

No. _____

IN THE
Supreme Court of the United States

JERMAINE LENARD MOSS,

Petitioner,

v.

KENNY ATKINSON, WARDEN,

Respondent.

**On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Fourth Circuit**

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

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

1. Under Supreme Court Rules 13.5, 22, and 30, petitioner Jermaine Lenard Moss, through counsel, respectfully requests a 60-day extension of time, up to and including Tuesday, November 26, 2019, to file a petition for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit to review *Moss v. Atkinson*, No. 18-6096. The Fourth Circuit denied Mr. Moss's petition for rehearing or rehearing en banc on July 1, 2018. Appendix B. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254. The time to file a petition for a writ of certiorari will otherwise expire on September 27, 2019. The application is timely because it has been filed on or before 10 days before the date on which the petition is otherwise due.

2. The decision of the Fourth Circuit presents important questions about whether a federal prisoner, such as Mr. Moss, may seek habeas relief under 28 U.S.C. § 2241 and the "saving clause" of 28 U.S.C. § 2255(e) when a § 2255 petition was "inadequate or ineffective" to test the legality of detention. There is an "entrenched split among the courts of appeals" about these specific questions, *Bruce v. Warden Lewisburg USP*, 868 F.3d 170, 177 (3d Cir. 2017), which "are of significant national importance and are best considered by [this] Court at the earliest possible date," *United States v. Wheeler*, 734 F. App'x 892, 893 (4th Cir. 2018) (Agee, J., statement respecting the denial of rehearing en banc). Compare *United States v. Barrett*, 178 F.3d 34, 51–52 (1st Cir. 1999), *Triestman v. United States*, 124 F.3d 361, 363 (2d Cir. 1997), *In re Dorsainvil*, 119 F.3d 245, 247–48, 251 (3d Cir. 1997), *United States v.*

Wheeler, 886 F.3d 415, 434 (4th Cir. 2018), *Reyes-Requena v. United States*, 243 F.3d 893, 904 (5th Cir. 2001), *Hill v. Masters*, 836 F.3d 591 (6th Cir. 2016), *In re Davenport*, 147 F.3d 605, 611 (7th Cir. 1998), *Alaimalo v. United States*, 645 F.3d 1042, 1047 (9th Cir. 2011), and *In re Smith*, 285 F.3d 6, 8 (D.C. Cir. 2002) (all allowing saving-clause relief), with *Prost v. Anderson*, 636 F.3d 578, 588 (10th Cir. 2011) (Gorsuch, J.), and *McCarthan v. Director of Goodwill Indus.-Suncoast, Inc.*, 851 F.3d 1076, 1099–1100 (11th Cir. 2017) (en banc) (both rejecting saving-clause relief).

3. Good cause exists for this motion. Undersigned counsel, Lawrence D. Rosenberg of Jones Day, directs the West Virginia University College of Law's Supreme Court Litigation Clinic, which is co-counsel in this case. The Clinic strives to have its students participate fully in its cases. Students from last year's Clinic class briefed and argued Mr. Moss's appeal in the Fourth Circuit, and now a new group of students is participating in this year's Clinic. As classes at the College of Law started recently, in late-August 2019, these new Clinic students require additional time to analyze the record in this case and the applicable law, and to draft the petition for certiorari, with enough time for Mr. Moss to review it before it is filed. At the same time, the Clinic is also handling other matters. The Clinic was appointed by the U.S. District Court for the Northern District of West Virginia in *Wilkerson v. Warden, Williamsburg Federal Correctional Institution*, No. 1:18CV211, to brief and argue a habeas jurisdictional issue, and expects significant work in the next several weeks that will follow therefrom. In addition, the Clinic was recently retained in *Haze v. Harrison*, No. 18-7340 (4th Cir.), in which we expect the opening brief to be due

October 28, 2019. In light of the academic calendar and the Clinic's other obligations, the requested extension is necessary to allow the students sufficient time to participate fully in this case.

4. Mr. Rosenberg himself also has had recently, and will have in the coming weeks, significant professional and personal commitments that would make it extremely difficult to complete the petition without an extension. Mr. Rosenberg is lead counsel in *Citigroup Inc., et al. v. Villar*, No. 2:19-cv-05310-GW (C.D. Cal.), in which he had hearings in Los Angeles on August 1, and August 30, and in which he has briefs due on September 19 and October 10. Mr. Rosenberg is counsel in *Precision Castparts Corp, et al. v. Schulz Holding GmbH & Co.*, No. 01-1 8-0001-0115 (ICDR-AAA), an international-arbitration proceeding in which an evidentiary hearing is set for October 15 to 17, 2019 in Geneva, Switzerland, and in which substantial briefing leading up to that hearing is required. Mr. Rosenberg is also lead counsel in *Lufthansa Technik v. Panasonic Avionics Corp.*, No. 2:17-cv-01453-JCC (W.D. Wash.) and *In re the Matter of Lufthansa Technik*, No. 8-19-mc-016-UA-KES (C.D. Cal.), in which he is coordinating simultaneous document discovery from several parties and multiple depositions, and in which he had hearings on August 14, and August 30, in Santa Ana, CA, and is preparing for a hearing on September 27, 2019. Finally, Mr. Rosenberg serves as lead counsel in numerous actions before the U.S. Court of Federal Claims, including *Owl Creek Asia I, L.P. v. United States, et al.*, No. 18-281C; *Appaloosa Investment Limited Partnership I, et al., v. United States*, No. 18-370C; *Akanthos Opportunity Master Fund, L.P., v. United States*, No. 18-369C; *CSS, LLC*,

v. United States, No. 18-371C; *Mason Capital L.P., et al., v. United States*, No. 18-529C; and *CRS Master Fund, L.P., et al. v. United States*, No. 18-1155C, in which he is currently preparing supplemental briefing. Mr. Rosenberg also will be out of town traveling on business and/or personal matters on September 17-18, September 25-26, October 3-5, October 8-9, October 11-14, and October 19-22.

WHEREFORE, Mr. Moss respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari for 60 days, up to and including November 26, 2019.

September 16, 2019

Respectfully submitted,



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