

NO:
IN THE
SUPREME COURT OF THE UNITED STATES

WARREN LAVELL JACKSON,
Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR A
WRIT OF CERTIORARI FROM THE JUDGMENT OF 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 ELEVENTH CIRCUIT

Pursuant to Supreme Court Rules 13.5, 22, and 30, Warren Jackson respectfully requests a sixty-day extension of time, up to and including July 3, 2023, within which to file a petition for a writ of certiorari from the judgment of the United States Court of Appeals for the Eleventh Circuit, issued on February 3, 2023. *See United States v. Jackson*, 58 F.4th 1331 (11th Cir. 2023) (attached hereto as Appendix A). Mr. Jackson has not previously sought an extension of time from this Court.

Mr. Jackson is filing this Application at least ten days before the filing date, which is May 4, 2023. *See* S.Ct. R. 13.5. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1).

The opinion below

This petition results from the Eleventh Circuit’s holding—reinstated on remand from this Court in light of *Concepcion v. United States*, 142 S. Ct. 2389, 2402 (2022)—that Mr. Jackson was ineligible for a reduced sentence under Section 404 of the First Step Act of 2018. Notwithstanding the fact that Mr. Jackson had been sentenced for a “covered offense” under Section 404(a) of the Act, the Eleventh Circuit held that he remained subject to a mandatory sentence based on a judicial finding of drug quantity that was used to trigger an enhanced penalty at his original sentencing hearing in March, 2000. *United States v. Jackson*, 59 F.4d 1331 (11th Cir. 2023).

In its initial ruling in this appeal, the Eleventh Circuit rejected Mr. Jackson’s argument that the district court should have applied the Court’s intervening holding in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), to determine Mr. Jackson’s statutory penalties for purposes of the First Step Act. *See United States v. Jones*, 962 F.3d 1290 (11th Cir. 2020), *vacated sub nom by Jackson v. United States*, 143 S. Ct. 72 (2022), *and reinstated on remand by United States v. Jackson*, 58 F. 4th 1331 (11th Cir. 2023). Under the rule adopted in *Jones*, “whether a court can look at a drug-quantity finding made at sentencing to determine what a movant’s statutory penalty range would have been under the Fair Sentencing Act generally depends on whether the movant was

sentenced before or after [*Apprendi*].” *United States v. Russell*, 994 F.3d 1230, 1237 n.7 (11th Cir. 2021).

After Mr. Jackson’s case was remanded by this Court in light of *Concepcion*, Mr. Jackson argued that *Jones* could not be reconciled with *Concepcion*’s holding that the First Step Act does “not prohibit district courts from considering any arguments in favor of, or against, sentence modification.” *See Concepcion*, 142 S.Ct. at 2402. The Eleventh Circuit disagreed, reasoning that *Jones* “was concerned with an issue that arises before the sentencing court’s discretion comes into play: determining how much of a drug the defendant possessed.” *Jackson*, 58 F.3d at 1336. “*Concepcion*, by contrast, addressed an issue that arises only after drug quantity and the corresponding penalties [for the defendant’s offense] have been established: which factors the district court may consider in deciding an appropriate sentence.” *Id.* *Concepcion* did not, according to the Eleventh Circuit, allow a movant to “relitigate an earlier drug-quantity finding” or “rely on *Apprendi* to redefine his offense.” *Id.* at 1334, 1337.

Good Cause for the Extension

The Eleventh Circuit’s decision in this case conflicts with decisions in other circuits and has resulted in significant prejudice to multiple defendants in Mr. Jackson’s position. Moreover, because this case has been the subject of four published

opinions in the Eleventh Circuit,¹ as well as a prior remand from this Court, the undersigned believes that Mr. Jackson's case presents the ideal vehicle for review.

Since the Eleventh Circuit's opinion was issued on February 3, 2023, the undersigned has been busy with other professional commitments including, *inter alia*, filing a reply brief in *United States v. Salas Encarnacion*, No. 22-11062 (11th Cir. Feb. 6, 2023); participating as faculty at the Winning Strategies for Federal Defenders seminar (Feb. 23-25, 2023); filing a reply memorandum in *United States v. Saldana*, No. 1:95-00605-PAS (S.D. Fla. Mar. 31 2023); arguing a motion to dismiss in *United States v. Henriquez*, No. 1:22-cr-20161 (S.D. Fla. Apr. 4, 2023); filing an initial brief in *United States v. Ramirez*, No. 22-13216 (11th Cir. Apr. 12, 2023); filing a reply brief in *United States v. Lindsay*, No. 22-12372 (11th Cir. Apr. 17, 2023), and drafting a petition for rehearing en banc in *United States v. Gata*, No. 22-11514 (11th Cir.), to be filed on April 18, 2023.

The undersigned wishes to consult with outside counsel regarding Mr. Jackson's petition, and may seek potential amicus support as well. For all of these reasons, the undersigned believes that additional time is necessary to ensure the most effective representation of Mr. Jackson in this matter. No party will be prejudiced by the granting of a sixty-day extension.

¹ In addition to the Eleventh Circuit opinions previously cited herein, members of the Eleventh Circuit published opinions both respecting the denial, and dissenting from the denial, of Mr. Jackson's petition for rehearing en banc. *See United States v. Jackson*, 995 F.3d 1308 (11th Cir. 2021) (Pryor, C.J., joined by Grant, J., respecting the denial of rehearing en banc); *Id.* at 1311 (Martin, J., joined by Rosenbaum, J., dissenting from the denial of rehearing en banc).

Accordingly, since the time within which to file a petition for writ of certiorari in this case will expire on May 4, 2023 unless extended, Mr. Jackson respectfully requests that an order be entered extending his time to file a petition for writ of certiorari by sixty days, to and including July 3, 2023.

Respectfully submitted,

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April 17, 2023