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23-5030

Application No. 22 A 892

IN THE

SUPREME COURT OF THE UNITED STATES

NYGEL DEJON FREEMAN — PETITIONER  
(Your Name)

VS.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF Appeals for the FIFTH CIRCUIT  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

NYGEL DEJON FREEMAN #29224-509  
(Your Name)

F.C.I P.O. BOX 800  
(Address)

Hertong, CA 96113  
(City, State, Zip Code)

N/A  
(Phone Number)

**ORIGINAL**

### QUESTION(S) PRESENTED

I. Whether the District Court and Court of Appeals erred in denying Mr Freeman's Rule 29 motion because the Governments evidence was insufficient to prove Mr Freeman's guilt beyond a reasonable doubt.

## LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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### OTHER

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

- [ ] reported at N/A; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

N/A The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

- [ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

- [ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

- [ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

## JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was January 6, 2023.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including April 12, 2023 (date) on June 5, 2023 (date) in Application No. 22 A 892.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

[ ] A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

**CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

*THE Fourtheeth Amendment to the UNITED STATES Constitution is reproduced in Appendix "B".*



## STATEMENT OF THE CASE

Mr NYGEL FREEMAN appeals his conviction of Convicted felon in Possession of a firearm because the evidence was insufficient to prove his actual or constructive possession of a firearm.

During a two day trial the Government called six witnesses, none of which presented physical factual evidence to include video, photographs, fingerprints or DNA linking the gun to Mr Freeman. As well as no ballistic testing or operations testing of the gun, proving that the gun in question may not even be able to fire a projectile. The officers at the scene had difficulty opening the slide meaning the gun may not have even been operational.

The Government instead based its case on three matters (1) the weapons proximity to Mr Freeman's arrest location. (2) his flight from police. (3) though it had mud on it, it was not dusty despite having experienced a dust storm "Habooob" that was followed by a three hour long rainstorm the day prior to Mr Freeman's arrest.

## REASONS FOR GRANTING THE PETITION

I. Petitioner was denied the fundamental fairness of trial and the due process rights guaranteed by the Fourteenth Amendment of the United States Constitution when the trial court abused its discretion and denied his motion for Rule 29 acquittal for insufficient evidence. "In determining if there is sufficient evidence to support a conviction, the relevant question is whether, after viewing the evidence in light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt" *United States v. Xu*, 599 F.3d 452, 453 (5<sup>th</sup> Cir. 2010). In petitioner's trial no hard factual evidence was presented to show or prove that petitioner was ever in possession of a firearm, there is no fingerprints, no DNA, no video nor photos of the scene. There is literally nothing connecting the said firearm to petitioner. Petitioner was tried and convicted off of the statements of witnesses you will see that the witnesses saying "no one goes into that field" that's not a fact, that's a person's opinion. The officers testified that the gun was in the grass, had someone just thrown a gun it would be on top of the grass not mixed in it.

~~The~~ Before us today is an opportunity for this Honorable Court to set a new standard in the way of how evidence is admitted and used at a trial. Here petitioner after a traffic stop, attempt fled from police, after a short foot chase petitioner gave up. *IN Illinois v. Wardlow* 528 U.S. 119 (2000) the supreme court observed that it is "undoubtedly true" that "Flight is not necessarily indicative of ongoing criminal activity" *Id.* At 125. Yet after a two day trial the jury convicted petitioner of possession of a firearm under 18 U.S.C. 922(g)(1) and 924(a)(2) statutes. Petitioner's trial was a prime example of the "tail wags the dog". As of the seven witnesses called to testify, not a single one placed seeing a firearm on or -

- within petitioners possession. The fact that a firearm was found in a nearby field does not establish actual or constructive possession as ("proof of mere proximity to contraband is not sufficient to establish actual or constructive possession or the element of knowledge.") United States v. Riggins 563 F.2d 1264, 1266 (5<sup>th</sup> Cir. 1977). Together the facts of this case are not enough for a reasonable factfinder to convict beyond a reasonable doubt. For the above mentioned facts and in the interest of justice this Honorable Court should grant this motion in the interest of justice.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Nigel DeJon Freeman

Date: June 2, 2023

NYGEL DEJON FREEMAN #29224-509

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