

No. ____-____

IN THE SUPREME COURT OF THE UNITED STATES

MALCOLM OMAR ROBINSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**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**

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 Malcolm Omar Robinson respectfully requests a 60-day extension of time, up to and including July 11, 2019, in which to file a petition for a writ of certiorari in this Court. The Fourth Circuit entered final judgment against Mr. Robinson on March 12, 2018. It denied his timely rehearing petition on February 11, 2019. Mr. Robinson's time to file a petition for a writ of certiorari in this Court expires on May 12, 2019. Mr. Robinson is filing this application more than 10 days before that date. A copy of the

Fourth Circuit's unpublished opinion in this case and the order denying panel rehearing and rehearing en banc is attached to this application as Exhibit 1. This Court has jurisdiction under 28 U.S.C. § 1254(1).

This case presents an important question regarding whether North Carolina Breaking and Entering categorically qualifies as generic "burglary" for purposes of the Armed Career Criminal Act. In *United States v. Stitt*, this Court recently held that a state statute that criminalized the breaking into "of vehicles designed or adapted for overnight use" is not "outside the generic definition of burglary." 139 S.Ct. 399, 407 (2018). In so holding, this Court expressly reserved the question of whether a statute that "might cover a car in which a homeless person occasionally sleeps" meets the generic burglary definition and remanded the question to the circuit court for consideration. *Id.* Thus, the question of what sorts of vehicles, and how they are used, intersects with the generic burglary definition is both important and unsettled after *Stitt*.

Mr. Robinson's petition will raise this important and unsettled question. In North Carolina, someone commits the offense of breaking or entering when he "breaks or enters any building with intent to commit any felony or larceny therein." N.C. Gen. Stat. § 14-54(a). The term "building" includes "any dwelling, dwelling house, uninhabited house, building under construction, building within the curtilage of a dwelling house, and *any other structure designed to house or secure within it any activity or property.*" N.C. Gen. Stat. § 14-54(c) (emphasis added).

North Carolina courts have applied this language to extend the Section 14-54(a) definition of building to include vehicles. The North Carolina courts hold that an unoccupied mobile home intended for retail sale and not affixed to the premises of the dealership qualifies as a “building” for purposes of the breaking or entering statute. *State v. Douglas*, 277 S.E.2d 467 (N.C. Ct. App. 1981). Similarly, an occupied “travel trailer” temporarily parked on a farm “satisf[ie]d the occupied dwelling element of first degree burglary.” *State v. Taylor*, 428 S.E.2d 273, 274 (N.C. Ct. App. 1993). Because Mr. Robinson’s petition will “rest[] in part upon state law” and will also involve surveying how other circuit courts have begun interpreting the vehicle question in light of *Stitt*, it will be more involved than the typical petition for certiorari, and it would benefit from extra time to draft. *Stitt*, 139 S.Ct. at 407.

Additionally, undersigned counsel has obligations that will make it difficult for him to draft the petition on time. Counsel has oral argument in the Fourth Circuit on May 9, 2019 in *United States v. Bennerman*, 4th Cir. No. 17-6544. Also, four days ago, the Fourth Circuit entered an Order establishing accelerated briefing and oral argument in *United States v. White*, 4th Cir. No. 19-6181. Undersigned counsel will be heavily involved in the briefing and preparation for oral argument in *White*. Mr. White’s brief is due on May 1, 2019, and oral argument is May 8, 2019.

Further, undersigned counsel has been the attorney coordinating his office’s response to defendants’ motions for retroactive resentencing under Section 404 of the First Step Act. Pub. L. No. 115-391. This coordination involves reviewing the

records of approximately 700 individuals sentenced in the Eastern District of North Carolina, making evaluations for eligibility, filing motions for resentencing in appropriate cases, and litigating those motions in the district court. This project, in addition to undersigned counsel's normal appellate workload, has made it difficult to timely complete Mr. Robinson's petition.

Thus, Mr. Robinson respectfully requests that an order be entered extending the time to petition for certiorari up to and including July 11, 2019.

Respectfully submitted today, April 16, 2019,

G. Alan DuBois
FEDERAL PUBLIC DEFENDER



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