

Case No.: _____

IN THE
SUPREME COURT OF THE UNITED STATES

Jose Cebreros,

Petitioner,

v.

United States,

Respondent.

APPLICATION TO EXTEND TIME
TO FILE A PETITION FOR A WRIT OF CERTIORARI

**Application Directed to the Honorable Anthony M. Kennedy
as Circuit Justice for the United States Court of Appeals
for the Ninth Circuit**

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To the Honorable Anthony M. Kennedy, as Circuit Justice for the United States Court of Appeals for the Ninth Circuit:

APPLICATION FOR EXTENSION OF TIME

Petitioner Jose Cebreros requests a 60 day extension of time, up to and including August 27, 2018, in which to file his Petition for a Writ of Certiorari. On February 22, 2018, the Ninth Circuit denied Mr. Cebreros's request for a certificate of appealability. He filed a Motion for Reconsideration on March 3, 2018, and the Ninth Circuit Court denied the motion on March 30, 2018. (attached). His Petition for a Writ of Certiorari would be due on Thursday, June 28, 2018. This Court would have jurisdiction under 28 U.S.C. § 1254(1). This request is being filed more than 10 days prior to the date on which his Petition is due.

BACKGROUND TO REQUEST FOR EXTENSION OF TIME

Mr. Cebreros is serving concurrent twenty year mandatory minimum sentences which are predicated on a felony conviction that has since been reduced to a misdemeanor. Mr. Cebreros has argued that 28 U.S.C. § 2255 authorizes resentencing because serving an enhanced sentence for a crime that has been retroactively reduced to a misdemeanor, as here, violates the sentencing statute, due process, and the Eighth Amendment.

Despite taking prior positions that resentencing is warranted under these circumstances, the government now opposes Mr. Cebreros's petition for a writ of habeas corpus. It is well-established that 28 U.S.C. § 2255 authorizes resentencing when a federal inmate vacates the prior conviction on which his sentence is

premised. *See Johnson v. United States*, 544 U.S. 295, 303 (2005) (“[A] defendant given a sentence enhanced for a prior conviction is entitled to a reduction if the earlier conviction is vacated.”); *Custis v. United States*, 511 U.S. 485 (1994); *Daniels v. United States*, 532 U.S. 374 (2001). In prior cases, the government agreed: “The Government shares Johnson’s preliminary assumption that if he filed his § 2255 motion in time, he is entitled to federal resentencing now that the State has vacated one of the judgments supporting his enhanced sentence.” *See Johnson*, 544 U.S. at 302–03. Likewise, the government argued in a direct appeal case before this Court that federal recidivist sentences should be reduced if predicate priors are retroactively reduced by state action, as here. *See Br. for the United States, McNeill v. United States*, 563 U.S. 816 (2011), 2011 WL 1294503, at *18 n.5.

Certiorari is warranted. In *United States v. Bell*, a recent case raising the same issue, the government filed a Brief in Opposition without waiting to see whether this Court would call for a response to Mr. Bell’s Petition. (Counsel also represented Mr. Bell.) The government conceded that “a defendant’s argument that he was wrongly subjected to a statutory sentencing enhancement may in some cases give rise to a constitutional claim” Brief for the United States in Opposition, *Bell v. United States*, No. 17-6778, 138 S. Ct. 1282, 2018 WL 798391 at *7 (filed Feb. 7, 2018). Instead, its central argument against granting certiorari was that Mr. Bell’s case presented a vehicle problem in that, in according to the government, he had failed to properly preserve the constitutional challenge. *Id.* This case does not present any such vehicle problem: Mr. Cebreros has squarely raised the

constitutional issue. Mr. Cebreros's Petition will thus present an even stronger case for certiorari.

REQUEST FOR EXTENSION OF TIME

Good cause supports granting an extension of time. This is the first time the Three Strikes Project ("the Project") has requested an extension of time to file a Petition for a Writ of Certiorari, either here or in other cases. The Project is a small non-profit, pro-bono organization at Stanford Law School. Students in the Project provide free legal counsel to individuals serving lengthy sentences in state and federal prison for non-violent crimes. The Project represents incarcerated individuals, all of whom are indigent and serving lengthy prison sentences of 20 years or more.

Currently, the Project represents 51 clients in federal and state courts, and administrative proceedings. At present, the Project clients have cases in the Central District of California, the Eastern District of California, the Eastern District of Virginia, the Western District of Texas; in addition, the Project represents clients before the Fifth Circuit Court of Appeals, the Ninth Circuit Court of Appeals, the Tenth Circuit Court of Appeals, and this Court. Project clients also have cases pending in six county level courts in California, in California's Fourth and Fifth District Courts of Appeal, and before California's Supreme Court.

Project students investigate, research and draft briefs for their clients, under the supervision of Project attorneys. Project students balance this work with their other academic demands. The Project writing process includes students

familiarizing themselves with their clients' case files, researching the applicable legal principles, drafting briefs on their clients' behalves, editing and revising the draft, and completing the editing process and filing the document, all under the supervision of and subject to the revisions of the supervising attorney.

Stanford's Spring Quarter ended on June 13, 2018. Project students have completed their work, but additional time is needed for supervising attorneys to complete the editing and revising process, and to finalize the Petition for filing. Counsel and the three other supervising attorneys in the Project suffered an unanticipated flood of deadlines in the months immediately preceding this Petition.

For example, the Project has spent years advocating for the California Department of Corrections and Rehabilitation ("CDCR") to use a new form of administrative relief to release non-violent California prisoners. This spring, in the middle of the quarter, the CDCR unexpectedly began a trial of the relief, and the Project was appointed to represent the potential releasees before the courts charged with implementation. This has resulted in multiple new clients in the middle of the quarter, each client requiring multiple appearances in different counties. Given the timing, students could not participate in the representations.

The Project likewise has served as both counsel of record and coordinating counsel across cases in recent challenges to CDCR regulations on a different issue. Counsel had believed that matter concluded for the next several months, only for the CDCR to issue new regulations and courts to request new rounds of briefing

that are still ongoing. Again, due to timing, these unexpected matters have fallen entirely on the shoulders of supervising attorneys.

CONCLUSION

For the foregoing reasons, Mr. Cebreros respectfully requests that this Court extend the date on which his Petition is due to August 27, 2018.

Respectfully submitted,

June 14, 2018

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APPENDIX

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

FEB 22 2018

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JOSE GUADALUPE CEBREROS,

Defendant-Appellant.

No. 17-56843

D.C. Nos. 3:17-cv-02310-JM
3:01-cr-02788-JM-1Southern District of California,
San Diego

ORDER

Before: Trott and Fisher, Circuit Judges.

The request for a certificate of appealability is denied because appellant has not shown that “jurists of reason would find it debatable whether the [section 2255 motion] states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also* 28 U.S.C. § 2253(c)(2); *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012).

Any pending motions are denied as moot.

In order for a district court to consider a second or successive 28 U.S.C. § 2255 motion, this court must first authorize the district court to consider that motion. *See* 28 U.S.C. §§ 2244(b)(3), 2255(h). The Clerk shall serve this order and a copy of the standard form application for leave to file a second or successive

motion on appellant.

DENIED.

FILED

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MAR 30 2018

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JOSE GUADALUPE CEBREROS,

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3:01-cr-02788-JM-1

Southern District of California,
San Diego

ORDER

Before: CLIFTON and CHRISTEN, Circuit Judges.

The motion for reconsideration (Docket Entry No. 4) is denied. *See* 9th Cir. R. 27-10.

No further filings will be entertained in this closed case.