

No:

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2022

DENIS GRUSHKO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**MOTION FOR EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION FOR WRIT OF
CERTIORARI**

**TO THE HONORABLE CLARENCE THOMAS, ASSOCIATE
JUSTICE OF THE SUPREME COURT OF THE UNITED
STATES AND CIRCUIT JUSTICE FOR THE ELEVENTH
CIRCUIT:**

Pursuant to Supreme Court Rules 13.5, 22, and 30.3, Denis Grushko respectfully requests a 60-day extension of time within which to file a petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit, or alternatively a 30-day extension. In support of this motion, Mr. Grushko states:

Mr. Grushko was convicted of access device fraud and aggravated identity theft, and he appealed his convictions and

sentence. The Eleventh Circuit court affirmed Mr. Grushko's judgment on September 23, 2022. Mr. Grushko filed a Petition for rehearing and rehearing *en banc* which was denied on January 20, 2023.

Subsequently, the Eleventh Circuit issued a significant new decision *United States v. Dupree*, 57 F.4th 1269 (2023) (*en banc*) which addressed the proper level of deference due to sentencing guideline commentary under the Sentencing Reform Act of 1984, based on *Kisor v. Wilkie*, 139 S.Ct. 2400, 2415 (2019). The *Dupree* case implicates the loss enhancement that was imposed in Mr. Grushko's case. Thus, on February 6, 2023, Mr. Grushko filed a motion with the Eleventh Circuit to recall the mandate and allow him to file supplemental briefing based on *Dupree*. If the Eleventh Circuit recalls the mandate and permits Mr. Grushko to file a supplemental brief based on *Dupree*, the current deadlines for a Petition for Writ of Certiorari would be replaced with new deadlines related to supplemental rehearing proceedings. In light of the pending motion to recall the mandate based on *Dupree*, Mr. Grushko seeks a 60-day extension of time within which to file a Petition for Writ of Certiorari.

Alternatively, if the Court is not inclined to continue the case while Mr. Grushko's motion to recall the mandate is pending, Mr. Grushko requests a 30-day continuance due to other matters she is currently working on, including *United States v. Joselin*, Case No. 22-13739 (11th Circuit); *United States v. Willis*, 22-13793 (11th Circuit); and *Gonzalez v. United States*, Case No. (22-22940 (S.D. Fla.)).

Unless extended, the time within which to file a petition for writ of certiorari will expire on April 20, 2023. This request for an extension is being filed more than ten days before the filing date of the Petition for Writ of Certiorari.

The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1). A copy of the Eleventh Circuit's opinion affirming Mr. Grushko's judgment is attached as Exhibit A. The Eleventh Circuit's denial of rehearing is attached as Exhibit B. Mr. Grushko's motion to recall the mandate is attached as Exhibit C.

No party will be prejudiced by the granting of this request.

Accordingly, petitioner respectfully requests that this Court extend the time to file a petition for writ of certiorari by 60 days, or in the alternative by 30 days.

Respectfully submitted,

MICHAEL CARUSO
FEDERAL PUBLIC DEFENDER

Fort Lauderdale, Florida
March 24, 2023

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