

No. \_\_\_\_\_

IN THE  
**Supreme Court of the United States**

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DEARNTA LAVON THOMAS,  
*Petitioner,*

v.

UNITED STATES OF AMERICA,  
*Respondent.*

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**On Petition for a Writ of Certiorari  
to the United States Court of Appeals  
for the Fourth Circuit**

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**APPLICATION FOR AN EXTENSION OF TIME IN WHICH  
TO FILE PETITION FOR A WRIT OF CERTIORARI**

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To the Honorable John Roberts, Chief Justice of the United States and  
Circuit Justice for the United States Court of Appeals for the Fourth Circuit:

Under Supreme Court Rule 13.5 and 28 U.S.C. § 2101(c), petitioner Dearnta  
Lavon Thomas respectfully requests an extension of 30 days in which to file a  
petition for writ of certiorari in this case. The petition will challenge the decision of  
the Fourth Circuit in *United States v. Thomas*, 87 F.4th 267 (4th Cir. Nov. 29, 2023)  
a copy of which is attached hereto as Appendix A.

In support of this application, petitioner states as follows:

1. The Fourth Circuit issued its opinion and entered judgment on November 29, 2023. Without an extension, the petition for a writ of certiorari would be due on February 27, 2024, 2023. With the requested extension of 30 days, the petition would be due on March 28, 2024. The Court’s jurisdiction will be invoked under 28 U.S.C. § 1254(1). In accordance with Supreme Court Rule 13.5, petitioner is filing this application at least ten days before the current due date.

2. This case involves important questions regarding the interplay between 18 U.S.C. § 1959(a) (the “VICAR” statute, for “Violent Crime in Aid of Racketeering”) and 18 U.S.C. § 924(c). Applicant was charged with violating § 924(c) by possessing a firearm in furtherance of a crime of violence. 87 F.4th at 272. The predicate crime of violence alleged was a violation of the VICAR statute, specifically § 1959(a)(3), assault with a dangerous weapon in aid of racketeering activity, “as set forth and charged in” another count of the indictment. *Id.*

The VICAR statute sets out categories of crimes, such as assault with a dangerous weapon, that require the government to plead and prove the commission of a state or federal predicate offense. As the court of appeals explained, “The VICAR statute makes it a crime to commit any of the statute’s enumerated offenses ‘in violation of the laws of any State or the United States.’ 18 U.S.C. § 1959(a).” 87 F.4th at 274. The court “ha[s] interpreted this language to mean that one element of a VICAR conviction is that the defendant committed the enumerated federal offense, and another is that the defendant’s conduct violated an independent state or federal law.” *Id.* In Applicant’s case, the count charging the VICAR offense that

was used as the predicate offense for the § 924(c) violation alleged that Applicant violated two Virginia statutes, (1) use or display of a firearm in violation of Virginia Code § 18.2-53.1 and (2) brandishing in violation of § 18.2-282.

The central issue in Applicant's appeal from the denial of his § 2255 motion was thus what offense within the VICAR violation served as the predicate offense for the § 924(c) violation: only the particular category of offense enumerated in VICAR, the specific state or federal offense alleged as the predicate for the VICAR violation, or both? This question has divided the federal courts of appeals. In *Alvarado-Linares v. United States*, 44 F.4th 1334, 1343 (11th Cir. 2022), for example, the Eleventh Circuit held that, where the indictment alleged that VICAR murder was based on state-law predicates, the court must consider the underlying state-law predicates to determine whether they constitute crimes of violence for purposes of establishing a § 924(c) violation. In contrast, in *Manners v. United States*, 947 F.3d 377, 380-81 (6th Cir. 2020), the Sixth Circuit held that VICAR assault with a dangerous weapon was itself a crime of violence without analyzing its predicates. That is the approach that the Fourth Circuit took in Applicant's case.

3. There is good cause for the requested 30-day extension of time. Counsel is the head of her office's appellate section, which has been operating at only 2/3s strength since September 2022, just as her office experienced an increase in the number of direct appeals coming out of the COVID-19 pandemic. Counsel's office has finally received authorization to hire a third appellate attorney but must

do so quickly because of budgetary constraints. As a result, counsel has spent most of her time since February 1 reviewing resumes and writing samples from over 60 applicants and participating in nine interviews (included two second interviews). In addition, counsel assisted with ten interviews on February 13 and 14 for two other positions in her office, for a total of 19 interviews in 11 days, all on top of her regular case-related work. As well, in the coming weeks, counsel has due opening briefs in three Fourth Circuit appeals, reply briefs in two other appeals, and filings regarding First Step Act § 404 sentence reductions in two district court cases. Finally, counsel is in the process of exploring the possibility of obtaining *pro bono* assistance on the cert. petition in this case.

For the foregoing reasons, petitioner respectfully requests a 30-day extension of time within which to file a petition for certiorari, to and including March 28, 2024.

Dated: February 16, 2024

Respectfully submitted,



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