

NO. 17-8637

IN THE
SUPREME COURT OF THE UNITED STATES

BOBBY JO GIPSON,

PETITIONER,

vs.

UNITED STATES OF AMERICA,

RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITIONERS' SUPPLEMENTAL BRIEF¹

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¹ Pursuant to Supreme Court Rule 12.4, Petitioner Keith Walker, also listed herein, joined the Petition seeking review of his Sixth Circuit judgment, as well. The cases involve an identical issue.

PETITIONERS' SUPPLEMENTAL BRIEF

Pursuant to Supreme Court Rule 15.8, Petitioners Bobby Jo Gipson and Keith Walker submit this supplemental brief to call the Court's attention to the Seventh Circuit's recent order denying rehearing and rehearing en banc in the consolidated cases of Cross v. United States, and Davis v. United States. See Cross v. United States, Nos. 17-2282/17-2724, 2018 U.S. App. LEXIS 24989 (7th Cir. Aug. 31, 2018). On June 7, 2018, a panel of the Seventh Circuit held that Cross's and Davis's § 2255 motions were timely under 28 U.S.C. § 2255(f)(3) because they asserted the right recognized in Johnson v. United States, 135 S. Ct. 2551 (2015), and were filed within one year of Johnson, and that petitioners were entitled to relief on the merits. See Cross v. United States, 892 F.3d 288, 294 (7th Cir. 2018). On July 23, 2018, the government filed a petition for rehearing and rehearing en banc.

In its memorandum in opposition in this case, the government argued that, because it had filed a petition for rehearing in Cross, the circuit conflict would soon resolve itself without the need for this Court's intervention. (See Br. Opp'n, at 15.) On August 31, 2018, however, no judge in regular service having requested a vote on the petition for rehearing en banc, and all judges on the panel having voted to deny rehearing, the Seventh Circuit denied the government's petition. See Cross v. United States, Nos. 17-2282/17-2724, 2018 U.S. App. LEXIS 24989 (7th Cir. Aug. 31, 2018). For this reason and as predicted in Petitioners' Reply Brief at pages 5-6, the circuit conflict has not resolved itself. For all of the reasons set forth heretofore in Messrs. Gipson and Walker's Petition and Reply Brief, this Court's intervention is required. This case is an excellent vehicle for resolving questions of exceptional importance in criminal jurisprudence. Should the Court grant certiorari in another case with similar issues, Petitioners respectfully requests that their case be held pending the Court's decision.

DATED: 7th day of September, 2018.

Respectfully submitted,

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