No. __A___

IN THE

Supreme Court of the United States

PAUL HUSKISSON,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

APPLICATION FOR A 45-DAY EXTENSION OF TIME TO FILE A PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE BRETT M. KAVANAUGH.,
CIRCUIT JUSTICE FOR THE SEVENTH CIRCUIT:

Pursuant to Supreme Court Rule 13.5, petitioner Paul Huskisson respectfully requests a 45-day extension of time to file a petition for a writ of certiorari, to and including October 18, 2019.[1]

The United States Court of Appeals for the Seventh Circuit's panel decision and judgment issued on June 5, 2019 (Tab A, available at 926 F.3d 369). Under this Court's Rule 13, Huskisson's time to petition for a writ of certiorari, absent an extension, runs to September 3, 2019.

[1] All parties are listed in the caption.

Huskisson files this application more than 10 days before that date, and invokes this Court's jurisdiction under 28 U.S.C. § 1254(1).

Huskisson plans to seek review of a decision by the Seventh Circuit that raises a recurring issue of national importance that has divided the circuits. Five DEA agents burst into Huskisson's home without a warrant, seized and field tested the drugs they discovered inside, and then relied on those test results in their application for warrants to search Huskisson's home and business. This was all part of a plan the agents formed hours earlier to look for drugs in Huskisson's home first and apply for a warrant later. Breaking from well-established Fourth Amendment principles, the Seventh Circuit affirmed the admission of the drugs the agents seized as well as other evidence later obtained by way of the tainted search warrants.

In its decision, the Seventh Circuit relied on the independent source exception to the exclusionary rule. It held agents' illegal entry and field test did not influence the agents' decision to seek a warrant or the magistrate's decision to issue one. Along the way, in a single unreasoned footnote, the Seventh Circuit refused to consider the "flagrant police

misconduct" that led to the warrant as part of the exclusionary-rule analysis. Tab A at 8-9 & n.2; *see also id.* at 14.

But the independent source exception was never meant to spare the type of deliberate and obviously unconstitutional conduct at issue here. Quite the opposite. The "flagrancy of the police misconduct" has always been an important factor when applying the exclusionary rule because it is directly tied to the rule's underlying rationale—deterring future Fourth Amendment violations. *United States v. Leon*, 468 U.S. 897, 911 (1984); *see also Utah v. Strieff*, 136 S. Ct. 2056, 2064 (2016). For that reason, no other exception to the exclusionary rule gives law enforcement a free pass for deliberate and obviously unconstitutional behavior. *See e.g.*, *Leon*, 468 U.S. at 911 (good-faith exception); *Brown v. Illinois*, 422 U.S. 590, 603-04 (1975) (attenuation doctrine). Thus,

Unlike the Seventh Circuit here, the Eighth Circuit has held the independent source exception is not exempt from these principles. In *United States v. Madrid*, the Eighth Circuit concluded an independent source exception that turned a blind eye to blatant police misconduct would undermine *both* the warrant requirement *and* the exclusionary rule's deterrent function. 152 F.3d 1034, 1040-41 (8th Cir. 1997). The

First Circuit has similarly expressed skepticism about whether the independent source exception applies where police engage in a "blatant search" and exploit their unlawful presence in a home. *United States v. Dent*, 867 F.3d 37, 41 (1st Cir. 2017).

This split of authority is likely to persist unless and until this Court intervenes to bring the Seventh Circuit back in line. And immediate intervention is urgently needed here. Nothing in the Constitution or this Court's precedent grants law enforcement the license the Seventh Circuit's approach affords to "violate constitutional rights the moment they have probable cause to obtain a search warrant." *Madrid*, 152 F.3d at 1041. Adopting such a rule would convert the warrant requirement into a warrant application requirement that eliminates any oversight by a detached magistrate untainted by unconstitutionally obtained evidence.

Huskisson respectfully requests an extension of time to accommodate its counsel's other professional obligations during the time allotted to prepare a petition for certiorari. Counsel's obligations during the time allotted to prepare the petition and through mid-October include (a) preparing and filing a petition for writ of certiorari in *Time Warner*

Cable, Inc. v. Sprint Communications Co., L.P., No. 19-211; (b) preparing for and arguing two appeals in the courts of appeals; (c) preparing and filing fifteen briefs in the court of appeals; and (d) various pre-existing professional obligations in district court proceedings. In the absence of an extension, those obligations will significantly impede counsel's ability to prepare a well-researched and comprehensive petition that will assist the Court in evaluating the Seventh Circuit's decision.

Accordingly, Huskisson respectfully requests a 45-day extension of time, to and including October 18, 2019, of the deadline to file a petition for writ of certiorari.

August 20, 2019

Respectfully submitted,

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