

No. \_\_\_\_\_

**In the Supreme Court of the United States**

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JOHN ELWOOD TYRONE MARTIN,  
Applicant,

v.

UNITED STATES OF AMERICA  
Respondent.

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Application to Extend Time  
to File a Petition for a Writ of Certiorari  
to the United States Court of Appeals for the Fourth Circuit

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APPLICATION TO THE HONORABLE JOHN G. ROBERTS, JR.,  
CHIEF JUSTICE OF THE UNITED STATES, AS CIRCUIT JUSTICE

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## **APPLICATION FOR AN EXTENSION OF TIME**

Pursuant to Supreme Court Rule 13.5, Applicant John Elwood Tyrone Martin respectfully requests that the time to file his petition for a writ of certiorari be extended by 30 days, up to and including Friday, November 14, 2025. The Fourth Circuit issued its opinion on July 17, 2025. Absent an extension of time, the petition would be due on Wednesday, October 15, 2025.

## **JUDGMENT FOR WHICH REVIEW IS SOUGHT**

The judgment for which review is sought is the order titled United States v. Martin, No. 24-4433, issued on July 17, 2025. The order is attached as Exhibit A.

## **JURISDICTION**

The Court will have jurisdiction over any timely filed petition for a writ of certiorari in this case, pursuant to 28 U.S.C. 1254(1). Under Supreme Court Rules 13.1, 13.3, and 30.1, a petition for a writ of certiorari is due on or before October 15, 2025. In accordance with Rule 13.5, this application is filed at least 10 days in advance of the due date for the petition.

## **REASONS JUSTIFYING AN EXTENSION OF TIME**

1. This case concerns whether the mandate rule bars the federal district courts and federal courts of appeals from deciding and reviewing motions to withdraw guilty pleas filed after a defendant's sentence is vacated and the case is remanded for resentencing.

2. There is conflicting and unclear case law on this issue within the Fourth Circuit and in other circuits. See, e.g., United States v. Agyepong,

388 F. App'x 343, 346 (4th Cir. 2010) (unpublished) (reviewing for abuse of discretion denial of motion to withdraw guilty plea filed after remand for resentencing); United States v. Hearne, 290 F. App'x 559, 562 (4th Cir. 2008) (unpublished) (concluding denial of motion to withdraw guilty plea was not properly before the court, where the defendant did not challenge his conviction in first appeal and filed motion to withdraw plea after remand for resentencing); United States v. Parks, 700 F.3d 775, 777, 779 (6th Cir. 2012) (reviewing denial of motion to withdraw plea on the merits, even where district court denied the motion, at least in part, based on it being outside the mandate); see also United States v. Bright, No. 21-2453, 2023 WL 2469767, at \*2 & n.4 (2d Cir. Mar. 13, 2023) (unpublished) (reviewing denial of motion to withdraw guilty plea filed after remand for resentencing, noting that the defendant and government agreed that doing so did not violate the mandate rule and assuming that appellate review of this issue was appropriate).

3. In March 2019, Mr. Martin was charged by information with one count of conspiring to distribute and possess with intent to distribute a kilogram or more of heroin, in violation of 21 U.S.C. § 846. JA24. He retained counsel and pled guilty to the information pursuant to a plea agreement. JA313-319. In January 2020, the district court imposed a prison sentence of 198 months and entered a judgment incorporating that sentence. JA50, JA86, JA90-91. A timely notice of appeal was not filed at that time, but, in February 2021, Mr. Martin filed a pro se motion for relief under 28 U.S.C. § 2255 on the basis of ineffective assistance of counsel,

contending, among other things, that he had asked his then counsel to file a notice of appeal on his behalf but counsel failed to do so. JA98, JA101-102. The court granted the section 2255 motion on this basis and entered an amended judgment, from which Mr. Martin filed a timely notice of appeal. JA147, JA148-155, JA156-57.

4. On appeal, Mr. Martin, then represented by appointed counsel, sought resentencing under United States v. Rogers, 961 F.3d 291 (4th Cir. 2020), based on the district court's procedural error in imposing certain conditions of supervised release. 4th Cir. No. 22-4619, DE 15 at 6, 14–16. The government conceded a Rogers error and the parties filed a joint motion to remand. See 4th Cir. No. 22-4619, DE 20. The Fourth Circuit granted the motion to remand. 4th Cir. No. 22-4619, DE 22, 23.

5. After the case was remanded, Mr. Martin filed a pro se motion to withdraw his guilty plea that raised issues forecasted in his section 2255 motion, related to the drug quantity attributed to Mr. Martin, trial counsel's failure to inform Mr. Martin of key information before Mr. Martin entered his plea, the guideline range, and Mr. Martin's loss of a sentencing reduction for acceptance of responsibility. JA158-166. New counsel was appointed to represent Mr. Martin. Counsel filed an amended motion to withdraw the guilty plea. JA174-175. Mr. Martin also challenged the guideline calculations on remand. JA321-22, JA327-28, JA406-07.

6. The Fourth Circuit concluded that Mr. Martin’s appeal of the denial of his motion to withdraw his guilty plea was barred by the mandate rule, even though the issues presented by his appeal were not previously considered by the Fourth Circuit. See Ex. A at 2-3.

7. This case presents an important question about application of the mandate rule in the district courts and federal appellate courts, one which the Fourth Circuit answered incorrectly by dismissing Mr. Martin’s appeal.

8. Moreover, Mr. Martin has paid close attention to his case and gone to great lengths to preserve issues for appellate review, including with pro se filings designed to preserve his rights and flag issues for the appellate courts. See 4th Cir. No. 24-4433, DE 27 at 13. Besides being an incorrect application of the mandate rule, it was contrary to the interests of justice for the Fourth Circuit to summarily dispose of Mr. Martin’s arguments in his motion to withdraw his plea—especially where the district court held a hearing on the motion and entered an order addressing Mr. Martin’s arguments. JA220-256. Notably, in the district court, the government did not argue that Mr. Martin’s motion to withdraw his plea was outside the scope of the mandate. JA408-429.

9. Mr. Martin respectfully requests an extension of time to prepare and file a petition for a writ of certiorari in this matter. Undersigned counsel, who was appointed by the Fourth Circuit pursuant to the Criminal Justice Act, was out of the office on maternity leave from July 8, 2025, through September 19, 2025. In addition to other ongoing matters, counsel has an opening brief to the Fourth

Circuit due on October 10, 2025, and another petition for a writ of certiorari due in this Court on October 27, 2025. Under these circumstances, the existing deadline for the petition for a writ of certiorari in this case is difficult to meet.

10. The requested extension of time would allow counsel to research relevant legal issues in Mr. Martin's case and to prepare a petition that appropriately addresses the important questions raised therein.

11. Accordingly, Mr. Martin respectfully requests that this Court grant an extension of 30 days, up to and including Friday November 14, 2025, for him to file his petition for a writ of certiorari in this matter.

Date: September 23, 2025

Respectfully submitted,

/s/ Michelle A. Liguori

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