

No. _____

IN THE
Supreme Court of the United States

RICHARD ALAN COSTANZO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**APPLICATION FOR EXTENSION OF TIME WITHIN WHICH TO FILE A
PETITION FOR WRIT OF CERTIORARI FROM JUDGMENT OF THE
UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT**

**TO THE HONORABLE JOHN G. ROBERTS, JR., CHIEF JUSTICE OF THE
UNITED STATES SUPREME COURT and
CIRCUIT JUSTICE FOR THE FOURTH CIRCUIT**

Pursuant to Supreme Court Rules 13.5, 22, and 30.3, Richard Alan Costanzo, Petitioner above named, respectfully requests a sixty (60) day extension of time, up to and including May 28, 2024, within which to file a petition for writ of certiorari from the judgment of the United States Court of Appeals for the Fourth Circuit.¹ Mr. Costanzo has not previously sought an extension of time from this Court.

Petitioner is filing this Application at least ten days before the filing deadline, which is March 27, 2024. See S. Ct. R. 13.5. The jurisdiction of this Court will be invoked pursuant to 28 U.S.C. § 1254(1).

Mr. Costanzo was convicted of a violation of 18 U.S.C. § 922(g)(1) in 2020. Mr. Costanzo was sentenced to five (5) years' probation, with standard and special conditions of supervision.

In October 2021, a petition for revocation of probation was filed by the United States Probation Office, asserting Mr. Costanzo had committed a Grade A violation of his probation. On October 22, 2022, the district court conducted a probation violation hearing, receiving testimony and admitting evidence. The district court determined, by a preponderance of the evidence, that Mr. Costanzo had committed the violation in question, and revoked Mr. Costanzo's probation. Mr. Costanzo was sentenced to thirty-seven (37) months' imprisonment, to be followed by thirty-six (36) months' supervised release.

¹ The sixty (60) day deadline for the filing of Mr. Costanzo's petition for writ of certiorari would expire Sunday, May 26, 2024. Monday, May 27, 2024, is a federal holiday. Accordingly, counsel seeks through Tuesday, May 28, 2024, in which to file the petition.

Mr. Costanzo filed a timely appeal. In the Fourth Circuit Court of Appeals, Mr. Costanzo argued the district court abused its discretion in admitting hearsay evidence in the revocation hearing because it erred in assessing both prongs of the balancing test for admission of hearsay evidence that is required by Federal Rule of Criminal Procedure 32.1(b)(2)(C). Accordingly, Mr. Costanzo sought the vacation of the district court's order revoking his probation and remand of the matter to the district court for further proceedings.

On December 28, 2023, the Fourth Circuit Court of Appeals issued an unpublished decision holding the district court had appropriately considered Costanzo's confrontation rights and correctly applied the balancing test contained in Federal Rule of Criminal Procedure 32.1(b)(2)(C). According, the Court of Appeals determined the district court had not abused its discretion in admitting the hearsay evidence and affirmed the decision of the district court.

A copy of the Court of Appeals' Opinion is attached as Appendix A hereto.

Undersigned counsel will not have sufficient time in which to file the petition for writ of certiorari for Mr. Costanzo's case. First, counsel has several briefs due in the Fourth Circuit Court of Appeals: an Opening Brief and Joint Appendix in *United States v. Outen*, Fourth Circuit No. 24-4011, currently due March 19, 2024; a Reply Brief in *United States v. Ellis*, Fourth Circuit No. 23-4625, due April 13, 2024; *United States v. Jacome*, Fourth Circuit No. 23-4158, due May 2, 2024 (an out-of-district multi-defendant RICO conspiracy case which proceeded to a two week trial). Additionally, counsel has recently been assigned an out-of-district appeal in the

Fourth Circuit Court of Appeals, *United States v. Chavis*, Fourth Circuit No. 23-4610, another multi-defendant case which proceeded to trial and which counsel anticipates the remaining transcripts will be filed the week of March 18, 2024.

Accordingly, additional time is necessary for the careful preparation of Mr. Costanzo's petition for writ of certiorari. Moreover, no party will be prejudiced by the granting of a sixty (60) day extension.

As the time within which to file a petition for writ of certiorari in this case will expire March 27, 2024, unless extended, Petitioner respectfully requests an extension of time in which to file a petition for writ of certiorari up to and including May 28, 2024.

Respectfully submitted,



s/Emily Deck Harrill

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