

No.

in the
Supreme Court
of the
United States

Term,

CHARLES CHUBB,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

**ON PETITION FOR A WRIT OF CERTIORARI FROM
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

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Pursuant to 28 U.S.C. § 2101(c) and Rule 13.5 of the Rules of the Court, applicant Charles Chubb respectfully requests a 60-day extension of time, to and including Thursday, June 7, 2018, to file a petition for writ of certiorari in this case.

The Sixth Circuit Court of Appeals issued its opinion denying Mr. Chubb's appeal on January 8, 2018. Unless extended, the time to file a petition for a writ of certiorari will expire on Sunday, April 8, 2018. The jurisdiction of the Court will be invoked under 28 U.S.C. § 1254(1). The opinion denying the appeal is not published, but it is attached to this motion.

1. Charles Chubb is one of many federal prisoners whose sentence was fixed by the residual clause of the mandatory career-offender guideline. A panel of the Sixth Circuit rejected Mr. Chubb's 28 U.S.C. § 2255 petition to vacate and correct his sentence, which was filed within one year of *United States v. Johnson*, 135 S. Ct. 2551 (2015).¹ Relying on its former decision in *Raybon v. United States*, 867 F.3d 625 (6th Cir. 2017), the panel deemed Mr. Chubb's petition untimely. In *Raybon*, the Sixth Circuit found petitions, like Mr. Chubb's, were untimely "[b]ecause ... whether *Johnson* applies to the mandatory Guidelines ... is an open question, [and therefore] is not a 'right' that 'has been newly recognized by the Supreme Court' let alone one that was 'made retroactively applicable to cases on collateral review' ... by the Supreme Court." *Id.*

¹ A § 2255 motion is timely when filed within one year of "the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review." 28 U.S.C. § 2255(f)(3).

The question that is likely to be presented in Mr. Chubb's petition is whether petitioners who were sentenced as career offenders in accordance with the mandatory Guidelines filed timely 28 U.S.C. § 2255 motions if they filed their motions within one year of *Johnson*.

2. Importantly, based on its logic in *Raybon*, the Sixth Circuit again held that Mr. Chubb's petition was untimely under 28 U.S.C. § 2255(f)(3) because the motion would require recognizing a new right, i.e., "that individuals have a Constitutional right not to be sentenced as a career offenders under the residual clause of the mandatory Sentencing guidelines." *Raybon*, 867, F.3d at 630-31. Mr. Chubb contends the right he asserts is not new; rather, it is a mere application of *Johnson*, *Chaidez v. United States*, 568 U.S. 342, 347-48 (2013), which the Court recognized is retroactive in *Welch v. United States*, 136 S. Ct. 1257, 1265 (2016).

Notably, the First Circuit has criticized the Sixth Circuit's resolution of this question, *see Moore v. United States*, 871 F.3d 72, 82-83 (1st Cir. 2017), as have district courts in other circuits, *see e.g., United States v. Roy*, --- F. Supp. 3d ---, No. CR 00-40013-NMG, 2017 WL 4581792, at*5 (D. Mass. Oct. 13, 2017), *reconsideration denied*, 2017 WL 5309619 (D. Mass. Nov. 13, 2017); *Long v. United States*, No. CV 16-4464 CBM, at 1-7 (C.D. Cal. Sept. 15, 2017) (holding *Johnson* invalidates the mandatory Guidelines' residual clause and petition was timely); *United States v. Parks*, No. 03-CR-00490-WYD, 2017 WL 3732078, at *1-7 (D. Colo. Aug. 1, 2017) (same); *Sarracino v. United States*, No. 95-CR-210-MCA, 2017 WL 3098262, at *2-5

& n.3 (D.N.M. June 26, 2017), report and recommendation adopted, No. 95-CR-210-MCA, 2017 WL 3822741 (D.N.M. Aug. 30, 2017).

Resolution of this question has significant practical importance to numerous federal prisoners whose sentences increased because the residual clause of the mandatory career-offender guideline fixed their sentencing ranges.

3. Good cause exists for an extension of time to prepare a petition for a writ of certiorari in this case. Because Mr. Chubb's petition follows that of Jerome Raybon, the question he intends to raise is identical to the one anticipated in Mr. Raybon's petition. *See Jerome Raybon v. United States*, Supreme Court case number 17A914. In Mr. Raybon's case, counsel for the applicant requested and was granted an extension of time to file the petition for certiorari. Currently, Mr. Raybon's petition is due Saturday, May 5, 2018. As Mr. Chubb's Sixth Circuit opinion relied on the decision in *Raybon*, and since *Raybon* is currently pending before the Court, Mr. Chubb avers that a continuance in this petition is necessary. Given Mr. Raybon's extension of time to file his petition for certiorari, Mr. Chubb's petition is presently due prior to Mr. Raybon's. Wherefore, Mr. Chubb seeks an extension of 60 days, so that his petition can follow the petition in Mr. Raybon's case.

4. Moreover, while undersigned counsel has been working diligently to prepare a writ of certiorari in this case, she also has other significant professional obligations that have interfered with her ability to draft the petition. Within the last month, she has had evidentiary hearings on motions to suppress, contested

sentencing proceedings, and various deadlines on dispositive pretrial motions, as well as post hearing briefs.

For the foregoing reasons, the application for a 60-day extension of time, to and including Thursday, June 7, 2018, within which to file petition for a writ of certiorari should be granted.

Respectfully Submitted,

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