

Appeal No.: A

IN THE
SUPREME COURT OF THE UNITED STATES

Brandon Allen,
petitioner,

versus

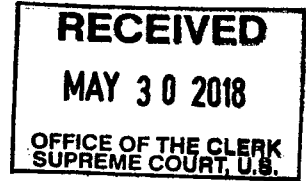
United States of America,
respondent.

ON APPEAL TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
RELATED CASE NO.: 17-14007-K

MOTION FOR AN EXTENSION OF TIME

Brandon Allen respectfully request an extension of time up to and including July 15, 2018, to file a petition for writ of certiorari.

In March 2017, the Eleventh Circuit Court of Appeals decided **McCarthan v. Director of Goodwill Industries-Suncoast, Inc.**, 851 F.3d 1076 (11th Cir. 2017)(en banc). The **McCarthan** holding narrowed the scope of § 2241 jurisdiction for a prisoner in custody under a criminal sentence. In reaching its decision, the Eleventh Circuit expressly aligned with the Tenth Circuit's construction of 28 U.S.C. § 2255(e). See, e.g., **Prost v. Anderson**, 636 F.3d 578 (10th Cir. 2011); **Reyes-Requena v. United States**, 243 F.3d 893, 904 (5th Cir. 2001); **In re Davenport**, 147 F.3d 605, 609-11 (7th Cir. 1998); **In re Dorsainvil**, 119 F.3d 245, 251 (3d Cir. 1997). A maturing and widening difference of opinion exists within the Court of Appeals. **Wheeler v. United States**, No. 16-6073, 2018 U.S. LEXIS 7756 (4th Cir. Jan. 25, 2018).

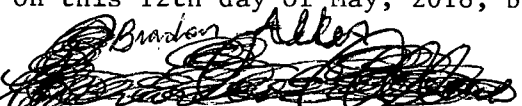


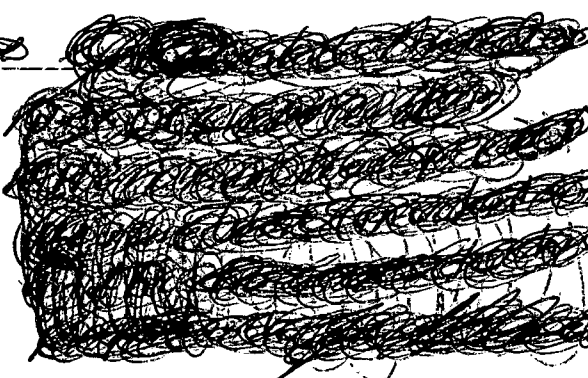
Despite the difference of judicial opinion, however, the Eleventh Circuit deems frivolous any § 2241 appeal that in essence is founded on the reasoning of another circuit. Although a reasonable district court may deny a petition based on controlling authority, a position in opposition to that authority does not--even if meritless--automatically become frivolous. Otherwise, stare decisis would transform into legislation by fiat, a bad or mistaken rule would never be alterable. Also, this Court's Rule 10 would have little meaning since most (criminal and habeas) circuit splits would be defeated by the threshold inquiry conducted at the in forma pauperis stage.

Mr. Allen seeks an additional 60 days to submit his petition for certiorari.

In addition, the conditions at the institution such as: shortage of staff, closure of nonessential departments (education department); twice daily census counts; early recalls; staff meetings; staff parties (this week was correctional officers week); delays work calls; the shorten of education department's operational hours; the lack of law computers, typewriters, one copy machine, and the sometimes closing of the education in general, warrants the extra time requested. The Solicitor General should not object the extra time as it appears the only one harmed by this request is the petitioner himself as he remains incarcerated.

Prepared with the assistance of Frank L. Amodio and respectfully submitted
on this 12th day of May, 2018, by:

B.A.

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