

In the Supreme Court of the United States

JIMMIE EUGENE WHITE, II,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

**APPLICATION FOR AN EXTENSION OF TIME TO FILE
A PETITION FOR A WRIT OF CERTIORARI**

To the Honorable Sonia Sotomayor, Associate Justice of the United States Supreme Court and Circuit Justice for the United States Court of Appeals for the Sixth Circuit:

1. Pursuant to Supreme Court Rule 13.5, petitioner Jimmie Eugene White, II respectfully requests a 59-day extension of time, until Friday, November 1, 2019, within which to file a petition for a writ of certiorari. The United States Court of Appeals for the Sixth Circuit issued its opinion on April 10, 2019. A copy of the opinion is attached. The Sixth Circuit denied petitioner's rehearing petition on June 5, 2019. A copy of the order is attached. This Court's jurisdiction would be invoked under 28 U.S.C. § 1254(1).

2. Absent an extension, a petition for a writ of certiorari would be due on September 3, 2019. This application is being filed more than 10 days in advance of that date, and no prior application has been made in this case.

3. This case concerns whether, and under which provisions, time may be excluded under the Speedy Trial Act based on the parties' stipulation that they are engaged in plea bargaining. Here, petitioner's counsel and the government stipulated that a period between petitioner's arrest and indictment should be excluded. The magistrate judge accepted the stipulation without explanation, stating simply that "good cause" exists for the continuance. The district court held that the exclusion of time was proper because petitioner and the government "agreed that the time period should be enlarged" and the "parties [were] engaged in plea bargaining." In 2017, the Sixth Circuit affirmed on the sole basis that under then-circuit precedent, time periods during which the parties are engaged in plea negotiations are automatically excludable under 18 U.S.C. § 3161(h)(1). *United States v. White*, 679 F. App'x 426 (6th Cir. 2017).

4. Petitioner filed a petition for a writ of certiorari, and the United States conceded that then-Sixth Circuit precedent regarding the automatic excludability of plea bargaining time was inconsistent with this Court's decision in *Bloate v. United States*, 559 U.S. 196 (2010). On January 8, 2018, this Court granted the petition, vacated the Sixth Circuit's judgment, and remanded "for further consideration in light of the confession of error by the Solicitor General." Order, *White v. United States*, 138 S. Ct. 641, No. 17-270.

5. The parties submitted supplemental briefing to the Sixth Circuit on remand regarding the effect of *Bloate* and whether, alternatively, the time at issue was excludable under the Speedy Trial Act’s ends-of-justice exception, 18 U.S.C. § 3161(h)(7). That provision “permits a district court to grant a continuance and to exclude the resulting delay if *the court*, after considering certain factors, makes *on-the-record* findings that the ends of justice served by granting the continuance outweigh the public’s and the defendant’s interests in a speedy trial.” *Zedner v. United States*, 547 U.S. 489, 498–99 (2006) (emphases added). It “gives the district court discretion—within limits and *subject to specific procedures*—to accommodate limited delays for case-specific needs.” *Id.* at 499 (emphasis added). As this Court has emphasized, the “strategy of [the ends-of-justice exception] . . . is to counteract substantive openendedness *with procedural strictness*. This provision demands *on-the-record findings* and specifies in some detail certain factors that a judge must consider in making those findings.” *Id.* at 509 (emphases added).

6. Despite the absence of *any* on-the-record findings in this case, in an opinion issued on April 10, 2019, a divided Sixth Circuit panel again affirmed petitioner’s conviction. *United States v. White*, No. 16-1009, slip op. (Apr. 10, 2019). The court first held, unanimously, that this Court’s decision in *Bloate* abrogated prior circuit precedent regarding the automatic exclusion of plea-bargaining time. *Id.* at 2. However, two members of the panel, constituting the majority, held that notwithstanding any error with respect to the automatic excludability of plea bargaining time, the time at issue was excludable under the ends-of-justice exception,

and petitioner's conviction should be affirmed on that basis. *Id.* at 8–12; *id.* at 14 (Guy, J., concurring in part and in the judgment). The majority reasoned that the parties' stipulation, which did nothing more than recite the statutory language that "the ends of justice served by a continuance outweigh the interests of the public and the defendant in a speedy trial," together with the "surrounding context," was sufficient to support an ends-of-justice exclusion. In dissent, Judge Clay found that "*the majority's reasoning is inconsistent with Supreme Court . . . precedent.*" *Id.* at 15 (Clay, J., concurring in part and dissenting in part) (emphasis added).

7. Judge Clay is correct. The Sixth Circuit majority's opinion is contrary to well-established precedent from this Court and effectively eviscerates the statutory requirement that a district court make express on-the-record findings, after considering certain factors, in order to exclude time under the ends-of-justice exception. This Court has been clear: "without the on-the-record findings, there can be no exclusion." *Zedner*, 547 U.S. at 507. But there were no findings here, and yet, the majority found a proper exclusion. The majority's decision also deepens a circuit split regarding the excludability of time under the ends-of-justice exception based on a stipulation between the parties.

8. The issues in this case are significant. Left undisturbed, the Sixth Circuit's decision will have a profound impact on federal criminal prosecutions, given that issues concerning the excludability of plea bargaining time arise constantly in a system in which 90 to 95 percent of convictions arise from guilty pleas. U.S. Dep't of

Justice, Bureau of Justice Statistics, *Plea and Charge Bargaining, Research Summary 1* (2011), <http://bja.gov/Publications/PleaBargainingResearchSummary.pdf>.

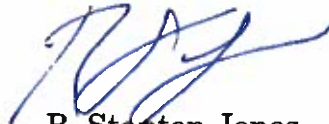
9. Petitioner respectfully requests an extension of time to file a petition for a writ of certiorari. A 59-day extension would allow counsel sufficient time to fully research and analyze the issues presented and to prepare the petition for filing. In addition, undersigned counsel has a number of other pending matters that will interfere with counsel's ability to file the petition on September 3, 2019.

10. Respondent does not object to this request.

Wherefore, petitioner respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari to November 1, 2019.

August 22, 2019

Respectfully submitted,



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