

No. 21A_____

IN THE
Supreme Court of the United States

BRETT C. KIMBERLIN,

Applicant,

v.

UNITED STATES,

Respondent.

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

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May 26, 2022

APPLICATION

To the Honorable Amy Coney Barrett, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Seventh Circuit:

Pursuant to Rule 13.5 of the Rules of this Court and 28 U.S.C. § 2101(c), Applicant Brett C. Kimberlin respectfully requests a 60-day extension of time, to and including August 6, 2022, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case.

1. The United States Court of Appeals for the Seventh Circuit issued its decision on January 6, 2022. *See Kimberlin v. United States*, No. 21-1691, 2022 WL 59399 (7th Cir. Jan. 6, 2022) (App. 1a-6a). Applicant timely filed a petition for rehearing and rehearing en banc. The Court of appeals denied the petition on March 9, 2022, *see Kimberlin v. United States*, No. 21-1691, 2022 WL 709885 (7th Cir. Mar. 9, 2022) (App. 18a), and the Court of Appeals issued its mandate on March 17, 2022. Unless extended, the time to file a petition for certiorari will expire on June 7, 2022. This application is being filed more than ten days before a petition is currently due. *See* Sup. Ct. R. 13.5. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1).

2. In February 1979, Kimberlin was charged in a 34-count indictment with crimes related to eight explosions that occurred in Speedway, Indiana in September 1978. App. 8a; *see also United States v. Kimberlin*, 805 F.2d 210, 215-216 (7th Cir. 1986). Kimberlin was convicted in three trials between 1980-1981, served his

sentences, and was released from imprisonment in 2001. App. 8a. In 2018, Kimberlin petitioned for a writ of coram nobis. App. 9a. The writ of coram nobis “provides a way to collaterally attack a criminal conviction for a person * * * who is no longer ‘in custody’ and therefore cannot seek habeas relief under 28 U.S.C. § 2255 or § 2241.” *Chaidez v. United States*, 568 U.S. 342, 345 n.1 (2013). Kimberlin asked the district court to vacate his convictions for several reasons, including that some convictions had been undermined by later decisions of this Court, and that others were based on now discredited scientific and investigative methods. See App. 10a, 12a. Kimberlin asserted that because of these convictions, he faces civil disabilities: among other things, he cannot serve on a jury, he cannot renew his pilot’s license, and he cannot obtain federal grants for the non-profit organization that he leads. App. 10a.

3. The district court denied Kimberlin’s coram nobis petition. App. 16a. As relevant here, the district court reasoned that Kimberlin could obtain coram nobis relief only if each of his felony convictions yielding the unwanted civil disabilities were removed, and Kimberlin could not prevail on a challenge to each of his convictions. App. 10a-11a. “[B]ecause he has been convicted of multiple felonies in separate trials,” including convictions that predated the 1980-1981 convictions and that Kimberlin did not challenge in his coram nobis petition, “a successful challenge to any one conviction will not relieve him of these impediments.” *Id.* “Those felony convictions interfere with his ability to sit on a jury in Maryland state court, renew his pilot’s license, and obtain government grants whether his convictions related to the

explosions in Speedway are overturned.” App. 11a. Kimberlin filed a motion for reconsideration. The district court denied that motion in relevant part.

4. The Seventh Circuit affirmed the denial of Kimberlin’s *coram nobis* petition. App. 1a-6a. Citing its earlier decision in *United States v. Keane*, 852 F.2d 199, 205 (7th Cir. 1988), the panel likewise held that “a *coram nobis* challenge that might eliminate some felony convictions but leaves intact others that yield the same civil disabilities does not warrant relief.” App. 4a. The panel then reasoned that because Kimberlin did not challenge his earlier, unrelated “felony convictions for marijuana possession and perjury” and “does not contest the district court’s conclusion that his ongoing civil disabilities will remain intact by virtue of these unchallenged convictions,” “he cannot obtain relief he seeks in his *coram nobis* petition.” App. 5a. The Seventh Circuit denied Kimberlin’s timely petition for rehearing. App. 18a.

5. This Court’s review is urgently needed to address a clear and acknowledged conflict among the circuits regarding whether a *coram nobis* petitioner must allege that he suffers from collateral consequences that are caused by the challenged conviction in order for a court to hear his claim. In some jurisdictions, including the Seventh Circuit below, *see* App. 2a, 4a, a *coram nobis* petitioner must establish that he is suffering from a continuing civil disability that arises from the challenged conviction in order to receive relief, *see, e.g., United States v. Waters*, 770 F.3d 1146, 1147 (6th Cir. 2014); *United States v. George*, 676 F.3d 249, 254 (1st Cir. 2012); *Fleming v. United States*, 146 F.3d 88, 90 (2d Cir. 1998) (*per curiam*). By contrast, other jurisdictions “presum[e] that collateral consequences flow from any criminal conviction,”

making “*coram nobis* relief * * * available to prevent manifest injustice ‘even where removal of a prior conviction will have little present effect on the petitioner.’” *Hirabayashi v. United States*, 828 F.2d 591, 606 (9th Cir. 1987) (quoting *Holloway v. United States*, 393 F.2d 731, 732 (9th Cir. 1968)); see also *United States v. Mandel*, 862 F.2d 1067, 1075 & n.12 (4th Cir. 1988). Coram nobis relief is therefore available in these jurisdictions even if the petitioner has other convictions that would remain intact. See, e.g., *United States v. Walgren*, 885 F.2d 1417, 1421-22, 1428 (9th Cir. 1989) (assuming that conviction on one count is valid and granting coram nobis relief on two other counts).

6. Neal Kumar Katyal of Hogan Lovells US LLP, Washington, D.C., was recently retained on behalf of Applicant to file a petition for certiorari in this Court. Applicant proceeded *pro se* before the court below. Over the next several weeks, counsel is occupied with briefing deadlines for a variety of matters, including: an amicus brief in support of petitioner in *Fitisemanu v. United States*, No. 21-1394 (U.S.), due May 31, 2022; responses to defendants’ motions in limine in *State v. Kueng*, No. 27-CR-12953 (Minn. Dist. Ct.) and *State v. Thao*, No. 27-CR-12949 (Minn. Dist. Ct.), due June 3, 2022; a reply in support of findings of fact in *Wye Oak Technology, Inc. v. Republic of Iraq*, 1:10-CV-01182-RCL (D.D.C.), due June 7, 2022; an opening brief and joint appendix in *Cruz v. Arizona*, No. 21-846 (U.S.), due June 13, 2022; and a reply in support of summary judgment in *Accent Delight International Ltd. v. Sotheby’s*, 1:18-cv-09011-JMF (S.D.N.Y.), due June 16, 2022. Counsel will also participate in an arbitration trial in California from June 17, 2022 through June 19, 2022,

and a criminal trial in *State v. Kueng*, No. 27-CR-12953 (Minn. Dist. Ct.) and *State v. Thao*, No. 27-CR-12949 (Minn. Dist. Ct.) from June 13, 2022 through August 5, 2022. Applicant requests this extension of time to permit counsel to research the relevant legal and factual issues and to prepare a petition that fully addresses the important questions raised by the proceedings below.

7. For these reasons, Applicant respectfully requests that an order be entered extending the time to file a petition for certiorari to and including August 6, 2022.

Respectfully submitted,

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