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FOR THE NORTHERN DISTRICT OF TEXAS

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Via Federal Express

April 21, 2022

Scott S. Harris
Clerk of the United States Supreme Court
One First Street, NE
Washington, D.C. 20543

Re: *Lipscomb v. United States*, Application No. 21A616: Suggestion of Mootness

Dear Mr. Harris:

On April 15, 2022, I filed an application to extend the time to file a petition for certiorari and motion to proceed *in forma pauperis* on behalf of my client, Eddie Lamont Lipscomb. As explained in the application, the Fifth Circuit entered judgment in the case on February 3, 2022. (Application Appendix 1a). Mr. Lipscomb filed a petition for rehearing on March 21, 2022, which was timely under Federal Rule of Appellate Procedure 40(a)(1)(A) because the United States is a party to the civil action.

At the time I filed the application for extension, it appeared that the Fifth Circuit would never rule on the petition for rehearing. The Government's appeal of the 28 U.S.C. § 2255 order had apparently been opened as a direct criminal appeal, rather than a civil or prisoner appeal. If this were a criminal appeal, the deadline to seek rehearing would have been 14 days rather than

45. The Fifth Circuit clerk's office sent "no action" letters informing me that it would take no action on the petition for rehearing (Application Appendix 3a) or on the motion to reconsider that decision (Application Appendix 4a).

Yesterday, however, the Fifth Circuit granted Mr. Lipscomb's motion to "change the case type" to recognize that the appeal arose in a civil case, not a criminal case. I have enclosed a copy of that order, which I have paginated as Supplemental Application Appendix 24a. In a separate order, also enclosed and paginated as Supplemental Application Appendix 25a, the Fifth Circuit denied Mr. Lipscomb's petition for panel rehearing. In my view, this eliminates the "jurisdictional limbo" discussed on page 2 in the Application. Under a straightforward application of Supreme Court Rule 13.3, the 90-day period to prepare the petition now runs from April 20, rather than February 3. If the Court agrees, then there is no need to grant the extension requested in the Application.

The Application now appears to be moot.

Respectfully submitted,

J. Matthew Wright

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cc (via email): Office of the Solicitor General