

No. 22A_____

In the Supreme Court of the United States

COMMONWEALTH OF KENTUCKY,
Applicant,

v.

DOVONTIA REED,
Respondent.

*ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF KENTUCKY*

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

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To the Honorable Brett M. Kavanaugh, Circuit Justice for the Sixth Circuit:

Under Supreme Court Rules 13.5, 22, and 30, the Commonwealth of Kentucky respectfully requests a 44-day extension of time, to October 28, 2022, to file a petition for a writ of certiorari to review the Supreme Court of Kentucky’s decision in *Commonwealth v. Reed*, 647 S.W.3d 237 (Ky. 2022) (attached at Appendix A), which issued on June 16, 2022. Without an extension of time, the petition for a writ of certiorari is due on September 14, 2022. The Commonwealth is filing this application at least ten days before that date. *See* Sup. Ct. R. 13.5. This Court has jurisdiction under 28 U.S.C. § 1257(a).

The time to file a petition should be extended by 44 days for several reasons:

1. This case presents important questions under the Fourth Amendment about using cellular location data for real-time surveillance, questions on which state and federal courts have divided since this Court’s decision in *Carpenter v. United States*, 138 S. Ct. 2206 (2018). The Supreme Court of Kentucky, over the dissent of three Justices, held that the Fourth Amendment prohibits the Commonwealth from obtaining real-time cellular location information without a warrant. *Reed*, 647 S.W.3d at 250; *id.* at 258–60 (VanMeter, J., dissenting). Kentucky’s high court, “answer[ing] the question left open by . . . the United States Supreme Court in *Carpenter*,” held that “individuals have a reasonable expectation of privacy in their cell phone’s [real-time] cell-site location information” no matter the individual’s location or the duration of the surveillance. *Id.* at 250. The Supreme Court of Kentucky’s holding further deepens an existing divide among state and federal courts that have decided

this issue. Compare, e.g., *United States v. Hammond*, 996 F.3d 374, 379 (7th Cir. 2021) (holding that accessing cell-site location data in real time while the suspect is traveling in public for a limited duration is not a Fourth Amendment search); *Sims v. State*, 569 S.W.3d 634, 637–38 (Tex. Crim. App. 2019) (no warrant required when law enforcement accessed real-time location data during a period less than three hours), with *State v. Brown*, 202 A.3d 1003, 1017–18 (Conn. 2019) (holding that *Carpenter*'s warrant requirement for historical cell-site location data “appl[ies] with equal force to prospective CSLI”); *Commonwealth v. Pacheco*, 263 A.3d 626, 640–41 (Pa. 2021) (same); *State v. Muhammad*, 451 P.3d 1060, 1073 (Wash. 2019) (same).

2. Given the significance of the issue presented, the Commonwealth needs additional time both to determine whether to file a petition for certiorari and, if so, to prepare a clear and concise petition for this Court's review.

3. The press of other matters makes submission of a petition difficult absent an extension. Over the next several weeks, counsel of record is responsible for, among other things: (i) presenting oral argument in *RAZ, Inc. v. Mercer Cnty. Fiscal Ct.*, No. 2020-CA-0543 (Ky. App.); (ii) presenting oral argument in *Cavanaugh v. Commonwealth of Kentucky*, No. 2021-SC-0441 (Ky.); (iii) drafting merits briefs in *KKR & Co., Inc. v. Mayberry*, No. 2021-CA-1307 (Ky. App.), *PAAMCO Prisma, LLC v. Commonwealth of Kentucky*, No. 2022-CA-0350 (Ky. App.), *KKR & Co., Inc. v. Commonwealth of Kentucky*, No. 2022-CA-0347 (Ky. App.), *Blackstone Alt. Asset Mgmt. L.P. v. Commonwealth of Kentucky*, No. 2022-CA-0353 (Ky. App.), and *Daniel Boone Fund, LLC v. Commonwealth of Kentucky*, 2022-CA-0352 (Ky. App.); and (iv)

drafting a merits brief in *EMW Women’s Surgical Ctr., P.S.C. v. Cameron*, 2022-SC-0326 (Ky.). The requested extension will ensure that counsel of record has sufficient time to research the relevant issues and prepare a clear and concise petition for a writ of certiorari.

* * *

For these reasons, the Commonwealth respectfully requests that the time to file a petition for a writ of certiorari in this matter be extended by 44 days, to October 28, 2022.

Dated: September 1, 2022

Respectfully submitted,

/s/ Brett R. Nolan
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