

NO. \_\_\_\_\_

**SUPREME COURT OF THE UNITED STATES**

**GARY DUANE HARRIS,**

**PETITIONER,**

**VS.**

**UNITED STATES OF AMERICA,**

**RESPONDENT.**

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**ON PETITION FOR WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT**

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**MOTION TO DIRECT THE CLERK TO FILE PETITION  
FOR WRIT OF CERTIORARI OUT-OF-TIME**

Comes the petitioner, Gary Duane Harris, by counsel, and respectfully moves the Court to direct the Clerk to file the accompanying Petition for a Writ of Certiorari out-of-time. In support of this motion, the petitioner states:

Certiorari is sought from an opinion and judgment issued by the United States Court of Appeals for the Sixth Circuit on December 1, 2021. *See Harris v. United States*, 19 F.4th 863 (6th Cir. 2021). Two questions are presented:

I. Whether petitioner's sentence under 18 U.S.C. §924(c) must be vacated because the record is silent on whether he was sentenced under the statute's unconstitutionally vague residual clause (18 U.S.C. §924(c)(3)(B)) or its elements clause (18 U.S.C. §924(c)(3)(A)).

II. Whether aiding and abetting attempted robbery under 18 U.S.C. §2111 is a crime of violence under the elements clause of 18 U.S.C. §924(c)(3)(A).

Since the Court's Miscellaneous Order of March 19, 2020, extended the time for filing a Petition for a Writ of Certiorari from 90 days to 150 days from the entry of a judgment of a United States Court of Appeals, undersigned counsel filed timely petitions in *Jermaine Tyrone Jones v. United States*, No. 20-5392 and *Matthew J. O'Neal v. United States*, No. 20-8039. In preparing the petition in the instant case, counsel continued to rely on the Court's Miscellaneous Order of March 19, 2020, to determine the due date for the petition.

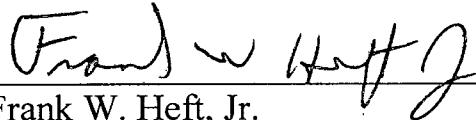
On April 8, 2022, the undersigned counsel mailed a Petition for a Writ of Certiorari, an Appendix to the Petition for a Writ of Certiorari, a Motion for Leave to Proceed in *Forma Pauperis*, and Proof of Service to the Clerk of this Court. Those documents were accompanied by a letter in which counsel noted that the Petition for a Writ of Certiorari was untimely. In his April 8, letter, counsel explained that as he worked that week on the petition in the instant case, he first learned that the Court's Miscellaneous Order of March 19, 2020, was rescinded on July 21, 2021, and that Rule 13 was again in full effect. Accordingly, the tendered documents were out-of-time.

The Clerk's office received the documents in the instant case on April 12, 2022. On April 14, 2022, the Clerk notified counsel by letter that his office could

not accept an out-of-time certiorari petition. Counsel was informed that he could resubmit the petition with a motion to direct the Clerk to file the petition out-of-time.

The untimeliness of the tendered documents is a result of counsel's mistake. In order that the petitioner, Mr. Harris, not be penalized for counsel's error, counsel respectfully requests that the Court direct the Clerk to file the petition for a writ of certiorari and accompanying documents.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Frank W. Heft, Jr.", written over a horizontal line.

Frank W. Heft, Jr.

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