

No. 18-A-_____

In the
Supreme Court of the United States

Burgess Massey,

Petitioner,

v.

United States of America,

Respondent.

**APPLICATION TO EXTEND THE TIME TO FILE A PETITION FOR A
WRIT OF A CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT**

*To the Honorable Ruth Bader Ginsburg, Associate Justice of the Supreme
Court of the United States and Circuit Justice for the United States Court of
Appeals for the Second Circuit:*

Petitioner Burgess Massey respectfully requests an extension of time of thirty days, until February 1, 2019, to file his petition for a writ of certiorari. The opinion of the Second Circuit Court of Appeals was filed on July 11, 2018, and the Second Circuit denied rehearing and entered judgment on October 4, 2018. Accordingly, a certiorari petition is currently due on or before January

2, 2019. This application is being filed more than 10 days before the due date. No prior extensions of time to file the petition have been sought.

I attach to this application a copy of the published decision of the Second Circuit in this case, as well as its order denying Mr. Massey's petition for rehearing and rehearing en banc. This Court will have jurisdiction over a certiorari petition under 28 U.S.C. § 1254(1).

The petition for certiorari concerns issues that have arisen in the wake of the Court's decision in Johnson v. United States, 135 S.Ct. 2551 (2015), which invalidated the residual clause of the Armed Career Criminal Act ("ACCA"), 18 U.S.C. § 924(e)(2)(B)(i), and was subsequently made retroactive to cases on collateral review. Mr. Massey's petition is likely to present the following issues : (1) in a second or successive petition challenging an ACCA sentence under 28 U.S.C. §2255, what showing must the petitioner make to demonstrate that a "claim relies on" a new rule of constitutional law (i.e., the rule of Johnson v. United States), as required by the gatekeeping provisions of 28 U.S.C. §§ 2255(h)(2), 2244(b)(2)(A); and (2) does the New York offense of robbery constitute a violent felony under the "force" clause of ACCA -- an issue that is presently before this Court in Stokeling v. United States, No. 17-5554 (argued Oct. 9, 2018) in the context of a Florida robbery conviction, and New York's highest court has held that Florida robbery requires the same degree of force as New York robbery. See People v. Sailor, 65 N.Y.2d 224, 236-37 (1985).

I request this extension of time because of the press of my other commitments before the Second Circuit and before the district court. In the past month, I filed a brief in the Second Circuit on November 28, 2018 (United States v. Greenland, Second Circuit No. 18-1761); had an oral argument in the same court on November 29, 2018 (United States v. Williams, Second Circuit No. 17-3747) ; participated in preparing a sentencing memorandum, filed in the district court on December 4, 2018 (Ortiz v. United States, S.D.N.Y. No. 99-cr-532); and had a sentencing in the district court on December 11, 2018 (also in the case of Ortiz v. United States). The petition for a writ of certiorari in Mr. Massey's case is due on January 2, 2019, the day after the New Year's Day holiday. Because of the press of my work in the Circuit and the district court, and also because of the interruptions in office staffing because of the two holidays occurring in the next two weeks, I respectfully request a 30-day extension of time until February 1, 2019.

For these reasons, I respectfully request that the Court grant this application for an extension of time from January 2, 2019, to and including February 1, 2019.

Respectfully submitted,

/s/

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