

\*\*\*THIS IS A CAPITAL CASE\*\*\*

No. \_\_\_\_\_

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**In the Supreme Court of the United States**

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STACEY JOHNSON, et al.

*Petitioners*

v.

DEXTER PAYNE, Director,  
Arkansas Division of Correction, et al.

*Respondents*

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On Petition for a Writ of Certiorari to the  
United States Court of Appeals for the Eighth Circuit

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**APPLICATION FOR EXTENSION OF TIME  
TO FILE PETITION FOR A WRIT OF CERTIORARI**

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To the Honorable Brett M. Kavanaugh, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Eighth Circuit:

Under Rule 13.5, Petitioners respectfully request an extension of sixty days, up to and including Thursday, April 13, 2023, in which to file a petition for a writ of certiorari.

Petitioners will seek review of an opinion of the United States Court of Appeals for the Eighth Circuit in *Johnson v. Hutchinson*, No. 21-1965, 44 F.4th 1116 (Aug. 16, 2022), attached as Appendix A. The Eighth Circuit denied a timely filed petition

for rehearing on November 14, 2022. *See* Appendix B. The time to file a petition for a writ of certiorari in this Court currently expires on February 13, 2023 (because the ninetieth day from denial of the rehearing petition falls on Sunday, February 12, 2023). This application has been filed at least ten days before that date. The Court has jurisdiction under 28 U.S.C. § 1254(1).

An extension of time is necessary to adequately prepare an argument on a significant constitutional question concerning the State of Arkansas’s method of execution. Specifically, the petition will address whether the Court of Appeals applied the correct legal standard when it required Petitioners to prove a “scientific consensus” that Arkansas’s execution protocol will cause them severe pain and when it declined to consider Petitioners’ proposed alternative method absent a showing of scientific consensus.

Counsel’s duties in other death-penalty matters will prevent him from completing the petition in the time Rule 13.1 allows. The undersigned was recently appointed chief of the Capital Habeas Unit of the Federal Defender’s Office, which has required him to supervise and get up to speed on several cases with January and February deadlines. He has recently taken the lead in several capital cases because of another attorney’s December departure from the office. Specifically, last week he filed a capital habeas petition in *Gay v. Payne*, No. 23-cv-06011 (W.D. Ark.). He has also become lead counsel in *Dansby v. Payne*, No. 22A659, which has a petition for certiorari due on March 31 after Justice Kavanaugh extended the time for filing. These obligations come on top of other deadlines in cases for which he is

already lead counsel. He has an Eighth Circuit brief due in another capital case, *Roberts v. Payne*, No. 22-1935, on February 22. He is also counsel in several non-capital criminal cases in the Eastern District of Arkansas that require near-term attention. A death in the family drew the undersigned away from his professional responsibilities for a week in mid-January and further limited the time available for working on the petition in this case.

The undersigned contacted Nicholas J. Bronni, Solicitor General of Arkansas and counsel for Respondents. Mr. Bronni stated Respondents' position on the application as follows:


As a matter of professional courtesy, Respondent does not oppose this request. However, should the State of Arkansas set an execution date for any of the Petitioners, the fact that the extended period for filing such a petition has not yet run or that a petition in this matter is pending before this Court is not a basis for staying an execution.

WHEREFORE, Petitioners respectfully request that the Court allow until April 13, 2023, to file a petition for a writ of certiorari.

FEBRUARY 1, 2023

Respectfully submitted,

LISA G. PETERS  
FEDERAL PUBLIC DEFENDER

  
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