

IN THE SUPREME COURT OF THE UNITED STATES

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No. 18A-\_\_\_\_\_

UNITED STATES

v.

DOMINIC LADALE WALTON

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

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The Solicitor General, on behalf of the United States, respectfully requests a 30-day extension of time, to and including July 31, 2019, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case. The court of appeals entered its judgment on November 27, 2018, and denied the government's petition for rehearing on April 2, 2019. Unless extended, the time within which to file a petition for a writ of certiorari will expire on July 1, 2019. The jurisdiction of this Court would be invoked under 28 U.S.C. 1254(1). A copy of the opinion of the court of appeals and the order denying rehearing are attached.

Following a guilty plea in the United States District Court for the Northern District of Texas, respondent was convicted of possession of a firearm by a felon, in violation of 18 U.S.C. 922(g). App., infra, 1a. The default maximum term of imprisonment for that offense is 120 months. 18 U.S.C. 924(a)(2). The Armed Career Criminal Act of 1984 (ACCA), 18 U.S.C. 924(e), however, provides for a sentence of 15 years to life imprisonment for certain offenders who have three prior convictions for a "violent felony," defined to include "burglary" punishable by more than one year in prison. 18 U.S.C. 924(e)(1) and (2)(B)(ii).

Respondent's presentence investigation report identified three prior "violent felony" convictions -- specifically, three convictions for burglary of a habitation under Texas Penal Code Ann. § 30.02(a)(1) (West 1994). App., infra, 1a. Respondent objected to the application of the ACCA. Ibid. He argued that the Texas statute is broader than "burglary" under the ACCA, on the theory that not all of its subsections require the intent to commit a crime at the moment of initial unpermitted entry into, or remaining in, a covered structure. D. Ct. Doc. No. 39 at 1. The district court sustained respondent's objection and sentenced him to 24 months of imprisonment. App., infra, 1a.

The government appealed, and the Fifth Circuit stayed the appeal pending its en banc consideration of United States v. Herrold, 883 F.3d 517 (2018), cert. granted, No. 17-1445 (June 17,

2019), and cert. denied, No. 17-9127 (June 17, 2019). 7/26/17 Order. The Fifth Circuit ultimately held in Herrold that Texas's burglary of a habitation statute is broader than generic burglary under the ACCA, because one of its subsections, Texas Penal Code Ann. § 30.02(a)(3) (West. Supp. 2017), criminalizes unlawful entry followed by the subsequent formation of intent to commit a crime. Herrold, 883 F.3d at 521-537.

The government filed a petition for a writ of certiorari in Herrold. United States v. Herrold, No. 17-1445 (filed Apr. 18, 2018). Following the court of appeals' en banc decision in Herrold, the court denied the government's motion to hold the appeal in this case in abeyance pending the resolution of the government's certiorari petition in Herrold. The court then affirmed the district court's 24-month non-ACCA sentence on the basis of Herrold, App., infra, 1a-2a, and denied the government's petition for rehearing, id. at 3a.

On June 10, 2019, this Court held in Quarles v. United States, No. 17-778, 2019 WL 2412905, that "[f]or purposes of [18 U.S.C.] § 924(e), \* \* \* remaining-in burglary occurs when the defendant forms the intent to commit a crime at any time while unlawfully remaining in a building or structure." Id. at \*2. On June 17, 2019, this Court granted the government's petition for a writ of certiorari in Herrold, vacated the judgment, and remanded for

further consideration in light of Quarles. United States v. Herrold, No. 17-1445.

The Solicitor General has not yet decided whether to file a petition for a writ of certiorari in this case. Additional time is needed for further consultation with other components of the Department of Justice and, if certiorari is authorized, to prepare and print the petition.

Respectfully submitted.

NOEL J. FRANCISCO  
Solicitor General  
Counsel of Record

JUNE 2019

## APPENDIX

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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No. 17-10199  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

November 27, 2018

UNITED STATES OF AMERICA,

Lyle W. Cayce  
Clerk

Plaintiff - Appellant

v.

DOMINIC LADALE WALTON,

Defendant - Appellee

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:15-CR-364-1

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Before DENNIS, CLEMENT, and OWEN, Circuit Judges.

PER CURIAM:\*

Dominic Ladale Walton received a 24-month sentence following his guilty plea conviction for felon in possession of a firearm. The district court sustained Walton's objection to the application of the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e), based on his three prior convictions for burglary of a habitation, violations of Texas Penal Code § 30.02(a)(1). The Government timely appealed.

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

2a  
No. 17-10199

Upon motion by the Government, this case was held in abeyance pending a decision in *United States v. Herrold*, 883 F.3d 517 (5th Cir. 2018) (en banc), *petition for cert. filed* (Apr. 18, 2018) (No. 17-1445). *Herrold* has now issued and, as the Government concedes, the district court did not err in determining that Walton's three prior convictions for burglary of a habitation, in violation of Texas Penal Code § 30.02(a)(1), could not serve as predicate offenses under the ACCA. *See Herrold*, 883 F.3d at 541. Accordingly, the judgment of the district court is AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 17-10199

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UNITED STATES OF AMERICA,

Plaintiff - Appellant

v.

DOMINIC LADALE WALTON,

Defendant - Appellee

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Appeal from the United States District Court  
for the Northern District of Texas

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**ON PETITION FOR REHEARING**

Before DENNIS, CLEMENT, and OWEN, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing is **DENIED**.

ENTERED FOR THE COURT:

  
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JAMES L. DENNIS  
UNITED STATES CIRCUIT JUDGE