

No. _____

IN THE
Supreme Court of the United States

JAWAN FORTIA,
Petitioner,
v.

UNITED STATES OF AMERICA,
Respondent.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

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. McClaren, 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
Hale Boggs Federal Building
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

ORDER

VERSUS

☒ Appointing Counsel

☐ Substituting Counsel For:

JAWAN FORTIA

☐ 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 AFFIDAVIT			
IN SUPPORT OF REQUEST FOR ATTORNEY, EXPERT OR OTHER COURT SERVICES WITHOUT PAYMENT OF FEE			
<div style="display: flex; justify-content: space-between;"> <div> <p>IN THE CASE OF _____ V.S. _____</p> <p>FOR _____</p> <p>AT _____</p> </div> <div style="border: 1px solid black; padding: 5px; width: 150px;"> <p>LOCATION NUMBER</p> <p> </p> </div> </div>			
<p>PERSON REPRESENTED (Show your full name)</p> <p>Jawan Fortia</p>		<p>1 <input type="checkbox"/> Defendant—Adult</p> <p>2 <input type="checkbox"/> Defendant - Juvenile</p> <p>3 <input type="checkbox"/> Appellant</p> <p>4 <input type="checkbox"/> Probation Violator</p> <p>5 <input type="checkbox"/> Parole Violator</p> <p>6 <input type="checkbox"/> Habeas Petitioner</p> <p>7 <input type="checkbox"/> 2255 Petitioner</p> <p>8 <input type="checkbox"/> Material Witness</p> <p>9 <input type="checkbox"/> Other _____</p>	<p>DOCKET NUMBERS</p> <p>Magistrate _____</p> <p>District Court _____</p> <p>Court of Appeals _____</p>
<p>CHARGE/OFFENSE (describe if applicable & check box →) <input checked="" type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor</p>			

NEW JURISDICTION OF MAGISTRATE COURT									
ASSETS	EMPLOYMENT	<p>Are you now <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Am Self-Employed</p> <p>Name and address of employer: _____</p> <p>IF YES, how much do you earn per month? \$ _____ IF NO, give month and year of last employment _____</p> <p>How much did you earn per month? \$ _____</p> <p>If married is your Spouse employed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>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? \$ _____</p>							
	OTHER INCOME	<p>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</p> <p style="text-align: center;">RECEIVED SOURCES</p> <p>IF YES, GIVE THE AMOUNT RECEIVED & IDENTIFY THE SOURCES</p> <p>\$ _____</p>							
	CASH	<p>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 \$ _____</p>							
	PROPERTY	<p>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</p> <p>IF YES, GIVE THE VALUE AND \$ DESCRIBE IT</p> <table style="width: 100%;"> <thead> <tr> <th style="width: 50%;">VALUE</th> <th style="width: 50%;">DESCRIPTION</th> </tr> </thead> <tbody> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> </tbody> </table>	VALUE	DESCRIPTION					
VALUE	DESCRIPTION								

OBLIGATIONS & DEBTS																	
DEPENDENTS	<p>MARITAL STATUS</p> <p><input checked="" type="checkbox"/> SINGLE</p> <p><input type="checkbox"/> MARRIED</p> <p><input type="checkbox"/> WIDOWED</p> <p><input type="checkbox"/> SEPARATED OR DIVORCED</p>	<p>Total No. of Dependents</p> <p style="text-align: center;"><u>0</u></p>	<p>List persons you actually support and your relationship to them</p> <p>_____</p> <p>_____</p> <p>_____</p>														
	<p>DEBTS & MONTHLY BILLS (LIST ALL CREDITORS, INCLUDING BANKS, LOAN COMPANIES, CHARGE ACCOUNTS, ETC.)</p> <table style="width: 100%;"> <thead> <tr> <th style="width: 40%;">Creditors</th> <th style="width: 20%;">Total Debt</th> <th style="width: 20%;">Monthly Paymt.</th> </tr> </thead> <tbody> <tr> <td>APARTMENT OR HOME:</td> <td>\$ _____</td> <td>\$ _____</td> </tr> <tr> <td>_____</td> <td>\$ _____</td> <td>\$ _____</td> </tr> <tr> <td>_____</td> <td>\$ _____</td> <td>\$ _____</td> </tr> <tr> <td>_____</td> <td>\$ _____</td> <td>\$ <u>0</u></td> </tr> </tbody> </table>			Creditors	Total Debt	Monthly Paymt.	APARTMENT OR HOME:	\$ _____	\$ _____	_____	\$ _____	\$ _____	_____	\$ _____	\$ _____	_____	\$ _____
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APARTMENT OR HOME:	\$ _____	\$ _____															
_____	\$ _____	\$ _____															
_____	\$ _____	\$ _____															
_____	\$ _____	\$ <u>0</u>															

I certify under penalty of perjury that the foregoing is true and correct. Executed on (date)

8/29/14

SIGNATURE OF DEFENDANT
(OR PERSON REPRESENTED)**Jawan Fortia**

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 J U D G E

Please serve:

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

No. _____

IN THE
Supreme Court of the United States

JAWAN FORTIA,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

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 its 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. McClaren 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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