

No. _____

IN THE
Supreme Court of the United States

RICKIE MARKIECE ATKINSON,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

**APPLICATION FOR AN EXTENSION OF TIME TO FILE A PETITION FOR A
WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE FOURTH CIRCUIT**

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

Under 28 U.S.C. § 2101(c) and Rules 13.5, 22, and 30 of this Court, petitioner
Rickie Markiece Atkinson respectfully requests a sixty-day extension of time, up to
and including August 9, 2019, in which to file a petition for a writ of certiorari in
this Court. The Fourth Circuit entered final judgment against Mr. Atkinson on
January 14, 2019. It denied his timely petition for rehearing and rehearing en banc
on March 12, 2019. Mr. Atkinson's time to file a petition for certiorari in this Court
expires on June 10, 2019. This application is being filed more than ten days before
that date. A copy of the Fourth Circuit's unpublished opinion in this case is

attached as Exhibit 1. Its order denying panel rehearing and rehearing en banc is attached as Exhibit 2. This Court has jurisdiction under 28 U.S.C. § 1254(1).

This case presents an important question regarding whether North Carolina breaking or entering categorically qualifies as generic burglary for purposes of the Armed Career Criminal Act. In the last four years, since ACCA's residual clause was invalidated in *Johnson v. United States*, 135 S. Ct. 2551 (2015), this Court has granted certiorari in four ACCA cases involving generic burglary: *Mathis v. United States*, 136 S. Ct. 2243 (2016), *United States v. Stitt* and *United States v. Sims*, 139 S. Ct. 399 (2018), and *Quarles v. United States*, No. 17-778 (certiorari granted Jan. 11, 2019).

In *United States v. Stitt*, this Court held that a state statute that criminalized the breaking into "vehicles designed or adapted for overnight use" is not "outside the generic burglary definition." 139 S. Ct. 399, 407 (2018). In so doing, the Court reaffirmed its holding in *Taylor v. United States*, 495 U.S. 575, 599 (1990), that Missouri breaking and entering falls outside the Act because it includes breaking and entering into "any boat or vessel or railroad car" and thus includes "ordinary boats and vessels often at sea (and railroad cars often filled with cargo, not people)." *Stitt*, 139 S. Ct. at 407. It reiterated its holding in *Mathis* that an Iowa statute including breaking into vehicles or similar structures used "for the storage or safekeeping of anything of value" was broader than generic burglary. *Id.* And it vacated and remanded Sims's sentence to explore his argument that

Arkansas residential burglary is overbroad because it covers burglary of a vehicle where a homeless person occasionally sleeps. *Id.* at 407-408.

North Carolina breaking or entering includes breaking or entering into any “dwelling, dwelling house, uninhabited house, building under construction, building within the curtilage of a dwelling house, and *any other structure designed to house or secure within it any activity or property.*” N.C. Gen. Stat. § 14-54(a) (emphasis added). By its terms, this italicized language could include a food truck (kitchen activity), an ambulance (medical activity), a tractor trailer (property storage), a bloodmobile (blood donation activity), an armored truck (money storage), and a mobile pet groomer (grooming activity), as well as a house boat or old non-functioning car used as occasional shelter or storage. Each of these involves property storage and is not “customarily used for overnight accommodation.” *See Stitt*, 139 S. Ct. at 403-404, 407.

North Carolina cases confirm this fatal overbreadth. Breaking into a storage trailer for tools and equipment on a construction site qualifies. *State v. Bost*, 286 S.E.2d 632, 634 (N.C. Ct. App. 1982). So does breaking into a permanent, locked storage facility used to transport musical equipment. *State v. Batts*, 617 S.E.2d 724, at *2-*3 (N.C. Ct. App. 2005). And so does breaking into a travel trailer made “an area of repose.” *State v. Taylor*, 428 S.E.2d 273, 274 (N.C. Ct. App. 1993).

This case thus is a strong candidate for certiorari because the North Carolina statute and case law demonstrate that North Carolina breaking or entering reaches conduct that falls outside the Act’s definition of generic burglary.

The requested extension is necessary to allow undersigned counsel to review this Court's decision in *Quarles v. United States*, No. 17-778, once it issues and to adequately research and draft a petition presenting this issue while balancing a heavy caseload. Since the Fourth Circuit denied rehearing and rehearing en banc, the undersigned has filed a response brief in *United States v. Provance*, No. 18-4786, opening briefs in *United States v. Carr*, No. 17-6853, *United States v. Lewis*, No. 19-4028, and *United States v. Crandell*, No. 19-4164, as well as a reply brief in *United States v. Cervantez-Ruiz*, Nos. 18-4700, 18-4701.

The undersigned also filed responses to expedited stay motions in *United States v. White*, in both the Eastern District of North Carolina, No. 5:17-HC-2162-D, and the Fourth Circuit, No. 19-6181, as well as an expedited response brief on the merits in the Fourth Circuit. The undersigned argued that appeal in the Fourth Circuit on May 8, 2019.

The undersigned is currently drafting opening briefs in *United States v. Diboh*, No. 19-4101, and *United States v. Robinson*, No. 19-4216, as well as a reply in a sealed matter in the Eastern District of North Carolina, and a reply in *United States v. Carr*, No. 17-6853.

For these reasons, Mr. Atkinson respectfully requests that an order be entered extending the time to petition for certiorari up to and including August 9, 2019.

This the 28th day of May, 2019.

Respectfully submitted,

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