

No. \_\_\_\_\_

**IN THE  
SUPREME COURT OF THE UNITED STATES**

**ALFRED LAMAR SHAVERS, PETITIONER**

**VS.**

**UNITED STATES OF AMERICA, RESPONDENT**

**ON PETITION FOR WRIT OF CERTIORARI TO  
THE ELEVENTH CIRCUIT COURT OF APPEALS**

**PETITION FOR WRIT OF CERTIORARI**

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## **QUESTION PRESENTED**

**QUESTION:** WHETHER THE CRIME OF POSSESSION OF A FIREARM BY A  
CONVICTED FELON PASSES CONSTITUTIONAL MUSTER  
UNDER THE SECOND AMENDMENT WHERE THERE IS A  
BLANKET PROHIBITION THAT AUTOMATICALLY APPLIES  
TO ANYONE CONVICTED OF ANY FELONY

## **LIST OF PARTIES**

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

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**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.

**OPINION BELOW**

The opinion of the Eleventh Circuit Court of Appeals appears in section A of the Appendix. United States v. Shavers, 24-11943 (11<sup>th</sup> Cir., June 20, 2025). The case was not formally reported.

## **JURISDICTION**

The Eleventh Court of Appeals decided this case on June 20, 2025. No petition for rehearing was filed. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

Second Amendment

Due Process Clause

## **STATEMENT OF THE CASE**

The petitioner, Alfred Lamar Shavers, was convicted after a jury trial of conspiracy to distribute and possess with intent to distribute cocaine in violation of 21 U.S.C. §§ 841(b)(1)(C) and 846, and possession of a firearm by a convicted felon in violation of 18 U.S.C. §§ 922(g)(1) and 924(e). He was sentenced to one hundred ninety-two (192) months imprisonment (16 years).

The defense moved to dismiss the part of the indictment alleging that 18 U.S.C. 922(g)(1) is unconstitutional on its face and as applied to the defendant because it infringes on the defendant's right to "keep and bear arms." The defendant has no violent criminal history.

The district court ruled against the defendant as did the Eleventh Circuit Court of Appeals. The issues in this case have all been fully preserved for appellate review. See Shavers at p. 8-10. The petitioner now files the instant petition.



## **REASONS FOR GRANTING THE PETITION**

**QUESTION: WHETHER THE CRIME OF POSSESSION OF A FIREARM  
BY A CONVICTED FELON PASSES CONSTITUTIONAL  
MUSTER UNDER THE SECOND AMENDMENT WHERE  
THERE IS A BLANKET PROHIBITION THAT  
AUTOMATICALLY APPLIES TO ANYONE CONVICTED OF  
ANY FELONY**

Firearms are woven into the fabric of our nation’s history. See United States v. Rahimi, 602 U.S. 680, 144 S.Ct. 1889, 219 L.Ed.2d 351 (2024); N.Y. State Rifle & Pistol Ass’n v. Bruen, 597 U.S. 1, 142 S.Ct. 2111, 213 L.Ed.2d 387 (2022).

The Second Amendment and the Due Process Clause require the granting of certiorari in this case. Section 922(g)(1) is unconstitutional on its face and as applied to the defendant because it violates the defendant’s “right to keep and bear arms” under the Second Amendment. This is the logical and proper consequence of Rahimi and Bruen.

The petitioner was *automatically* stripped of his right to bear arms, only because he was a convicted felon. There was no inquiry into the nature of the felony.

He just needed to be a felon. In fact, the defendant has no violent convictions. His Constitutional rights were violated.

The key Eleventh Circuit case on this issue (which was cited as binding precedent by the panel in the case at bar), is United States v. Dubois, 2025 WL 1553843 (11<sup>th</sup> Cir., June 2, 2025) (motion for rehearing *en banc* pending).

Dubois was already before this Court and this Court remanded for further consideration in light of Rahimi. See Dubois v. United States, 145 S.Ct. 1041 (2025). The Eleventh Circuit did not change its position. The Dubois Court held Rahimi did not abrogate Eleventh Circuit precedent that section 922(g)(1) is constitutional. This was error.

There is very quickly evolving and conflicting precedent on this issue that seemingly fluctuates on a daily basis. This Court, in the case at bar or another, is going to be re-visiting the lingering issues on this new Second Amendment case law. Because of this uncertainty, the petitioner wants to make sure he has a foot in the door.

First, the petitioner hereby requests that this Court not decide this case until after the petition for rehearing *en banc* has been resolved in Dubois. (It was filed on July 23, 2025). There is a chance the Eleventh Circuit could reverse course on this issue and rule in the petitioner's favor.


Regardless, there are Circuit splits on this Second Amendment issue. At least four circuits have acknowledged that their prior precedent was abrogated by Bruen and/or Rahimi. See also United States v. Harris, 21-3031 (3d Cir., July 14, 2025); Range v. Attorney General, 124 F.4th 218 (3d Cir. 2024) (*en banc*); United States v. Williams, 113 F.4th 637 (6<sup>th</sup> Cir. 2024); United States v. Connelly, 23-50312 (5<sup>th</sup> Cir., August 28, 2024).

The defendant had a right to make an as applied challenge in his case and the Eleventh Circuit was otherwise incorrect that Section 922(g)(1) was constitutional on its face when the defendant is a felon (without any further inquiry).

### **CONCLUSION**

The Eleventh Circuit incorrectly ruled that Rahimi and Bruen did not abrogate its precedent on this Second Amendment issue. They could change their minds as there is a petition for rehearing *en banc* pending in Dubois. For this reason a judgment on this petition should not be made until there is a final resolution. In any event, the defendant is otherwise entitled to certiorari.

RESPECTFULLY SUBMITTED this 1<sup>st</sup> day of August 2025.

By: 

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# APPENDIX

[DO NOT PUBLISH]

In the  
United States Court of Appeals  
For the Eleventh Circuit

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No. 24-11943

Non-Argument Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

*versus*

ALFRED LAMAR SHAVERS,  
TYRONE JAMES JONES,

Defendants-Appellants.

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Appeals from the United States District Court  
for the Middle District of Florida  
D.C. Docket No. 6:23-cr-00067-RBD-RMN-6

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Before BRANCH, BRASHER, and ANDERSON, Circuit Judges.

PER CURIAM:

Alfred Lamar Shavers, Sr., appeals his convictions by jury trial and his sentence for one count of conspiracy to possess with intent to distribute a mixture and substance containing cocaine, in violation of 21 U.S.C. §§ 841(b)(1)(C), 846, and one count of possession of a firearm by a convicted felon, in violation of 18 U.S.C. §§ 922(g)(1), 924(e). He argues that his sentence is procedurally unreasonable because the district court erroneously calculated his guideline range. Specifically, he contends that it was error for the district court to enhance his guideline range based on his status as an armed career criminal because the district court, and not the jury, made the finding that he had three prior serious drug offenses committed on three separate occasions. He also argues that § 922(g)(1) is unconstitutional under both the Commerce Clause and the Second Amendment.

Tyrone James Jones appeals his convictions by jury trial of one count of conspiracy to possess with intent to distribute 500 grams or more of a mixture and substance containing methamphetamine, in violation of 21 U.S.C. §§ 841(b)(1)(A), 846; one count of possession with intent to distribute 50 grams or more of a mixture and substance containing methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(B); and one count of possession with intent to distribute 500 grams or more of a mixture and substance

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containing methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A). Jones argues that the district court plainly erred by allowing a witness, Detective Austin Raimundo, to testify about testimonial hearsay statements made by a confidential informant.

We write only for the parties who are already familiar with the facts. For these reasons, we include only such facts as are necessary to understand our opinion.

### **I. *Erlinger* Error in Shavers' case**

We review *de novo* claims of constitutional error. *United States v. Brown*, 364 F.3d 1266, 1268 (11th Cir. 2004). We review preserved constitutional errors under a harmless error standard unless the error amounts to a “structural error.” *United States v. Margarita Garcia*, 906 F.3d 1255, 1263 (11th Cir. 2018). Under harmless error analysis, a constitutional error must be harmless beyond a reasonable doubt. *Id.* When reviewing for procedural reasonableness, we review legal issues *de novo* and factual findings for clear error. *United States v. Isaac*, 987 F.3d 980, 990 (11th Cir. 2021). “To be procedurally reasonable, a defendant’s guidelines range, including the application of any enhancements, must have been correctly calculated.” *Id.* An appellant abandons an argument if he does not plainly and prominently raise it on appeal to this Court, and passing references to an issue are insufficient to plainly and prominently raise it. *Brown v. United States*, 720 F.3d 1316, 1332 (11th Cir. 2013).

Generally, a defendant who violates 18 U.S.C. § 922(g) is subject to a statutory maximum term of imprisonment of 15 years.



18 U.S.C. § 924(a)(8). However, under the Armed Career Criminal Act, a defendant who violates 18 U.S.C. § 922(g) receives a mandatory minimum 15-year sentence (and is subject to a maximum penalty of life imprisonment) if he “has three previous convictions . . . for a violent felony or a serious drug offense, or both, committed on occasions different from one another.” *Id.* § 924(e)(1). The statutory maximum sentence for conspiracy to possess with intent to distribute a mixture and substance containing cocaine, in violation of 21 U.S.C. § 841(b)(1)(C), is 20 years’ incarceration. 21 U.S.C. §§ 841(b)(1)(C), 846.<sup>1</sup>

In *Erlinger v. United States*, 602 U.S. 821 (2024), the Supreme Court held that judicial factfinding by a preponderance of evidence that a defendant has three qualifying predicate convictions committed on different occasions under the meaning of § 924(e)(1) violates the Fifth Amendment’s guarantee of due process of law and the Sixth Amendment’s guarantee to a jury trial. *Erlinger*, 602 U.S. at 833-35. This is because facts that increase the statutory range of

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<sup>1</sup> If the armed career offender enhancement were not applicable, the statutory maximum sentence for Shavers’ felon-in-possession offense (Count 4, the § 922(g) offense) is 15 years or 180 months, which is less than the 192-month sentence imposed on Shavers. However, the district court still could have imposed on Shavers a 192-month sentence on the basis of Shavers’ cocaine conviction under § 841 (Count 1), the statutory maximum for which is 20 years or 240 months. However, the actual sentence imposed on Shavers for the felon-in-possession offense (Count 4) was 192 months, and thus was error under *Erlinger* because the judge rather than the jury made the finding that there were three prior serious drug offenses committed by Shavers on three separate occasions. This would be reversible unless harmless beyond a reasonable doubt.

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penalties to which a defendant is exposed must be made by a jury beyond a reasonable doubt or freely admitted in a guilty plea. *Id.* at 834. The Court emphasized that the different occasions inquiry can be “intensely factual” and noted that, while judges may use *Shepard*<sup>2</sup> documents—that is, documents like judicial records, plea agreements, and colloquies between a judge and the defendant—for the limited function of determining the fact of a prior conviction and the then-existing elements of that offense, judges may not use *Shepard* documents to determine whether the “past offenses differed enough in time, location, character, and purpose to have transpired on different occasions.” *Id.* at 826-28, 838-41. The Court explained that “no particular lapse of time or distance between offenses automatically separates a single occasion from distinct ones.” *Id.* at 841. The Court further held that, although, “in many cases the occasions inquiry will be straightforward,” such as when a defendant’s past offenses are “different enough and separated by enough time and space,” this finding must still be made by a jury rather than a judge. *Id.* at 841-43 (quotation omitted). This Court recently held that *Erlinger* errors are not structural and are to be assessed under the harmless error standard of review. *United States v. Rivers*, 134 F.4th 1292, 1305-06 (11th Cir. 2025).

While the district court did commit error under *Erlinger* when it, and not the jury, found that Shavers’ three predicates were committed on different occasions, no reasonable juror would find that Shavers did not commit the three qualifying offenses on

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<sup>2</sup> See *Shepard v. United States*, 544 U.S. 13 (2005).

different occasions. Shavers' PSR set out the following facts with respect to Shavers' prior convictions: that he had three prior convictions for "serious drug offenses" and that he had committed those offenses on three separate occasions—i.e. July 28, 2008, July 28, 2009, and October 25, 2012. Shavers did not object to those paragraphs of the PSR, and therefore is deemed to have admitted same. *United States v. Beckles*, 565 F.3d 832, 844 (11th Cir. 2009) ("It is the law of this circuit that a failure to object to allegations of fact in a PSI admits those facts for sentencing purposes' and 'precludes the argument that there was error in them.'" (quoting *United States v. Wade*, 458 F.3d 1273, 1277 (11th Cir.2006))). Moreover, at sentencing—when the district court was considering the proposed ACCA enhancement to his sentence—the prosecutor said: "I know the defense is not objecting or contesting those convictions and that [they] occur[ed] on separate dates—or separate occasions from one another." The defense counsel did not respond and allowed the statement to stand uncontradicted. Furthermore, Shavers does not dispute on appeal the dates on which he committed the three prior drug offenses or the fact that they were committed on separate occasions. Thus, the truth of the district court's finding—that Shavers committed three prior serious drug offenses on three separate occasions—stands as admitted by Shavers. See *United States v. Penn*, 63 F.4th 1305, 1318 (11th Cir. 2023) ("No reasonable person would say that Penn's two sales of cocaine, thirty days apart, occurred on the same occasion. . . . Whatever the similarities between Penn's offenses, the similarities cannot overcome the substantial gap of time between the offenses."). Because the

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district court's *Erlinger* error was harmless, the district court's procedural error in applying a two-point increase under § 4B1.4 was also harmless because the two-point increase would properly apply if a jury had found Shavers committed three qualifying predicate offenses on different occasions. *See* § 4B1.4(a); 18 U.S.C. § 924(e)(1). Thus, we affirm Shavers' sentence.

## II. Commerce Clause Challenge in Shavers' case

We are bound to follow our prior binding precedent unless the decision has been overruled by a decision of this Court sitting *en banc* or the United States Supreme Court. *United States v. White*, 837 F.3d 1225, 1228 (11th Cir. 2016).

Title 18 of the United States Code, section 922(g)(1), prohibits anyone who has been convicted of a crime punishable by more than one year of imprisonment from possessing a firearm or ammunition. 18 U.S.C. § 922(g)(1).

The Commerce Clause reads: "The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." U.S. Const. art. I, § 8, cl. 3. We have held that § 922(g) is constitutional under the Commerce Clause, both facially and as applied to defendants who possess firearms that were manufactured in a different state than the state where the offense took place. *United States v. Scott*, 263 F.3d 1270, 1273-74 (11th Cir. 2001).

Here, this Court's precedent forecloses both Shavers's facial and as applied challenges to the Commerce Clause. *Scott*, 263 F.3d at 1273-74. Shavers acknowledges that the firearm he possessed

was manufactured outside the state of Florida, and therefore, traveled in interstate commerce. Therefore, § 922(g)(1) is constitutional under the Commerce Clause, both facially and as applied to Shavers.

### III. Second Amendment Challenge in Shavers' case

The Second Amendment reads: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” U.S. Const. amend. II. In *United States v. Rozier*, 598 F.3d 768 (11th Cir. 2010), we relied on *District of Columbia v. Heller*, 554 U.S. 570 (2008), to hold that § 922(g)(1) did not violate the Second Amendment. *Rozier*, 598 F.3d at 771. We stated that *Heller* suggested that “statutes disqualifying felons from possessing a firearm under any and all circumstances do not offend the Second Amendment.” *Id.*

In *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022), the Supreme Court rejected means-end scrutiny, explaining that courts must ask (1) whether the firearm regulation at issue governs conduct within the plain text of the Second Amendment, and (2) whether the government could “affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms.” *Bruen*, 597 U.S. 1, 17, 19 (2022).

In *United States v. Rahimi*, 602 U.S. 680 (2024), the Supreme Court upheld § 922(g)(8), noting that courts have “misunderstood” the *Bruen* methodology and stating that the Second Amendment permitted not just regulations identical to those in existence in

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1791, but also regulations that are “consistent with the principles that underpin our regulatory tradition” and are “relevantly similar to laws that our tradition is understood to permit.” *Rahimi*, 602 U.S. at 691-93 (quotation omitted).

In *United States v. Dubois*, this Court recently held that *Bruen* and *Rahimi* did not abrogate our precedent holding that § 922(g)(1) is constitutional under the Second Amendment. *United States v. Dubois*, 2025 WL 1553843 (11th Cir. June 2, 2025). There, we observed that in our precedent *Rozier*, we interpreted *Heller* as limiting the right to bear arms to “‘law-abiding and qualified individuals’ and as clearly excluding felons from those categories by referring to felon-in-possession bans as presumptively lawful.” *Id.* at \*5. We noted that the Court in *Bruen* repeatedly stated that its decision was “faithful” to *Heller*, and that the Court in *Rahimi* “reiterate[d] *Heller*’s conclusion that prohibitions ‘on the possession of firearms by “felons and the mentally ill . . .” are “presumptively lawful.”’” *Id.* (quoting *Rahimi*, 144 S. Ct. at 1902). We noted that *Rahimi* also clarified that it did not suggest the Second Amendment prohibited the barring of gun possession by categories of persons the legislature deemed dangerous. *Id.* Finally, we rejected Dubois’s argument that *Rozier* was undermined by *Rahimi*’s rejection of bars on ownership by those deemed not responsible; *Rozier* never stated that qualification for gun possession was based on whether a person was responsible. *Id.*

Because *Dubois* affirmed that *Rahimi* and *Bruen* did not abrogate our precedent holding that §922(g)(1) is constitutional, we reject Shavers' arguments on this issue.

### III. Confrontation Clause Challenge in Jones' case

If a defendant did not lodge a timely Confrontation Clause objection in the district court, we review for plain error only. *United States v. Arbolaez*, 450 F.3d 1283, 1291 (11th Cir. 2006). “Under plain error review, an appellate court may not correct an error not raised at trial unless there is (1) error, (2), that is plain, and (3) that affects substantial rights.” *Id.* (quotation omitted). Even where all three conditions are met, we have discretion to notice a forfeited error only if “the error seriously affects the fairness, integrity, or public reputation of judicial proceedings.” *Id.* To establish that an error affected his substantial rights, a defendant “must show there is a reasonable probability that, but for the error, a different outcome would have occurred.” *Margarita Garcia*, 906 F.3d at 1267. A hearsay objection to testimony at trial, standing alone, does not preserve for appeal a constitutional challenge under the Confrontation Clause. *United States v. Chau*, 426 F.3d 1318, 1321-22 (11th Cir. 2005).

The Confrontation Clause provides, “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him.” U.S. Const. amend. VI. The Confrontation Clause bars the use of statements only if the statements are “testimonial” in nature. *See United States v. Cooper*, 926 F.3d 718, 730 (11th Cir. 2019). Statements made to police officers are

generally testimonial if the officer's primary purpose is investigative. *Id.* at 731. But testimonial statements are only prohibited by the Confrontation Clause if they constitute impermissible hearsay—testimonial statements may be admissible if they are not used to prove the truth of the matter asserted. *United States v. Kent*, 93 F.4th 1213, 1218 (11th Cir. 2024). Thus, a testimonial statement made to law enforcement by an out-of-court witness may be admissible if the statement (1) is offered for a non hearsay purpose, (2) the non hearsay purpose is relevant, and (3) the probative value of the statement is not substantially outweighed by the risk of unfair prejudice. *Id.*

Here, as an initial matter, Jones's arguments do not identify specific statements that violated the Confrontation Clause, providing only a general summary of the content of Detective Raimundo's testimony in the fact section of his brief, and then arguing that Detective Raimundo testified as to "out of court testimonial statements" by Wood. And, as the government points out, some of the testimony regarding Wood's statements may have been offered for purposes other than to prove the truth of the matter asserted, such as to establish why the government began investigating Saleem and why Detective Raimundo gave Wood extra money during the June drug buy.

Nevertheless, it is unnecessary for this Court to determine which statements were or were not hearsay, because Jones has not shown that his substantial rights were affected, even if all of Detective Raimundo's testimony regarding Wood's statements violated



the Confrontation Clause. The government introduced recorded phone calls in which Wood arranged to buy methamphetamine from Saleem, photographs of Saleem delivering the methamphetamine to Jones, photographs of Wood meeting with Jones to buy the methamphetamine, and video and audio recordings of the drug deals between Jones and Wood. Saleem confirmed that he agreed to sell methamphetamine to Wood, that he delivered the methamphetamine to Jones, and that Jones sold the methamphetamine to Wood. Detective Raimundo testified in detail regarding the controlled buys, including that he provided Wood with money, watched him meet with Jones, and that Wood returned each time with methamphetamine. Detective Raimundo, Special Agent Welch, Detective Blissett, and Detective Smith all testified that they observed various stages of the drug deals. Chemist Stephanie Armas confirmed that what Jones sold to Wood was, in fact, methamphetamine. Thus, even without any of Detective Raimundo's testimony regarding what Wood told him about Jones, the government introduced voluminous evidence establishing that Jones sold methamphetamine to Wood on multiple occasions. Therefore, Jones has not shown a reasonable probability that excluding the challenged statements would have resulted in a different outcome at trial. See *Margarita Garcia*, 906 F.3d at 1267. Thus, we reject this challenge to Jones' conviction.

For the foregoing reasons, we affirm Shavers' convictions and sentence and Jones' conviction.

AFFIRMED.

**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303

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June 20, 2025

**MEMORANDUM TO COUNSEL OR PARTIES**

Appeal Number: 24-11943-JJ  
Case Style: USA v. Alfred Shavers, et al  
District Court Docket No: 6:23-cr-00067-RBD-RMN-6

**Opinion Issued**

Enclosed is a copy of the Court's decision issued today in this case. Judgment has been entered today pursuant to FRAP 36. The Court's mandate will issue at a later date pursuant to FRAP 41(b).

**Petitions for Rehearing**

The time for filing a petition for panel rehearing or rehearing en banc is governed by 11th Cir. R. 40-2. Please see FRAP 40 and the accompanying circuit rules for information concerning petitions for rehearing. Among other things, **a petition for rehearing must include a Certificate of Interested Persons.** See 11th Cir. R. 40-3.

**Costs**

No costs are taxed.

**Bill of Costs**

If costs are taxed, please use the most recent version of the Bill of Costs form available on the Court's website at [www.ca11.uscourts.gov](http://www.ca11.uscourts.gov). For more information regarding costs, see FRAP 39 and 11th Cir. R. 39-1.

**Attorney's Fees**

The time to file and required documentation for an application for attorney's fees and any objection to the application are governed by 11th Cir. R. 39-2 and 39-3.

**Appointed Counsel**

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation via the eVoucher system no later than 45 days after issuance of the mandate or the filing of a petition for writ of certiorari. Please contact the CJA Team at (404) 335-6167 or [cja\\_evoucher@ca11.uscourts.gov](mailto:cja_evoucher@ca11.uscourts.gov) for questions regarding CJA vouchers or the eVoucher system.

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OPIN-1 Ntc of Issuance of Opinion