

No. 19A

IN THE SUPREME COURT OF THE UNITED STATES

Billy F. May,
Applicant,

v.

Juan Segovia,
Respondent.

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

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September 20, 2019

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

Pursuant to this Court's Rules 13.5, 22, and 30.3, Applicant Billy F. May requests a 60-day extension of time to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit in this case, to December 9, 2019.

As discussed herein, this case involves an important question of federal statutory law concerning the rights of formerly incarcerated persons, on which the lower courts are divided. Applicant requests this extension because Counsel of Record, Amir H. Ali, has several substantial briefing deadlines and oral argument during the relevant period, and requires additional time to conduct the level of analysis that aids this Court in determining whether to grant certiorari.

In support of this request, Applicant states as follows:

1. The U.S. Court of Appeals for the Tenth Circuit issued its opinion on July 12, 2019. *See May v. Segovia*, 929 F.3d 1223 (10th Cir. 2019) (Attachment A). The time for filing a petition would thus expire on October 10, 2019, absent an extension. Consistent with Rule 13.5, this application has been filed at least 10 days before that date. This Court has jurisdiction over the case under 28 U.S.C. § 1254(1).

2. In the decision below, the Tenth Circuit held that the question of whether Applicant is a “prisoner” and therefore subject to the affirmative defense of non-exhaustion under 42 U.S.C. §1997e, is determined based on his status at the time of his non-operative, original complaint even where the plaintiff has filed an amended complaint after being released from prison. As a result, a prisoner who is released during the pendency of his suit—and therefore no longer subject to the defense of exhaustion under the terms of § 1997e—would be required to voluntarily dismiss and refile a whole new action, rather than avail himself of the ordinary procedure of amending a complaint, as any other plaintiff may do.

3. That decision conflicts with decisions of the Third and Ninth Circuits. Adhering to this Court’s decision in *Jones v. Bock*, 549 U.S. 199 (2007), those circuits hold that where a plaintiff is released from prison and amends his complaint, the plaintiff’s status is determined based upon the timing of his operative, amended complaint. Because such a plaintiff was not a “prisoner” at the time the operative complaint was filed, he is not subject to the exhaustion requirement in § 1997e. *See Garrett v. Wexford Health*, No. 17-3480, 2019 WL 4265187, at *8–14 & n.21 (3d Cir.

Sept. 10, 2019) (recognizing that the Tenth Circuit has taken “a contrary view” and instead adopting a “conclusion consistent with” the Ninth Circuit in *Jackson v. Fong*, 870 F.3d 928 (9th Cir. 2017)).

4. Applicant intends to file a petition for certiorari asking this Court to resolve this conflict. Applicant requests additional time to file the petition because counsel has several substantial briefing deadlines and oral argument in addition to a pre-planned vacation on the week of October 7, 2019. These include:

- Oral argument in the U.S. Court of Appeals for the Tenth Circuit in *Smart v. Chaffee*, No. 18-3242, scheduled for September 23, 2019;
- A petition for certiorari in this Court from the Supreme Court of Washington’s decision in *Morgan v. Washington*, No. 19A119, due October 13, 2019;
- A petition for certiorari in this Court from the Supreme Court of Pennsylvania’s decision in *Commonwealth v. Shaffer*, No. 19A224, due October 16, 2019;
- A reply brief in the U.S. Court of Appeals for the Second Circuit in *Thompson v. Clark*, No. 19-580, due November 11, 2019.

5. Applicant has not previously sought an extension of time from this Court.

6. For these reasons, Applicant respectfully requests that the time to file a petition for a writ of certiorari be extended to and including December 9, 2019.

Respectfully submitted,



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