

IN THE SUPREME COURT OF THE UNITED STATES

JUAQUENE SOLOMON,	:
	:
Petitioner	:
	:
-vs-	:
	:
UNITED STATES OF AMERICA,	:
	:
Respondent.	:

**APPLICATION FOR EXTENSION OF TIME
FOR FILING PETITION FOR WRIT OF CERTIORARI**

Jeffrey B. Lazarus, attorney with the Federal Public Defender for the Northern District of Ohio, respectfully requests the granting of the instant application for a 90-day extension of time for filing a petition for writ of certiorari, or until November 20, 2019, and in support represents the following:

1. Juaquene Solomon, was charged in federal court in the Northern District of Ohio with possession with intent to distribute a controlled substance, in Case No. 5:17-CR-376. He pled guilty. The district court found him to qualify as a career offender and imposed a sentence of 126 months. On direct appeal, Mr. Solomon challenged the district court's finding that he qualified as a career offender. The Sixth Circuit Court of Appeals issued an unpublished opinion affirming the district court's decision. *United States v. Solomon* No. 18-3058 (6th Cir. February 13, 2019) (Attached as Appendix A). Mr. Solomon filed a petition for en banc hearing. This petition was denied on April 9, 2019. *United States v. Solomon* No. 18-3058 (6th Cir. April 9, 2019) (Attached as Appendix B).

2. Petitioner's petition for writ of certiorari is due 90 days after the entry of the judgment of the Court of Appeals. Originally, the petition was July 8, 2019, however, Petitioner has already received one 45-day extension by this Court, which was granted on June 27, 2019.

3. The previous extension was requested because of the Sixth Circuit's published opinion in *United States v. Havis*, 927 F.3d 382 (6th Cir. 2019) (en banc). In *Havis*, the Sixth Circuit found the Sentencing Guidelines' definition of "controlled substance offense" does not include attempt crimes. The Court concluded, "[t]he Commission's use of commentary to add attempt crimes to the definition of 'controlled substance offense' deserves no deference. The text of § 4B1.2(b) controls, and it makes clear that attempt crimes do not qualify as controlled substance offenses." *Havis*, 927 F.3d 387. In light of *Havis*, Mr. Solomon filed a motion to recall the mandate in the Sixth Circuit. *United States v. Solomon* No. 18-3058, Document 37 (6th Cir. June 13, 2019). Mr. Solomon sought, and received a 45-day extension from this Court based on the pendency of that motion before the Sixth Circuit.

4. Since that time, the Sixth Circuit granted Petitioner's motion to recall the mandate. *United States v. Solomon* No. 18-3058, Document 40 (6th Cir. July 2, 2019). Subsequently, the Sixth Circuit requested the parties file briefs "explaining how *Havis* impacts Solomon's appeal and advising whether remand is appropriate." *United States v. Solomon* No. 18-3058, Document 41 (6th Cir. July 18, 2019). Briefs have been filed and the issue remains pending before the Sixth Circuit. Mr. Solomon believes that delaying the filing of his petition for writ of certiorari is necessary to see how the Sixth Circuit handles the impact of *Havis* upon Petitioner's case.

4. Counsel respectfully requests an additional 90 days or until November 20, 2019, in which to complete the petition for writ of certiorari.

WHEREFORE, for all the foregoing reasons of good cause, Jeffrey B. Lazarus, attorney with the Office of the Federal Public Defender for the Northern District of Ohio, and on behalf of Juaquene Solomon, Petitioner, respectfully requests that this Court grant this motion for a 90-day extension of time for filing the petition for writ of certiorari and order that the petition be filed on or before November 20, 2019.

Respectfully submitted,

STEPHEN C. NEWMAN
Federal Public Defender
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/s/ Jeffrey B. Lazarus
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Counsel for Juaquene Solomon

CERTIFICATE OF SERVICE

I, Jeffrey B. Lazarus, hereby certify that a copy of the foregoing was served on counsel for Respondent by enclosing a copy thereof in an envelope, postage prepaid, addressed to:

Noel Francisco, Solicitor General of the United States
Office of Solicitor General
950 Pennsylvania Avenue, N.W.
Washington, DC 20530; and

Laura McMullen Ford, Assistant United States Attorney
Carl B. Stokes U. S. Courthouse
801 W. Superior Avenue, Suite 400
Cleveland, OH 44113,

and depositing same in the United States Mail at Cleveland, Ohio, on August 20, 2019, and further certifies that all parties required to be served have been served.

Respectfully submitted,

/s/ Jeffrey B. Lazarus
JEFFREY B. LAZARUS (0079525)
Assistant Federal Public Defender