

No. _____

IN THE
Supreme Court of the United States

TRAVIS RAY NORWOOD,

Petitioner,

v.

WEST VIRGINIA,

Respondent.

**On Petition for Writ of Certiorari to the
Supreme Court of Appeals of
West Virginia**

**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, in which West Virginia is located:

1. Under Supreme Court Rules 13.5, 22, and 30, petitioner Travis Ray Norwood, through counsel, respectfully requests a 58-day extension of time, up to and including Friday, January 31, 2020, to file a petition for a writ of certiorari to the Supreme Court of Appeals of West Virginia to review *West Virginia v. Norwood*, No. 17-0978. The West Virginia Supreme Court denied Mr. Moss's petition for rehearing or rehearing en banc on September 5, 2019. App.B. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1257. The time to file a petition for a writ of certiorari will otherwise expire on December 4, 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 West Virginia Supreme Court presents important and recurring equal protection and due process questions about whether a criminal defendant convicted of a crime involving drugs of one class can be given a harsher sentence than another similarly situated criminal defendant convicted of a crime involving drugs of another class, despite the legislature's directive that the two classes of drugs be treated identically for punitive purposes. Here, Mr. Norwood was convicted of a drug crime involving heroin, while a similarly situated criminal defendant was given a more lenient sentence for the exact same crime and in materially identical circumstances, where the crime involved an opioid,

notwithstanding the West Virginia legislature’s directive that heroin and opioids be treated the same for punitive purposes. *Compare* App. A with *State v. Lane*, 241 W. Va. 532, 826 S.E.2d 657 (2019); *see* App. A, Opinion of Workman, J., concurring in part and dissenting in part, at 7 (“[t]he only difference between the charge in Lane and the charge in the case at bar is that Lane involved the drug Oxycodone and, here, it was heroin”). The lower federal and state courts are deeply divided as to whether and under what circumstances such differential treatment is constitutionally permissible. *Compare, e.g.*, App. A (West Virginia Supreme Court permitting such differential treatment); *State v. Ellison*, 255 So.3d 568 (La. 2018) (Johnson, C.J., dissenting) (criticizing majority for treating abusers of prescription opioids differently from heroin abusers); *U.S. v. Lewis*, 521 Fed. Appx. 109, 110 (4th Cir. 2013) (rejecting challenge that differential treatment of defendants convicted of crimes involving opioids and defendants convicted of crimes involving heroin is “arbitrary, excessive, and causes unjust disparities”) *with, e.g.*, *People v. Berry*, 489 N.E.2d 1107 (Ill. Ct. App. 1986) (affirming identical sentences for both convictions of delivery of cocaine and delivery of heroin, despite the drugs’ different classifications, because the legislature had intended similar treatment); *U.S. v. Castillo*, 460 F.3d 337, 345 (2nd Cir. 2006) (upholding disparity of crack and powder cocaine guideline ranges because they were specifically intended by Congress).

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. Both the Mr.

Rosenberg and the Clinic were recently retained in this matter. They require sufficient time to research the issues presented and to present an effective petition for a writ of certiorari.

4. Furthermore, the Clinic strives to have its students participate fully in its cases. However, the Clinic is currently engaged in other matters and the Fall term is almost over. Mr. Rosenberg and the Clinic are preparing a petition for a writ of certiorari in *Moss v. Atkinson*, which is due on November 26, 2019. Mr. Rosenberg and the Clinic were appointed by the United States Court of Appeals in *Haze v. Harrison*, No. 18-7340 (4th Cir.), in which the opening brief was filed on November 12, 2019. And Mr. Rosenberg and the Clinic were 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 expect significant work in the next several weeks that will follow therefrom. Moreover, the Clinic students have their Thanksgiving break from November 25 to 29, 2019 and will have final examinations and their winter break from December 9, 2019 until January 13, 2020. 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.

5. 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 a hearing in Los Angeles, California on November 12, 2019, and has upcoming hearings scheduled for November 25, 2019 and January 9, 2020. 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 a hearing on November 20, 2019, and has an upcoming hearing on December 3, 2019 in Santa Ana, California, has a brief due on November 22, 2019, and will likely have several depositions in December 2019 and early January 2020. Mr. Rosenberg also 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 argued in opposition to the government's motion to dismiss on November 19, 2019, and expects further briefing in the next several weeks. Mr. Rosenberg also will be out of town traveling on business and/or personal matters on December 5-6, 2019, December 22, 2019-January 1, 2020, and January 16-20, 2020.

WHEREFORE, Mr. Norwood respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari for 58 days, up to and including January 31, 2020.

November 22, 2019

Respectfully submitted,

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