAN FORTIA, in these proceedings for all purposes other than the restitution hearing currently scheduled December 6, 2017.

**IT IS FURTHER ORDERED**, that the Federal Public Defender's Office appoint counsel to represent Jawan Fortia for appellate purposes.

**SO ORDERED**, this 10th day of October, 2017, at New Orleans, Louisiana.



HONORABLE KURT D. ENGELHARDT  
UNITED STATES DISTRICT JUDGE

Please serve:

Claude Kelly  
Barbara Daigle  
Federal Public Defender's Office  
500 Poydras St  
Suite 318  
New Orleans, LA 70130

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

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

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JAWAN FORTIA,  
*Petitioner,*  
v.

UNITED STATES OF AMERICA,  
*Respondent.*

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**PETITIONER'S APPLICATION FOR EXTENSION OF TIME TO FILE  
PETITION FOR WRIT OF CERTIORARI**

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To: The Honorable Samuel A. Alito, Jr., Associate Justice of the Supreme Court and Circuit Justice for the Fifth Circuit.

Pursuant to Title 28, United States Code, Section 2101(c) and Supreme Court Rule 13.5, Petitioner Jawan Fortia respectfully requests that the time to file a Petition for a Writ of Certiorari in this case be extended for 58 days, to and including Friday, February 4, 2022.

**Basis for Jurisdiction**

The district court had original jurisdiction over this criminal action pursuant to 18 U.S.C. § 3231. Following an eight-day jury trial, Mr. Fortia was found guilty of four counts related to a racketeering conspiracy, namely, of violating 21 U.S.C. § 846 and 18 U.S.C. §§ 1962(d), 924(o), and 1959(a)(1). The Fifth Circuit had jurisdiction over the direct appeal under 18 U.S.C. § 3742(a) and 28 U.S.C. § 1291. The Fifth Circuit issued an initial, published decision on May 18, 2021. However, petitioner filed timely petitions for rehearing en banc and for panel rehearing. The panel

withdrew it prior opinion and substituted it with a new, published opinion on September 9, 2021. The Fifth Circuit affirmed three of Mr. Fortia's convictions and vacated one. This Court has the power to grant or deny this motion pursuant to 28 U.S.C. § 2101(c), and it will have jurisdiction to review the Fifth Circuit's judgment under 28 U.S.C. § 1254(1).

### **Judgment to be Reviewed and Opinion Below**

The Fifth Circuit panel's final opinion is published at *United States v. McLaren et al.*, 13 F.4th 386 (5th Cir. 2021), reprinted on pages 1a–45a of the appendix.

### **Reasons for Granting an Extension**

Petitioner requests an extension because the case involves multiple complex legal issues and because Petitioner's counsel has been fully occupied with other assigned matters. The five-defendant appeal below followed an eight-day racketeering trial with over 60 witnesses. The appellate briefing thus raised numerous issues and involved a record of over 13,000 pages. The appeal resulted in a detailed, 40-page Court of Appeals opinion that reached many issues of high complexity and great importance. These issues have far-reaching implications beyond this case, and the lengthy opinion has required extensive review.

Most notably, the Fifth Circuit decision examines the complex Racketeer Influenced and Corrupt Organizations Act (RICO), and the opinion implicates critically important and complicated legal issues involving the limits of the federal government's interstate-commerce regulatory authority. RICO and the

related Violent Crimes in Aid of Racketeering Act (VICAR) contain constitutionally-mandated jurisdictional elements requiring prosecutors to prove in each case that the charged enterprise's activities affected interstate commerce. This case involved issues of first impression as to what type of evidence satisfies that jurisdictional element. Notably, the precise interstate-commerce element embedded in RICO and VICAR is mirrored in dozens of statutes throughout federal law, covering a broad swath of activity ranging from tampering with consumer products, 18 U.S.C. § 1365, to the most widely applied federal firearm regulation, § 922(g). In other words, the Fifth Circuit's interpretation of RICO and VICAR's interstate-commerce element in this case has broad and complicated implications throughout the law that have required extensive work to untangle.

The opinion below also implicates application of *Taylor v. United States*, 136 S. Ct. 2074 (2016), and *Gonzales v. Raich*, 545 U.S. 1 (2005), critically important commerce clause decisions. Those cases involve the complex issue of so-called “aggregation” of the interstate commerce effects of particular classes of activity as a means of broadening federal authority to reach traditionally local affairs. The Fifth Circuit's application of *Taylor* in this case, in particular, appears to represent newly charted territory and an apparent expansion of *Taylor*'s reach to new areas of the law. Thus, determining the potential effects of the Fifth Circuit's decision has required intensive and time-consuming surveys of multi-circuit and multi-statute caselaw.

Given the complexity of these issues, Petitioner's counsel needs additional time to complete the petition for certiorari. Counsel has been unable to complete the petition in the allotted time due to the press of work in other cases, including but not limited to preparing for contested revocation hearings on December 2, 2021, in *United States v. Williams*, No. 14-cr-034 (E.D. La.); authoring a sentencing memorandum and preparing for the December 15, 2021, sentencing hearing in *United States v. Tranchina*, No. 20-cr-122 (E.D. La.); preparing for a December 15, 2021, competency hearing in *United States v. Berry*, No. 20-cr-068 (E.D. La.); authoring a reply brief due on December 15, 2021, for the appeal of a two-week, multi-defendant racketeering trial in *United States v. Hankton*, No. 16-30995 (5th Cir.); preparing for the December 16, 2021, sentencing hearing in *United States v. Mosley*, No. 20-cr-076 (E.D. La.); authoring a sentencing memorandum and preparing for the December 16, 2021, sentencing hearing in *United States v. Berry*, No. 19-cr-155 (E.D. La.); authoring a sentencing memorandum and preparing for the December 16, 2021, sentencing hearing in *United States v. Perrilloux*, No. 20-cr-094 (E.D. La.); authoring a sentencing memorandum and preparing for the December 22, 2021, sentencing hearing in *United States v. Parker*, No. 20-cr-119 (E.D. La.).

## CONCLUSION

For all these reasons, Petitioner and undersigned counsel respectfully request that the Court grant an extension fifty-eight days, to and including February 4, 2022, for the deadline to file a petition for certiorari.

Respectfully submitted this 26th day of November, 2021.

*/s/ Celia C. Rhoads*  
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Assistant Federal Public Defender  
*Counsel of Record*  
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