

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

E.V. (Pseudonym),

Applicant

v.

EUGENE H. ROBINSON, JR.
Lieutenant Colonel, U.S. Marine Corps
(In His Capacity as Military Judge)

Respondent

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

APPLICATION TO EXTEND TIME TO FILE
PETITION FOR WRIT OF CERTIORARI

PETER COOTE

Counsel of Record for Applicant

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TO THE HONORABLE ELENA KAGAN, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE NINTH JUDICIAL CIRCUIT:

Pursuant to 28 U.S.C. § 2101(c) and Rule 13.5 of the Rules of this Court, Applicant E.V. requests a thirty-day extension of time, to and including Thursday, May 2, 2019, to file her petition for writ of certiorari in this Court to review the decision of the United States Court of Appeals for the Ninth Circuit in *E.V. v. Robinson*, No. 16-16975, decided on October 17, 2018. On January 2, 2019, the court of appeals denied Applicant's timely-filed petition for a rehearing and rehearing en banc. A copy of the decision and rehearing denial are attached (Appendix A).

Absent an extension of time, the deadline for filing the petition for certiorari would be April 2, 2019. This application is being filed more than 10 days before that date pursuant to Supreme Court Rule 13.5.

This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

Applicant is the victim of sexual assault by a military member. During her assailant's court-martial, Respondent issued an order to seize and release to her assailant Applicant's psychotherapy records. Military Rules of Evidence, like Federal Rules of Evidence, prohibit psychotherapy records' disclosure except for narrow circumstances that must be plead by the requesting party. No such circumstances were plead by the parties to the Court Martial, but the Respondent nonetheless unlawfully ordered the seizure and release of Applicant's psychotherapy records. After she exhausted her appeals in the military court

system, Applicant filed suit in federal district court seeking review of the military judge's order.

Applicant initially filed this case in the United States District Court for the District of Columbia. That court transferred the case to the United States District Court for the Eastern District of California who dismissed it by ruling that the Respondent's order was not subject to judicial review because of the sovereign immunity canon of construction. Applicant appealed to the United States Court of Appeals for the Ninth Circuit who affirmed.

This case presents the following questions: (1) whether Congress intended to allow victims to obtain judicial review of their rights under 10 U.S.C. § 806b; and, if Congress did not so intend, (2) whether the Constitution's requirement that tribunals constituted by Congress remain inferior to the Supreme Court requires judicial review of courts-martial tribunals.

Good cause exists to grant a time extension to file the Petition for Writ of Certiorari. Applicant's counsel is an in-house corporate attorney representing Applicant on a *pro bono* basis. Applicant's counsel fell ill on February 4, 2019. The illness caused Applicant's counsel to lose his sense of hearing and produced "brain fog" which inhibited the counsel's ability to think clearly and maintain mental focus. Counsel sought medical help, but despite numerous tests and prescriptions, doctors have been unable to diagnose the cause of the problem. On or around March 14, 2019, the loss of hearing and brain fog resolved itself, but the cause remains undiagnosed. Doctors believe the problem may have been an allergic

reaction. Counsel was unable to work on the petition for writ of certiorari for a period of 37 days.

Since resolution of the symptoms, counsel has been diligently working to complete and file the petition for writ of certiorari by the April 2, 2019 deadline for filing the petition. However, given the effort required to produce the writ of certiorari with limited resources available, Applicant requests a thirty-day extension so that he may file the petition for writ of certiorari on or before Thursday, May 2, 2019.

For the foregoing reasons, the application for a thirty-day extension of time, to and including Thursday, May 2, 2019, within which to file a petition for a writ of certiorari should be granted.

March 21, 2019

Respectfully submitted.

A handwritten signature in black ink, appearing to read 'P. Coote', written over a horizontal line.

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