

IN THE SUPREME COURT OF THE UNITED STATES

JERMAINE SMITH,

Petitioner,

CASE # \_\_\_\_\_

v.

UNITED STATES OF AMERICA,

Respondent.

\_\_\_\_\_/

**MOTION TO DIRECT THE CLERK TO FILE PETITION FOR WRIT OF  
CERTIORARI OUT OF TIME**

Petitioner, Jermaine Smith, respectfully moves this Court to direct the Clerk to accept and file his Petition for Writ of Certiorari as timely filed, and in support states as follows:

1. On June 5, 2025, Petitioner, through undersigned counsel, electronically filed his Petition for Writ of Certiorari and Appendix through this Court's electronic filing system. The filing deadline was June 11, 2025.
2. On the same date, Petitioner also electronically filed his Motion for Leave to Proceed *in forma pauperis*, which included the following representation: "Financial Affidavit in support of this motion has been mailed to Petitioner for completion and signature. Upon receipt of the executed affidavit, undersigned counsel will promptly file it with the Court." (A copy of the motion is attached hereto as **Exhibit A.**)
3. Because Petitioner is proceeding *in forma pauperis*, undersigned counsel was required to obtain Petitioner's executed Affidavit of Indigency in compliance with this Court's rules governing indigent petitioners.

4. Petitioner, who is incarcerated, returned the executed Affidavit of Indigency as soon as reasonably possible. Upon receipt, undersigned counsel promptly transmitted to the Clerk's Office the required paper copies of the Petition and Appendix, along with the executed affidavit.
5. The Clerk subsequently rejected the Petition on the ground that the paper copies were received after the due date. However, the Petition and Appendix had in fact been timely filed electronically on June 5, 2025.
6. The delay in transmission of the paper copies was due solely to indigency procedures and was not the result of neglect, fault, or lack of diligence by Petitioner or his counsel.
7. The interests of justice and the proper administration of this Court's rules favor acceptance of the Petition, which was substantively and electronically filed in a timely manner.

WHEREFORE, Petitioner respectfully requests that this Court grant this Motion and direct the Clerk to accept and file the Petition for Writ of Certiorari as timely filed.

Respectfully submitted,

Respectfully submitted,

JOFFE LAW, P.A.  
Attorney for Defendant  
110 SE 6<sup>th</sup> Street  
Suite 1700  
Fort Lauderdale, Florida 33301  
Telephone: (954) 723-0007  
Facsimile: (954) 723-0033

By David J. Joffe  
DAVID J. JOFFE, ESQUIRE  
FLORIDA BAR NO. 0814164

**CERTIFICATE OF SERVICE**

I, David J. Joffe, counsel for the above Petitioner, do hereby certify that a true and correct copy of this motion was duly served on the United States by placing same in the U.S. Mail, addressed to: SOLICITOR GENERAL OF THE UNITED STATES, Room 5614, Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530-0001, this 3rd day of October, 2025.

  
\_\_\_\_\_  
DAVID J. JOFFE, ESQUIRE

# **Exhibit A**

IN THE SUPREME COURT OF THE UNITED STATES

JERMAINE SMITH,

Petitioner,

CASE # \_\_\_\_\_

v.

UNITED STATES OF AMERICA,

Respondent.

\_\_\_\_\_/

**MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS**

The Petitioner, JERMAINE SMITH, by and through undersigned counsel, respectfully moves this Honorable Court pursuant to Supreme Court Rule 39 for leave to proceed *in forma pauperis* in connection with the concurrently filed Petition for a Writ of Certiorari, without prepayment of costs.

In support of this motion, Petitioner states:

1. Petitioner has been incarcerated for over six (6) years and lacks the financial resources to pay the costs associated with this filing.
2. Petitioner has not previously been granted leave to proceed *in forma pauperis* in any other court.
3. A Financial Affidavit in support of this motion has been mailed to Petitioner for completion and signature. Upon receipt of the executed affidavit, undersigned counsel will promptly file it with the Court.

The Financial Affidavit was mailed to:

**Jermaine Smith (DC # G50120)**

Lawtey Correctional Institution

22298 NE CR 200B

Lawtey, Florida 32058

WHEREFORE, Petitioner respectfully requests that this Court grant leave to proceed *in forma pauperis* and permit the filing of the Petition for a Writ of Certiorari without prepayment of costs.

Respectfully submitted,

JOFFE LAW, P.A.  
Attorney for Defendant  
110 SE 6<sup>th</sup> Street  
Suite 1700  
Fort Lauderdale, Florida 33301  
Telephone: (954) 723-0007  
Facsimile: (954) 723-0033

By David J. Joffe  
DAVID J. JOFFE, ESQUIRE  
FLORIDA BAR NO. 0814164

**CERTIFICATE OF SERVICE**

I, David J. Joffe, counsel for the above Petitioner, do hereby certify that a true and correct copy of this motion was duly served on the United States by placing same in the U.S. Mail, addressed to: SOLICITOR GENERAL OF THE UNITED STATES, Room 5614, Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530-0001, this 5<sup>th</sup> day of June, 2024.

David J. Joffe  
DAVID J. JOFFE, ESQUIRE

**SUPREME COURT OF THE UNITED STATES  
OFFICE OF THE CLERK  
WASHINGTON, DC 20543-0001**

**COPY**

September 9, 2025

David Joffe  
110 Tower Building  
110 S.E. 6th Street  
Suite 1700  
Ft. Lauderdale, FL 33301

RE: Smith v. Sec. FLDOC  
USA11 24-13221

Dear Mr. Joffe:

The above-entitled petition for a writ of certiorari was originally postmarked July 22, 2025 and received again on September 9, 2025. The papers are returned for the following reason(s):

The petition is out-of-time. The date of the lower court judgment or order denying a timely petition for rehearing was March 13, 2025. Therefore, the petition was due on or before June 11, 2025. Rules 13.1, 29.2 and 30.1. When the time to file a petition for a writ of certiorari in a civil case (habeas action included) has expired, the Court no longer has the power to review the petition.

A document to this Court is timely filed if received or postmarked in paper form by the due date specified for filing, not by the date that it is electronically filed. Rule 29.2.

If you wish to proceed, you may file the petition with a motion to direct the Clerk to file the petition for writ of certiorari out of time.

Sincerely,  
Scott S. Harris, Clerk  
By:

**COPY**

Sara Simmons  
(202) 479-3023

Enclosures