

No. 21-_____

IN THE
SUPREME COURT OF THE UNITED STATES

DYLANN STORM ROOF,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

CAPITAL CASE

**APPLICATION FOR EXTENSION OF TIME IN WHICH TO FILE
PETITION FOR WRIT OF CERTIORARI**

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**Application For Extension Of Time In Which To File Petition
For Writ Of Certiorari**

[28 U.S.C.A. 2101(c); Supreme Court Rules 13.5, 22, 30.3]

To the Honorable John G. Roberts, Jr., Chief Justice of the United States and Circuit Justice for the Fourth Circuit:

Petitioner, by his counsel, respectfully makes an application pursuant to 28 U.S.C. § 2101(c), and Supreme Court Rules 13.5 and 22, to extend the time in which to file a petition for writ of certiorari from the judgment entered by the United States Court of Appeals for the Fourth Circuit from December 27, 2021, to and including February 25, 2022. The government does not oppose this application. In support thereof, counsel state the following:

1. Dylann Roof was convicted after a federal jury trial of thirty-three felony counts related to the murder and attempted murder of parishioners of the Emanuel African Methodist Episcopal Church in Charleston, South Carolina, and sentenced to death. The Fourth Circuit Court of Appeals affirmed Roof's conviction and death sentence in a

published opinion on August 25, 2021. *United States v. Roof*, 10 F.4th 314 (4th Cir. 2021) (App. 1a).¹

2. On September 8, 2021, Roof filed a timely petition for rehearing and rehearing en banc raising two issues: (1) whether the panel's opinion conflicted with this Court's precedents interpreting the scope of the Interstate Commerce Clause; and (2) whether the panel's opinion conflicted with this Court's precedents on the constitutionality of victim impact evidence. The panel denied rehearing on September 24, 2021. (App. 150a.) The Fourth Circuit denied rehearing en banc on September 27, 2021. (App. 151a-152a.)

3. This Court has jurisdiction over Roof's case pursuant to 28 U.S.C. § 1254(1). His petition for a writ of certiorari is presently due on December 27, 2021. Roof seeks a 60-day extension of time, to and including February 25, 2022, to file that petition, for the following reasons.

4. First, the Circuit decision in this case is unusually lengthy, spanning 149 pages, and addresses several issues of national importance. These include a direct split between the Fourth Circuit and

¹ "App." refers to the attached appendix.

the Louisiana Supreme Court on the question of whether defense counsel may override a capital defendant's choice to not present certain facts in mitigation; the Fourth Circuit's creation of a novel and far-reaching theory to extend Commerce Clause jurisdiction to noneconomic, intrastate crimes based on the defendant's pre-offense use of highways, the telephone, and the Internet; the Fourth Circuit's expansive construction of the Thirteenth Amendment's enforcement clause, which sits in tension with the narrower construction this Court has given to corresponding clauses in the Fourteenth and Fifteenth Amendments (a disjunction about which multiple Circuit judges have expressed concern); and the Fourth Circuit's blanket recusal from Roof's appeal, so that no quorum existed to consider his petition for rehearing en banc. Counsel require additional time to adequately consider, select, and prepare the appropriate issues for this Court's consideration.

5. Second, because this is a capital case with the most serious penalty—death—at stake, counsel owe an extra duty of care in our consideration, selection, and preparation of the issues. *See* A.B.A. Guidelines for the Appointment and Performance of Counsel in Death

Penalty Cases (“A.B.A. Guidelines”), Guideline 10.15.1(c) (rev. 2003), *reprinted in* 31 Hofstra L. Rev. 913, 1033 (2003).

6. Third, counsel believe that this request for a 60-day extension of time is necessary to fulfill our ethical and legal obligations to our client given the capital nature of this case and our current workloads. Since the Fourth Circuit denied Roof’s petition for rehearing en banc on September 27, 2021, counsel have been required to attend to a number of other matters. On September 30, 2021, counsel filed a motion requesting reconsideration of the Fourth Circuit’s recusal from Roof’s case for en banc purposes based on the Rule of Necessity. The Fourth Circuit denied that motion on October 12, 2021. Ms. Yates’s availability has been limited because she transitioned last year from full-time work as a federal public defender to part-time private practice with limited hours. Ms. Mirchandani carries a full load as a federal public defender and has been required to devote time to other direct appeals in the Fourth Circuit, as well as the filing of post-conviction motions in district court. Ms. Farrand also carries a full load as a federal public defender and has been obligated to devote significant time to appeals from a multi-day trial and denial of a motion to

suppress evidence, and assisting with other appeals in her office. All three counsel also have school-age children, and have been required to balance work against continuing COVID-related gaps in childcare.

7. In light of these obligations and our duties to our client, counsel request a 60-day extension of time to file the petition for a writ of certiorari, to and including February 25, 2022.

8. This motion is brought pursuant to Rule 39.1 of the Rules of the Supreme Court of the United States.

Respectfully submitted,

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