

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

TREVIN NUNNALLY,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE ELEVENTH CIRCUIT
COURT OF APPEALS

APPLICATION FOR EXTENSION OF TIME TO FILE
PETITION FOR WRIT OF CERTIORARI

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To the Honorable Clarence Thomas, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Eleventh Circuit:

Introduction

Pursuant to this Court's Rule 13.5, the Petitioner, Trevin Nunnally, respectfully requests a thirty-day extension of time within which to file a petition for a writ of certiorari in this Court, to and including June 19, 2023.

Jurisdiction

The opinion of the Eleventh Circuit Court of Appeals affirming the denial of the Petitioner's motion for sentence reduction was entered on February 17, 2023. Unless extended, the time within which to file a petition for a writ of certiorari would expire on May 18, 2023.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). A copy of the opinion of the Eleventh Circuit Court of Appeals is included in the appendix to this motion.

Argument

In light of the Court's decision in *Concepcion v. United States*, 142 S. Ct. 2389 (2022), the Court recently vacated and remanded for reconsideration the Eleventh Circuit's previous September 27, 2021, opinion in this case affirming the district court's denial of the Petitioner's motion for sentence reduction pursuant to the First Step Act

of 2018. In the Eleventh Circuit’s original opinion, the Eleventh Circuit relied on its precedent in *United States v. Jones*, 962 F.3d 1290 (11th Cir. 2020) – requiring the use of the “as if” framework outlined in that opinion. After this Court’s remand, the Eleventh Circuit held that *Concepcion* did *not* abrogate the reasoning in *Jones*. See *United States v. Jackson*, 58 F.3d 1331 (11th Cir. 2023). Thus, in the instant case, the Eleventh Circuit reinstated its prior decision and affirmed the district court’s denial of relief. The Petitioner will be seeking certiorari in this case on the issue of whether *Concepcion* abrogated the reasoning in *Jones*. Undersigned counsel notes that the prisoner in *Jackson* is also seeking certiorari review on this issue. See *Jackson v. United States*, Application No. 22A915.

Unfortunately undersigned counsel’s schedule requires him to seek an extension of time in this case. In particular, since the Eleventh Circuit Court of Appeals entered its opinion, undersigned counsel has participated in three postconviction evidentiary hearings before Florida circuit courts, four motion hearings before Florida circuit courts, two oral arguments before two Florida district courts of appeal, lectured at two continuing legal education seminars, and attended four Florida Bar committee meetings.

Additionally, during the next two months, undersigned counsel will be attending two oral arguments before Florida district courts of appeal and four postconviction evidentiary hearings before Florida circuit courts.¹

¹ Undersigned counsel will appear at oral arguments on: 1) May 9, 2023, in *King v. State*, case number 5D21-2985, pending before the Florida Fifth District Court of

Therefore, the Petitioner requests an extension of thirty days to file the petition for a writ of certiorari. No party will be prejudiced by the granting of a thirty-day extension in this case.

Accordingly, the Petitioner respectfully requests that an order be entered extending the time to petition for writ of certiorari by thirty days.

Respectfully submitted,

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Appeal; and 2) May 11, 2023, in *Simpson v. State*, case number 1D21-1663, pending before the Florida First District Court of Appeal. Undersigned counsel will also appear at postconviction evidentiary hearings on: 1) May 3, 2023, in *State v. Bullard*, case number 2016-CF-5226, pending in the Florida First Judicial Circuit Court (Escambia County); 2) May 11, 2023, in *State v. Altschuler*, case number 2016-CF-583, pending in the Florida Ninth Judicial Circuit Court (Osceola County); 3) June 6, 2023, in *State v. Simeon*, case number 2016-CF-584, pending in the Florida Second Judicial Circuit Court (Leon County); and 4) June 16, 2023, in *State v. Sowers*, case numbers 2014-CF-10560, 2016-CF-2970, 2016-CF-3149, 2016-CF-3627, pending in the Florida Fourth Judicial Circuit Court (Duval County).

CERTIFICATE OF SERVICE

I, Michael Ufferman, a member of the Bar of this Court, hereby certify that on the 28th day of April, 2023, a copy of this Application For Extension of Time To File A Petition For A Writ Of Certiorari in the above-entitled case was mailed, first class postage prepaid, to the Office of the United States Attorney, 111 North Adams Street, 4th Floor, Tallahassee, Florida 32301 (counsel for the Respondent herein). I further certify that all parties required to be served have been served.

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