

No. _____

IN THE
Supreme Court of the United States

CHARLES FOXX,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit

**APPLICATION FOR EXTENSION OF TIME TO FILE PETITION FOR WRIT OF
CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT**

**TO THE HONORABLE CLARENCE THOMAS,
ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES
AND CIRCUIT JUSTICE FOR THE ELEVENTH CIRCUIT**

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TO THE HONORABLE CLARENCE THOMAS,
ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED
STATES AND CIRCUIT JUSTICE FOR THE ELEVENTH CIRCUIT

Pursuant to Rules 13.5, 22, and 30.3 of the Rules of the Supreme Court of the United States, Petitioner respectfully requests a sixty-day extension of time, up to and including February 1, 2019, to file a Petition for Writ of Certiorari from the judgment of the U.S. Court of Appeals for the Eleventh Circuit.

1. The Eleventh Circuit issued its opinion on September 4, 2018. No rehearing was sought, rendering the petition due on or before December 3, 2018. This application is being filed more than ten days before that deadline. Petitioner has not previously sought an extension of time. This Court's jurisdiction will be invoked under 28 U.S.C. § 1254(1).

2. In the decision below, the Eleventh Circuit affirmed the district court's denial of Petitioner's initial 28 U.S.C. § 2255 motion to vacate his 502-month sentence in light of *Johnson v. United States*, 135 S. Ct. 2551 (2015). His sentence was based on an enhancement under the Career Offender Guideline, U.S.S.G. § 4B1.1, at a time when the Guidelines were mandatory, binding, and had the force and effect of law. See *United States v. Booker*, 543 U.S. 220, 233–34 (2005). The Eleventh Circuit's decision was based exclusively on its decision in *In re Griffin*, 823 F.3d 1350 (11th Cir. 2016), which held that the mandatory Guidelines were not susceptible to a vagueness challenge and that the invalidation of the then-mandatory residual clause in § 4B1.2(a)(2) would not be retroactive.

3. Petitioner respectfully seeks an additional sixty days to file his Petition. As two Justices of this Court has recently recognized, *In re Griffin* (and thus the decision below) implicates a split among the circuits as to whether career offenders sentenced before *Booker* are entitled to relief. *See Brown v. United States*, ___ S. Ct. ___, 2018 WL 2877128, at *1 (2018) (Sotomayor, J., dissenting from denial of certiorari) (“This important question, which has generated divergence among the lower courts, calls out for an answer.); *id.* at *2 (“Regardless of where one stands on the merits of how far *Johnson* extends, this case presents an important question of federal law that has divided the courts of appeals and in theory could determine the liberty of over 1,000 people.”).

The decision below also raises an additional question: whether the Eleventh Circuit’s application of the prior panel precedent rule violated Petitioner’s procedural due process rights. That is so because the Eleventh Circuit relied exclusively on *In re Griffin*, and that decision was issued without counseled or adversarial briefing in less than 30 days based on a standardized form limiting the *pro se* prisoner from making any legal arguments. The reasoning of *In re Griffin* has also been undermined by this Court’s subsequent decision in *Beckles v. United States*, 137 S. Ct. 886 (2017). The Eleventh Circuit, however, declined to consider the merits of Petitioner’s arguments, finding them precluded by *In re Griffin*.

4. Given the importance of these questions, and the divergence of the lower courts, undersigned counsel requests additional time to prepare the Petition. No party will be prejudiced by the requested extension. This extension is not

sought for purpose of delay but rather to carefully prepare the petition. In that regard, undersigned counsel presently has several other deadlines and matters in this Court and the Eleventh Circuit, including: *United States v. Cooper*, 11th Cir. No. 18-13266 (reply brief due Nov. 21, 2018); *United States v. Valdes Gonzalez*, 11th Cir. No. 17-14583 (rehearing petition due Dec. 4, 2018); *United States v. Lawson*, 11th Cir. No. 18-12848 (reply brief estimated due Dec. 24, 2018); *Mann v. United States*, 11th Cir. No. 17-13129 (cert. petition due Jan. 24, 2019); *Pickett v. United States*, 11th Cir. No. 17-13476 (oral argument week of Jan. 28, 2019); *Phillips v. United States*, 11th Cir. No. 16-17106 (cert. petition due Feb. 5, 2019).

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests a sixty-day extension of time within which to file a Petition for Writ of Certiorari, up to and including February 1, 2019.

Respectfully submitted,

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