

NO:
IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2017

BRIAN PATRICK GATHERS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**APPLICATION FOR AN EXTENSION OF TIME WITHIN
WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI FROM THE
JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE
ELEVENTH CIRCUIT**

**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, 30.2 and 30.3, Brian Patrick Gathers respectfully requests a thirty-day extension of time, to and including February 5, 2018, within which to file a petition for a writ of certiorari from the judgment of the United States Court of Appeals for the Eleventh Circuit. Mr. Gathers has not previously sought an extension of time

from this Court.

Petitioner is filing this Application at least ten days before the filing date, which is January 4, 2018. *See* S.Ct. R. 13.5. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1).

Mr. Gathers was convicted in the Northern District of Florida on two counts of distributing cocaine base in violation of 21 U.S.C. §§841(a)(1) and 841(b)(1)(C), one count of possession with intent to distribute marijuana in violation of 21 U.S.C. §§841(a)(1) and 841(b)(1)(D), one count of possession of a firearm by a convicted felon in violation of 18 U.S.C. §§922(g)(1) and 924(e)(1), and one count of possession of a firearm in furtherance of a drug trafficking crime in violation of 18 U.S.C. §924(c)(1)(A)(i). At sentencing, the district court enhanced his sentence under the Federal Sentencing Guidelines based, in part, upon his prior conviction for Florida felony battery in violation of Fla. Stat. § 784.041(1). That statute prohibits an intentional touching or striking that unintentionally causes great bodily harm. The district court found that it qualified as a “crime of violence.”

When Mr. Gathers appealed his sentence to the Eleventh Circuit Court of Appeals, the Eleventh Circuit, based upon its holding in *United States v. Vail-Bailon*, 868 F. 3d 1293 (11th Cir. 2017), affirmed his sentence, finding that “a conviction under section 784.041 categorically qualifies as a crime of violence under §2L1.2.”

Undersigned counsel is aware that counsel for Mr. Vail-Bailon has filed an application for an extension of time within which to file a petition for writ of certiorari. In the application, counsel for Mr. Vail-Bailon requested an extension of time to and including December 27, 2017, within which to file a petition for writ of certiorari. Due to the fact Mr. Gathers’ case was

decided based upon the holding in *United States v. Vail-Bailon*, Mr. Gathers submits the time period for him to file a petition for writ of certiorari should be extended pending the filing of the petition in Mr. Vail-Bailon's case.

No party will be prejudiced by the granting of an extension.

Since the time within which to file a petition for writ of certiorari in this case will expire on January 4, 2018, unless extended, Petitioner respectfully requests that an order be entered extending his time to file a petition for writ of certiorari by thirty days. Since thirty actual days from January 4th would be February 3rd, which is a Saturday, counsel is requesting until February 5, 2018, in which to file Mr. Gather's petition.

Respectfully submitted,



By: _____

RICHARD A. GREENBERG
Florida Bar Number 0382371
Rumberger, Kirk & Caldwell
101 North Monroe Street, Suite 120
Post Office Box 10507
Tallahassee, Florida 32302-2507
Telephone: (850) 222-6550
Telecopier: (850) 222-8783

CJA Counsel for the Applicant-Petitioner

Dated: December 18, 2017.