

No.

In the Supreme Court of the United States

FRED DAVIS CLARK, JR.,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

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

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

On behalf of Petitioner, Fred Davis Clark, Jr., and pursuant to Supreme Court Rules 13.5 and 30, I respectfully apply to Associate Justice Thomas as Circuit Justice for the United States Court of Appeals for the Eleventh Circuit and request a 60-day extension of time from January 26, 2026 until March 27, 2026, or from March 17, 2026 until May 18, 2026, whichever is later, to file the petition for a writ of certiorari. *See infra ¶¶ 7–9.* The grounds are my workload, the extensive record, and the fact that the petition will seek review of what appears at first blush to be two clear circuit splits (1-3 and 5-2) regarding habeas issues. *See infra ¶¶ 13–16.*

1. Petitioner was a successful real estate developer. Initially, his company grossed \$750 million in revenue, including \$300 million in real estate sales. Alas, during the Great Recession, his enterprise failed. At first, he prevailed in an SEC civil case against him, *SEC v. Graham*, 21 F. Supp. 3d 1300, 1316 (S.D. Fla. 2014), *aff'd in part, rev'd in part, and remanded*, 823 F.3d 1357 (11th Cir. 2016). But then, he was prosecuted under a novel bank fraud theory. *See* D.Ct. Doc. 351, *U.S. v. Clark*, No. 4:13-cr-10034 (S.D. Fla.). Petitioner was convicted, sentenced to 40 years' imprisonment, and ordered to repay \$179,076,942 in restitution and forfeit \$308,878,581. *See* D.Ct. Docs. 524, 630 & 631, *U.S. v. Clark*, No. 4:13-cr-10034 (S.D. Fla.).

2. On direct appeal, Petitioner challenged his conviction. *See* C.A. Docs. 47 & 89, *U.S. v. Clark*, Nos. 16-10811 & 16-14410 (11th Cir.). But because there were so many grounds on which to challenge his conviction, his appellant's brief and reply brief lacked room to challenge his forfeiture order or restitution award. *See id.* After

briefing and oral argument concluded, *see* C.A. Docs. 127 & 128, *U.S. v. Clark*, Nos. 16-10811 & 16-14410 (11th Cir.), President Trump commuted Petitioner's sentence on January 13, 2021, but left Petitioner's forfeiture order and restitution award intact. C.A. Doc. 133, *U.S. v. Clark*, Nos. 16-10811 & 16-14410 (11th Cir.). A copy of that commutation order is attached hereto as Exhibit A.

3. At that point, Petitioner sought leave from the Eleventh Circuit, over the government's opposition, to provide supplemental briefing regarding his forfeiture order and restitution award. *See* C.A. Docs. 141 & 144, *U.S. v. Clark*, Nos. 16-10811 & 16-14410 (11th Cir.). As Petitioner explained, if leave were granted, he intended to brief those financial issues while voluntarily dismissing or withdrawing all of his other arguments. *See* C.A. Doc. 141 at 7–24, *U.S. v. Clark*, Nos. 16-10811 & 16-14410 (11th Cir.). A copy of that motion for leave, which describes some of the substantive problems with the forfeiture order and restitution award, is attached hereto as Exhibit B. *See* Sup. Ct. R. 13.5.

4. The Eleventh Circuit denied Petitioner's request. C.A. Doc. 145, *U.S. v. Clark*, Nos. 16-10811 & 16-14410 (11th Cir.). So, on advice of counsel, Petitioner dismissed his appeal in its entirety. *See* C.A. Docs. 146 & 148, *U.S. v. Clark*, Nos. 16-10811 & 16-14410 (11th Cir.).

5. Thereafter, Petitioner challenged his forfeiture order and restitution award by pursuing collateral relief. *See* D.Ct. Doc. 1, *Clark v. U.S.*, No. 4:23-cv-10027 (S.D. Fla.). The government opposed, and Petitioner replied. D.Ct. Docs. 4.6 & 4.9, *Clark v. U.S.*, No. 4:23-cv-10027 (S.D. Fla.). Eventually, the Southern District of

Florida denied relief, denied a certificate of appealability, and entered judgment. *See* D.Ct. Docs. 5 & 6, *Clark v. U.S.*, No. 4:23-cv-10027 (S.D. Fla.). In particular, the order denying relief noted, “While Movant cites to cases from other Circuits that discuss the possibility of raising an argument that restitution orders are not categorically excluded from § 2255, the Court sees no reason to disturb the well-set precedent of the Eleventh Circuit.” D.Ct. Doc. 5 at 4, *Clark v. U.S.*, No. 4:23-cv-10027 (S.D. Fla.) (citing three Eleventh Circuit cases for the proposition that collateral challenges to noncustodial punishment, such as forfeiture or restitution challenges, aren’t cognizable under § 2255). A copy of the order denying relief is attached hereto as Exhibit C.

See Sup. Ct. R. 13.5.

6. Petitioner appealed, *see* D.Ct. Doc. 7, *Clark v. U.S.*, No. 4:23-cv-10027 (S.D. Fla.), and sought a certificate of appealability from the Eleventh Circuit, *see* C.A. Doc. 9, *Clark v. U.S.*, No. 25-10955 (11th Cir.).

7. Alas, Petitioner was unsuccessful: on October 28, 2025, the Eleventh Circuit denied a certificate of appealability. C.A. Doc. 12, *Clark v. U.S.*, No. 25-10955 (11th Cir.). A copy of that order is attached hereto as Exhibit D. *See* Sup. Ct. R. 13.5.

8. Petitioner timely filed a motion for reconsideration (not a petition for rehearing) 21 calendar days later. *See* C.A. Doc. 13, *Clark v. U.S.*, No. 25-10955 (11th Cir.); *see also* 11th Cir. R. 22.1(c) (“denial of a certificate of appealability, whether by a single circuit judge or by a panel, may be the subject of a motion for reconsideration but may not be the subject of a petition for panel rehearing or a petition for rehearing *en banc*”), 27.2 (allowing 21 days for motion for reconsideration) & 40.2 (allowing 21

days for petition for rehearing). The Eleventh Circuit denied reconsideration on December 17, 2025. A copy of that order is attached hereto as Exhibit E. *See Sup. Ct. R. 13.5.*

9. So the upshot is this: Petitioner's petition for a writ of certiorari is currently due filed in this Court 90 days after either October 28, 2025 (the date the Eleventh Circuit entered its original order) or December 17, 2025 (the date the Eleventh Circuit entered its reconsideration order). The actual deadline depends on whether a motion for reconsideration tolls the deadline for a certiorari petition in the same way that a petition for rehearing would. *See Sup. Ct. R. 13.3.* In turn, that means the petition for a writ of certiorari's current deadline would be either January 26, 2026 or March 17, 2026. *See Sup. Ct. R. 30.1.* Also, this Court has jurisdiction to review the denial of a certificate of appealability by a court of appeals. *See Hohn v. United States*, 524 U.S. 236, 253 (1998).

10. Anyways, Petitioner is in the process of retaining me this week. Given my recent (and not yet completed) retention, I require additional time—an additional 60 days, not an additional 30 days—to review the record, analyze potential issues, and prepare the petition for a writ of certiorari.

11. I'm a board-certified appellate lawyer who operates a solo practice with a heavy caseload. Aside from this case, my caseload includes 14 appellate briefs due between now and mid-April with the following deadlines (as they currently exist or may be extended): Jan. 15, 2026, *Piljevic v. Jankovic*, No. 2D25-1112 (Fla. 2d DCA) (family law); Jan. 30, 2026, *U.S. v. Jackson*, No. 25-11642 (11th Cir.) (drugs); Feb. 6,

2026, *Citadel Sec. LLC v. SEC*, No. 25-13631 (11th Cir.) (securities regulation); Feb. 10, 2026, *Ghalyaie v. Chamberlain*, No. 2D25-2627 (Fla. 2d DCA) (domestic violence); Feb. 12, 2026, *U.S. v. Ambuila*, No. 25-11650 (11th Cir.) (money laundering); Feb. 19, 2026, *U.S. v. Ruan*, Nos. 24-12319 & 24-12442 (11th Cir.) (pain clinic); Feb. 19, 2026, *U.S. v. Burke*, No. 24-13903 (11th Cir.) (habeas); Feb. 23, 2026, *U.S. v. Sychowski*, No. 25-10864 (11th Cir.) (bullet possession); Feb. 25, 2026, *U.S. v. Purvis*, No. 24-12632 (11th Cir.) (EIDL loan); Feb. 26, 2026, *U.S. v. Williamson*, No. 24-11671 (11th Cir.) (violent prison gang); Mar. 16, 2026, *Quraishi v. State*, No. 2D25-772 (Fla. 2d DCA) (terrorism); Apr. 6, 2026, *U.S. v. Marshall*, No. 23-14087 (11th Cir.) (theft of government funds); Apr. 13, 2026, *U.S. v. Cooper*, No. 25-12748 (11th Cir.) (drugs); Apr. 15, 2026, *Yonye v. SP Oaks, LLC*, No. 2D25-2987 (Fla. 2d DCA) (wrongful death). Of those, *Quraishi* and *Ruan* involve multiweek trials with massive records and complicated issues. Also, *Ruan* has already been to this Court twice. *See Ruan v. United States*, 597 U.S. 450 (2022); *Ruan v. United States*, 144 S. Ct. 377 (2023).

12. This is a “cold record” appeal in which I wasn’t previously involved, and the record is extensive. (My prior involvement in the direct appeal didn’t involve briefing or oral argument; instead, it was limited to seeking leave to file supplemental briefs on the forfeiture and restitution issues.) A first multiweek trial ended in a mistrial for Petitioner and the acquittal of his wife; a second multiweek jury trial resulted in Petitioner’s conviction and financial penalties. The record exceeds 760 docket entries, thousands of transcript pages, and hundreds of documents.

13. Finally, and most importantly, the petition will seek review of two mature circuit splits. Although I haven't yet exhaustively researched the two circuit splits, they appear at first blush to involve at minimum a 1-3 split and a 5-2 split.

14. First, the petition would likely examine what appears at first blush to be, at minimum, a 1-3 circuit split about whether—as this Court suggested in *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)—the existence of a circuit split alone, notwithstanding contrary circuit precedent, can demonstrate that reasonable jurists could find a claim debatable for purposes of granting a certificate of appealability under 28 U.S.C. § 2253(c)(2). The Eleventh Circuit has repeatedly held that a circuit split isn't sufficient when there's contrary circuit precedent. *See, e.g., Lambrix v. Sec'y, Fla. Dep't of Corr.*, 851 F.3d 1158, 1171 (11th Cir. 2017) (circuit splits don't present debatable claims “because reasonable jurists would follow controlling law”); *accord Gordon v. Sec'y, Dep't of Corr.*, 479 F.3d 1299, 1300 (11th Cir. 2007); *Hamilton v. Sec'y, Fla. Dep't of Corr.*, 793 F.3d 1261, 1266 (11th Cir. 2015). In contrast, three other circuits have held the existence of a circuit split is sufficient despite contrary circuit precedent. *See, e.g., Allen v. Ornoski*, 435 F.3d 946, 951 (9th Cir. 2006) (“Even if a question is well settled in our circuit, a constitutional claim is debatable if another circuit has issued a conflicting ruling.”); *Wilson v. Sec'y Pennsylvania Dep't of Corr.*, 782 F.3d 110, 115 (3d Cir. 2015) (sister circuit's decision that conflicted with district court orders within Third Circuit demonstrated that reasonable jurists could deem claim debatable); *United States v. Crooks*, 769 Fed. App'x 569, 572 (10th Cir. 2019) (sister circuit's conflicting decision made constitutional claim debatable notwithstanding

contrary circuit precedent); *see also Rodella v. United States*, 467 F. Supp. 3d 1116, 1126 (D.N.M. 2020) (granting certificate of appealability per *Crooks*).

15. Second, the petition would also likely examine what appears at first blush to be, at minimum, a 5-2 circuit split about whether collateral challenges to noncustodial punishment, such as forfeiture orders or restitution awards, can be cognizable under § 2255 if the financial penalty is sufficiently severe that it restrains liberty. The First, Third, Fifth, Seventh, and Eleventh Circuit have held they're never cognizable. *See United States v. Michaud*, 901 F.2d 5, 7 (1st Cir.1990); *United States v. Ross*, 801 F.3d 374, 380 (3d Cir. 2015); *United States v. Segler*, 37 F.3d 1131, 1137 (5th Cir. 1994); *Barnickel v. United States*, 113 F.3d 704, 706 (7th Cir.1997); *Mamone v. United States*, 559 F.3d 1209, 1211 (11th Cir. 2009); *see also Arnaiz v. Warden, Fed. Satellite Low*, 594 F.3d 1326, 1330 (11th Cir. 2010); *Blaik v. United States*, 161 F.3d 1341, 1342 (11th Cir. 1998). In contrast, the Second and Sixth Circuits have held that if a restitution award or forfeiture order is sufficiently severe that it restrains liberty, such challenges under § 2255 can be cognizable. *See Gonzalez v. United States*, 792 F.3d 232, 237 (2d Cir. 2015) (restitution order may sufficiently severe restrain liberty to support § 2255 jurisdiction) (discussing *Kaminski v. United States*, 339 F.3d 84, 87 (2d Cir. 2003)); *Weinberger v. United States*, 268 F.3d 346, 351 n.1 (6th Cir. 2001) (§ 2255 doesn't categorically bar challenges to restitution); *Ratliff v. United States*, 999 F.2d 1023, 1027 (6th Cir. 1993) (vacating restitution order under § 2255 due to counsel's ineffectiveness). Here, the financial penalties are almost \$500 million.

16. This second circuit split is notable because this Court has repeatedly held that *physical* custody is not a strict jurisdictional requirement under § 2255: “History, usage, and precedent can leave no doubt that, besides physical imprisonment, there are other restraints on a man’s liberty, restraints not shared by the public generally, which have been thought sufficient in the English-speaking world to support the issuance of habeas corpus.” *Jones v. Cunningham*, 371 U.S. 236, 240 (1963) (defendant serving parole was still in custody for habeas purposes); *accord Justices of Boston Mun. Ct. v. Lydon*, 466 U.S. 294, 301 (1984) (defendant released on personal recognizance was still in custody for habeas purposes); *Hensley v. Mun. Court, San Jose Milpitas Judicial Dist.*, 411 U.S. 345, 351–53 (1973) (same).

WHEREFORE, the Court should grant Petitioner a 60-day extension of time from January 26, 2026 until March 27, 2026, or from March 17, 2026 until May 18, 2026, whichever is later, to file his petition for a writ of certiorari.

January 15, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date, January 15, 2026, as required by Supreme Court Rule 29, I have served the enclosed Application For Extension Of Time To File Petition For A Writ Of Certiorari on each party to the above proceeding or that party's counsel, and on every other person required to be served, via email and by depositing an envelope containing the above document in the U.S. mail properly addressed to each of them and with first-class postage prepaid. The names and addresses of those served are as follows:

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January 15, 2026

/s/ Thomas Burns

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