

NO:
IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2018

ERIK LINDSEY SMITH,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**APPLICATION FOR A 60-DAY EXTENSION OF TIME 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**

Petitioner, Erik Lindsey Smith, respectfully requests a 60-day extension of time, to and including December 21, 2018, 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. Smith has not previously sought an extension of time from this Court.

Petitioner is filing this Application at least ten days before the filing date, which is October 21, 2018. See S.Ct. R. 13.5. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1).

Mr. Smith sought to appeal the denial of his 28 U.S.C. § 2255 motion. Mr.

Smith filed a request for a certificate of appealability from the Eleventh Circuit Court of Appeals in Eleventh Circuit Case No. 17-15435. The Court of Appeals denied his request on July 20, 2018. That order is attached. The issue raised in Mr. Smith's case is identical to the issue recently decided by an *en banc* panel of the Eleventh Circuit in *Ovalles v. United States*, ___ F.3d ___, 2018 WL 4830079 (11th Cir. Oct. 4, 2018) (*en banc*).

It is anticipated that counsel for petitioner in *Ovalles* will file a petition for a writ of certiorari with this Court. This Court's decision on that petition in a published, *en banc* decision will likely dictate the disposition of Mr. Smith's petition.

Undersigned counsel believes that additional time will be important for the effective representation of Mr. Smith. No party will be prejudiced by the granting of a 60-day extension.

Accordingly, Petitioner respectfully requests that an order be entered extending the time to file a petition for writ of certiorari by sixty days, to and including December 21, 2018.

Respectfully submitted,

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FEDERAL PUBLIC DEFENDER

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October 9, 2018