

App No. _____

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

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ZACKARY ELLIS SANDERS,

Applicant,

v.

UNITED STATES OF AMERICA,

Respondents.

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

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November 22, 2024

To the Honorable Chief Justice John G. Roberts, Jr., as Circuit Justice for the United States Court of Appeals for the Fourth Circuit:

In accordance with this Court’s Rules 13.5, 22, 30.2, and 30.3, Applicant, Zackary Ellis Sanders, respectfully requests that the time to file his petition for a writ of certiorari be extended for 60 days, up to and including Monday, February 3, 2025. The Court of Appeals issued its amended opinion on July 10, 2024. (Exhibit B) and denied rehearing and rehearing *en banc* on September 6, 2024. (Exhibit A). Absent an extension of time, the petition would be due on December 5, 2024. The jurisdiction of this Court is based on 28 U.S.C. § 1254(1). This request is unopposed.

Background

This case presents an important question of the application of the forfeiture laws to electronic data files: Whether under 18 U.S.C. § 2253(a), electronic data files are distinct forms of property from the physical devices or medium on which they are stored. The circuit courts are in disagreement on whether illegally seized electronic data files are distinct “property” that can be extracted from physical devices and returned. The panel decision directly conflicts with Fourth and Ninth

Circuit precedent recognizing illegally seized digital files stored on forfeitable electronic devices as distinct forms of property. The panel decision also conflicts with a majority circuits generally recognizing the separate existence of intangible computer data or computer code, the value of which may vastly exceed the value of any physical item on which it might be stored.

Applicant was found guilty by a jury of 12 counts of violating federal child exploitation and child pornography offenses. The district court sentenced him to a term of eighteen years' imprisonment. Applicant is currently incarcerated at FCI Fort Dix, New Jersey.

Prior to sentencing, Applicant moved for the return of the non-contraband data files stored on nine forfeitable electronic devices, pursuant to Federal Rule of Criminal Procedure 41(g). Applicant further objected to the entry of an anticipated preliminary order of forfeiture that had not yet been requested by the government, forfeiting his otherwise non-forfeitable, electronic files. The district court ordered the forfeiture of the nine electronic devices "in their entirety," on which Applicant stored child pornography and which he used to commit the crimes, including the non-contraband data contained on them.

The Court of Appeals for the Fourth Circuit affirmed, concluding that (1) the clear text of § 2253(a)(1) provides for the forfeiture of the entirety of the electronic devices containing child pornography and (2) in the context of § 2253(a)(3), “property” can only mean the entire device used to commit the offense, including the visual depictions of child pornography and the non-contraband data files stored on it.

Reasons For Granting an Extension of Time

On November 15, 2024, Applicant asked the undersigned to file a petition for writ of certiorari. Applicant is currently indigent. Counsel is still waiting to receive Applicant’s executed Application to Appeal In Forma Pauperis from FCI Fort Dix at which time she will request the Fourth Circuit appoint new counsel under the Criminal Justice Act. 18 U.S.C. § 3006A. New counsel will require the requested extension to familiarize him or herself with the trial and appellate records and to prepare the petition.

The request for new counsel is precipitated by the impending dissolution of the undersigned’s law firm. In addition to managing her own caseload, the undersigned has sole responsibility for dissolving a law firm that has existed for 34 years and that until recently, consisted

of five lawyers, one of whom is now deceased. The remaining partners have retired, and the firm's associate has left the firm.

Conclusion

Applicant requests that the time to file a writ of certiorari in the above-captioned matter be extended 60 days to and including February 3, 2025.

Dated this 22nd day of November, 2024.

Respectfully submitted,

/s/ Nina J. Ginsberg

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CERTIFICATE OF SERVICE

In accordance with this Court's Rule 29, I hereby certify on this 22nd day of November, 2024 a true copy of the foregoing was mailed and emailed to:

Office of the Solicitor General of the United States
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/s/ Nina J. Ginsberg

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