
No. _____

In the

Supreme Court of the United States

ANTONIO DEAN BLACKSTONE, Petitioner

v.

UNITED STATES OF AMERICA, Respondent

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

Corrected Application for Extension of Time to File Petition for Writ of Certiorari

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**Application for Extension of Time
to File Petition for Writ of Certiorari
[28 U.S.C.A § 2101(c); Supreme Court Rules 13.5, 22, 30.3]**

To: Justice Kagan, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Ninth Circuit.

Pursuant to 28 U.S.C. §2101(c) and Supreme Court Rule 13.5, application is hereby made for an extension of time within which to file a petition for a writ of certiorari from April 17, 2019, to and including May 17, 2019.

Basis for Jurisdiction

In *United States v. Blackstone*, Case No. 17-55023, the Ninth Circuit affirmed the petitioner's conviction and sentence on September 12, 2019.¹ It denied his petition for panel rehearing / rehearing en banc on January 17, 2019.² This Court has jurisdiction pursuant to 28 U.S.C. §1254(1).

¹ App., *infra*, 1a-18a. "App." refers to the attached appendix.

² App., *infra*, 19a.

Judgment Sought to be Reviewed

After the Court issued its decision in *Johnson v. United States*, 135 S. Ct. 2551 (2015), several hundred petitioners in the Ninth Circuit filed motions to vacate their sentences based on *Johnson*. In the Central District of California alone, the Federal Public Defender filed approximately 220 such petitions. Those petitioners claimed that their sentences, based on materially identical residual clauses in the mandatory career-offender guideline and in Section 924(c), should be vacated. Mr. Blackstone was one such petitioner; he claimed that his mandatory career-offender sentence, and the mandatory enhancement under 18 U.S.C. § 924(c), should be vacated and that he should be resentenced. In the underlying opinion in this case, the Ninth Circuit held that Mr. Blackstone's petition, and others like his, should be dismissed as untimely--that they filed their claims too *early*--because this Court had not yet applied *Johnson* to those provisions. This is the judgment sought to be reviewed.

Reasons to Justify a 30-Day Extension

Petitioner Antonio Blackstone seeks a 30-day extension of time to file his petition for writ of certiorari in this case. The primary reason for this request is that both issues presented this case remain in substantial flux.

First, two Circuits have outstanding cases that may affect the strength of the petition. In the Sixth Circuit, one judge wrote a concurrence urging that

Court to reconsider its decision in *Raybon v. United States*, 867 F.3d 625 (6th Cir. 2017). *United States v. Chambers*, __ F. App'x __, 2019 WL 852295 (6th Cir. Feb. 21, 2019) (Moore, J., concurring). *Raybon* held along the same lines as *Blackstone* that a petition raising a mandatory guidelines *Johnson* claim was untimely. As of today's filing, it is not yet clear whether the Court will take up Judge Moore's suggestion; the time for filing a petition for rehearing en banc has not yet elapsed.

The Tenth Circuit recently ruled that mandatory guidelines claims based on *Johnson* are untimely. *United States v. Pullen*, 913 F.3d 1270, 1274 (10th Cir. 2019). The Court ordered a response to the petitioner's request for rehearing en banc, and the government filed that response only last week.

Given that either of these cases could deepen an already deep circuit split on the timeliness of a mandatory guidelines question and that there may be resolution in one or both cases relatively soon, Petitioner requests this extension.

Blackstone's second holding is that the petitioner's Section 924(c) claim is untimely because this Court has not yet applied *Johnson* to the residual clause in 18 U.S.C. § 924(c). This Court is set to hear argument on that very question in *United States v. Davis*, 18-431, on the same day that the petition for a writ of certiorari is due. Petitioner would like the opportunity to review the recording of the oral argument in that case before filing the petition here.

For these reasons, Petitioner respectfully requests a 30-day extension of this deadline (to and including May 17, 2019).

This motion is brought pursuant to Rule 39.1 of the Rules of the Supreme Court of the United States.

Respectfully submitted,

HILARY POTASHNER
Federal Public Defender

DATED: March 19, 2019

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