

**EXTENSION OF TIME REQUEST FOR
A PETITION FOR WRIT OF CERTIORARI**

NO. _____

In The Supreme Court of The United States

Michael John Wolfe, Petitioner

v.

State of Oregon, Respondent

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

To the Honorable Elena Kagan of the United States Court of Appeals for the Ninth Circuit.

Petitioner Michael John Wolfe, requests sixty (60) days to file his Petition for Writ of Certiorari. The denial of petition for reconsideration was entered by the Oregon Supreme Court on August 28, 2021, and the time in which to file a Petition for Writ of Certiorari will expire on November 24, 2021. Because the tenth (10th) day before the due date fell on a Sunday, this application is being filed on the next day the Court is open pursuant to Supreme Court Rule 30(1) and (2). If necessary, petitioner cites the extraordinary circumstances noted below as justifying petitioner's request.

Petitioner is attaching copies of the opinion of the Oregon Supreme Court and the order denying petitioner's timely petition for reconsideration. *State v. Wolfe*, 368 Or. 38, 486 P.3d 748 (2021). This court has jurisdiction to review the final judgment of the Oregon Supreme Court under 28 U.S.C. § 1257(a).

The case concerns the validity of the *ex post facto* Clause of the United States Constitution. U.S. Const., Art. I, § 10 ("No state shall * * * pass any * * * ex post facto Law[.]"). The Oregon Supreme Court decided below that the prohibition against *ex post facto* laws was not violated when the State charges a defendant with a crime that includes an element added by the legislature after the acts alleged in the indictment. *Wolfe*, 368 Or. at 27-28. The Oregon Supreme Court also decided below that the prohibition against *ex post facto* laws was not violated when the State charges a defendant with aggravated murder to seek a death sentence against a defendant despite the fact that the legislature lessened the State's burden by removing an eligibility factor from the statutes after the acts alleged. *Id.* at 63.

Petitioner seeks an extension because additional time is needed to prepare the petition for writ of certiorari primarily due to operational and managerial workload imposed on counsel of record under the resurgence of COVID-19 delta variant. The worldwide pandemic caused by COVID-19 has greatly affected the Oregon Judicial Department and operation of Oregon State government, continuing up and through the current day, notwithstanding this court's July 19, 2021 order rescinding COVID-19 timelines. *See, e.g.*, Chief Justice Order No. 21-035 (September 7, 2021) (available at https://www.courts.oregon.gov/rules/Documents/CJO_2021-035.pdf); Chief Justice Order No. 21-030 (August 13, 2021) (available at https://www.courts.oregon.gov/rules/Documents/CJO_2021-030.pdf); Chief Justice Order No. 21-025 (June 30, 2021) (https://www.courts.oregon.gov/Documents/CJO_2021-025.pdf); *see also* Executive Order 21-15 (extending COVID-19 state of emergency to December 31, 2021) (June 25, 2021) (available at https://www.oregon.gov/gov/Documents/executive_orders/eo_21-15.pdf). Counsel of record is the chief administrator and manager of the Criminal Appellate Section of the Office of Public Defense Services, a 46- member office of attorneys and support staff who have been continuing to provide constitutionally and statutorily mandated appellate representation to financially eligible persons in criminal cases throughout the State of Oregon. The transition to primarily teleworking by attorneys and staff have brought increased oversight and logistical responsibilities that have required time and attention. Should Petitioner's request be allowed, Counsel of record anticipates having ample time to dedicate to preparation of the petition for writ of certiorari.

Should Petitioner's request be allowed, the petition for writ of certiorari will be filed no later than Monday, January 23, 2022 (the 60th day falling on a Sunday).

Respectfully submitted,

Signed

By Ernest G Lannet at 11:03 am, Nov 15, 2021

Ernest G. Lannet
Chief Defender
Counsel for Petitioner
Office of Public Defense Services
1175 Court Street NE
Salem, OR 97301
Telephone (503) 378-3349
ernest.g.lannet@opds.state.or.us

November 15, 2021