

No. \_\_\_\_-\_\_\_\_

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IN THE SUPREME COURT OF THE UNITED STATES

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WILLIE JOHNSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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**APPLICATION FOR AN EXTENSION OF TIME IN WHICH TO FILE  
A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE FOURTH CIRCUIT**

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

Under 28 U.S.C. § 2101(c) and Rules 13.5, 22, and 30 of this Court, petitioner Willie Johnson respectfully requests a 60-day extension of time, up to and including July 3, 2019, in which to file a petition for a writ of certiorari in this Court. The Fourth Circuit entered final judgment against Johnson on February 6, 2019. Johnson's time to file a petition for certiorari in this Court expires on May 7, 2019. This application is being filed more than 10 days before that date. A copy of the Fourth Circuit's published

opinion in this case is attached as Exhibit 1. This Court has jurisdiction under 28 U.S.C. § 1254(1).

This case presents the important question of how the categorical approach should be applied to 18 U.S.C. § 3559(c) – the federal “three-strikes law” that provides for mandatory life in prison for defendants convicted of their third “serious violent felony.” The Petitioner argued, based on this Court’s decisions in *Johnson v. United States*, 135 S. Ct. 2551 (2015) and *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018), that the residual clause of § 3559(c) was unconstitutionally vague. The opinion below did not reach this question because it concluded that the petitioner’s prior New York robbery offense qualified under the enumerated offenses in § 3559(c). The opinion found that the categorical approach applied, but instead of comparing the elements of New York third degree robbery and the robbery offenses listed in § 3559(c), the opinion found that the petitioner’s New York third degree robbery offense “reflects the essence of robbery as Congress described it” in the enumerated offense clause of § 3559(c) and expressed “the conviction that Congress intended robbery under the three-strikes law to encompass New York robbery in the third degree.” The panel’s application of the categorical approach guts this Court’s decision from *Taylor v. United States*, 495 U.S. 575 (1990) and the requirement that a court compare the elements from the generic offense listed in a federal statute with the elements – and not the essence – of the defendant’s prior offense.

This application of the categorical approach in name only also conflicts with the Second Circuit’s recent decision in *United States v. Kroll*, 918 F.3d 47 (2nd Cir. 2019) which applied the categorical approach to the definition of “prior sex conviction” under § 3559(e) over the Government’s objection and argument that the categorical approach should be abandoned for the “conduct-specific approach.” In *Kroll*, the Second Circuit correctly compared the elements of the defendant’s underlying New York state offense and concluded it swept more broadly than the federal equivalent set forth in § 3559(e).

This case is a strong candidate for certiorari because it presents a clean vehicle for the Court to resolve whether, and how, the categorical approach should be applied to § 3559(c) – a statute with renewed importance after the First Step Act of 2019, P.L. 115-391, incorporated the definitions from § 3559(c) for enhancements for a prior “serious violent felony” under 21 U.S.C. § 851.

The requested extension is necessary to allow undersigned counsel to adequately research and draft a petition presenting this issue while simultaneously balancing a heavy, public-defender caseload. In addition to this case, counsel also is responsible for meeting deadlines in pending Fourth Circuit cases including *United States v. May*, Fourth Cir. No. 19-6332 (opening brief due April 12, 2019), *United States v. Legall*, Fourth Cir. No. 19-4183 (brief regarding jurisdiction due April 12, 2019), *United States v. Riley*, Fourth Cir. No. 18-4783 (petition for rehearing due April 17, 2018), *United States v. Fleurival*, 19-6281 (opening brief due April 23, 2019), *United States*

*v. Druitt*, 19-6289 (opening brief due April 25, 2019), *United States v. Terrell*, 19-6294 (opening brief due April 25, 2019), *United States v. Jackson*, Fourth Cir. No. 18-6288 (reply brief due April 25, 2019), *United States v. Venable*, Fourth Cir. No. 19-6280 (reply brief due May 7, 2019), *United States v. Cortez*, Fourth Cir. 19-4055 (oral argument May 9, 2019). Undersigned counsel is also trial counsel in numerous cases but significantly for *United States v. Daley*, W.D.V.A. Docket No. 3:18-cr-26 (motion to dismiss hearing set for April 22, 2019 and trial set for June 3-7, 2019), and *United States v. James Fields*, W.D.V.A Docket No 3:18-cr-11 (sentencing set for July 3, 2019).

For these reasons, Johnson respectfully requests that an order be entered extending the time to petition for certiorari up to and including July 3, 2019.

Respectfully submitted,

Juval O. Scott  
FEDERAL PUBLIC DEFENDER FOR THE  
WESTERN DISTRICT OF VIRGINIA

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April 9, 2019

**Exhibit 1**

*United States*

v.

*Willie Johnson,*

915 F.3d 223