

No. 22-_____

IN THE
Supreme Court of the United States

ORTAZ SHARP,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**APPLICATION FOR AN EXTENSION OF TIME TO
FILE PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE ELEVENTH CIRCUIT**

STEPHEN P. JOHNSON

Counsel of Record

FEDERAL DEFENDER PROGRAM, INC.

101 Marietta Street, NW

Suite 1500

Atlanta, Georgia 30303

(404) 688-7530

Stephen_P_Johnson@FD.org

No. 22-_____

IN THE
Supreme Court of the United States

ORTAZ SHARP,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**APPLICATION FOR AN EXTENSION OF TIME TO
FILE PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE ELEVENTH CIRCUIT**

TO THE HONORABLE CLARENCE THOMAS,
Associate Justice of the Supreme Court of the United
States, and Circuit Justice for the United States Court of
Appeals for the Eleventh Circuit:

The Petitioner, ORTAZ SHARP, through undersigned
counsel and pursuant to 28 U.S.C. § 2101 and Supreme
Court Rules 13.5 and 30.2, respectfully requests an
extension of time of sixty (60) days to file his Petition for
Writ of Certiorari in this Court. Mr. Sharp will seek review

of the decisions of the United States Court of Appeals for the Eleventh Circuit entered on December 28, 2021, (Judgment Entered as to USA Appellant) and February 22, 2022 (Denial of Petition for Rehearing En Banc). *See* Attachment A and B, respectively. Mr. Sharp invokes the jurisdiction of this Court pursuant to 28 U.S.C. § 1254. His time to file a Petition for Writ of Certiorari will expire on May 23, 2022. Mr. Sharp makes this application for an extension more than ten (10) days before the petition's original due date. This is his first request for an extension of time. In support of the application, Mr. Sharp offers the following:

Petitioner's case involves an important constitutional question: Can a defendant be sentenced to the Armed Career Criminal enhancement for a conviction that was not a qualifying predicate at the time of sentencing under binding Eleventh Circuit precedent, and which the government chose not to argue was a predicate conviction during the contested sentencing hearing? The Eleventh Circuit Court of Appeals answered the question in the affirmative.

In doing so, the court continued a worrisome trend of eroding the party presentation principle by allowing the government to avail itself to arguments on appeal, which they purposefully waived in prior proceedings. In *United States v. Campbell*, 2022 WL 468677, *6-*20 (11th Cir. 2022), the Eleventh Circuit in a 7 to 5 en banc opinion held that the party presentation principle did not bar the government from availing itself to the good-faith exception to the exclusionary rule, despite the government's knowing failure to raise this exception before the appellate panel.

The Eleventh Circuit’s holdings in *Sharp* and *Campbell* seem to run afoul of this Court’s recent holding in *United States v. Sineneng-Smith*, — U.S. — 140 S. Ct. 1575, 1578 (2020). In the Court’s unanimous decision, it admonished that “[i]n our adversarial system of adjudication, we follow the principle of party presentation.” *Id.* The Court explained that “we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present.” *Id.* (quoting *Greenlaw v. United States*, 554 U.S. 237, 243 (2008)). The Court was clear that appellate courts “do not, or should not, sally forth each day looking for wrongs to right.” *Id.* (citation omitted). Instead, is the role of appellate courts to “wait for cases to come to [us], and when [they do, we] normally decide only questions presented by the parties.” *Id.* (citation omitted).

The Eleventh Circuit’s holdings in *Sharp* and *Campbell* also seem at odds with the Court’s prior holdings on the party presentation principle. *See Wood v. Milyard*, 566 U.S. 463, 472 (2012) (“[A] federal court does not have carte blanche to depart from the principle of party presentation basic to our adversary system.”); *Greenlaw*, 554 U.S. at 243 (“In our adversary system, in both civil and criminal cases, in the first instance and on appeal, we follow the principle of party presentation.”)

Meanwhile, Mr. Sharp’s own petition for writ of certiorari will be due on May 23, 2022. Counsel for Mr. Sharp asks the Court to extend that deadline by 60 days for several reasons. First, counsel will be on vacation (and unable to work on the petition) for seven days in April and, also, has a five-day jury trial in May. Second, counsel

requires additional time to consult with experienced Supreme Court advocates as he prepares the petition.

CONCLUSION

Mr. Sharp asks this Court to grant this application for an extension of time to file the Petition for Writ of Certiorari by sixty (60) days, until and including July 22, 2022.

Respectfully Submitted,

STEPHEN P. JOHNSON
Counsel of Record
FEDERAL DEFENDER PROGRAM
101 Marietta Street, NW
Suite 1500
Atlanta, Georgia 30303
(404) 688-7530
Stephen_P_Johnson@FD.org

April 25, 2022