

No. 19A-____

IN THE
Supreme Court of the United States

DANIEL JOHN PATTON,
Petitioner/Applicant,

v.

COMMONWEALTH OF PENNSYLVANIA.

APPLICATION FOR EXTENSION OF TIME TO
FILE A PETITION FOR WRIT OF CERTIORARI

To the Honorable Samuel A. Alito, Jr., Associate
Justice of the United States Supreme Court
and Circuit Justice for the Third Circuit

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**APPLICATION FOR EXTENSION OF TIME
TO FILE A PETITION FOR WRIT OF CERTIORARI**

To the Honorable Samuel A. Alito, Jr., Associate Justice of the United States Supreme Court and Circuit Justice for the Third Circuit:

Petitioner/Applicant Daniel John Patton respectfully requests a sixty-day extension of the time within which to file a petition for writ of certiorari. Sup. Ct. R. 13.5. On October 1, 2019, the Pennsylvania Supreme Court denied Mr. Patton's application for reconsideration of the Court's Order dated August 27, 2019, which denied Mr. Patton's petition for allowance of appeal. *See* Appendix, Attachments A, B. Mr. Patton had sought review by the Pennsylvania Supreme Court of the decision of the Pennsylvania Superior Court dated November 14, 2017, which affirmed Mr. Patton's conviction and judgment of sentence for driving under the influence ("DUI").

The Pennsylvania Supreme Court had initially stayed a ruling on Mr. Patton's petition for allowance of appeal pending its disposition of *Commonwealth v. Bell*, 211 A.3d 761 (Pa., July 17, 2019). *See* Appendix, Attachment C. In *Bell*, the Pennsylvania Supreme Court held that, under the Fourth Amendment to the United States Constitution, a driver's refusal to consent to warrantless blood testing may be introduced as evidence of guilt in a driving-under-the-influence prosecution. *Id.* at 776. Thereafter, the Pennsylvania Supreme Court denied Mr. Patton's petition for allowance of appeal. Appendix, Attachment B.

This case involves the same issue that was decided in *Bell*, and the outcome in *Bell* was dispositive of Mr. Patton's request for relief in the Pennsylvania Supreme Court. Mr. Bell's petition for writ of certiorari is pending in this Court at No. 19-622.

Mr. Patton's petition is currently due on December 30, 2019. *See* Sup. Ct. R. 13.1. For good cause, Mr. Patton asks that this deadline be extended such that his petition for writ of certiorari may be filed on or before February 28, 2020.

1. Mr. Patton intends to file a petition for a writ of certiorari seeking review of the decision of the Pennsylvania Superior Court dated November 17, 2017, which affirmed his conviction and judgment of sentence for DUI.

2. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1257.

3. This application is timely because it has been filed more than ten days prior to the date on which the time for filing the petition is to expire.

4. This case presents a substantial and important constitutional question: Whether the Fourth Amendment permits the government to use an individual's refusal to consent to a warrantless blood test as key evidence of his guilt in a criminal prosecution for driving under the influence ("DUI").

5. Under Pennsylvania law, as enunciated in *Bell* and applied in this case, the Commonwealth is permitted in a criminal prosecution to introduce evidence at trial that a defendant charged with DUI exercised his or her constitutional right to refuse to submit to a blood test. 75 Pa. C.S. § 1547(e).¹

6. The Fourth Amendment generally permits the imposition of certain "*civil* penalties and evidentiary consequences on motorists who refuse to comply,"

¹ The statute provides:

In any summary proceeding or criminal proceeding in which the defendant is charged with a violation of [75 Pa.C.S. §3802 (Driving Under the Influence)] or any other violation of this title arising out of the same action, the fact that the defendant refused to submit to chemical testing as required by [75 Pa.C.S. §1547(a) (deeming drivers to have given consent to chemical testing)] may be introduced in evidence along with other testimony concerning the circumstances of the refusal. No presumptions shall arise from this evidence but it may be considered along with other factors concerning the charge.

but it prohibits statutory implied-consent regimes under which a motorist is “deemed to have consented to submit to a blood test *on pain of committing a criminal offense*.” *Birchfield v. North Dakota*, 579 U. S. _____, 136 S. Ct. 2160, 2186 (2016) (emphasis added).

7. In the wake of *Birchfield*, open questions remain regarding the extent to which the Fourth Amendment to the United States Constitution forbids the government from converting a purported “evidentiary consequence” for refusing to consent to a blood test into an impermissible criminal penalty.

8. This case, along with *Bell* itself, are ideal vehicles for resolving that question because, relying on 75 Pa. C.S. § 1547(e), the Commonwealth used the refusal to consent to a blood test as proof of guilt at the criminal trial.

9. The constitutional issue that Mr. Patton intends to raise in his petition for writ of certiorari has implications for motorists across the country and, indeed, any citizen asserting his or her right to refuse to consent to a warrantless search.

10. The need for this Court’s review is especially great because the highest courts in at least two other states, Colorado and Vermont, are in accord with the Pennsylvania Supreme Court’s decision in *Bell*. *Fitzgerald v. People*, 394 P.3d 671 (Colo. 2017), *cert. denied sub nom., Fitzgerald v. Colorado*, 138 S. Ct. 237 (2017); *State v. Rajda*, 196 A.3d 1108 (Vt. 2018), *reargument denied* (Sept. 4, 2018). Despite these decisions, significant room for disagreement exists regarding the extent to which the government may penalize the exercise of the constitutionally-recognized right to refuse a blood test without violating the Fourth Amendment.

11. To properly research and draft a petition for writ of certiorari, Mr. Patton respectfully requests an extension of his deadline to file the petition until March 2, 2020.

12. Good cause exists for the request. *See* Sup. Ct. R. 13.5.

13. It was not until December 5, 2019, less than one month before the current certiorari deadline, that Mr. Patton first met with the undersigned counsel to discuss seeking this Court's review.

14. The requested extension is needed for undersigned counsel to fully familiarize themselves with the trial record, the decisions below, and the relevant case law, and to prepare the petition for writ of certiorari.

15. In light of the undersigned counsel's many other professional obligations, and the upcoming holidays, which will deprive counsel of the necessary support of staff, the undersigned would have difficulty completing those tasks by the current due date of December 30, 2019. The undersigned is also currently preparing appellate briefing due on December 18, 2019, and preparing for an appellate oral argument on January 7, 2020, in separate multimillion-dollar civil actions pending in Pennsylvania state court.

16. The undersigned attempted to confer with counsel for the Commonwealth, Robert M. Falin, Deputy District Attorney of Montgomery County, Pennsylvania, regarding this request by calling his office, but did not receive a return call after leaving a message with Mr. Falin's staff.

17. This is Mr. Patton's first request for an extension of the deadline to file a petition for writ of certiorari.

18. For these reasons, Mr. Patton respectfully requests that the due date for his petition be extended to and including February 28, 2020.

**MARSHALL DENNEHEY WARNER
COLEMAN & GOGGIN**

/s John J. Hare

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