

OCTOBER TERM 2022

No. 22-_____

IN THE SUPREME COURT OF THE UNITED STATES

JAIME PIERO COLE,

Petitioner,

v.

BOBBY LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE,
CORRECTIONAL INSTITUTIONS DIVISION,

Respondent.

CAPITAL CASE

**APPLICATION TO THE HONORABLE SAMUEL A. ALITO, JR.
FOR EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT**

Petitioner Jaime Piero Cole, through undersigned counsel, respectfully moves for an extension of sixty (60) days to prepare and file his Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit. In support thereof, Petitioner respectfully submits as follows:

1. This is a capital case brought by a Texas state prisoner. This Court has jurisdiction under 28 U.S.C. § 1257(a). Petitioner seeks review of the Court of Appeals' decision entered on August 26, 2022 (Attachment A), affirming the district court's denial of habeas relief. *Cole v. Lumpkin*, No. 4:17-CV-940, 2021 WL 4067212 (S.D. Tex. Sept. 7,

2021), *certificate of appealability denied*, No. 21-70011, 2022 WL 3710723 (5th Cir. Aug. 26, 2022).

2. Petitioner's Petitions for Rehearing and Rehearing En Banc were denied by the Court of Appeals on October 5, 2022 (Attachment B). Pursuant to Rule 13 of the Rules of the Supreme Court of the United States, Petitioner may file a writ of certiorari within 90 days of the denial of rehearing, i.e., by January 3, 2023.

3. Petitioner intends to seek certiorari review in this case as this case presents important constitutional questions and highlights a circuit split in need of resolution.

4. However, Petitioner's counsel cannot meaningfully prepare a professionally appropriate certiorari petition by the current due date of January 3, 2023. Undersigned counsel, Shawn Nolan, had a client executed on November 29, 2022 (Johnson); has an appellate brief due in the United States Court of Appeals for the Third Circuit on January 13, 2023 (*Hannibal v. Sec'y, Pa. Dep't of Corr.*, No. 21-3075); and has two clients facing execution dates on February 1, 2023 (Ruiz), and February 8, 2023 (Balentine). The obligations resulting from these active execution cases and competing obligations have prevented counsel from being able to adequately prepare a petition for certiorari by the current due date. Undersigned counsel requests additional time in which to do so.

5. In accordance with this Court's Rule 13.5, this request is being made more than ten (10) days in advance of the current filing deadline and is timely.

6. Under the circumstances, which include both the timing issues outlined above and the fact that Mr. Cole is at a final stage of his capital litigation and presents an issue that has nationwide importance, the undersigned respectfully requests that this Court grant Mr. Cole's

request to extend the date by which to file his Petition for Writ of Certiorari by sixty (60) days, or until March 4, 2023.

7. The granting of this request shall cause no prejudice to the Government. This request is made in good faith and is not predicated on an intent to delay the resolution of this litigation.

WHEREFORE, Petitioner prays that the Court allow a sixty (60) day extension for the preparation and filing of his Petition for Writ of Certiorari.

Respectfully submitted,

/s/ Shawn Nolan
SHAWN NOLAN
Counsel of Record, Member of the Supreme
Court Bar
Chief, Capital Habeas Unit
Federal Community Defender for the
Eastern District of Pennsylvania
601 Walnut Street, Suite 545 West
Philadelphia, PA 19106
Shawn_Nolan@fd.org
(215) 928-0520

Dated: December 23, 2022

CERTIFICATE OF SERVICE

I, Shawn Nolan, hereby certify that on this date I served the foregoing upon the following persons by first class mail, postage prepaid:

Cara Hanna
Assistant Attorney General
Office of the Attorney General of Texas
Post Office Box 12548, Capitol Station
Austin, Texas 78711-2548

/s/ Shawn Nolan
Shawn Nolan

Dated: December 23, 2022