

No. **23-5751**

Supreme Court, U.S.
FILED

AUG 11 2023

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

Akeem Gumbs — PETITIONER
(Your Name)

VS.

U.S.A. — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Please check the appropriate boxes:

☒ Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

3rd Circuit Appeal Court

☐ Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

☒ Petitioner's affidavit or declaration in support of this motion is attached hereto.

☐ Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

☐ The appointment was made under the following provision of law: _____

_____, or

☐ a copy of the order of appointment is appended.

ORIGINAL

Akeem Gumbs

(Signature)

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SEP 13 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

**AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

I, Akeem Gumbs, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ 0	\$ 0	\$ 0	\$ 0
Self-employment	\$ 0	\$ 0	\$ 0	\$ 0
Income from real property (such as rental income)	\$ 0	\$ 0	\$ 0	\$ 0
Interest and dividends	\$ 0	\$ 0	\$ 0	\$ 0
Gifts	\$ 12	\$ 0	\$ 0	\$ 0
Alimony	\$ 0	\$ 0	\$ 0	\$ 0
Child Support	\$ 0	\$ 0	\$ 0	\$ 0
Retirement (such as social security, pensions, annuities, insurance)	\$ 0	\$ 0	\$ 0	\$ 0
Disability (such as social security, insurance payments)	\$ 0	\$ 0	\$ 0	\$ 0
Unemployment payments	\$ 0	\$ 0	\$ 0	\$ 0
Public-assistance (such as welfare)	\$ 0	\$ 0	\$ 0	\$ 0
Other (specify):	\$ 0	\$ 0	\$ 0	\$ 0
Total monthly income:	\$ 12	\$ 0	\$ 0	\$ 0

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
<u>0</u>	<u>0</u>	<u>0</u>	\$ <u>0</u>
			\$
			\$

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
<u>0</u>	<u>0</u>	<u>0</u>	\$ <u>0</u>
			\$
			\$

4. How much cash do you and your spouse have? \$ 100
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings)	Amount you have	Amount your spouse has
<u>0</u>	\$ <u>0</u>	\$ <u>0</u>
	\$	\$
	\$	\$

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

☐ Home
Value 0

☐ Other real estate
Value 0

☐ Motor Vehicle #1
Year, make & model 0
Value 0

☐ Motor Vehicle #2
Year, make & model 0
Value 0

☐ Other assets
Description 0
Value 0

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money

Amount owed to you

Amount owed to your spouse

0

\$ 0

\$ 0

\$ _____

\$ _____

\$ _____

\$ _____

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

Name

Relationship

Age

0

0

0

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

You

Your spouse

Rent or home-mortgage payment
(include lot rented for mobile home)

\$ 0

\$ 0

Are real estate taxes included? ☐ Yes ☐ No

Is property insurance included? ☐ Yes ☐ No

Utilities (electricity, heating fuel,
water, sewer, and telephone)

\$ 0

\$ 0

Home maintenance (repairs and upkeep)

\$ 0

\$ 0

Food

\$ 50

\$ 0

Clothing

\$ 0

\$ 0

Laundry and dry-cleaning

\$ 0

\$ 0

Medical and dental expenses

\$ 0

\$ 0

	You	Your spouse
Transportation (not including motor vehicle payments)	\$ 0	\$ 0
Recreation, entertainment, newspapers, magazines, etc.	\$ 0	\$ 0
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$ 0	\$ 0
Life	\$ 0	\$ 0
Health	\$ 0	\$ 0
Motor Vehicle	\$ 0	\$ 0
Other: _____	\$ 0	\$ 0
Taxes (not deducted from wages or included in mortgage payments)		
(specify): _____	\$ 0	\$ 0
Installment payments		
Motor Vehicle	\$ 0	\$ 0
Credit card(s)	\$ 0	\$ 0
Department store(s)	\$ 0	\$ 0
Other: _____	\$ 0	\$ 0
Alimony, maintenance, and support paid to others	\$ 0	\$ 0
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ 0	\$ 0
Other (specify): _____	\$ 0	\$ 0
Total monthly expenses:	\$ 50	\$ _____

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes

☒ No

If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? ☐ Yes ☒ No

If yes, how much? _____

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes

☒ No

If yes, how much? _____

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: September 1, 2023

Akeem Yeembo

(Signature)

Document Cover Sheet

Gumbs, Akeem R. v. United States

Petition

SCUS|284288|43



Supreme Court, U.S.
FILED

AUG 11 2023

OFFICE OF THE CLERK

No. 23-5751

IN THE
SUPREME COURT OF THE UNITED STATES

Akeem Gumbs — PETITIONER
(Your Name)

vs.

USA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Third Circuit Appeals Court
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Akeem Gumbs 08372094
(Your Name)

Joint Base MDL; P.O. Box 2000; NJ 08640
(Address)

Housing Unit 5741
(City, State, Zip Code)

(Phone Number)

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AUG 18 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

TRULINCS 08372094 - GUMBS, AKEEM - Unit: FTD-D-C

FROM: 08372094

TO:

SUBJECT: QP

DATE: 08/04/2023 10:45:25 AM

Questions Presented

Whether the fact that the docket sheet of case 3:11-MJ-00031 contains all blank Disposition sections and states "none" in it's Terminated Counts section proves that case 3:11-MJ-00031 which is the only case based on evidence from a DVD against petitioner and all motions filed in that case are pretrial?

Whether 18 U.S.C. 3162(a)(1) is violated because no indictment or information based on a DVD and evidence from that DVD of case 3:11-MJ-00031 and, criminal conduct and charge of the complaint of case 3:11-MJ-00031 had been filed from the time of petitioner's arrest on March 19, 2011?

Whether federal criminal rule 45(b)(1)(B) can be used used to extend time to file motions under federal criminal rules 29 (c) and 33 due to counsel's ineffective assistance by failing to timely file those motions?

Whether federal criminal rule 12(c)(3) can be used to consider a motion under federal criminal rule 12(b)(3) due to counsel's ineffective assistance by failing to timely file that motion?

FROM: 08372094
TO:
SUBJECT: SCTOC
DATE: 08/03/2023 08:59:46 AM

Table of Contents

	Page No.
Questions Presented for Review	2
Table of Authorities Cited	4
Opinions Below	5
Jurisdictional Statement	6
Constitutional and Statutory Provisions	7-11
Statement of the Case	12
Reasons for granting the petition	13-17
Conclusion	18
Appendix	19-48

FROM: 08372094
TO:
SUBJECT: STOAC
DATE: 08/03/2023 10:10:41 AM

Table of Authorities Cited

	Page No.
Federal criminal 12(b)(3)	16
Federal Criminal Rule 12(c)(3)	17
Federal Criminal Rule 29(c)	16
Federal Criminal Rule 33	16
Federal Criminal rule 45(b)(1)(B)	16
18 U.S.C. 3162(a)(1)	15
Gumbs v. Ortiz, 2020 U.S. Dist. Lexis 151560 (D.N.J. Aug, 2020)	14
Rothgery v. Gillespie County, 554 U.S. 191, 128 S. CT 2578, 171 L. ed 2D 366 (2008)	14
United States v. Doost, 435 U.S. App D.C. 132, 137, 2021 U.S. App. Lexis 19952 D.C. Cir., July 6, 2021)	17
United States v. Perez-Alcatan, 376 F. Supp. 2d 1253, 1256 (July 6, 2005) (D.N.M. 2005)	15

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 _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

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 6/1/23.

☐ 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 B.

☐ 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. § 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

Amendment 6 Rights of the accused.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

USCONST

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08372094

18 U.S.C. § 3162. Sanctions

(a) (1) If, in the case of any individual against whom a complaint is filed charging such individual with an offense, no indictment or information is filed within the time limit required by section 3161(b) [18 USCS § 3161(b)] as extended by section 3161(h) of this chapter [18 USCS § 3161(h)], such charge against that individual contained in such complaint shall be dismissed or otherwise dropped. In determining whether to dismiss the case with or without prejudice, the court shall consider, among others, each of the following factors: the seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of a reprosecution on the administration of this chapter [18 USCS §§ 3161 et seq.] and on the administration of justice.

USCS

•9

Rule 29. Motion for a Judgment of Acquittal

(a) Before Submission to the Jury. After the government closes its evidence or after the close of all the evidence, the court on the defendant's motion must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction. The court may on its own consider whether the evidence is insufficient to sustain a conviction. If the court denies a motion for a judgment of acquittal at the close of the government's evidence, the defendant may offer evidence without having reserved the right to do so.

(b) Reserving Decision. The court may reserve decision on the motion, proceed with the trial (where the motion is made before the close of all the evidence), submit the case to the jury, and decide the motion either before the jury returns a verdict or after it returns a verdict of guilty or is discharged without having returned a verdict. If the court reserves decision, it must decide the motion on the basis of the evidence at the time the ruling was reserved.

(c) After Jury Verdict or Discharge.

(1) Time for a Motion. A defendant may move for a judgment of acquittal, or renew such a motion, within 14 days after a guilty verdict or after the court discharges the jury, whichever is later.

Rule 33. New Trial

(a) Defendant's Motion. Upon the defendant's motion, the court may vacate any judgment and grant a new trial if the interest of justice so requires. If the case was tried without a jury, the court may take additional testimony and enter a new judgment.

(b) Time to File.

(1) Newly Discovered Evidence. Any motion for a new trial grounded on newly discovered evidence must be filed within 3 years after the verdict or finding of guilty. If an appeal is pending, the court may not grant a motion for a new trial until the appellate court remands the case.

(2) Other Grounds. Any motion for a new trial grounded on any reason other than newly discovered evidence must be filed within 14 days after the verdict or finding of guilty.

TRULINCS 08372094 - GUMBS, AKEEM - Unit: FTD-D-C

FROM: 08372094

TO:

SUBJECT: SCSOC

DATE: 07/25/2023 01:26:55 PM

Statement of the Case

On 12/14/22 the district court denied petitioner's motions.

On 6/1/23 the third circuit court of appeals denied petitioner's appeal.

REASONS FOR GRANTING THE PETITION

FROM: 08372094
TO:
SUBJECT: ARDC
DATE: 06/05/2023 06:46:39 AM

Arguments Refuting Denial of Motions to Dismiss Complaint of Case 3:11-MJ-00031 and
Motions Regarding Complaint of Case 3:11-MJ-00031

Ground |

The docket sheet of case 3:11-CR-00021 states "none" in its Complaints section on its second page which means that the charges of the indictment of case 3:11-CR-00021 which are based on a blue flash drive and evidence from that blue flash drive does not include the charge which is based on a DVD and evidence from that DVD of the complaint of the criminal prosecution of the initial appearance of March 21, 2011 of case 3:11-MJ-00031 which means that the indictment of case 3:11-CR-00021 cannot moot claims to dismiss the complaint of case 3:11-MJ-00031 and cannot remedy defects of the complaint of case 3:11-MJ-00031.

The Docket Sheet of case 3:11-MJ-00031 contains a blank Disposition Section and a blank Terminated Counts section.

The indictment of case 3:11-CR-00021 which is based on a blue flash drive and evidence from that blue flash drive and the complaint of case 3:11-MJ-00031 which is based on a DVD and evidence from that DVD are separated from each other by that separate evidence which means that claims to dismiss the complaint of case 3:11-MJ-00031 which is based on a DVD and evidence from that DVD cannot be mooted by the indictment of case 3:11-CR-00021 which is based on a blue flash drive and evidence from that blue flash drive and also means that the complaint of case 3:11-MJ-00031 which is based on a DVD and evidence from that DVD cannot have defects remedied by the indictment of case 3:11-CR-00021 which is based on blue flash drive and evidence from that blue flash drive. Entry 1-1 of case 3:11-MJ-00031 is the affidavit supporting the complaint of case 3:11-MJ-00031 which proves that case 3:11-MJ-00031 is based on a DVD and evidence from that DVD. Entry 8 of case 3:11-CR-00021 is the government's second supplemental discovery which proves that the indictment of case 3:11-CR-00021 is based on a blue flash drive and evidence from that blue flash drive.

In *Gumbs v. Ortiz*, 2020 U.S. Dist. Lexis 151560 (D.N.J. Aug, 2020) the district court of New Jersey dismissed petitioner's motion 2241 by stating that case 3:11-MJ-00031 is inactive and that pretrial habeas jurisdiction does not extend to other federal courts which proves all of the foregoing.

In *Rothgery v. Gillespie County*, 554 U.S. 191, 128 S.Ct. 2578, 171 L. ED. 2d 366 (2008) the supreme court held that criminal prosecution commences at initial appearances which means that criminal prosecution commenced at the initial appearance of March 21, 2011 for the complaint of case 3:11-MJ-00031 which is the only charging document based on a DVD and evidence from that DVD.

FROM: 08372094
TO: Sample, Brandon
SUBJECT: ST
DATE: 01/20/2023 08:12:27 AM

Arguments Refuting Denial of Claims Under 18 U.S.C. 3162(a)(1) of Ground One of Amended Pretrial Motion to Dismiss Complaint of Case 3:11-MJ-00031 at ECF 428

Ground 2

A criminal complaint can be dismissed under 18 U.S.C. 3162(a)(1) if no indictment based on the same evidence, the same criminal conduct and the same charge as that complaint is filed within the 30 day time limit of that statute or if an indictment based on the same evidence, the same criminal conduct and the same charge as that criminal complaint is filed after the 30 day time limit of that statute. The fact that an indictment was subsequent filed does not moot defendant's speedy trial act claim according to *United States v. Perez-Alcatan*, 376 F. Supp. 2d 1253, 1256 (July 6, 2005) (D.N.M. 2005) which dismissed a complaint under 18 U.S.C 3162(a)(1) because the indictment containing the charge of that complaint was filed after the 30 day time limit of that statute. Therefore, the filing of the 6/2/11 indictment of case 3:11-CR-00021 which is based on a blue flash drive and evidence from that blue flash drive 74 days after petitioner's arrest on 3/19/11 pursuant to the complaint of case 3:11-MJ-00031 which is based on a DVD and evidence from that DVD cannot moot or bar the claims under 18 U.S.C. 3162(a)(1) to dismiss the complaint of case 3:11-MJ-00031 of ground one of petitioner's motion captioned as Amended Pretrial Motion to Dismiss Complaint of case 3:11-MJ-00031 at ECF 428

The 30 day time limit of 18 U.S.C. 3162(a)(1) has been violated which must result in the dismissal of the complaint of the criminal prosecution of the initial appearance of March 21, 2011 for the charge which is based on a DVD and evidence from that DVD of case 3:11-MJ-00031. That violation has prejudiced petitioner by preventing a possible sentence for that charge which is based on that DVD and evidence from that DVD from being served concurrently with his current sentence which is based on other evidence from another storage device, causing memory loss in petitioner which impairs his defense by preventing him from remembering his location during that crime which is based on that DVD and evidence from that DVD, delaying petitioner's educational and employment opportunities outside of prison, causing anxiety in petitioner and subjecting petitioner to public scorn.

FROM: 08372094
TO:
SUBJECT: EXT
DATE: 06/05/2023 06:47:14 AM

Arguments Refuting Denial of Extension of Time Under Federal Criminal Rule 45(b)(1)(B) to File Motions Under Federal Criminal Rule 29(c) for Judgment of Acquittal, Federal Criminal Rule 33 for New Trial and Federal Criminal rule 12(b)(3) to Dismiss Indictment of case 3:11-CR-00021

Ground 3

A request for extension of time under federal criminal rule 45(b)(1)(B) was made in page two of the memorandum of law for petitioner's amended motion for judgment of acquittal under federal criminal rule 29(c) and in page two of the memorandum of law for petitioner's motion for new trial under federal criminal rule 33. A separate motion under federal criminal rule 45(b)(1)(B) at ECF 416 to extend time to file petitioner's motion under federal criminal rule 12(b)(3) was filed.

Petitioner's reason for filing those motions under federal criminal rules 29(c), 33 and 12(b)(3) after the time to file those motions is that petitioner's counsel failed to timely file those motions. If petitioner's counsel had timely filed those motions, petitioner would not have had to file those motions after the time to file those motions. That violation of petitioner's right to have counsel timely file those motions is not validated or remedied by denying petitioner's request under federal criminal rule 45(b)(1)(B) for extension of time to file those motions. It is unfair to punish petitioner for petitioner's counsel's violation of petitioner's right to have counsel timely file those motions by denying petitioner's request for extension of time under federal criminal rule 45(b)(1)(B).

Petitioner did not have control to timely file those motions under federal criminal rules 29(c), 33 and 12(b)(3) due to hybrid representation which prevents consideration of pro se motions while represented by counsel during the time to file those motions.

No prejudice to the government, no impact on judicial proceedings and no bad faith by petitioner is shown regarding the filing of those motions under federal criminal rules 29(c), 33, 12(b)(3) and 45(b)(1)(B).

Other motions containing similar arguments to petitioner's motions under federal criminal rule 29(c), 33 or 12(b)(3) do not prove that petitioner was aware of motions under federal criminal rule 29(c), 33 or 12(b)(3) when other motions were filed because an argument in one motion does not automatically make petitioner aware of a similar argument in another motion under a different rule, statute, constitution or law.

No record presents evidence or states the essential findings to refute the merits of petitioner's motions under federal criminal rules 29(c), 33 and 12(b)(3).

FROM: 08372094

TO:

SUBJECT: GC12C3/DP29(c).

DATE: 08/10/2023 02:06:24 PM

Arguments Refuting Denial of Motion Under Federal Criminal Rule 12(c)(3) for Good Cause to Consider Motion Under Federal Criminal Rule 12(b)(3)

Ground 4

Petitioner requested that his amended motion under federal criminal rule 12(b)(3) be considered for good cause under federal criminal rule 12(c)(3) in a motion under both of those rules in the district court.

Petitioner's counsel failed to timely file petitioner's motion under federal criminal rule 12(b)(3). That violation of petitioner's right to have counsel timely file that motion under federal criminal rule 12(b)(3) is not validated or remedied by denying petitioner's motion under federal criminal rule 12(b)(3). If Petitioner's counsel had timely filed that motion under rule 12(b)(3), petitioner would not have had to file that motion under federal criminal rule 12(b)(3) after the time to file that motion and would not have had to request that that motion under federal criminal rule 12(b)(3) be considered for good cause under federal criminal rule 12(c)(3). It is unfair to punish petitioner for petitioner's counsel's violation of petitioner's right to have counsel timely file that motion under federal criminal rule 12(b)(3) by denying petitioner's motion under federal criminal rule 12(c)(3) for good cause.

No record states the essential findings or presents evidence to refute the merits of petitioner's motion under federal criminal rule 12(b)(3).

In United states v. Doost, 435 U.S. App. D.C. 132, 137, 2021 U.S. App. Lexis 19952 (D.C. Cir., July 6, 2021) the appeals court for the district of Colombia held that ineffective assistance of counsel is good cause under federal criminal rule 12(c)(3).

Arguments for Violation of Fifth Amendment right to Due Process for Failure to Rule on Request for Extension of Time of Federal Criminal Rule 45(b)(1)(B) to File Motion Under Federal Criminal Rule 29(c)

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Akeem Gumbs

Date: 8/10/22