

No. _____

IN THE
Supreme Court of the United States

SEANTREY MORRIS,
Petitioner,
v.

JOSEPH MEKDESSIE, BRANDON LEBLANC; DANIEL SWEARS; ARTHUR S. LAWSON, IN HIS
OFFICIAL CAPACITY AS CHIEF OF POLICE, CITY OF GRETNA POLICE DEPARTMENT;
GRETNA CITY,
Respondents.

**APPLICATION TO THE HON. SAMUEL A. ALITO, JR.
FOR A 30-DAY EXTENSION OF TIME WITHIN WHICH TO FILE
A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT**

Pursuant to Rule 13(5) of the Rules of this Court, Applicant Seantrey Morris moves for an extension of time of 30 days, up to and including August 26, 2019, within which to file a petition for a writ of certiorari.

1. Applicant will seek review of the judgment in *Morris v. Mekdessie*, No. 18-30705, (5th Cir. Apr. 26, 2019). A copy of the decision, dated April 26, 2019, is attached as Exhibit 1. The current deadline for filing a petition for writ of certiorari is July 25, 2019. This application is filed more than 10 days before the date the petition is due. *See* Sup. Ct. R. 13.5. The jurisdiction of this Court is based on 28 U.S.C. § 1254(1).

2. Good cause exists for an extension. Applicant has recently retained the undersigned as new counsel, and therefore seeks a 30-day extension to August 26,

2019, so that counsel can review the extensive record, study the relevant case law, and prepare a petition.

3. An extension is further justified by the press of business on numerous other matters. The undersigned are responsible for the following engagements, all of which have intervening deadlines between now and when the petition for certiorari in this case is due:

- 1) A response brief in *Pecoraro v. Union Carbide Corp.*, New York County Clerk's Index No. 190099/09 (N.Y. App. Div. 1st Dep't) due July 1, 2019.
- 2) Oral argument in *Idenix Pharmaceuticals LLC et al. v. Gilead Sciences, Inc.*, No. 18-1691 (Fed. Cir.) on July 9, 2019.
- 3) Oral argument in *Plastic Omnium Advanced Innovation and Research v. Donghee America, Inc.*, No. 18-2087 (Fed. Cir.) on July 11, 2019.
- 4) A Reply brief in *Lanzo v. Cyprus Amax Minerals*, No. A-005717-17 (N.J. App.) due July 11, 2019.
- 5) A reply brief in *Pinter-Brown v. Regents of the University of California*, No. B290086 (Cal. Ct. App.) due July 15, 2019.
- 6) An opening brief in *Arconic Inc. v. APC Investment Co.*, No. 19-55181 (9th Cir.) due July 15, 2019.
- 7) An opening brief in *Donghee America, Inc. v. Plastic Omnium Advanced Innovation and Research*, No. 19-1627 (Fed. Cir.) due July 17, 2019.

4. In addition, an extension is warranted because this case presents a substantial question of law on which the federal courts of appeals are divided. This Court held in *Heck v. Humphrey* that “to recover damages ... for ... harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of

a writ of habeas corpus.” 512 U.S. 477, 486 (1994). The Fifth Circuit held in the decision below that this bar applies even when the plaintiff completes a pretrial diversion program and is never convicted or sentenced of any crime. *Morris v. Mekdessie*, No. 18-30705, 2019 WL 1889907, at *2 (5th Cir. Apr. 26, 2019).

The courts of appeals are sharply divided on this issue. The Second and Third Circuits both agree with the Fifth Circuit that *Heck* bars claims that would call into question any conviction that a plaintiff avoided through a pretrial procedure that led to dismissal of the charges. *Gilles v. Davis*, 427 F.3d 197, 211 (3d Cir. 2005); *Roesch v. Otarola*, 980 F.2d 850 (2d Cir. 1992). The Sixth, Tenth, and Eleventh Circuits, by contrast, have held that *Heck* does not apply following the completion of a program that did not lead to a conviction or sentence. *S.E. v. Grant County Bd. of Educ.*, 544 F.3d 633, 639 (6th Cir. 2008); *McClish v. Nugent*, 483 F.3d 1231, 1251 (11th Cir. 2007); *Vasquez Arroyo v. Starks*, 589 F.3d 1091, 1095 (10th Cir. 2009).

An extension of time will help to ensure that the petition clearly and thoroughly presents the vitally important and complicated issues raised by the Fifth Circuit’s decision.

5. For the foregoing reasons, Applicants hereby request that an extension of time be granted, up to and including August 26, 2019, within which to file a petition for a writ of certiorari.

Respectfully submitted,

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