

No.

In the Supreme Court of the United States

RICHARD E. CRAYTON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent,

**PETITIONER'S APPLICATION TO EXTEND TIME
TO FILE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT**

To the Honorable Brett M. Kavanaugh, Associate Justice, as Circuit Justice for the United States Court of Appeals for the Eighth Circuit:

Pursuant to 28 U.S.C. § 2101(c) and Rules 13.5, 22, and 30.2 of this Court, Petitioner Richard E. Crayton respectfully requests that the time to file a petition for a writ of certiorari in this case be extended for sixty days to and including August 1, 2022. The court of appeals entered judgment on March 4, 2022. *See Crayton v. United States*, 27 F.4th 652 (8th Cir. 2022). A copy of the Eighth Circuit's opinion is attached as Exhibit 1. Mr. Crayton's time to file a

petition for a writ of certiorari in this Court will currently expire on June 2, 2022. This application is being filed more than 10 days before that date.

The case presents an important issue of federal habeas law over which the courts of appeals have been deeply split: whether a prisoner, who is barred from filing a successive 28 U.S.C. § 2255 motion to vacate, can petition for habeas corpus via § 2255(e)'s saving clause when new and retroactively applied statutory interpretations from this Court make clear that the prisoner's conduct did not satisfy the applied mandatory minimum penalty enhancement.

This Court recently granted certiorari to resolve a case presenting a nearly identical issue, *Jones v. Hendrix*, (No. 21-857) (certiorari granted on May 16, 2022). The only distinction between the legal issues presented in *Jones* and in this case is immaterial to the applicability of the savings clause: in *Jones* the statutory interpretation made clear that the relevant conduct was never a crime, whereas for Mr. Crayton this Court's statutory interpretation meant that a mandatory sentencing enhancement couldn't have been applicable. *Compare Jones v. Hendrix*, 8 F.4th 683, 685–86 (8th Cir. 2021), *with* Ex. 1, *infra*, 2–3. At the Eighth Circuit, Mr. Crayton's ability to pursue federal habeas was rejected explicitly because of the Eighth Circuit's recently-issued opinion in *Jones*. Ex. 1, *infra*, 5 (“Our decision in *Jones* controls. There, we addressed the same issue.”) (citing *Jones*, 8 F.4th at 686).

Petitioner had been considering pursuing rehearing *en banc* in the Eighth Circuit prior to this Court’s grant of certiorari in *Jones* on May 16, 2022. As the counsel for Petitioner who handled the matter on appeal is currently on maternity leave, Petitioner had requested and received an extension of time to submit a petition for rehearing *en banc* until August 2022. *See Ex. 2.*

However, given this Court’s grant of certiorari review in *Jones*—the opinion that formed the basis for the Eighth Circuit’s decision in Mr. Crayton’s appeal—Petitioner plans to submit a petition for writ of certiorari rather than pursue rehearing. This Court granted certiorari in *Jones* on May, 16, 2022, seventeen days before Mr. Crayton’s petition for a writ of certiorari is currently due. The undersigned’s partner Caitlinrose Fisher, who was appointed under the Criminal Justice Act and who was the primary appellate attorney in this matter, remains on a maternity leave. Preparing a petition for a writ of certiorari will require time and familiarity with the complex legal issues on appeal. Given Counsel’s lack of prior work on the matter, it would be difficult to take over the matter and prepare a petition for certiorari in less than seventeen days given both the complexity of the issues and because of Counsel’s other case obligations.

Wherefore, Petitioner respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari by 60 days up to and including August 1, 2022.

Respectfully submitted,

Dated: May 20, 2022

s/ Robert J. Gilbertson

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