

App No. 25-_____

In the Supreme Court of the United States

Gregory Johnson, Jr.,

Applicant,

v.

United States of America,

Respondent.

**On Application for an Extension of Time to File Petition for a Writ of
Certiorari to the United States Court of Appeals for the Fifth Circuit**

Stuart Kottle

Counsel of Record

Kaylyn B. Handy

SHER GARNER CAHILL RICHTER

KLEIN & HILBERT, L.L.C.

909 Poydras Street

Suite 2800

New Orleans, LA 70118

Tel: (504) 299-2100

Email: skottle@shergarner.com

khandy@shergarner.com

Counsel for Applicant

November 3, 2025

To the Honorable Samuel Alito, as Circuit Justice for the United States Court of Appeals for the Fifth Circuit:

In accordance with this Court's Rules 13.5, 22, 30.2, and 30.3, Applicant, Gregory Johnson respectfully requests that the time to file his petition for a writ of certiorari be extended for 60 days, up to and including Thursday, January 15, 2026. The Court of Appeals issued its opinion on August 15, 2025. (Exhibit A). Absent an extension of time, the petition would be due on November 15, 2025. The jurisdiction of this Court is based on 28 U.S.C. 1254(1). The request is unopposed.

1. This case arises from the sentencing of Gregory Johnson, Jr. following a federal prosecution. Mr. Johnson pleaded guilty to conspiracy to distribute and possess with intent to distribute 500 grams or more of cocaine hydrochloride, in violation of 21 U.S.C. § 846. Pursuant to his plea agreement, Mr. Johnson allegedly waived his right to appeal any portion of the prosecution, including his sentence, prior to the District Court's sentencing decision. The District Court determined that Mr. Johnson was a career offender under U.S.S.G. § 4B1.1 and sentenced him to enhanced guidelines, increasing his imprisonment range.

2. Mr. Johnson filed an appeal of his sentence with the Fifth Circuit, asserting that the District Court erred in classifying Mr. Johnson as a career offender because his 1997 Louisiana conviction for armed robbery was not a crime of violence under the U.S. Sentencing Guidelines. The Government moved for dismissal of the appeal, urging that Mr. Johnson's waiver was valid and enforceable and precluded Mr. Johnson from challenging his conviction or sentence. Mr. Johnson opposed the motion

to dismiss and argued that the waiver provision in the plea agreement is not enforceable because the waiver of appeal for sentencing prior to sentencing is inherently unknowing and involuntary.

3. This case presents the question ***substantively identical*** to *Devin Chaney v. United States of America*, docket number 24-6543, which is already pending review before the Court pursuant to Devin Chaney’s petition for writ of certiorari. The question that will be presented by Mr. Johnson is substantially similar to the one presented by Mr. Chaney: “can a criminal defendant knowingly and voluntarily waive the right to appeal a district court’s yet-to-be-made errors as part of a plea agreement, and, if so, what are the limits on the validity and enforceability of such appeal waivers?” Petition for Writ of Certiorari at ii, *Devin Chaney v. United States of America*, No. 24-6543 (U.S. *petition for cert. filed* Feb. 6, 2025). Mr. Chaney’s petition has been distributed for conference twice, on September 29, 2025 and October 10, 2025. His petition is still under review.

Mr. Chaney’s sentencing was substantially similar to Mr. Johnson’s. Mr. Chaney pleaded guilty to committing a Hobbs Act robbery, in violation of 18 U.S.C. § 1951(a), and bank robbery, in violation of 18 U.S.C. § 2133(a) and (d). Petition for Writ of Certiorari at 9, *Chaney* (No. 24-6543). The District Court determined that Mr. Chaney was a “career offender” under U.S.S.G. § 4B1.1(a) upon recommendation from the U.S. Probation Office for a Louisiana state conviction for distribution of marijuana in violation of La. R.S. § 40:966(B)(2)(a). *Id.* at 9, 11. The application of the

career-offender enhancement increased Mr. Chaney's sentencing range by more than six years. *Id.* at 9.

4. Applicant will demonstrate that certiorari is warranted on the same question as Mr. Chaney: whether a criminal defendant knowingly and voluntarily waives the right to appeal a district court's yet-to-be-made errors as part of a plea agreement, and, if so, whether there are limits on the validity and enforceability of such appeal waivers. This question merits review because this Court has yet to rule on the validity of such waivers, and a complex circuit split exists amongst the Federal Circuits, with some recognizing exceptions to the waiver and some exercising discretion in refusing to enforce the waiver, while the Fifth Circuit adopted a two-step inquiry that largely forecloses review of any improper sentence when the defendant agrees to an appeal waiver.

5. Good cause exists for an extension of time to prepare a petition for a writ of certiorari in this case. Mr. Johnson's appeal is substantially similar to Mr. Chaney's, which is currently under review by the Supreme Court.

In addition, while Mr. Kottle is representing Mr. Johnson under an appointment with the Criminal Justice Act, Ms. Handy, Mr. Kottle's associate, does not retain an appointment under the Criminal Justice Act, and needed to seek admission to the U.S. Supreme Court bar prior to submission of the petition for writ of certiorari. Ms. Handy was not admitted to the bar until November 3, 2025. Additionally, Mr. Kottle has, and has had, several other professional obligations and conflicts, including:

1. Responding on behalf of defendant to motion for contempt in the matter *HealthTrackRx, Inc. v. Samaha et al*, pending in the Eastern District of Texas under case number 4:24-cv-01100-SDJ. An opposition brief was filed October 31, 2025 and a hearing will likely be scheduled.
2. Briefing and study to prepare for an October 24, 2025 hearing on behalf of defendants in the matter *Cusachs v. State, et. al.*, pending in Civil District Court for the Parish of Orleans under case number 2024-02085. The hearing has since been rescheduled for November 21, 2025.
3. Investigating facts and preparing legal responses on behalf of defendant in new lawsuits filed in the Eastern District of Louisiana. The response in *Villavaso v. New Orleans*, 2:25-cv-01858-WBV-JVM is due November 5, and the responses in *Patin v. New Orleans*, 2:25-cv-01885-WBV-JVM and *Tricia Diamond vs. City of New Orleans*, No. 2025-cv-01940-WBV-JVM are due November 13, 2025.
4. Briefing to prepare on behalf of defendant in response to a motion for partial summary judgment and request for a writ of sequestration, scheduled for hearing December 15, 2025, in the matter *MMAA, et al v Archon, et al.*, pending in the 24th Judicial District Court for the State of Louisiana under Case No, 857-105. The opposition briefs are due December 1 and 8th, in advance of the hearing.

For the foregoing reasons, the application for a 60-day extension of time, to and including Thursday, January 15, 2026, within which to file a petition for a writ of certiorari in this case should be granted.

November 3, 2025

Respectfully submitted.

/s/Stuart D. Kottle
STUART D. KOTTLE
Counsel of Record
KAYLYN B. HANDY
Sher Garner Cahill
Richter Klein & Hilbert, L.L.C.
909 Poydras Street
28th Floor
New Orleans, Louisiana 70112
(504) 299-2102