

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2024

LUIS FERNANDEZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR A
WRIT OF CERTIORARI FROM A JUDGMENT OF THE UNITED STATES
COURT OF APPEALS FOR THE ELEVENTH CIRCUIT**

**TO THE HON. CLARENCE THOMAS, ASSOCIATE JUSTICE OF THE
UNITED STATES SUPREME COURT AND CIRCUIT JUSTICE FOR THE
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT**

Pursuant to Rules 13.5, 22, and 30 of this Court, Petitioner Luis Fernandez respectfully requests a 30-day extension of time, up to and including May 16, 2025, within which to file a petition for a writ of certiorari from the judgment of the U.S. Court of Appeals for the Eleventh Circuit. Petitioner has not previously sought an extension of time from this Court. Petitioner is filing this Application at least ten days before the current deadline, which is April 16, 2025. *See* Sup. Ct. R. 13.5. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1).

In 2009, a jury found Petitioner guilty on one count of conspiracy to commit Hobbs Act robbery, one count of attempt to commit Hobbs Act robbery, and one count of carrying and possessing a firearm in furtherance of a crime of violence and a drug trafficking crime, in violation of 18 U.S.C. § 924(c). The jury acquitted Petitioner as to the other two counts he was charged with (two drug trafficking offenses). The jury was instructed that to convict Petitioner of the § 924(c) offense, it would have to find that he committed a drug trafficking offense or crime of violence as charged in the indictment. The jury returned a general verdict and did not make a finding or otherwise specify the predicate offense supporting the § 924(c) conviction.

In subsequent second or successive § 2255 litigation before the Eleventh Circuit, Petitioner argued that because binding precedent holds that neither Hobbs attempt (*United States v. Taylor*, 596 U.S. 845 (2022)) nor Hobbs conspiracy (*Brown v. United States*, 942 F.3d 1069 (11th Cir. 2019)) are crimes of violence under § 924(c)'s elements clause, his conviction must necessarily have rested on the statute's unconstitutional residual clause. Petitioner based his argument on this Court's holding in *Rivers v. Roadway Express, Inc.* that “[a] judicial construction of a statute [as opposed to a legislatively enacted amendment] is an authoritative statement of what the statute meant before as well as after the decision of the case giving rise to that construction.” 511 U.S. 298, 312–13 (1994).

A three-judge panel of the Eleventh Circuit affirmed the denial of Petitioner's § 2255 motion. Citing its prior panel precedent *Beeman v. United States*, 871 F.3d 1215 (2017), the panel rejected Petitioner's *Rivers* argument and held that he was not

entitled to relief because he had failed to show that, “as a matter of ‘historical fact,’” his § 924(c) conviction resulted from the unconstitutional residual clause. Petitioner filed a motion for rehearing *en banc*, which was denied.

Undersigned counsel will not have sufficient time to prepare and file the certiorari petition in this case by the current deadline due to the press of other business, including upcoming travel for hearings in the district court in Key West, Florida, a recent trial and a number of additional court hearings in Miami, as well as a recent family trip taken from March 24 through March 31, 2025.

Undersigned counsel believes that additional time is important to ensure the effective representation of Petitioner. No party will be prejudiced by the granting of a 30-day extension of time. Accordingly, Petitioner respectfully requests that an order be entered extending his time to file a petition for a writ of certiorari by 30 days—extending the current deadline from April 16, 2025, to May 16, 2025.

Respectfully submitted,

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April 3, 2025