

No. _____

IN THE
Supreme Court of the United States

LOUIS A. WILSON, ALSO KNOWN AS SPUDS,

Petitioner,

v.

UNITED STATES,

Respondent.

**Application for Extension of Time to File a Petition for a
Writ of Certiorari to the United States Court of Appeals
for the District of Columbia Circuit**

To the Honorable John G. Roberts, Chief Justice of the United States Supreme Court and Circuit Justice for the United States Court of Appeals for the District of Columbia Circuit:

Petitioner Louis A. Wilson is a federal prisoner serving a sentence of life imprisonment plus one consecutive five-year term. He intends to file a Petition for a Writ of Certiorari in connection with a decision of the D.C. Circuit affirming a district court's denial of Wilson's request for early release pursuant to 18 U.S.C. § 3582(c)(1)(A). The D.C. Circuit issued its decision on July 21, 2023. Pursuant to Supreme Court Rule 13.5, Petitioner respectfully requests that the time to file a Petition for a Writ of Certiorari to the D.C. Circuit be extended thirty (30) days, which, because the thirtieth day is a Saturday (November 18, 2023) would extend

Wilson’s deadline for filing to and including November 20, 2023. The Petition for a Writ of Certiorari is currently due in this Court on October 19, 2023. This Application is being filed more than ten days before that date.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The judgment sought to be reviewed is the opinion of the D.C. Circuit in *United States v. Louis A. Wilson, Also Known As Spuds*, No. 21-3074, 77 F.4th 837, 2023 U.S. App. LEXIS 18608 (D.C. Cir.), decided July 21, 2023. A copy of the opinion is attached (Appendix A).

Good cause exists for granting this application. The opinion for which review is sought deals with an important, Circuit-splitting question regarding whether courts may consider non-retroactive changes in law when determining if the requisite “extraordinary and compelling reasons” exist to afford relief under § 3582(c)(1)(A), sometimes referred to as “compassionate release.” Wilson – imprisoned since 1997 – contends that, in connection with other factors constituting “extraordinary and compelling reasons” in his situation, the law has changed so as to justify his release. Specifically, as the D.C. Circuit noted, he asserts that “if *United States v. Booker*, 543 U.S. 220, 125 S. Ct. 738, 160 L. Ed. 2d 621 (2005), and *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000), were issued prior to his sentence, he would have received twenty-five years instead of life imprisonment because the district court considered additional facts during sentencing not proven to a jury.” Appendix A at 4. Relying on one of its earlier precedents, the D.C. Circuit held: “per *United States v. Jenkins*, 50 F.4th 1185, 1192, 1198 (D.C. Cir. 2022), Wilson’s change

in law arguments cannot constitute extraordinary and compelling reasons, whether alone or in combination with other factors.” Appendix A at 3.

The Circuits are deeply split on whether changes in law may constitute “extraordinary and compelling reasons” warranting release under § 3582(c)(1)(A).¹ Moreover, when other litigants previously have sought Certiorari on the same issue, the Government has contended that despite the Circuit split, this Court should await the viewpoint of the United States Sentencing Commission before resolving the split.² Though, for several years, the Sentencing Commission lacked a quorum and therefore could not issue relevant guidelines, it gained a quorum earlier this year. Importantly, it has issued guidelines that will go into effect on November 1, 2023 (absent Congressional action to the contrary) providing that changes in law *can* be considered in appropriate situations (including if the prisoner is serving a very long sentence, like Wilson) when evaluating a request for release under § 3582(c)(1)(A). *See* 88 Fed. Reg. 28,254, 28,255/2 (May 3, 2023). The Sentencing Commission addressed the

¹ The First, Second, Fourth, Ninth, and Tenth Circuits allow consideration of changes in law under § 3582(c)(1)(A). *See United States v. Trenkler*, 47 F.4th 42, 48 (1st Cir. 2022); *United States v. Brooker*, 976 F.3d 228, 237-38 (2d Cir. 2020); *United States v. McCoy*, 981 F.3d 271, 287-88 (4th Cir. 2020); *United States v. Roper*, 72 F.4th 1097, 1101-02 (9th Cir. 2023); *United States v. McGee*, 992 F.3d 1035, 1047-48 (10th Cir. 2021). In contrast, the Third, Sixth, Seventh, Eighth, and D.C. Circuits have found that changes in law may not be considered. *See United States v. Andrews*, 12 F.4th 255, 261 (3d Cir. 2021), *cert. denied*, 142 S. Ct. 1446 (2022); *United States v. McCall*, 56 F.4th 1048, 1065-66 (6th Cir. 2022) (*en banc*), *cert. denied*, 143 S. Ct. 2506 (2023); *United States v. Brock*, 39 F.4th 462, 465-66 (7th Cir. 2022); *United States v. Crandall*, 25 F.4th 582, 586 (8th Cir.), *cert. denied*, 142 S. Ct. 2781 (2022); *Jenkins*, 50 F.4th at 1200.

² *See, e.g.*, Brief for the United States in Opposition to Grant of Certiorari, *Jarvis v. United States*, No. 21-568, 2021 WL 5864543, at *16-22 (U.S. Dec. 8, 2021); Memorandum for the United States in Opposition to Grant of Certiorari, *Watford v. United States*, No. 21-551, 2021 WL 5983234, at *2 (U.S. Dec. 15, 2021); Memorandum for the United States in Opposition to Grant of Certiorari, *Williams v. United States*, No. 21-767, 2022 WL 217947, at *2 (U.S. Jan. 24, 2022); Memorandum for the United States in Opposition to Grant of Certiorari, *Thacker v. United States*, No. 21-877, 2022 WL 467984, at *2 (U.S. Feb. 14, 2022).

Circuit split, and sided with the First, Second, Fourth, Ninth, and Tenth Circuits, and against the D.C. Circuit. *See id.* at 28,258/2-3.

Additionally, Petitioner's Counsel of Record, Anthony F. Shelley, was appointed by the D.C. Circuit as Wilson's *pro bono* counsel and continues serving in that role. He has primary responsibility for the preparation of the Petition for a Writ of Certiorari, and the press of other recent work-related matters in which Counsel has or has had primary or substantial responsibility are such that, even with the assistance of other attorneys, he will not reasonably be able to complete the work necessary to prepare the Petition for a Writ of Certiorari by the current due date (October 19, 2023). These matters include: (1) *Dunne v. Elton Corp.*, No. 23-1499 (3d Cir.) (Appellants' opening brief previously due Oct. 5, 2023, with extension request pending); *Nelson v. SEC*, No. 22-1316 (D.C. Cir.) (court-appointed *amicus curiae*'s brief due Oct. 10, 2023); *Powell v. Yellen*, No. 22-5200 (D.C. Cir.) (oral argument Nov. 13, 2023); and *Motor Vehicle Admin. v. Usan*, No. 6 (Md.) (Appellee's brief filed Sept. 29, 2023; oral argument Nov. 3, 2023).

Petitioner makes this request in good faith and believes that the requested extension of time is necessary. Counsel for Petitioner has exercised, and will continue to exercise, diligence regarding the preparation of the Petition for a Writ of Certiorari.

Wherefore, Petitioner respectfully requests that an order be entered extending the time to file a Petition for a Writ of Certiorari to and including November 20, 2019.

October 3, 2023

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Anthony F. Shelley, a member of the Bar of this Court, hereby certify that, on October 3, 2023, I caused one (1) copy of the **Application for Extension of Time to File a Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit** to be served by first-class mail, postage prepaid, on counsel of record for each respondent in this case as set forth below. I also caused an electronic copy of the Application in .pdf format to be served on counsel of record for each party in this case. I further certify that all persons required to be served have been served.

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