

No. 22A__

IN THE
Supreme Court of the United States

EDWARD PINKNEY,

Applicant,

v.

BERRIEN COUNTY, MICHIGAN; BERRIEN COUNTY PROSECUTOR, IN HIS OFFICIAL
CAPACITY AS A LOCAL, NON-STATE OFFICIAL WITH A LEGAL EXISTENCE SEPARATE AND
DISTINCT FROM THE COUNTY, JOINTLY AND SEVERALLY,

Respondents.

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

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

1. Under Supreme Court Rules 13.5, 22, and 30, Applicant, Edward Pinkney, respectfully requests a 58-day extension of time, up to and including February 10, 2023, to file a petition for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit (the “Sixth Circuit”), to review *Pinkney v. Berrien County, Michigan, et al.*, No. 21-2802 (6th Cir. Aug. 19, 2022). The Sixth Circuit issued its decision on August 19, 2022. Appendix A. The Sixth Circuit denied the petition for panel rehearing and rehearing en banc on September 15, 2022. Appendix B. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254. The time to file a petition for a writ of certiorari will otherwise expire on December 14, 2022. The

application is timely because it has been filed more than ten days before the date on which a petition is otherwise due.

2. The decision of the Sixth Circuit presents important and recurring questions concerning whether a wrongly convicted criminal defendant may pursue Section 1983 claims for his wrongful conviction and incarceration under the Due Process Clause of the Constitution or whether he must instead assert a Fourth Amendment claim. Applicant Pickney was convicted of a Michigan state-law election forgery offense and served 30 months in prison before he was released on parole. Ultimately, the Michigan Supreme Court ruled that the statute under which Pickney was convicted did not proscribe a criminal offense. Pickney then filed in federal court a Section 1983 claim seeking damages from Berrien County, Michigan and the county prosecutor in his official capacity as a county official for violating Pickney's due process rights by wrongfully obtaining a conviction under a statute that did not proscribe a criminal offense and causing Pickney to be incarcerated. The Sixth Circuit below ultimately held that, even though Pickney was not challenging a pretrial search or seizure and even though he did not contest probable cause under state law, Pickney was required to assert his claim under the Fourth Amendment, rather than the Due Process Clause. Because Pickney did not assert a claim under the Fourth Amendment, the Sixth Circuit held that his Section 1983 suit was properly dismissed. The question whether a Section 1983 claim for wrongful prosecution based on post-seizure conduct at trial is properly raised under the Due Process Clause or the Fourth Amendment has divided the courts of appeals. Several

courts of appeals hold that such claims are properly brought under the Due Process Clause, while other courts of appeals agree with the Sixth Circuit's decision below that such claims must be brought under the Fourth Amendment.

3. Good cause exists for this requested extension. Undersigned counsel, Lawrence D. Rosenberg of Jones Day, directs the West Virginia University College of Law's Supreme Court Litigation Clinic, which is co-counsel in this case. The Clinic students recently returned from their Thanksgiving recess, are preparing for upcoming exams and are also engaged in a number of other cases including *Lora v. United States* (No. 22-49), in which a reply in support of certiorari was filed on November 15, 2022. Moreover, the Clinic students' work on this petition has been hampered as several of them had recent bouts of Covid-19. An extension of time is necessary to ensure that the students are able to meaningfully engage in substantive work on the Petition in this matter.

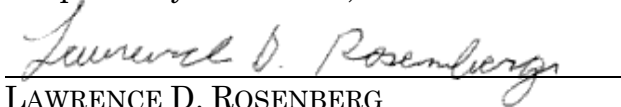
4. Furthermore, Mr. Rosenberg has had a number of recent and upcoming deadlines in other matters. Undersigned counsel drafted a reply in support for a petition for a writ of certiorari filed on November 29, 2022, in *Owl Creek Asia I, L.P. et. al, v. United States* (No. 22-97). He also has attended and prepared for hearings in an arbitration proceeding before the American Arbitration Association in *Citigroup v. Villar* (No. 01-21-0004-5256) on October 26, November 1, and November 8 and has also engaged in substantial witness preparation and a deposition for that matter in California over the last few weeks. He is also litigating an appeal in a related matter in the Ninth Circuit (No. 22-56025), and is also lead counsel in *Lufthansa Technik v.*

Panasonic Avionics Corp., No. 2:17-cv-01453-JCC (W.D. Wash.), in which he is coordinating simultaneous document discovery from several parties, and in which he will be conducting one or more additional depositions in Seattle, Washington, in the next few weeks.

WHEREFORE, Applicant respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari for 58 days, up to and including February 10, 2023.

Dated: December 2, 2022

Respectfully submitted,



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