

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

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

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Bradley J. Harris,  
*Petitioner,*

v.

United States of America,  
*Respondents.*

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In Anticipation of Petition for Writ of Certiorari to  
The United States Court of Appeals  
For the Fifth Circuit

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**UNOPPOSED EMERGENCY MOTION FOR  
EXTENSION OF TIME TO FILE  
PETITION FOR WRIT OF CERTIORARI**

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**ATTORNEY FOR PETITIONER  
BRADLEY J. HARRIS**

**TO THE HONORABLE JUSTICE SAMUEL A. ALITO, JR.**

**JURISDICTION**

The Fifth Circuit entered an order and judgment on October 24, 2022, dismissing Harris’s appeal, without opinion. *See Exhibit 4*. This Court has jurisdiction under 28 U.S.C. §1254(1).

**GROUND FOR MOTION TO EXTEND TIME TO FILE PETITION**

Pursuant to Rule 13.5, on behalf of Petitioner Bradley J. Harris, the undersigned (although having previously withdrawn as Mr. Harris’s retained counsel) files this Unopposed Emergency Motion for Extension of Time to File Petition for Writ of Certiorari, to preserve Mr. Harris’s right to petition this court, and to give the Fifth Circuit additional time to act on Mr. Harris’s pending motion for appointed counsel. As both good cause for this unopposed motion, and to demonstrate extraordinary circumstances for filing this motion within ten (10) days of the date the Petition is due (January 23, 2023), Mr. Harris would show the following:

Mr. Harris was convicted after pleading guilty to two (2) counts – Counts 1 and 4 of a Superseding Indictment (Conspiracy to Commit Health Care Fraud and Health Care Fraud). *See Exhibits 1 and 2*. Mr. Harris appealed to the Fifth Circuit on a narrow constitutional due process violation issue during sentencing, stemming

from the undisputed fact that the district court announced on the record at sentencing it and/or its staff had had *ex parte* communications of an undisclosed nature about Mr. Harris with undisclosed parties. *See Exhibit 3.* The Fifth Circuit granted Respondent's Motion to Dismiss Mr. Harris's appeal on October 24, 2022, without opinion. *See Exhibit 4.*

Prior to the Fifth Circuit's ruling, Mr. Harris was able to actively participate in his appeal. Retained counsel engaged in frequent and regular communication with Mr. Harris (who was incarcerated) by legal phone calls Mr. Harris was granted, and by E-mail via the Federal Bureau of Prison's Corrlinks E-mail system. When the Fifth Circuit dismissed Mr. Harris's appeal on October 24, 2022, the undersigned was initially unable to reach Mr. Harris by E-mail, received no phone calls from Mr. Harris, and at first did not know the reason why. Counsel subsequently learned Mr. Harris had been moved to the Special Housing Unit of the Fort Worth Medical Center prison, where Harris was denied legal phone calls and access to E-mail. After learning of Harris's situation by "snail mail," the undersigned counsel met in person with Mr. Harris in the Special Housing Unit, and counsel and Mr. Harris agreed that, because Harris had been unable to fulfill the financial terms of their fee arrangement for this appeal, the undersigned would withdraw as retained counsel.

The undersigned withdrew from representing Petitioner Harris on December 15, 2022, filing a Motion to Withdraw in the district court because the Fifth Circuit

had closed the appeal and issued its mandate. Also on December 15, 2022, the undersigned requested that the district court appoint counsel for Mr. Harris to advise him whether or not to file (and/or represent him in filing) a Petition for Writ of Certiorari. *See Exhibit 5*. The undersigned counsel informed the district court Mr. Harris's deadline for filing the Petition for Writ of Certiorari was January 22, 2023. *Id.* Given that January 22, 2023, is a Sunday, Mr. Harris's Petition is actually due Monday, January 23, 2023, and at the time the undersigned requested appointed counsel for Mr. Harris, Mr. Harris still had almost half of his original 90-day time period [thirty (39) days] remaining on his Petition deadline – plenty of time for appointed counsel to review Harris's case, file *in forma pauperis* papers, file a Petition, advise Harris not to file one, or file a timely Motion for Extension pursuant to Rule 13.5.

The day after appointed counsel was requested, the district court referred the motion to a magistrate judge. *See Exhibit 6*. However, the magistrate judge did not act on the motion for twenty (20) days until January 5, 2023, when it referred the motion to the Fifth Circuit. *See Exhibit 7*. Concerned the Fifth Circuit might wait an additional ten (10) days to see if any opposition to the motion was filed, the undersigned counsel requested assistance expediting the Fifth Circuit's action by asking Respondent's Fifth Circuit counsel to notify the Fifth Circuit it was not opposed to the motion, but Respondent's counsel declined. *See Exhibit 8*.

When the Fifth Circuit had not acted on Mr. Harris's motion to appoint counsel within ten (10) days, the undersigned counsel called the Clerk of the Fifth Circuit on January 17, 2023, and learned for the first time that no one at the district court, the district clerk, or the magistrate judge had ever actually forwarded or presented Mr. Harris's motion to appoint counsel to the Fifth Circuit. Thus, as the undersigned discovered on January 17, 2023, the Fifth Circuit was unaware of the pending motion or Mr. Harris's request for appointed counsel. The Clerk of the Fifth Circuit indicated it would now retrieve the motion from the district clerk's system, that the undersigned was withdrawn as retained counsel by virtue of having notified the court via the motion, and that the Clerk's office would put the motion in line for decision on appointed counsel. By that point, however, it became clear there was no chance the Fifth Circuit could or would appoint counsel for Mr. Harris before his deadline for filing a Petition for Writ of Certiorari would run on January 23, 2023, and that for more than two weeks the motion for appointed counsel had been in limbo and was not actually being reviewed by any court; moreover, Mr. Harris was now within the 10-day window for a timely Motion to Extend absent these extraordinary circumstances. Within one day of learning this information, the undersigned confirmed the government's lack of opposition, and within two days counsel has drafted, compiled and transmitted this emergency motion on behalf of Mr. Harris for filing.

The right to counsel is fundamental to constitutional due process under the Sixth Amendment. Further complicating matters is the fact that Mr. Harris remains in the SHU and cannot take action on his own. He has no access to E-mail, he can rarely make legal phone calls, and he can only visit with counsel in person, which, with travel and wait time takes the better part of a day. Moreover, lawyers cannot take electronic devices such as a laptop into the prison, so working with an incarcerated inmate assigned to the SHU is far less efficient.

Mr. Harris has had a pending motion to appoint counsel pending in three (3) lower courts for thirty-four (34) days, no court has yet acted on it, but the Fifth Circuit has indicated it will now act on the motion. If Mr. Harris's Petition deadline passes, his procedural right to review is lost and appointing counsel for him becomes moot. On behalf of Mr. Harris and so that he may be represented by counsel on his Petition filing decision and/or the Petition itself, the undersigned prays the Honorable Justice reviewing this motion grant Mr. Harris an extension of sixty (60) days, to and including March 24, 2023, to file his Petition for Writ of Certiorari, or such shorter period of time as such Justice deems appropriate, so that the Fifth Circuit may act on his motion for appointed counsel and he may be properly represented.

**CERTIFICATE OF CONFERENCE**

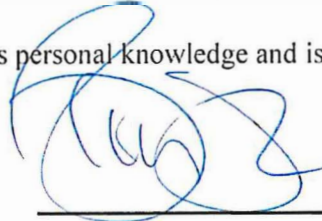
On January 17, 2023, the undersigned counsel conferred by E-mail with Ms. Ann Adams with the United States Attorney's Office, Criminal Appellate Division, Washington, D.C., who confirmed Respondent United States of America is unopposed to the extension requested.

VERIFICATION

THE STATE OF TEXAS §

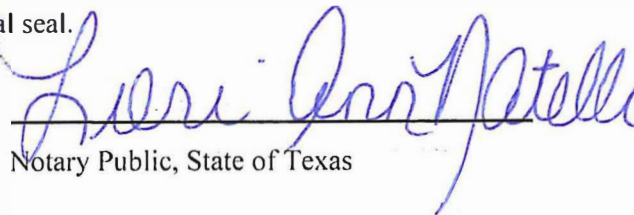
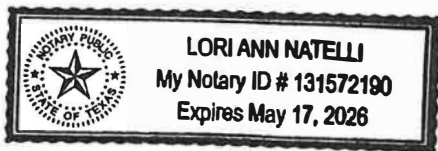
COUNTY OF TARRANT §

BEFORE ME, the undersigned Notary Public, on this day personally appeared Walter L. Taylot, who being first duly sworn on his oath deposed and stated that he has read the foregoing Unopposed Emergency Motion for Extension of Time to file Petition for Writ of Certiorari, and that each statement contained therein is within his personal knowledge and is true and correct.



WALTER L. TAYLOR

SUBSCRIBED AND SWORN TO BEFORE ME on this the 18<sup>th</sup> day of January, 2023,  
to certify which witness my hand and official seal.



Notary Public, State of Texas



Respectfully submitted,

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**ATTORNEY FOR PETITIONER**  
**BRADLEY J. HARRIS**

**CERTIFICATE OF SERVICE**

In accordance with Rule 29, Respondent is being contemporaneously served with both an electronic and paper copy of this Unopposed Emergency Motion to Extend Time to File Petition for Writ of Certiorari:

Ms. Ann Adams  
***[Ann.Adams@usdoj.gov](mailto:Ann.Adams@usdoj.gov)***  
United States Attorney's Office  
601 D Street, NW  
Washington, DC 20579-0001