

No. 18-5880  
CAPITAL CASE

IN THE SUPREME COURT  
OF THE UNITED STATES

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VIRGINIA S. CAUDILL

PETITIONER

v.

JANET CONOVER, Warden  
Kentucky Correctional Institution for Women

RESPONDENT

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RESPONDENT'S APPLICATION TO HONORABLE JUSTICE  
ELENA KAGAN FOR EXTENSION OF TIME  
TO FILE A BRIEF IN OPPOSITION  
TO PETITION FOR WRIT OF CERTIORARI

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Respectfully submitted,

**ANDY BESHEAR**  
Attorney General of Kentucky

**MATTHEW R. KRYGIEL**  
Assistant Attorney General  
*Counsel of Record*  
Office of Criminal Appeals  
Office of the Attorney General  
1024 Capital Center Drive  
Frankfort, KY 40601  
(502) 696-5342

Counsel for Petitioner

## APPLICATION

Comes the Respondent, Janet Conover, Warden - Kentucky Correctional Institution for Women, and respectfully asks this Court, via Hon. Justice Elena Kagan, for an extension of time of thirty (30) days from October 5, 2018, to and including, November 4, 2018, in which to file a response/brief in opposition to petition for a writ of certiorari in this case. In support of this application, the Respondent states as follows:

### FACTS AND OPINIONS BELOW

The offense conduct perpetrated by Caudill has been summarized by various appellate courts on multiple occasions. *Caudill v. Conover*, 881 F.3d 454 (6<sup>th</sup> Cir. 2018); *Caudill v. Commonwealth*, 120 S.W.3d 635 (Ky. 2003); *Caudill v. Commonwealth*, 2009 WL 1110398, 2006-SC-457 (Ky. April 23, 2009).

In short, on March 15, 1998, Caudill and her co-defendant, Jonathan Wayne Goforth, bludgeoned to death Lonetta White, age seventy-three (73), in her home in Lexington, Kentucky. White had been killed by up to fifteen blows to her head with a hammer-like instrument - causing skull fractures that drove fragments of bone into her brain. Goforth and Caudill had ransacked White's home and numerous items were stolen - including personal property, two guns, jewelry, and a mink coat. Mrs. White's body was discovered in the trunk of her own burning automobile in a field several miles away (at a location familiar to Caudill and special to her ex-boyfriend - Lonetta White's son [Steve]). Mrs. White was burned beyond recognition and her remains had to be pried from the base of the trunk.

Caudill was found guilty of all indicted charges - Murder, Robbery in the First degree, Burglary in the First Degree, Arson in the Second Degree, and Tampering with Physical Evidence. Caudill was sentenced to death for Mrs. White's murder, as well as, twenty (20) years for first-degree robbery, twenty (20) years for first-degree burglary, twenty (20) years for second-degree arson, and five (5) years for the tampering charge. After review by the Kentucky Supreme Court, Caudill's convictions and sentences were affirmed on direct appeal. *Caudill v. Commonwealth*, 120 S.W.3d 635 (Ky. 2003). Likewise, the Kentucky Supreme Court affirmed the denial of her post-conviction actions. *Caudill v. Commonwealth*, 2009 WL 1110398, 2006-SC-457 (Ky. April 23, 2009).

On January 31, 2014, the United States District Court for the Eastern District of Kentucky issued a memorandum opinion and order that denied Caudill's federal habeas petition. *Caudill v. Conover*, 2014 WL 349300, Case No. 5:10-cv-84 (E.D.Ky. 2014). The district court also denied a Certificate of Appealability (COA) as to all issues. *Id.* Ultimately, after two (2) issues were designated for a certificate of appealability, the United States Court of Appeals for the Sixth Circuit affirmed the district court's denial as to each issue. Caudill's petition seeking an *en banc* rehearing was also denied.

On August 30, 2018, the Petitioner filed a petition for a writ of certiorari seeking review of the two (2) issues before the Sixth Circuit, as well as, review of the denial of a certificate of appealability as to one (1) additional issue.

## REASONS JUSTIFYING AN EXTENSION

1. As an initial note, undersigned counsel has contacted counsel for the Petitioner, Virginia S. Caudill, regarding this extension. Opposing counsel, Hon. Dennis J. Burke, has indicated no opposition to the extension request.

2. Undersigned counsel has made every effort to complete the response to the petition prior to the upcoming deadline on October 5, 2018. Unfortunately, due to a multitude of factors, the petition cannot be completed in the allotted time. Given the length of the opinion, the breadth of the issues involved, and the seriousness of the underlying convictions/sentences (and the granted relief), this case requires additional time for a full and comprehensive review in preparation for the noted response.

3. This request is made, in part, due to undersigned counsel's current caseload. At present, mostly due to staff reductions and budget shortfalls, undersigned counsel represents the Warden and/or Commonwealth of Kentucky in cases involving eight (8) inmates that have been sentenced to death (all without the benefit of co-counsel). These cases are extremely active and have involved considerable litigation practice. For example, in the past year, undersigned counsel has been working on federal habeas cases involving five (5) of the aforementioned inmates in the United States Court of Appeals for the Sixth Circuit (resulting in two [2] oral arguments to date) at various stages of appellate litigation.

In addition, despite being assigned to the capital branch of the Kentucky Office of the Attorney's General - Office of Criminal Appeals, undersigned counsel is also required to carry a non-capital caseload. Those felony cases have had filing requirements (many of which were also on some form of extension) during the time necessary for completion of the response/brief.

4. Undersigned counsel does not make any request for an extension of time lightly and would only do so out of absolute necessity. This application is not made for purposes of delay, but due to the aforementioned necessity, and the Respondent will make every effort to file the petition as quickly as possible. It is the Warden's position that an extension of time will not prejudice either party.

**CONCLUSION**

WHEREFORE, the Respondent respectfully requests that Hon. Justice Elena Kagan grant an extension of time of thirty (30) days from October 5, 2018, to and including November 4, 2018, in which to file a brief in opposition to the petition for certiorari in the above referenced matter.

Respectfully submitted,

**ANDY BESHEAR**  
Attorney General of Kentucky

*/s/ Matthew R. Krygiel*  
**MATTHEW R. KRYGIEL**  
Counsel of Record  
Assistant Attorney General  
Office of Criminal Appeals  
Office of the Attorney General  
1024 Capital Center Drive  
Frankfort, Kentucky 40601-8204  
(502) 696-5342

Counsel for Respondent

**FILING/PROOF OF SERVICE**

The foregoing Application was mailed October 4, 2018 to the Clerk of this Court for filing – and re-filed on October 18, 2018 with the non-application case number.

Further, in compliance with Rule 29 of this Court, I, Matthew R. Krygiel, a member of the Bar of this Court, hereby certify that on the 4<sup>th</sup> day of October, 2018, a copy of this Application was mailed via United States Postal Service, postage prepaid, to Hon. Dennis J. Burke, Assistant Public Advocate, Department of Public Advocacy, 2202 Commerce Parkway – Suite D, LaGrange, Kentucky 40031; and Hon. J. Robert Linneman, Santen & Hughes, LPA, 600 Vine Street – Suite 2700, Cincinnati, Ohio 45202 - Counsel for Petitioner.

*/s/ Matthew R. Krygiel*

**MATTHEW R. KRYGIEL  
COUNSEL OF RECORD  
ASSISTANT ATTORNEY GENERAL  
1024 CAPITAL CENTER DRIVE  
FRANKFORT, KY 40601  
(502) 696-5342  
COUNSEL FOR RESPONDENT**