

Application No. _____

IN THE SUPREME COURT OF THE UNITED STATES

**SUPERINTENDENT OF COAL TOWNSHIP STATE CORRECTIONAL INSTITUTION
AND THE ATTORNEY GENERAL OF STATE OF PENNSYLVANIA,**
Petitioners

v.

MELVIN KEITH RICHARDSON,
Respondent

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Third Circuit

**APPLICATION FOR 30 DAY EXTENSION OF TIME
TO FILE PETITION FOR WRIT OF *CERTIORARI***

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DATE: January 25, 2019

JENNIFER A. BUCK *
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Appeals & Legal Services Section
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TO THE HONORABLE SAMUEL ANTHONY ALITO, JR:

Pursuant to Rule 13.5 of the Supreme Court of the United States, the Petitioners, Superintendent of Coal Township State Correctional Institution and the Attorney General of the State of Pennsylvania, hereby respectfully file this application for a 30-day extension of time within which to file a Petition for Writ of *Certiorari* seeking review of the October 2, 2018 Judgment of the United States Court of Appeals for the Third Circuit (“Court of Appeals”) in *Melvin Keith Richardson v. Superintendent of Coal Township State Correctional Institution, et al.*, No. 15-4105, thereby establishing a new filing deadline of March 4, 2019. In support thereof, the Petitioners aver the following:

1. On December 21, 2015, the United States District Court for the Eastern District of Pennsylvania (“the District Court”) entered an order and memorandum denying a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 filed by Pennsylvania state inmate Melvin Keith Richardson (“Richardson”).

2. On October 2, 2018, a panel of the Court of Appeals entered a judgment and opinion reversing the District Court’s denial of habeas relief and announced two holdings: 1) In Pennsylvania state court, the post-sentencing-motions stage is a critical stage at which a defendant is entitled to the effective assistance of counsel; and 2) The line dividing trial from appeal falls naturally at the notice of appeal. Post-sentencing motions precede the notice of appeal, so they fall on the trial side of the line. Thus, when a state-habeas lawyer fails to raise a

post-sentencing lawyer's ineffectiveness, the prisoner may raise that issue for the first time in his federal habeas petition.

3. Concluding that the exception announced in *Martinez v. Ryan*, 566 U.S. 1 (2012) excused Richardson's procedural default of his claim that his post-sentencing counsel was ineffective, the Court of Appeals ultimately concluded that post-sentence counsel was ineffective and remanded to the District Court to order a new sentencing hearing. *See Appendix "A."*

4. The Petitioners (then-Appellees) sought re-hearing before the panel and the Court of Appeals *en banc*.

5. By order dated November 2, 2018, the petition for re-hearing was denied. *See Appendix "B."*

6. Petitioners seek to challenge the decision of the Court of Appeals. Pursuant to Rule 13.3, the time to file a Petition for Writ of *Certiorari* runs from the date of denial of the petition for re-hearing. Accordingly, the Petitioners would be required to file the Petition for Writ of *Certiorari* by January 31, 2019.

7. Due to the recent schedule of your undersigned counsel, the Petitioners respectfully submit that additional time is needed to prepare the Petition. Specifically, during the month of December, 2018, your undersigned counsel devoted a large portion of her time to preparing her response to a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in the District Court in the capital case of *David v. Beard* (No. 06-917). The response totaled 170 pages. Additionally, in her role as Supervising Attorney for the three Statewide Investigating Grand Juries in

Pennsylvania, she is responsible for handling the day-to-day operations of the juries, as well as reviewing and preparing pleadings for submission to the Supervising Judges. Due to the unexpected departure of key support staff at the end of October, 2018, your undersigned counsel has been responsible for assuming additional responsibilities until the position is filled. Moreover, during the past few weeks, the process for initiating the empanelment of a new grand jury has begun. She is also preparing for a post-conviction evidentiary hearing on January 29, 2019 in the Butler County Court of Common Pleas.

8. In light of her schedule, your undersigned counsel is respectfully requesting an extension of time until March 4, 2019 to file the Petition for Writ of *Certiorari*.

9. Undersigned counsel certifies that the instant application is being filed in good faith and for no improper purpose.

WHEREFORE, the Petitioners hereby respectfully requests this Honorable Court to grant a 30-day extension of time within which to file a Petition for Writ of *Certiorari* seeking review of the October 2, 2018 Judgment of the Court of Appeals, establishing a new filing deadline of March 4, 2019.

Respectfully submitted,

JOSH SHAPIRO
Attorney General

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Date: January 25, 2019

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a copy of the foregoing

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TO FILE PETITION FOR WRIT OF CERTIORARI

upon the person(s) and in the manner indicated below:

*Service by first-class mail
addressed as follows:*

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