

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

In re Daniel John Riley

PETITION FOR A WRIT OF MANDAMUS

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Pro Se
14528-052
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PETITION FOR A WRIT OF MANDAMUS DIRECTED TO THE
FIRST CIRCUIT COURT OF APPEALS WITH ATTACHED MOTION
TO PROCEED IN FORMA PAUPERIS

PETITION FOR A WRIT OF MANDAMUS

QUESTION PRESENTED FOR REVIEW

1. Should this Court use its general supervisory authority to rectify an abuse, when the exceptional time of over two years has lapsed since petitioner has filed an application for permission to proceed on a second or successive § 2255, when Congress has specifically commanded that the court of appeals "shall" decide the application "no later than 30 days after filing" 28 USC § 2244(b)(3)(D); and this Court's precedent interpreting this statute held the court of appeals "must make a decision on the application within 30 days." Tyler v Cain 533 US 656, 664 (2001).

PARTIES

Daniel John Riley, Petitioner;

First Circuit Court of Appeals, Respondent, United States Real
Party in Interest.

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TABLE OF CASES

<u>Johnson v US</u> 135 S. Ct 2551 (6-26-15)	5
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CITATIONS

1. Judgment and Commitment 07-cr-189-01-GZS
2. United States v Erhard, 615 F3d 7 (1st Cir. 2010)
3. Riley v United States, 2013 US Dist LEXIS 28575
4. Riley v United States No. 16-1582 (1st Cir 5-19-16)

JURISDICTION

This Court has jurisdiction to issue the requested writ pursuant to 28 USC § 1651 (a).

STATUTES INVOLVED

1. Section 2244 (b)(3)(D) of Title 28 of the United States Code provides:

The court of appeals shall grant or deny the authorization to file a second or successive application not later than 30 days after filing of the motion.

2. Section 924(c)(3)(B) of Title 18 of the United States Code provides:

crime of violence means an offense that is a felony and that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

STATEMENT OF FACTS

On May 19, 2016 the First Circuit Court of Appeals docketed petitioner's application for permission to proceed on a second or successive § 2255. See appendix: exhibit A. Petitioner based his application on the retroactive new rule made in Johnson v US 135 S. Ct. 2551 (6-26-15), challenging a sentence enhancement based on the definition of a crime of violence found at 18 USC § 924(c)(3)(B).

Petitioner has since sent several F.R.A.P. 28(j) supplements, detailing the facts: that a plethora of prisoners were being granted permission based on the same argument petitioner was raising; and that the Supreme Court had struck down the identical statute found at 18 USC § 16(b) in a case known as Sessions v Dimaya No. 15-1498; and that the Tenth Circuit Court of Appeals in a case known as US v Salas No. 16-2170, struck down § 924(c)(3)(B) 17 days after Dimaya was decided. Petitioner's application and supplements can be found in the appendix as exhibits B-D.

To date the United States has put up no opposition to petitioner's application and the First Circuit has made no decision on petitioner's application. The application has been pending over two years and the case number is 16-1582.

ARGUMENT

This Court has made it clear in Tyler v Cain 533 US 656, 664 (2001) that 28 USC § 2244(b)(3)(D) subjects a mandatory obligation, requiring the court of appeals to decide an SoS application within 30 days. The First Circuit has no legal justification to usurp § 2244(b)(3)(D) nor this Court's precedents. This usurpation is exceptional, in that it's been 735 days to date, or 24.5 times the time allotted by Congress. This is unreasonable and an abuse of power*.

§ 2244(b)(3)(D) grants petitioner the right to have his application decided within the time limit set by Congress. The word "shall" in the statute makes the time limit mandatory. Mandamus is a tool used to compel mandatory performance. Moreover, the public's confidence in the judiciary is eroded by the refusal of courts to adhere to the law.

The writ will aid in this Court's appellate jurisdiction under the exercise of its general supervisory control over the federal court system. And without the First Circuit deciding the application, the judicial process cannot get started, and if necessary, a final appeal to this Court.

The petitioner is suffering possible irreparable harm. Petitioner has already served 11 years in prison. Without the sentence enhancement the maximum sentence petitioner is liable for is six years. Since the Dimaya decision, petitioner has a solid chance of being released. Everyday

* I'd use the word discretion but the controlling statute doesn't allow for any discretion.

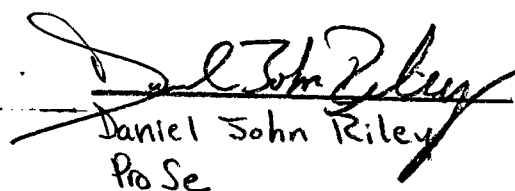
the First Circuit refuses to decide petitioner's application subjects petitioner to possibly spending time in prison that he would otherwise not be required to serve. This is time that petitioner can never get back.

There is no court higher than the First Circuit, except this Court, that petitioner can seek a writ or other means to rectify this situation. Petitioner has tried to move the First Circuit with his 28(j) Supplements without results. Petitioner has no other means or court to turn to for the relief sought herein.

RELIEF SOUGHT

Petitioner seeks a writ of mandamus directed to the United States Court of Appeals of the First Circuit, directing and commanding these respondents to immediately decide petitioner's application for permission to proceed on a second or successive habeas corpus motion pursuant to 28 USC § 2255.

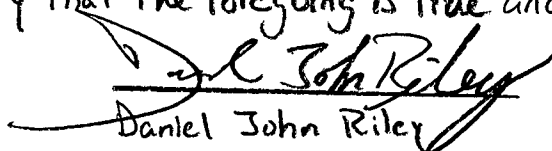
Date: May 23, 2018


Daniel John Riley
Pro Se

PROOF OF SERVICE

I, Daniel John Riley sent a copy of this Petition for a Writ of Mandamus with attached Motion to Proceed in Forma Pauperis via first class U.S. Postal Service prepaid postage to the U.S. Solicitor General, DOJ, Room 5614, 950 Pennsylvania AVE NW, Wash D.C. 20530-0001 on the date below. I declare under penalty of perjury that the foregoing is true and correct.

Date: May 24, 2018


Daniel John Riley