

No. ____ - ____

IN THE
SUPREME COURT OF THE UNITED STATES

EDWARD JOSEPH KEHOE,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

**APPLICATION FOR EXTENSION OF TIME IN WHICH TO
FILE PETITION FOR WRIT OF CERTIORARI**

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

Petitioner, by his attorney, respectfully makes application pursuant to Supreme Court Rule 13.5 and Rule 22 to extend the time in which to file a petition for writ of certiorari from the judgment entered by the United States Court of Appeals for the Fourth Circuit. In support thereof, counsel states the following:

1. Petitioner Edward Kehoe was convicted of possession of a firearm subsequent to a conviction for a felony, after he was seized by the police without a warrant, physically escorted by the police outside the business at which he was a customer, and then frisked. The police found a firearm on his person and arrested him. Mr. Kehoe filed a motion to suppress arguing that the warrantless seizure of his person and subsequent frisk violated the Fourth

Amendment. The district court disagreed and denied the motion. Mr. Kehoe then pled guilty to a violation of 18 U.S.C. § 922(g)(1), maintaining his right to appeal the denial of the motion to suppress.

2. On appeal, the Fourth Circuit affirmed, concluding that the police officers had sufficient reasonable suspicion to support the warrantless seizure and frisk. In affirming, however, the Fourth Circuit agreed with Mr. Kehoe that the “district court’s repeated reference to Kehoe’s race during the suppression hearing was clearly improper.” *United States v. Kehoe*, 893 F.3d 232, 240 (4th Cir. 2018). The Fourth Circuit concluded, however, that the court’s racial remarks were harmless because the Fourth Circuit itself could review the police body camera evidence and the rest of the record and itself conclude that reasonable suspicion supported the seizure, without agreeing with the district court’s use of race or the district court’s legal analysis. *Id.* at 240-41. As the Fourth Circuit noted: “In sum, racial remarks like those at issue here have no place in our judicial system, and we do not in any way condone them.” *Id.* at 241. Yet, the court of appeals affirmed the conviction. *Id.* Mr. Kehoe’s petition will argue that this Court should grant review and hold that a United States District Court’s “clearly improper” racial remarks should not be subject to a harmless error analysis.

3. The Fourth Circuit issued its decision on June 20, 2018. This Court has jurisdiction over Mr. Kehoe’s case pursuant to 28 U.S.C. § 1254(1). His petition for a writ of certiorari is presently due on September 18, 2018.

4. The appellate attorney assigned to this case, Caroline S. Platt, recently has had or soon will have the following filings: the opening brief in *United States v. Tomas Alvarez-Alvarez*, 4th Cir. No. 18-4243, on June 28, 2018; the opening brief and joint appendix in *United States v. Romique Radcliffe*, 4th Cir. No. 18-4180, on July 9, 2018; the reply brief in *United States v. Delfino De Leon-Ramirez*, 4th Cir. No. 18-4121, on August 13, 2018; the response brief in *United States v. Billy Curry*, 4th Cir. No. 18-4233, on August 23, 2018; the opening brief and joint appendix in *United States v. Christopher Rodriguez-Soriano*, 4th Cir. No. 18-4291, on August 28, 2018; the opening brief and joint appendix in *United States v. Darryl Seay*, 4th Cir. No. 18-4383, on September 17, 2018; and the reply brief in *Radcliffe*, *supra*, after the government files its pending response brief, currently due the week of July 30. In addition, Ms. Platt will be out of the office between August 3 and August 14. Ms. Platt will present oral argument to the Fourth Circuit in *United States v. Trenton Birchette*, 4th Cir. No. 17-4450, on September 28, 2018, and will also assist her colleagues with preparation for the several other cases her office will present during that Fourth Circuit court week.

5. In light of appellate counsel's briefing deadlines and other obligations, counsel for Mr. Kehoe request an extension of thirty days, from September 18, 2018, to October 18, 2018, in which to file the petition for writ of certiorari in Mr. Kehoe's case.

Wherefore, Petitioner prays that this application be granted.

Respectfully submitted,

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