

NO:

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2018

MICHAEL LEE,

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**

Pursuant to Supreme Court Rules 13.5, 22, and 30.3, Michael Lee respectfully requests a sixty-day extension of time, to and including July 29, 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. Lee has not previously sought an extension of time from this Court.

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

Mr. Lee was convicted for being a felon in possession of a firearm, and sentenced as an Armed Career Criminal, based upon a prior conviction for robbery in violation of Fla. Stat. § 812.13(a). He appealed his sentence to the Eleventh Circuit, but the Eleventh Circuit affirmed his sentence and this Court denied certiorari. Within a year of this Court's decision in *Johnson v. United States*, 135 S.Ct. 2551 (2015) which invalidated the ACCA's residual clause, Mr. Lee filed a motion to vacate his sentence pursuant to 28 U.S.C. § 2255, arguing that in light of *Johnson* that he was not an Armed Career Criminal because his Florida felony robbery did not meet the elements clause.

The district court granted his motion and the government subsequently appealed. On appeal, a panel of the Eleventh Circuit held that its recent decision in *United States v. Fritts*, 841 F.3d 937 (11th Cir. 2016) bound the panel.

But the one of the panel members wrote a concurrence agreeing with Mr. Lee that the recent *Fritts* decision relied on circuit precedent that used outdated modes of interpretation and analysis that had since been overturned by intervening Supreme Court precedent and, as such, were "wrongly decided." *See United States v. Lee*, 886 F.3d 1161, 1165-71 (11th Cir. 2018) (Jordan, J., concurring).

Mr. Lee filed a petition for rehearing, but that was denied. His case was remanded to the district court for it to impose the original ACCA sentence.

Undersigned counsel will not have sufficient time to prepare a petition for writ of certiorari by May 28th due to several competing obligations before this Court, the Eleventh Circuit, and the various district judges in the Southern District of Florida, including two trials and a suppression hearing; a scheduled training in June; a scheduled annual leave in July and September.

There will be no prejudice to any party from the requested extension.

Since the time within which to file a petition for writ of certiorari in this case will expire on May 28, 2019, unless extended, Mr. Lee respectfully requests that an order be entered extending his time to file a petition for writ of certiorari by sixty days, to and including July 29, 2019.

Respectfully submitted,

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FEDERAL PUBLIC DEFENDER

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