No. _____

IN THE SUPREME COURT OF THE UNITED STATES

CHARLES EDWARD CASE, *Petitioner*

v.

STATE OF CALIFORNIA, *Respondent*.

APPLICATION FOR EXTENSION OF TIME TO FILE
PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE STATE OF CALIFORNIA
(DEATH PENALTY CASE)

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Counsel for Petitioner

No. _____

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IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2018

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CHARLES EDWARD CASE, Petitioner,

v.

STATE OF CALIFORNIA, Respondent.

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APPLICATION FOR EXTENSION OF TIME TO FILE
PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE STATE OF CALIFORNIA
(**DEATH PENALTY CASE**)

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

Petitioner, Charles Edward Case, requests a 60-day extension of time from the current expiration date, November 13, 2018, to and including January 12, 2019, to file in this Court a petition for a writ of certiorari to the Supreme Court of California. This application is filed more than 10 days before November 13, 2018.

The final judgment of the Supreme Court of California affirming Mr. Case's conviction and sentence of death was entered on May 31, 2018. A timely-filed petition for rehearing was denied on August 15, 2018. Copies of the California Supreme Court opinion, *People v. Case*, 5 Cal. 5th 1 (2018) (*Case*), and its order denying rehearing are

attached to this application as appendix A and B, respectively. The jurisdiction of this Court is invoked under 28 U.S.C. section 1257(a).

This capital case raises numerous important federal constitutional issues. The attorney assigned to the case is Supervising Deputy State Public Defender Robin Kallman, who is in the process of applying for admission to the bar of this Court. The questions currently under examination for a petition to this Court include whether evidence should be excluded when law enforcement has acquired it by deliberately disregarding petitioner's invocation of the right to remain silent pursuant to *Miranda v. Arizona (*1966) 384 U.S. 436. (*Case,* 5 Cal.5th at 26-27.) Petitioner's counsel is also considering raising an issue arising from the California Supreme Court's application of *Apprendi v. New Jersey,* 530 U.S. 466 (2000) and *Ring v. Arizona,* 536 U.S. 584 (2002): whether a state court violates a capital defendant's rights under the Fifth, Sixth and Fourteenth Amendments by not requiring a jury to find the existence of each aggravating factor unanimously and beyond a reasonable doubt, and not requiring a jury to find beyond a reasonable doubt that the factors in aggravation outweigh the factors in mitigation. Petitioner's counsel believes these questions are substantial, require careful scrutiny and resolution, and will meet the criteria for a discretionary grant of review under Supreme Court Rule 10.

An extension of time to file a petition for a writ of certiorari is justified because

the important issue described above warrants careful scrutiny and resolution. Preparation of a petition that is appropriate in presentation and scope requires extensive research, in part to compare the California Supreme Court's approach with *Hurst v. Florida,* 136 S.Ct. 616 (2016). Consequently, a substantial amount of time is required to research and draft the petition competently. Furthermore, petitioner's counsel is counsel of record in other capital appeals and has had to devote a substantial amount of her time to meeting time-sensitive responsibilities in those other cases since the state supreme court's decision in this case became final.

Petitioner's counsel has made researching and drafting the petition for a writ of certiorari the highest priority in her work schedule, and she is currently working to complete the petition while meeting her responsibilities in other capital cases.

Accordingly, petitioner's counsel respectfully requests that an order be entered extending her time to file a petition for a writ of certiorari to and including January 12, 2019.

Dated: November 1, 2018

Respectfully submitted,

/s/ Mary McComb

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MARY K. McCOMB
STATE PUBLIC DEFENDER
FOR THE STATE OF CALIFORNIA