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In The
SUPREME COURT OF THE UNITED STATES
October Term 2018

Scott Schmidt,
Applicant/Petitioner,

v.

Brian Foster, Warden,
Respondent.

**Application for an Extension of Time Within Which
to File a Petition for a Writ of Certiorari to the
United States Court of Appeals for the Seventh Circuit**

**APPLICATION TO THE HONORABLE
BRETT M. KAVANAUGH, AS CIRCUIT JUSTICE**

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February 28, 2019

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APPLICATION FOR EXTENSION OF TIME

Pursuant to this Court's Rule 13.5 and 28 U.S.C. § 2101(c), Applicant Scott Schmidt hereby requests a 30-day extension of time within which to file a petition for a writ of certiorari, to and including April 19, 2019.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The judgment for which review is sought is *Schmidt v. Foster*, No. 17-1727 (7th Cir. Dec. 20, 2018), a copy of which is attached as Exhibit A. A copy of the *en banc* opinion for the U.S. Court of Appeals for the Seventh Circuit is attached as Exhibit B and is reported at 911 F.3d 469.

JURISDICTION

The U.S. Court of Appeals for the Seventh Circuit entered judgment on December 20, 2018. This Court's jurisdiction will rest on 28 U.S.C. § 1254. Under Rules 13.1, 13.3, and 30.1 of this Court, a petition for a writ of certiorari is due to be filed on or before March 20, 2019. In accordance with Rule 13.5, Applicant has filed this application more than 10 days in advance of that due date.

REASONS JUSTIFYING AN EXTENSION OF TIME

Applicant respectfully requests a 30-day extension of time, to and including April 19, 2019, within which to file a petition for a writ of certiorari seeking review of the decision of the U.S. Court of Appeals for the Seventh Circuit in this case. An extension is warranted because of the importance of the issues presented and undersigned counsel's need for additional time to prepare a petition that will assist this Court in deciding whether to grant certiorari.

1. This case concerns a federal habeas petition brought by an inmate facing a term of life imprisonment. Applicant was denied his Sixth Amendment right to the assistance of counsel when the trial judge questioned Applicant in an *ex parte, in camera* hearing regarding a critical issue in the case but did not allow Applicant's counsel to speak or otherwise participate during the hearing. A panel of the Seventh Circuit initially agreed, holding that the state court's decision to the contrary was an unreasonable application of clearly established federal law under 28 U.S.C. § 2254(d). The Seventh Circuit then reheard the case *en banc* and held, by a vote of 7–3, that the state court's decision was not an unreasonable application of clearly established federal law.

2. Undersigned counsel respectfully submits that additional time is warranted because counsel of record was only recently engaged to prepare the petition. Applicant was represented by different counsel during the Seventh Circuit proceedings, and undersigned counsel needs additional time to review the record in this case and prepare the petition.

3. In addition, undersigned counsel has multiple obligations that would make it difficult to complete a petition for certiorari by the current deadline. Those obligations include a brief of appellee to be filed on March 1, 2019 in *Kemper Corp. Services, Inc. v. Computer Sciences Corp.*, No. 18-11276 (5th Cir. docketed Sept. 28, 2018); a brief seeking discretionary appellate review due to be filed on March 4, 2019 in the Illinois Appellate Court arising out of *Schultz v. Sinav Ltd.*, No. 2014 L 15; a petition for writ of certiorari to be filed in this Court on March 7, 2019 arising out of

the Tennessee Supreme Court decision in *Abdur'Rahman v. Parker*, 558 S.W.3d 606 (Tenn. 2018); a claim construction brief due to be filed on March 8, 2019 in *SpeedTrack, Inc. v. Amazon.com, Inc.*, No. 4:09-cv-04479-JSW (N.D. Cal.); and a brief of appellee due to be filed on March 28, 2019 in *Rozo v. Principal Life Insurance Co.*, No. 18-3310 (8th Cir. docketed Oct. 30, 2018).

CONCLUSION

For these reasons, Applicant respectfully requests an extension of 30 days, to and including April 19, 2019, within which to file a petition for a writ of certiorari in this case.

Respectfully submitted,

/s/ Robert N. Hochman

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