No. A 18A1262 ORIGINAL

In the Supreme Court of the United States

ALEXANDER CHRISTIAN MILES,
Applicant,

v.

UNITED STATES OF AMERICA
Respondent

APPLICATION TO EXTEND TIME TO FILE A PETITION FOR WRIT OF CERTIORARI

DIRECTED TO THE HONORABLE SONYA SOTOMAYOR, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

ALEXANDER C. MILES
pro se
C/O LAW OFFICES OF DON P. CHAIREZ
P.O. Box 1954
Pahrump. NV 89041
Telephone: (702) 281-0681
Facsimile: (702) 926-9700
acmilesesq@gmail.com

May 22, 2019

TO:
THE HONORABLE JUSTICE SONYA SOTOMAYOR,
CIRCUIT JUSTICE FOR THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT:

The Applicant and Petitioner, Dr. Alexander C. Miles, respectfully requests a 60-day extension to file his petition for a writ of certiorari.

If granted, the filing deadline would be extended from August 1, 2019, to September 30, 2019.

Dr. Miles will ask for a review by this Court of a published judgment by the Tenth Circuit Court of Appeals, rendered on May 3, 2019, and attached hereto as ATTACHMENT A.

The Supreme Court has jurisdiction to review the Tenth Circuit's judgment under 28 U.S.C. §1254(1). The Tenth Circuit issued its published opinion in *Miles v. United States*, Case No. 18-6119, on May 3, 2019.

The Petitioner, currently acting pro se, respectfully contends that an extension is required for the following reasons:

(1) The Tenth Circuit dismissed the Petitioner's second coram nobis appeal by relying on the common law abuse of the writ doctrine as codified by the AEDPA under 28 U.S.C. §2255.

In *Prost v. Anderson*, 636 F.3d 578 (10th Cir. 2011), the Tenth Circuit provides that second or successive petitions by prisoners, except as specified in 28 U.S.C. §2255(h), are allowed only when the remedy of an initial petition under 28 U.S.C. §2255 was "*inadequate or ineffective* to test the legality of the [prisoner's] detention" under the

'*savings clause*' of 28 U.S.C. §2255(e).

Prost posits that the remedy of an initial §2255 petition is only *inadequate or ineffective* when a sentencing court has ceased to exist, such as when a court martial has been disbanded.

Thus, under *Prost,* access to the *remedy* of an initial §2255 petition is not impeded by the denial of *relief* due to legal or factual errors by a trial or appellate court, no matter how egregious: In the interests of finality of judgments, one, and only one chance under §2255 is all a criminal defendant gets, no matter how purportedly factually innocent under statutory law.

In the instant published opinion, and in prior unpublished opinions, the Tenth Circuit has expanded the ambit of *Prost* to encompass coram nobis petitions by persons at liberty, not otherwise subject to the constraints of the AEDPA. In reality, this constitutes a judicial abrogation of the All Writs Act.

(2) This case also involves a material breach of the terms of a fully integrated plea agreement, caused by the government and district court, acting in consort, amending the date and factual basis for the crime the Petitioner originally had pled guilty to and been convicted of, more than two years earlier. This post hoc, 2011 amendment of the Petitioner's criminal charges resulted in the Petitioner standing convicted of a completely different offense, for double jeopardy purposes, than what he had been originally charged with and convicted on in 2009. Both the district court and Tenth Circuit have openly conceded that the reason for the post-hoc amendments was to correct a charging error due to the government mistakenly having charged the Petitioner with

conduct that later turned out not to be criminalized under controlling Board of Immigration Appeals precedent.

(3) After the AEDPA was promulgated in 1996, a four-way circuit split regarding the availability of second or successive habeas petitions by current and former federal prisoners claiming factual innocence, and other grave procedural errors, has developed. This circuit divide is currently ripe for review and guidance by the Supreme Court.

Nor has the Supreme Court ever expressly provided that contract law principles should govern the enforcement of plea agreements by criminal defendants to the same degree as commercial contracts. At present, the federal judiciary is reluctant to apply contract law to plea agreements when it would disadvantage the government. However, there is no reason why an individual who bargains with his liberty should receive fewer contractual protections than an individual or business in the commercial marketplace that buys products or services. In this context, civil litigants are in a superior position to criminal defendants when it comes to enforcement of contractual rights. Therefore, the Petitioner also intends to solicit this Court's guidance on whether plea agreements should be on par with commercial contracts, and enforced by the application of contract law principles, even in instances where it would favor criminal defendants.

(5) Since these two issues are of universal importance to all criminal defendants and their counsel, as well as the executive branch and judiciary, the extra 60 days will be used to solicit amicus brief from interested parties and organizations.

(6) Furthermore, as the Supreme Court eschews the prospect of inept oral arguments by wild card amateurs, the Petitioner will also use the extra time to attempt to secure the

assistance of counsel, ideally in the form of a commercial law firm Supreme Court litigation department, or law school litigation clinic, whose representatives are in regular attendance before this Court.

(7) An extension will not prejudice the Office of the Solicitor General of the United States, since it is not routinely onligated to respond to certiorari petitions.

Respectfully submitted,

ALEXANDER C. MILES
pro se
C/O LAW OFFICES OF DON P. CHAIREZ
P.O. Box 1954
Pahrump. NV 89041
Telephone: (702) 281-0681
Facsimile: (702) 926-9700
acmilesesq@gmail.com