

No. \_\_\_\_\_

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IN THE  
**Supreme Court of the United States**

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ROBERT DALEY,

*Petitioner,*

v.

UNITED STATES,

*Respondent.*

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**APPLICATION FOR EXTENSION OF TIME IN WHICH TO  
FILE PETITION FOR WRIT OF CERTIORARI**

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To the Honorable John G. Roberts, Jr., Chief Justice of the United States and  
Circuit Justice for the Fourth Circuit:

Pursuant to Supreme Court Rule 13.5, Petitioner Robert Daley respectfully  
requests a 30-day extension of time, to and including July 25, 2019, within which to file a  
petition for a writ of certiorari to review the judgment of the United States Court of  
Appeals for the Fourth Circuit. In support thereof, undersigned counsel states the  
following:

1. The United States Court of Appeals for the Fourth Circuit issued its judgment on March 27, 2019. *See Daley v. United States*, No. 18-1658, 2019 WL 1386199 (Mem) (4th Cir. 2019) (Appendix A). Unless extended, the time to file a petition for certiorari will expire on June 25, 2019. This application is being filed more than ten days before the petition is currently due. *See* Sup. Ct. R. 13.5. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

2. This case presents an important question for coram nobis litigation, which touches on important immigration issues and is of particular significance for immigrants with prior criminal histories: what constitutes a valid reason for delay in seeking coram nobis relief, and what should courts assess in making this determination? This is an important question because often times, a writ of coram nobis is the only vehicle through which an individual can challenge an unconstitutional conviction; but courts often rely on undue delay to deny relief without reaching the merits of a coram nobis petitioner's claim. Indeed, courts have often summarily found undue delay without any analysis of the reasons for delay, focusing instead on the *length* of delay. This is precisely what the lower court did here. However, this is in direct conflict with other jurisdictions, which require that, rather than focusing on the length of a petitioner's delay, courts weigh the reasons for the delay against any resulting prejudice to the Government before determining whether that delay should bar relief. *See, e.g. United States v. Kwan*, 407 F.3d 1005 (9th Cir. 2005) (considering (1) the petitioner's reasons for delay, (2) any resulting prejudice to the Government, and (3) whether the petitioner is merely abusing

the writ, in determining whether petitioner's delay in attacking conviction should bar relief), *abrogated on other grounds by Padilla v. Kentucky*, 559 U.S. 356 (2010).

3. Daley was charged on July 11, 2001, with one count of conspiracy to distribute cocaine, in violation of 21 U.S.C. § 846. Seeking to avoid deportation, and following the advice of his counsel, Daley – a Jamaican national who had been living in the United States as a lawful permanent resident for 20 years, since he was 13 years old – entered into a plea agreement with the Government. He was told by both his attorney and Government agents that he would not be deported if he did this. Almost one year later, having held up his end of the agreement, Daley pleaded guilty to the single drug count and was sentenced to 57 months' imprisonment. Upon the completion of his sentence, however, Daley was removed to Jamaica as a result of this conviction.

4. What followed was an 11-year odyssey to get back to the United States to address his immigration issues. Both of the times he returned, Daley was arrested and charged with illegal reentry – once in 2009 and again in 2016. After his 2009 arrest, he served a 36-month sentence before again being removed to Jamaica. He is currently serving a 46-month sentence for his second illegal reentry charge, upon the completion of which he will presumably be, once again, removed to Jamaica. Thus, the majority of the time between his arrest in 2001, and his most recent arrest in 2016, Daley was either in Jamaica – from where he was unable to seek relief – or in jail. He therefore had no access to the resources he needed in order to address either the bad advice he had received from his attorney, or the collateral immigration consequences stemming therefrom. Indeed, he spoke to numerous attorneys in attempts to resolve these issues, and it was not until 2016

that an attorney advised him that he could challenge his 2002 conviction, through a writ of error coram nobis, based on the affirmative misrepresentations of his trial counsel.

Before that date, Daley had no idea this was even possible.

5. After his 2016 arrest, Daley filed a *pro se* Petition for Writ of Error Coram Nobis in the United States District Court for the District of Maryland. He sought to vacate his 2002 conviction based on claims of ineffective assistance of counsel. Undersigned counsel was appointed by the court to represent Daley, and multiple hearings were held in February 2018. On May 4, 2018, the district court denied Daley’s petition on grounds of undue delay, and thus did not reach the merits of his claim. The district court, however, improperly focused its analysis on the length of Daley’s delay – essentially finding that too much time had passed between his first removal and the filing of his coram nobis petition. This focus, however, is incorrect.

6. Daley timely appealed the district court’s denial of his coram nobis petition, but on March 27, 2019, without more than a blanket conclusion that the district court did not abuse its discretion, the Fourth Circuit affirmed the district court’s judgment.

7. The district court’s decision, and the Fourth Circuit’s affirmance thereof, is in conflict with other jurisdictions that have addressed this issue. In *United States v. Morgan*, 346 U.S. 502, 512 (1954), this Court recognized that there may be “sound reasons” justifying a petitioner’s delay in attacking his conviction, such that delay would not, in and of itself, bar relief. This makes sense, since delay is inherent in coram nobis proceedings, in which relief is available only after a sentence has been served and there exists no other statutory remedy. This Court has not, however, defined what might

constitute “sound reasons” that would justify a delay, and there is a conflict among the courts on this point. The Ninth Circuit, for example, assesses the reasons for a petitioner’s delay and balances those against other considerations, such as any prejudice to the Government. *See, e.g., Kwan, supra.* Similarly, the Seventh Circuit has held that the doctrine of laches applies to *coram nobis* petitions, based on its recognition that “if... the delay is found to be excusable or nonprejudicial to the government, the time bar is inoperative.” *United States v. Darnell*, 716 F.2d 479, 480 (1983). The decision upheld by the Fourth Circuit in the instant case, which focused on the *length* of Daley’s delay, is in conflict with these cases.

8. Undersigned counsel runs a two-person firm with a significant caseload. In the coming months, the undersigned is occupied with a number of other appellate matters. For example, he has an oral argument scheduled for May 10, 2019, in the Maryland Court of Special Appeals, *Tormarco Harris v. State*, No. 745, Sept. Term 2018; he has an opening brief due in the same court on May 30, 2019, in *State of Maryland v. Charles Brandon Martin*, No. 3207, Sept. Term 2018; an opening brief due in the Fourth Circuit Court of Appeals on June 17, 2019, in *Rafael Chikvashvili v. United States*; and a petition for writ of certiorari to this Court due in mid-July, 2019, in *Adnan Syed v. State of Maryland*. He also is managing approximately 30 active criminal and civil matters. In addition, since the date of the order affirming the district court’s judgment, both the undersigned and his sole associate have had to deal with family medical emergencies, which have further burdened the small firm. In light of undersigned counsel’s workload, he respectfully requests an extension of 30 days, from June 25, 2019, until July 25, 2019,

within which to file the petition for writ of certiorari on Daley's behalf. This case presents an important issue that may have broad implications for coram nobis litigation. Additional time will allow counsel to adequately research this matter and prepare an effective petition for certiorari.

Wherefore, Petitioner respectfully requests that this Court grant this application and enter an order extending the time to file a petition for writ of certiorari to and including July 25, 2019.

Respectfully Submitted,

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/s/  
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