

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

CARL DEVON POWELL, *Petitioner*,

v.

STATE OF CALIFORNIA, *Respondent*.

**ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF CALIFORNIA**

**PETITIONER'S APPLICATION TO EXTEND TIME
TO FILE A PETITION FOR A WRIT OF CERTIORARI**

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CARL DEVON POWELL

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Supreme Court Rule 30.3

TO THE HONORABLE ELENA KAGAN,
Associate Justice of the United States Supreme Court and
Circuit Justice for the United States Court of Appeals for the
Ninth Circuit:

Petitioner, Carl Devon Powell, by and through his counsel of record,
Neoma Kenwood, and pursuant to Supreme Court Rule 30.3, hereby files this
application to extend by forty-five days the time within which to file a
petition for writ of certiorari, currently due on or before February 12, 2019.

The grounds for this application are more fully set forth below:

1. Petitioner seeks review of the judgment of the California Supreme Court, which was entered on September 17, 2018, affirming petitioner's conviction and sentence of death. See *People v. Powell* (2018) 6 Cal.5th 136.

2. On October 9, 2018, petitioner timely filed a Petition for Rehearing. On November 14, 2018, the California Supreme Court denied rehearing without modifying its opinion. Copies of the California Supreme Court's opinion and its order denying rehearing are attached.

3. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257. Pursuant to Supreme Court Rule 13.3, the time to petition for certiorari expires on February 12, 2019, and this application is being submitted more than ten days before that date.

4. This capital case presents a number of significant issues under the United States Constitution, including the following:

a. Whether court-sanctioned disclosure by the prosecutor during his opening statement of the details of anticipated testimony by Petitioner, including an admission of guilt, based solely on defense counsel's representations, infringed Petitioner's Fifth Amendment privilege against self-incrimination and deprived him of due process of law in violation of the Fifth and Fourteenth Amendments.

b. Whether California's death penalty scheme, which permits the trier of fact to impose a sentence of death without finding the existence of aggravating factors and that aggravating circumstances outweigh mitigating circumstances beyond a reasonable doubt, violates the constitutional requirement that any fact, other than a prior conviction, that serves to increase the statutory maximum or minimum penalty for a crime, must be found true beyond a reasonable doubt.

5. This extension of time is sought because counsel for Petitioner has extreme time commitments to other capital cases that have prevented completion of the certiorari petition for filing by February 12, 2019. In addition to representing Petitioner, the undersigned counsel is employed as a supervising attorney of the appellate team at the California Appellate Project. The California Appellate Project, San Francisco ("CAP"), is a non-profit corporation established by the State Bar of California in 1983 as a legal resource center to implement the constitutional right to counsel for indigent persons facing execution. We serve the largest population of condemned individuals in the country. CAP attorneys provide training and case-specific assistance to attorneys appointed to represent those individuals in their automatic appeals and habeas corpus proceedings, including review of all pleadings filed in the California Supreme Court. The undersigned counsel, as

supervising attorney for the appellate team, not only supervises the other six attorneys on her team, but also carries her own caseload of over 15 cases in which she provides case-specific assistance. Her demanding responsibilities on those other capital matters have made it impossible for her to conclude her work on Petitioner's certiorari petition.

6. Petitioner's counsel believes that the issues that will be presented in the petition for certiorari are not only important for Petitioner but will meet the criteria for grant of certiorari by this Court. Counsel needs additional time in order to competently present the issues in the petition.

7. Because of these circumstances, and in order to protect Petitioner's substantial rights, counsel files this request for an extension of time for filing the petition of writ of certiorari, and on behalf of Petitioner, requests an extension of time of 45 days to file a petition for writ of certiorari.

WHEREFORE, petitioner respectfully requests that this Court grant his application and enter an order extending the time for filing the petition for a writ of certiorari by forty-five days, that is, up to and including March 29, 2019.

Dated this 31st day of January, 2019

Respectfully submitted,

NEOMA KENWOOD
Attorney of Record for Petitioner
Carl Devon Powell

DECLARATION

I declare under penalty of perjury that the statements made in this application are true. Signed at San Francisco, California, on January 31, 2019.

NEOMA KENWOOD