

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Brian Gonzales,
Petitioner

v.

The State of California,
Respondent

**APPLICATION FOR EXTENSION OF TIME TO FILE PETITION
FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL OF
CALIFORNIA FOR THE SECOND APPELLATE DISTRICT**

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**Counsel of Record for
Petitioner, Brian Gonzales**

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

APPLICATION FOR AN EXTENSION OF TIME

Pursuant to Rule 13.5 of the Rules of this Court, Brian Gonzales respectfully requests a 60-day extension of time within which to file a petition for a writ of certiorari up to and including July 7, 2022.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The judgment for which review is sought is *The State of California v. Brian Gonzales*, Cause Number B306537 on November 23, 2021 (opinion attached). On December 29, 2021, timely petition for review was filed in the California Supreme Court, which denied review on February 9, 2022 (order attached).

JURISDICTION

This Court will have jurisdiction over a timely filed petition for certiorari in this case pursuant to 28 U.S.C. § 1257. Under the Rules of this Court, the petition for a writ of certiorari is due to be filed on or before May 9, 2022. In accordance with Rule 13.5, this application is being filed more than 10 days in advance of the filing date for the petition for a writ of certiorari.

REASONS JUSTIFYING AN EXTENSION OF TIME

Mr. Gonzales requests a 60-day extension of time within which to file a petition for a writ of certiorari seeking review of the decision of

the Court of Appeal of California for the Second Appellate District, up to and including July 7, 2022.

Mr. Gonzales was found guilty of two counts of murder and sentenced to life imprisonment without the possibility of parole. His appeal raised two significant federal constitutional issues, including whether the jury instructions violated his right to be convicted only upon proof of each element of the crimes and special circumstances beyond a reasonable doubt, and whether the court violated his right to present a defense by completely excluding a vital defense expert.

I have been working diligently, but I am a solo practitioner with no support staff and have numerous professional commitments, including upcoming California state court briefing due in *People v. Corder, et al.* (B261370; petition for rehearing and likely petition for review in California Supreme Court, and habeas petition in the superior court), *People v. Emery* (B312853; petition for review in California Supreme Court), as well as pro bono habeas work in the Central District of California in *Lampley v. Pollard* (2:2021cv08126) (preparing briefing for pro se inmate), and *People v. Balbuena* (B303752, not yet filed in federal court). I also expect the state to soon file a responsive brief to a 17-issue, 49,000-word opening brief I filed in *People v. Colletta* (Cause No. B298359) and I will likely need to devote

dozens of hours to drafting a reply brief.

Further, I am currently planning an interstate move of home and office, which is cutting significantly into my work time.

I am also aware of an ongoing empirical study at Northeastern University pertaining to the specific issue that will be raised in the petition (how mock jurors process instructions that the prosecution must prove the defendant “guilty of the crime beyond a reasonable doubt” versus prove “each element of the crime beyond a reasonable doubt”). The professor in charge expects results to be available by June of this year. If published by then, they could be of significant help to this Court in determining whether jurors are reasonably likely to apply the jury instructions at issue here in a way that violates the Constitution, thus whether or not the cert petition should be granted.

I contacted Deputy Attorney General David Wildman, counsel of record for the State of California in this appeal, and he stated by email on April 17, 2022, that he had no objection to a 60-day extension.

The requested extension will not unduly delay proceedings and would allow counsel to draft a petition that would fully present the issues to this Court.

CONCLUSION

For the reasons set forth above, Mr. Gonzales respectfully asks this Court to extend the time to file a Petition for Writ of Certiorari for 60 days to and including July 7, 2022.

Dated: April 18, 2022

Respectfully submitted,

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