

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

CHARLES L. RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS,
PETITIONER,

-vs-

JASPAR PHILLIP RUSHING,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI
TO THE ARIZONA SUPREME COURT

APPLICATION FOR EXTENSION OF TIME TO FILE PETITION FOR WRIT OF CERTIORARI
TO THE ARIZONA SUPREME COURT

MARK BRNOVICH
ATTORNEY GENERAL

DOMINIC E. DRAYE
SOLICITOR GENERAL

LACEY STOVER GARD
CHIEF COUNSEL

GINGER JARVIS
ASSISTANT ATTORNEY GENERAL
CAPITAL LITIGATION SECTION
(COUNSEL OF RECORD)
2002 N. CENTRAL AVE.
PHOENIX, ARIZONA 85004
CADOCKET@AZAG.GOV
TELEPHONE: (602) 542-8557

ATTORNEYS FOR PETITIONER

To the Honorable Anthony M. Kennedy, Associate Justice of the Supreme Court and Circuit Justice for the Ninth Circuit.

Pursuant to Rule 13(5) of the Rules of the Supreme Court of the United States, Petitioner, Charles L. Ryan, respectfully requests a 60-day extension of time to file his petition for certiorari in this Court, to and including May 14, 2018. On December 15, 2017, the Arizona Supreme Court issued its decision denying Respondent Rushing's motion for reconsideration of its November 6, 2017, opinion affirming his conviction for the vicious first-degree murder of his prison cellmate, yet remanding for a second capital sentencing proceeding. Petitioner's time to petition for certiorari in this Court thus expires on March 15, 2018. This application is being filed more than 10 days before that date.

A copy of the Arizona Supreme Court's 2017 opinion, in which the court applied *Kelly v. South Carolina*, 534 U.S. 246 (2002), to reverse a jury's death verdict for an in-prison killing, is attached hereto as Exhibit A. The Arizona Supreme Court concluded that evidence of Rushing's past violent acts, and other violent and threatening conduct in prison, called for an instruction pursuant to *Simmons v. South Carolina*, 512 U.S. 154 (1994) (plurality), despite that evidence having been introduced as rebuttal to his claim in the penalty phase that he can be safely housed in prison. Petitioner invokes this Court's jurisdiction under Article III, Section 2 of the United States Constitution; 28 U.S.C. § 1257(a), and United States Supreme Court Rule 10. This case presents important questions about the reach, effect and interpretation of *Simmons*, *Kelly*, and its progeny on state court law, state jury instructions, and valid state capital jury sentences.

Petitioner's counsel of record has been delayed in drafting the certiorari petition in this matter due to her caseload and personal obligations. In addition to briefing and attending to matters related to other cases before state and federal courts, such as a recently-filed Replacement Answering Brief in *Djerf v. Ryan*, No. 08-99027 (capital case), in the Ninth Circuit Court of Appeals after that court struck all of the original briefing completed in February of 2011, and *sua sponte* expanded the certificate of appealability following that court's grant of a remand, and subsequent additional district court rulings, occasioned by this Court's decision in *Martinez v. Ryan*, 566 U.S. 1 (2012), and *Styers v. Ryan*, No. 17-17356 (capital case), an opposition to a certificate of appealability from the denial of a second or successive habeas in the Ninth Circuit.

Therefore, Petitioner respectfully requests that this Court grant an extension of time to and including May 14, 2018, in which to complete and file a petition.

Respectfully submitted,

Mark Brnovich
Attorney General

Dominic E. Draye
Solicitor General

Lacey Stover Gard
Chief Counsel

s/Ginger Jarvis
Assistant Attorney General
(Counsel of Record)
Attorneys for Petitioner