

NO.
IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2018

LEON ESCOURSE-WESTBROOK,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

APPLICATION FOR AN EXTENSION OF TIME WITHIN
WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI FROM THE
JUDGMENT OF THE UNITED STATES 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

Mr. Escourse-Westbrook respectfully requests a 30-day extension of time, to and including May 7, 2019, within which to file a petition for a writ of certiorari from the judgment of the United States Court of Appeals for the Eleventh Circuit. Mr. Escourse-Westbrook has not previously sought an extension of time from this Court.

Petitioner is filing this Application at least ten days before the filing date, which is April 7, 2019. *See* S.Ct. R. 13.5. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1).

On June 24, 2016, Mr. Escourse filed a motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255, arguing that after *Johnson v. United States*, 576 U.S. ___, 135 S.Ct. 2551 (2015), § 924(c)'s residual clause was unconstitutionally vague and that his § 924(c) could no longer stand. The United States Magistrate Judge issued a report and recommendation in which she recommended that the district court grant Mr. Escourse's petition, finding that conspiracy to commit Hobbs Act robbery does not qualify as a crime of violence under the elements clause of 18 U.S.C. § 924(c)(3)(A) and that the residual clause in 18 U.S.C. § 924(c)(3)(B) is unconstitutionally vague after *Johnson v. United States*, 576 U.S. ___, 135 S.Ct. 2551 (2015). The district court declined to adopt the report and recommendation and, instead, denied Mr. Escourse's petition after finding that *Johnson* does not render 924(c)'s residual clause unconstitutionally vague. The district court also denied Mr. Escourse a certificate of appealability. Mr. Escourse appealed to and requested a certificate of appealability from the Eleventh Circuit. The Eleventh Circuit denied his application for a certificate of appealability, Eleventh Circuit Case No. 17-12040, citing no case law but simply stating that the motion was denied because Mr. Escourse "has failed to make a substantial showing of the denial of a constitutional right." Mr. Escourse filed a petition for writ of certiorari, arguing that *Johnson* invalidates § 924(c)'s residual clause and that reasonable jurists could at least debate the issue, therefore, the Eleventh Circuit erred in denying the certificate of appealability. This Court granted, vacated and remanded the case for further consideration in light of *Sessions v. Dimaya*, 584 U.S. ___ (2018). On remand, the

Eleventh Circuit once again denied the motion for certificate of appealability with no explanation other than "Escourse has not made a substantial showing of the denial of a constitutional right." A copy of the Court of Appeals' decision denying a certificate of appealability is attached as Exhibit A. Unless extended, the time within which Mr. Escourse must file a petition for writ of certiorari will expire on April 7, 2019.

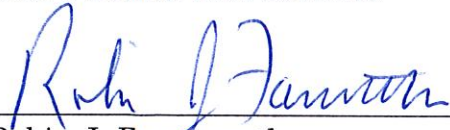
Undersigned counsel has the following other matters: Reply Brief in *United States v. Cadet*, Case No. 18-14091 (April 3, 2019); Initial brief in *United States v. Russa*, Case No. 18-14175 (April 12, 2019).

Counsel believes that additional time will be important for the effective representation of Mr. Escourse. No party will be prejudiced by the granting of a 30-day extension.

Accordingly, Petitioner respectfully requests that an order be entered extending the time to file a petition for writ of certiorari by thirty days, to and including May 7, 2019.

Respectfully submitted,

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FEDERAL PUBLIC DEFENDER

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March 26, 2019