

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

No. ---

VIRGINIA CAUDILL

Petitioner,

v.

JANET CONOVER, WARDEN,

Respondent.

**APPLICATION TO THE HONORABLE JUSTICE ELENA KAGAN
FOR EXTENSION OF TIME TO FILE A PETITION FOR A WRIT
CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE SIXTH CIRCUIT**

CAPITAL CASE

APPLICATION TO THE HONORABLE
ASSOCIATE JUSTICE ELENA KAGAN
AS CIRCUIT JUSTICE

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June 20, 2018

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To the Honorable Elena Kagan, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Sixth Circuit:

Petitioner, Virginia Caudill, respectfully requests that the time to file a Petition for a Writ of Certiorari in this matter be extended for sixty days up to and including August 30, 2018. The Court of Appeals issued its opinion on February 2, 2018 (see App. A, attached). On April 2, 2018, the Court of Appeals issued an order (see App. B, attached) in which it denied a petition for rehearing *en banc*.

Absent an extension of time, the petition would be due on or before July 1, 2018. Caudill is filing this Application at least ten days before that date. See S.Ct. R. 13.5. This Court has jurisdiction under 28 U.S.C. §1257.

REASONS JUSTIFYING AN EXTENSION OF TIME

Applicant respectfully requests a 60-day extension of time for the following reasons:

1. Undersigned counsel of record is a public defender working for the Kentucky Department of Public Advocacy (DPA) representing indigent clients including eight capital clients, one of whom is Virginia Caudill.
2. Counsel's workload since the denial of rehearing by the Supreme Court of Kentucky has been heavy. Included among the workload, counsel filed a brief in Kentucky Court of Appeals on May 30, 2018, a brief in a capital case in the Sixth Circuit on June 13, 2018, and a major brief in a capital case is due in the Kentucky Supreme Court on June 22, 2018. A petition for rehearing in a capital case is due in the Sixth Circuit, also on June 22, 2018. Counsel will also need to spend extensive time in July becoming acquainted with several non-capital clients and their cases, which were reassigned due to staff attorney turnover.
3. Co-counsel Linneman was only appointed to this case in November 2017. Accordingly, co-counsel's involvement in the case prior to the Petition for Certiorari was limited to the two issues for which the Court of Appeals granted a Certificate of Appealability. Co-counsel is an attorney in private practice. Since the time of the decision appealed herein, co-counsel has been engaged in researching, developing and drafting a response to a dispositive motion in post-conviction proceedings in a different capital case in Ohio that is subject to a deadline of July 20, 2018. The response in that case has taken substantial time and effort during the

preceding months.

4. The Petition for Certiorari will present issues of Constitutional import, and significant complexity that merit an extension of time. Among other things this petition for a writ of certiorari will ask this Court to consider whether the Kentucky Supreme Court unreasonably applied clearly established Federal law, as determined by this Court in *Batson v. Kentucky*, 476 U.S. 79 (1986). The applicant, a white woman, objected to the striking of eight white male jurors. The trial judge believed a *Batson* challenge could not lie for white males and promptly rejected all eight *Batson* objections without conducting an inquiry in to the prosecutor's intent when he struck the eight white males. The applicant will focus on *Batson's* third step which requires trial courts to undertake "a sensitive inquiry into such circumstantial and direct evidence of intent as may be available," *Batson* 476 U.S. at 93. The Court of Appeals concluded that the applicant "makes too much of the 'sensitive' inquiry language of *Batson*, in the context of a habeas claim."

6. In addition, it is critical that Applicant be permitted a full opportunity to develop the issues to be brought before this Court because the State seeks to carry out the death penalty in this case.

For the reasons expressed above, Applicant, Virginia Caudill respectfully requests that this Court grant her a sixty-day extension to file a petition for a writ of certiorari up to and including August 30, 2018.

Respectfully submitted,

/s//Dennis J. Burke

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CERTIFICATE OF SERVICE

I, Dennis J. Burke, a member of the Bar of this Court, hereby certify that on June 18, 2018, a copy of this Application for Extension of Time to File a Petition for a Writ of Certiorari in the above entitled case was mailed, first class postage prepaid, to Matthew R. Krygiel, Assistant Attorney General, Commonwealth of Kentucky, 1024 Capital Center Drive, Frankfort, Kentucky 40601, counsel for respondent herein. I further certify that all parties required to be served have been served.

/s/ Dennis J. Burke

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