

DOCKET NO. 19-A-_____

IN THE SUPREME COURT OF THE UNITED STATES

DANNY HERRERA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**APPLICATION FOR EXTENSION OF TIME TO FILE
A PETITION FOR A WRIT OF CERTIORARI**

Sarah Brewerton-Palmer
CAPLAN COBB LLP
75 14th St. NE, Suite 2750
Atlanta, GA 30309
Tel: (404) 596-5610
Fax: (404) 596-5604
spalmer@caplancobb.com

Counsel for Petitioner Danny Herrera

TO THE HONORABLE CLARENCE THOMAS, Associate Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Eleventh Circuit:

Petitioner Danny Herrera, by and through undersigned counsel and pursuant to Supreme Court Rules 13.5, 22, and 30, respectfully requests an extension of 30 days to file his petition for a writ of certiorari in this Court. Mr. Herrera seeks review of a decision of the United States Court of Appeals for the Eleventh Circuit entered on January 10, 2019. *See* Attachment A. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1). This request is timely made more than 10 days before April 10, 2019, the day when his petition would be due without an extension of time. In support of his request, Mr. Herrera shows the following as good cause:

1. This case presents a substantial and important question of federal law: Whether this Court's decision in *Johnson v. United States*, 135 S. Ct. 2551 (2015), invalidates the residual clause of 18 U.S.C. § 924(c)(3)(B). This Court has already granted certiorari on this question in *United States v. Davis*, No. 18-431, which will be orally argued before this Court on April 17, 2019. Below, the Eleventh Circuit applied its recent decision in *Ovalles v. United States*, 905 F.3d 1231 (11th Cir. 2018) (*en banc*) to hold that Mr. Herrera's sentence under 18 U.S.C. § 924(c)(3)(B) was not imposed in violation of the United States Constitution. In so ruling, the Eleventh Circuit has split with the Fifth, Seventh, Tenth, and D.C.

Circuits, which have all held that 18 U.S.C. § 924(c)(3)(B) is unconstitutionally vague.

2. Currently, a petition for writ of certiorari of the Eleventh Circuit's decision is due on April 10, 2019. Undersigned counsel represented Mr. Herrera in the Eleventh Circuit through an appointment under the Criminal Justice Act and will continue to do so before this Court. Undersigned counsel undertakes this representation in addition to maintaining a full client base as part of her responsibilities at Caplan Cobb LLP. As a result of counsel's other pressing professional obligations, the undersigned finds it necessary to request an extension of time to file the petition for a writ of certiorari. Counsel has been occupied by several major obligations since the Eleventh Circuit issued its decision, including a two-week jury trial that was scheduled to begin at the end of January in *Howard v. Wal-Mart Stores East, et al.*, No. 1:13-cv-02374-CAP, in Fulton County State Court. That case settled just two days before trial. On February 25, 2019, counsel filed a response brief in the Georgia Court of Appeals in *ASAP Solutions Group, LLC, et al. v. Roslyn Renay Alford*, No. A19A1249. In addition, on March 8, 2019, counsel conducted an evidentiary hearing in the Northern District of Georgia in *Githieya v. Global Tel*Link Corp.*, No. 1:15-cv-00986-AT.

3. Counsel's future deadlines and professional commitments will limit her availability to work on the petition for certiorari in this matter between today and

April 10, 2019. Counsel represents an appellee in the Georgia Court of Appeals in *Charna Gowen, et al. v. Peggy Cisco*, No. A19A1381, and the response brief in that case is due on April 8, 2019. In *Murrey v. Atlanta National League Baseball Club*, No. 16EV001898 pending in Fulton County State Court, counsel has a deadline to file motions *in limine* by April 15. Additionally, counsel is preparing a motion for summary judgment in the Fulton County Superior Court case *Jones v. Ironwood Capital Partners, LLC, et al.*, No. 2017CV294369. That motion must be filed by April 22, 2019. These obligations, as well as other filings and appearances for which counsel is responsible in the coming weeks, mean that additional time will be necessary to prepare the petition in this case.

Accordingly, Petitioner respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari for 30 days, up to and including May 10, 2019.

Respectfully submitted, this 22nd day of March, 2019.

/s/ Sarah Brewerton-Palmer
Sarah Brewerton-Palmer
CAPLAN COBB LLP
75 14th St. NE, Suite 2750
Atlanta, GA 30309
Tel: (404) 596-5609
Fax: (404) 596-5604
spalmer@caplancobb.com