

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

United States of America,
Respondent

v.

Marlo Helmstetter,
Petitioner

**APPLICATION FOR 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**

APPLICATION TO THE HONORABLE SAMUEL A. ALITO
AS CIRCUIT JUSTICE

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APPLICATION FOR EXTENSION OF TIME

Pursuant to Rule 13.5 of the Rules of this Court, Applicant Marlo Helmstetter respectfully requests an additional thirty (30) day in which to file a petition for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit, or up to and including July 13, 2024. This request is unopposed.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The judgment for which review is sought is not reported, but is available at 2024 WL 1132854, as *United States of America v. Marlo Helmstetter*, #23-30384. The Court of Appeals for the Fifth Circuit issued its opinion on March 15, 2024, which is attached hereto as Exhibit A.

JURISDICTION

This Court will have jurisdiction over any timely filed petition for certiorari pursuant to 28 U.S.C. § 1254(1). Under Rules 13.1, 13.3, and 30.1 of the Rules of this Court, a petition for a writ of certiorari would be due, in the absence of the requested extension, on June 13, 2024. The requested extension would make a petition for a writ of certiorari due on or before July 13, 2024. In accordance with Rule 13.5, this application is being filed more than 10 days in advance of the existing filing deadline.

REASONS JUSTIFYING THE EXTENSION OF TIME REQUESTED

The petition will be on behalf of a federal inmate, Marlo Helmstetter, who was convicted and sentenced to three concurrent life sentences in 1993. The vast majority of the criminal conduct for which Marlo Helmstetter was tried and convicted occurred when Helmstetter was a minor, i.e.,

under the age of 18. In fact, the over-arching conspiracy which “connects” the offenses committed by Helmstetter, and others, began when Helmstetter was 14 years old.

Nevertheless, because the conspiracy continued past Helmstetter’s 18th birthday, he was sentenced as an adult. Because his sentence was imposed before *United States v. Booker*, 543 U.S. 220 (2005), the district court treated the sentencing guidelines as mandatory. Thus, the case will present important questions regarding the relationship between *Miller v. Alabama*, 132 S. Ct. 2455 (2012), the impact of *Booker* on life sentences made “mandatory” by the sentencing guidelines, the sentencing factors set forth in 18 U.S.C. § 3553, and the sentencing factors set forth in 18 USC § 3582. It will also address the Fifth Circuit’s standard for compassionate release under 18 U.S.C. § 3582, which requires a defendant to cite “extraordinary and compelling reasons for compassionate release.”

Because undersigned counsel was not retained in this matter until almost one-half of the original ninety (90) day period for filing a petition for a writ of certiorari had elapsed, additional time is needed to properly brief these complex questions. Moreover, undersigned counsel is a Senior Professor of Practice at Tulane University School of Law, and has a pre-existing obligation to teach abroad this summer, which will prevent him from performing the research and writing needed to effectively present his client’s claims to this Court – claims which are worthy of review.

CONCLUSION

Wherefore, Applicant respectfully requests a thirty (30) day extension of time in which to file a petition for a writ of certiorari, or up to and including July 13, 2024.

Respectfully submitted.



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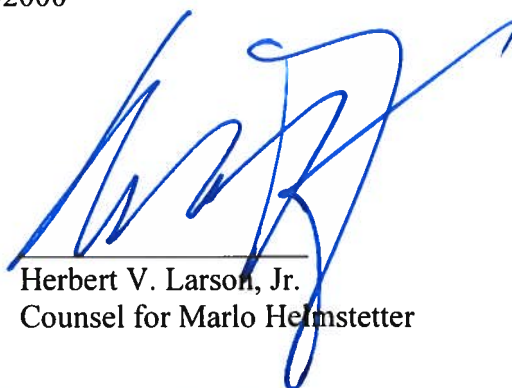
CERTIFICATE OF SERVICE

This certifies that I have sent a copy of the foregoing petition to the following persons, properly addressed, first class postage prepaid:

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Dated: May 20, 2024.



Herbert V. Larson, Jr.
Counsel for Marlo Helmstetter

Exhibit A

United States Court of Appeals
for the Fifth Circuit

No. 23-30384
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED
March 15, 2024
Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

MARLO HELMSTETTER,

Defendant—Appellant.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:92-CR-469-7

Before ELROD, OLDHAM, and WILSON, *Circuit Judges*.

PER CURIAM:*

Marlo Helmstetter, federal prisoner # 23245-034, appeals the denial of his motion for compassionate release, filed pursuant to 18 U.S.C. § 3582(c)(1)(A)(i), and the denial of his motion for reconsideration. Helmstetter, who was sentenced to life imprisonment for conspiring to possess cocaine with intent to distribute and two counts of committing

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

murder in aid of racketeering activity and to 240 months for aggravated assault in aid of racketeering activity, asserts that the district court failed to afford adequate consideration and weight to his arguments that his post-sentencing rehabilitation, the length of time he has already served, and his youth at the time of the offenses of conviction warranted § 3582(c)(1)(A) relief. We review each denial for abuse of discretion. *See United States v. Chambliss*, 948 F.3d 691, 693 (5th Cir. 2020); *Kapordelis v. Myers*, 16 F.4th 1195, 1202 (5th Cir. 2021).

The district court considered Helmstetter's arguments relating to his rehabilitation and his youth at the time that he committed his criminal offenses; nevertheless, the court determined that Helmstetter's sentences as imposed were appropriate to protect the public from his future crimes, reflect the seriousness of his offenses, promote respect for the law, and deter future similar conduct. *See* 18 U.S.C. § 3553(a)(1), (a)(2)(A)-(C). In other words, the district court's "written order adequately reflects that it gave due consideration to [Helmstetter's] arguments in favor of a reduction of his sentence" under the § 3553(a) factors. *United States v. Batiste*, 980 F.3d 466, 478-79 (5th Cir. 2020). Helmstetter's extensive disagreement with the district court's weighing of the § 3553(a) factors does not establish that the court abused its discretion. *See Chambliss*, 948 F.3d at 694; *Kapordelis*, 16 F.4th at 1202. In light of the district court's reliance on the § 3553(a) factors as the basis for denying relief, it was not required to determine whether Helmstetter had cited extraordinary and compelling reasons for compassionate release. *See Ward v. United States*, 11 F.4th 354, 360-62 (5th Cir. 2021).

AFFIRMED.