

App No. _____

IN THE SUPREME COURT OF THE UNITED STATES

DAVID NICHOLSON,
Petitioner

-v-

UNITED STATES OF AMERICA,
Respondent

**APPLICATION FOR EXTENSION OF TIME TO FILE PETITION FOR
WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIFTH CIRCUIT**

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**CJA COUNSEL OF RECORD FOR
DAVID NICHOLSON**

May 9, 2025

To the Honorable Justice Samuel Alito, Associate Justice of United States Supreme Court and Circuit Justice for the Fifth Circuit:

In accordance with this Court's Rules 13.5, 22, 30.2 and 30.3, Petitioner David Nicholson respectfully requests a forty-five (45) day extension of time to file his petition for a writ of certiorari, up to and including Thursday, July 10, 2025. The Fifth Circuit Court of Appeals issued its opinion on January 28, 2025 (Appendix B) and denied petition for rehearing on February 25, 2025 (Appendix A). Absent an extension of time, the petition for writ of certiorari is due on May 26, 2025. Jurisdiction of this Court to review the order and judgment of the Fifth Circuit is being invoked pursuant to 28 U.S.C. §1254(1).

Background

Petitioner was convicted in the Northern District of Texas of one count of Possession with Intent to Distribute a Controlled Substance, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(A). On direct appeal to the United States Court of Appeals for the Fifth Circuit, Petitioner raised claims challenging the sufficiency of the evidence as to each element of the offense, as well as the procedural and substantive reasonableness of his sentence. Petitioner argued the evidence was insufficient as to each and every element of 21 U.S.C. § 841(a)(1), (b)(1)(A). In addition to his substantive unreasonable claim, Petitioner contended that his sentence was procedurally unreasonable due to errors in calculating the base offense level and the

improper application of two sentencing enhancements. The complexity and importance of the issues necessitated a reply brief and a petition for panel rehearing.

The forthcoming Petition for Writ of Certiorari will present multiple compelling issues regarding important questions of law. Specifically, the circuit courts disagree as to the legal standard required to establish two elements (knowing and possession) of 21 U.S.C. § 841(a)(1), (b)(1)(A). Additionally, the circuits disagree as to the legal application of the sentencing enhancements and guidelines. Undersigned counsel certifies that the case presents significant legal issues warranting the attention and review of the United States Supreme Court through a Petition for a Writ of Certiorari.

Reasons For Granting an Extension of Time

On March 13, 2025, undersigned counsel filed a Motion to the Fifth Circuit Court of Appeals to request being allowed to withdraw a retained counsel and to be appointed via the Criminal Justice Act (“CJA”). On March 18, 2025, the court denied the motion requesting appointment, without prejudice. (Appendix C). This has precluded Petitioner from securing counsel for the purpose of filing his Petition for Writ of Certiorari. Undersigned counsel filed a Motion to Reconsider Counsel Withdrawal as Retained and Request for CJA Appointment on May 9, 2025. (Appendix D). This motion remains pending. Petitioner is incarcerated and has exhausted all financial resources to continue funding representation by undersigned

counsel. Petitioner requests this extension of time to file his Petition for Writ of Certiorari to provide continuity of effective representation and legal advocacy.

Conclusion

For the foregoing reasons, Petitioner respectfully requests that the time to file the Petition for a Writ of Certiorari in this matter be extended by forty-five (45) days, up to and including July 10, 2025.

Dated this 9th day of May 2025.

Respectfully submitted,

WHALEN LAW OFFICE

/s/ James P. Whalen

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COUNSEL FOR PETITIONER

DAVID NICHOLSON

CERTIFICATE OF SERVICE BY MAILING

I hereby certify that, on the 9th day of May 2025, the foregoing Application for Extension has been filed via overnight delivery service to the Clerk of the Supreme Court as well as via the Supreme Court's electronic system. A copy of the foregoing has been served via overnight delivery to:

Solicitor General of the United States
950 Pennsylvania Ave., N.W.; Room 5616
Washington, DC 20530-0001

I also certify that on the same day, one copy of the Application was sent to David Nicholson, at:

FCI Atlanta
Federal Correctional Institution
P.O. Box 150160
Atlanta, GA 30315

/s/ James P. Whalen
JAMES P. WHALEN