

Application No. _____

In the Supreme Court of the United States

MELVIN HODGES, JR.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Application for Extension of Time to File a Petition for Writ of Certiorari
to the United States Court of Appeals for the Ninth Circuit

**PETITIONER'S APPLICATION FOR EXTENSION OF TIME
TO FILE PETITION FOR WRIT OF CERTIORARI**

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TO THE HONORABLE ELENA KAGAN, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE NINTH CIRCUIT:

Pursuant to Supreme Court Rules 13.5, 22, and 30.2, Petitioner Melvin Hodges respectfully requests a 30-day extension of time, up to and including February 14, 2020, to file a petition for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit to review that court's unpublished memorandum decision in *Hodges v. United States*, COA No. 17-35408 (attached as Exhibit A). On October 17, 2019, the court denied a petition for panel rehearing with suggestion for rehearing *en banc* (attached as Exhibit B). The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(a), and the time to file a petition for writ of certiorari will expire without an extension on January 15, 2020. This application is timely because it has been filed more than ten days prior to the date on which the time for filing the petition is to expire.

1. The undersigned is the Federal Public Defender for the Western District of Washington.
2. This case presents an important issue of statutory interpretation that has produced intractable conflict among the lower courts: When does 28 U.S.C. § 2255(f)(3) require that a § 2255 motion based on *Johnson v. United States*, 135 S. Ct. 2551 (2015), be filed when it challenges a sentence imposed under the pre-*Booker* mandatory guidelines.

3. Assistant Federal Public Defender Ann K. Wagner is the lead counsel. She has authored or coauthored all of the briefing in this case. Ms. Wagner has an opening brief in the Ninth Circuit concerning the rarely invoked writ of *audita querela* due on February 7, 2020, as well as a previously scheduled two-week vacation during the month of January. In addition, Ms. Wagner has other appellate, district court, and habeas cases, which have limited her availability to work on this matter.

4. Although the memorandum below was unpublished, it was the first opinion in which Ninth Circuit Judge Marsha S. Berzon, in a concurrence, announced her disagreement with the published Ninth Circuit decision on this issue, *Blackstone v. United States*, 903 F.3d 1020 (9th Cir. 2018), *cert. denied*, 139 S. Ct. 2762 (June 23, 2019).

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Accordingly, Petitioner Hodges respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari for 30 days, up to and including February 14, 2020.

Dated: January 3, 2020

Respectfully submitted,

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