

No. ____-____

IN THE SUPREME COURT OF THE UNITED STATES

JOSHUA WAYNE RILEY,

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 Joshua Wayne Riley respectfully requests a 60-day extension of time, up to and including August 31, 2019, in which to file a petition for a writ of certiorari in this Court. The Fourth Circuit entered final judgment against Riley on April 3, 2019. Riley's time to file a petition for certiorari in this Court expires on July 2, 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 two important questions about the nature of supervised release revocation hearings. First, whether the exclusionary rule should apply in such a hearing, and second, whether an out-of-court admission of criminal activity must be corroborated to prove a violation of supervised release occurred. Central to the Fourth Circuit's denial of both aspects of Riley's appeal is the conclusion that supervised release revocation proceedings are not criminal proceedings and therefore afford a defendant fewer constitutional and procedural protections. In so holding, the Fourth Circuit first looked to *Morrissey v. Brewer*, 408 U.S. 471, 480 (1972) for the principle that revocation of parole is not part of a criminal prosecution and therefore does not afford a defendant the "fully panoply of rights." The Fourth Circuit then relied on its prior precedent that "parole and supervised release are not just analogous, but virtually indistinguishable." See *United States v. Armstrong*, 187 F.3d 392, 394 (4th Cir. 1999).

This Court heard argument in *United States v. Haymond*, 17-1782 during this term but no opinion has been released to date. At issue in *Haymond* is the potential expansion of Sixth Amendment protections in the supervised release revocation context as well as the very premise that supervised release and parole are entirely analogous proceedings. Regardless of the outcome in *Haymond*, the opinion will feature significantly in the petition for a writ of certiorari in this case.

The requested extension is necessary to allow undersigned counsel to adequately research and draft a petition presenting the issues in light of the forthcoming opinion in *Haymond*, while simultaneously balancing a heavy, public-defender caseload. In addition to this case, counsel has another petition for writ of certiorari due before this Court in *United States v. Johnson*, No. 18A1063, on July 3, 2019 and is also responsible for meeting deadlines in pending Fourth Circuit cases including *United States v. Jackson*, Fourth Cir. No. 19-6288 (reply brief due June 5, 2019), *United States v. Venable*, Fourth Cir. No. 19-6280 (reply brief due June 13, 2019), *United States v. May*, Fourth Cir. No. 19-6332 (reply brief due June 17, 2019), *United States v. Fulton*, Fourth Cir. No. 19-6717 (opening brief due June 25, 2019).

Undersigned counsel is also trial counsel in numerous cases but significantly in the capital cases of *United States v. James Jordan*, W.D.V.A. Docket 1:19-mj-57 and for *United States v. James Fields*, W.D.V.A Docket No 3:18-cr-11 (sentencing set for June 28, 2019).

For these reasons, Riley respectfully requests that an order be entered extending the time to petition for certiorari up to and including August 31, 2019.

Respectfully submitted,

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

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June 4, 2019

Exhibit 1

United States

v.

Joshua Riley,
920 F.3d 200