

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

RICHARD ALLEN HARRIS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

**TO THE HON. CLARENCE THOMAS, ASSOCIATE JUSTICE OF THE
UNITED STATES SUPREME COURT AND CIRCUIT JUSTICE FOR THE
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT**

Pursuant to Rules 13.5, 22, and 30 of this Court, Petitioner Richard Allen Harris respectfully requests a 30-day extension of time, up to and including October 16, 2024, within which to file a petition for a writ of certiorari from the judgment of the U.S. Court of Appeals for the Eleventh Circuit. Petitioner has not previously sought an extension of time from this Court. Petitioner is filing this Application at least ten days before the current deadline, which is August 28, 2024. *See* Sup. Ct. R. 13.5. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1).

Petitioner pleaded guilty to being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). Over Petitioner's objection, the district court determined that

he was subject to the Armed Career Criminal Act (ACCA), and the district court imposed ACCA's 15-year mandatory minimum sentence. Petitioner was subject to ACCA based in part on two prior Florida convictions for aggravated assault. Both in the district court and on appeal, Petitioner argued that these convictions did not qualify as ACCA "violent felonies" under this Court's decision in *Borden v. United States*, 593 U.S. 420 (2021), because they could have been committed with a reckless *mens rea*. The Eleventh Circuit rejected that argument as foreclosed by precedent. App. 4 (citing *Somers v. United States*, 66 F.4th 890 (11th Cir. 2023)).

In *Somers*, the Eleventh Circuit had certified to the Florida Supreme Court questions of state law about the *mens rea* required for assault, a question that had divided the intermediate state appellate courts. *Somers v. United States*, 15 F.4th 1049, 1054–56 (11th Cir. 2021). After the Florida Supreme Court clarified that assault could not be committed recklessly, the Eleventh Circuit held that Florida aggravated assault qualified as a "violent felony." *Somers*, 66 F.4th at 895–96.

In so holding, the Eleventh Circuit declined to look to the state of Florida law from the time of the prior conviction because "[w]hen the Florida Supreme Court interprets a statute, it tells us what that statute always meant." *Id.* at 896 (quotation and brackets omitted) (citing *Rivers v. Roadway Express, Inc.*, 511 U.S. 298, 312–13 (1994)). The Seventh Circuit has since expressly disagreed with *Somers* and held that a Florida aggravated assault conviction pre-dating the Florida Supreme Court's decision did not qualify. *United States v. Anderson*, 99 F.4th 1106 (7th Cir. 2024). Other circuits have also taken that backwards-looking methodological approach.

Undersigned counsel will not have sufficient time to prepare and file the certiorari petition in this case by the current deadline due to the press of other business, including motions for sentence reductions in the district court, briefs in the Eleventh Circuit (*e.g.*, *United States v. Brian Bocage*, 11th Cir. No. 24-12275, *United States v. Fabiano Santos-Segatto* 11th Cir. No. 24-12456, *United States v. Spearman*, No. 24-10300), oral argument in the Eleventh Circuit (*Ramdeo v. United States*, No. 23-11699), and certiorari petitions in this Court (*e.g.*, *United States v. Cooper*, 11th Cir. 23-10224, *In re Bowe*, 11th Cir. No. 24-11704, *United States v. Peddicord*, 11th Cir. No. 22-13882, and *United States v. Grandia Gonzalez*, 11th Cir. No. 23-10578).

Undersigned counsel believes that additional time is important to ensure the effective representation of Petitioner. No party will be prejudiced by the granting of a 30-day extension of time. Accordingly, Petitioner respectfully requests that an order be entered extending his time to file a petition for a writ of certiorari by 30 days—extending the current deadline from September 16, 2024, to October 16, 2024.

Respectfully submitted,

HECTOR A. DOPICO
Interim Federal Public Defender

August 15th, 2024

By: /s/ Andrew L. Adler
Andrew L. Adler
Counsel of Record
Ashley D. Kay
Assistant Federal Public Defenders
1 E. Broward Blvd., Suite 1100
Ft. Lauderdale, FL 33301
(954) 356-7436
Andrew_Adler@fd.org