

No. _____

In the Supreme Court of the United States

RICHARD FUENTES, *PETITIONER*,
v.

UNITED STATES OF AMERICA, *RESPONDENT*.

APPLICATION FOR EXTENSION OF TIME TO FILE PETITION FOR
WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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To the Honorable Samuel A. Alito, Jr., Associate Justice of the Supreme Court of the United States and Circuit Justice for the Fifth Circuit:

1. Petitioner Richard Fuentes requests a 30-day extension of time to file his petition for certiorari in this Court to and including February 8, 2019. *See* 28 U.S.C. § 2101(c); Sup. Ct. R. 13.5, 22, 30. The final judgment of the Fifth Circuit was entered on October 11, 2018, and petitioner's time to petition for certiorari in this Court expires January 9, 2019. This application is being filed more than 10 days before that date.

A copy of the opinion below, which is reported at 906 F.3d 322, is attached hereto. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1).

2. As shown by the opinion below, the case involves important questions about a court of appeals' ability to preemptively limit the precedential value of its decisions, and the standard of review for a defendant's appeal from an order revoking supervised release and imposing a new term of imprisonment. Fuentes argued below that his five-year revocation sentence is plainly unreasonable because 1) it was authorized by the fact that he was originally sentenced under the Armed Career Criminal Act, 2) he no longer qualifies as an Armed Career Criminal after the Court's 2015 decision in *Johnson v. United States*, 135 S. Ct. 2551, and 3) he has already served more than the twelve-year aggregate statutory maximum he should have faced without the ACCA enhancement. The Fifth Circuit affirmed Fuentes's sentence because an important case on which he relied purported to limit its own precedential value, and based on the court's "default view that a statutory maximum revocation

sentence is neither plainly unreasonable nor plain error.” 906 F.3d at 327; slip op. at 8. Since this Court’s decision in *United States v. Booker*, 543 U.S. 220 (2005), a multifarious circuit split has developed over the proper standard of review for revocation imprisonment sentences. See *United States v. Bolds*, 511 F.3d 568, 574–75 & n.2 (6th Cir. 2007).

3. Petitioner was represented in the district court and court of appeals by the Federal Public Defender for the Western District of Texas, and is represented in this Court by Assistant Federal Public Defender Bradford W. Bogan, a member of the Bar of this Court. This month, counsel has been engaged in several matters in this Court and the Fifth Circuit, limiting the amount of time he has been able to devote to preparing the petition in this case. On December 6, counsel presented oral argument in the Fifth Circuit in *United States v. Najera*, No. 17-50802. On December 5, the Fifth Circuit ordered counsel to file a supplemental brief in support of the motion for certificate of appealability in *United States v. Joiner*, No. 18-50136, with a deadline of December 13. Counsel then prepared a petition for writ of certiorari in *United States v. Wiese*, Fifth Circuit No. 17-50445, which was filed on December 26. Finally, counsel will be presenting oral argument in the Fifth Circuit on January 10 in *United States v. Ganzer*, No. 17-51042.

For these reasons, Petitioner respectfully requests that an order be entered extending his time to petition for certiorari in the above-captioned case to and including February 8, 2019.

Respectfully submitted,

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