

No. 22-

IN THE SUPREME COURT OF THE UNITED STATES

JOE CLARENCE SMITH, JR.,

Applicant,

v.

DAVID SHINN, Director, in official capacity only; et al.,

Respondents.

**APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR A
WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

To the Honorable Elena Kagan, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Ninth Circuit:

Under 28 U.S.C. § 2101(c) and Rules 13.5 and 30.1 of the Rules of this Court, Petitioner Joe Clarence Smith, Jr. respectfully requests a 30-day extension of time, or until March 16, 2022, to file his petition for writ of certiorari in this Court. The time to file a petition for a writ of certiorari currently expires on February 14, 2022. This application is being filed more than 10 days before that date.

A copy of the Ninth Circuit's decision affirming the district court is attached. *See* App. A. This Court has jurisdiction under 28 U.S.C. § 1254(1).

As shown by the opinion below, this is a § 1983 case, and Mr. Smith is an Arizona prisoner under a sentence of death who has spent much of his sentence under solitary confinement. The Ninth Circuit incorrectly affirmed the District Court's dismissal because it found Mr. Smith's case established a *Lackey* claim and

is “in the province of habeas corpus.” This case will present important questions about the interplay between § 1983 and habeas relief.

The extension request is made because there have been departures and additions to undersigned counsel’s team and additional time is needed to review the record and prepare a competent petition for certiorari for Mr. Smith. Further, the Respondents would not be prejudiced by an extension of time. For the same reason, it is plain this application is not being filed for delay.

For the foregoing reasons, Mr. Smith respectfully requests that the time for filing a petition for a writ of certiorari be extended to and including March 16, 2022.

Respectfully submitted,

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February 2, 2022