

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

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IN THE  
**Supreme Court of the United States**

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KEVIN CURRAN  
*Petitioner,  
Movant*

v.

WENDY CURRAN  
*Respondent*

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On Petition For A Writ Of Certiorari  
To The Supreme Court Of New Jersey

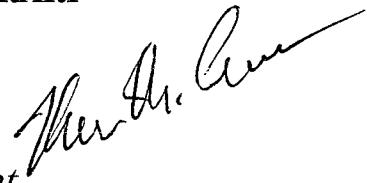
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**MOTION TO DIRECT THE CLERK TO FILE A  
PETITION FOR A WRIT OF CERTIORARI  
OUT OF TIME,  
AS WITHIN TIME**

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## PARTIES TO THE PROCEEDINGS

Kevin Curran, Petitioner-Movant;

Wendy Curran, Respondent,

formerly spouses, presently divorced;

both residents of New Jersey and Citizens of the United States of America.

## RELATED PROCEEDINGS

*Wendy Curran v. Kevin Curran*, Superior Court of New Jersey, Chancery Division; Family Part, Morris County; dates of entries of relevant orders include May 30, 2018; August 29, 2018; and December 12, 2018.

*Wendy Curran v. Kevin Curran*, Superior Court of New Jersey, Appellate Division; dates of entries of relevant orders include April 06, 2020; and May 08, 2020.

*Wendy Curran v. Kevin Curran*, Superior Court of New Jersey, Appellate Division; dates of entries of relevant orders include April 06, 2020; May 08, 2020; and May 08, 2020.

*Wendy Curran v. Kevin Curran*, Supreme Court of New Jersey; dates of entries of relevant orders include November 03, 2021; February 11, 2022; and February 11, 2022.

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To the Honorable Justices of the Supreme Court, to the Honorable Justice Samuel A. Alito, Jr., as Circuit Justice for the United States Court of Appeals for the Third Circuit, and to the Honorable Scott S. Harris, Clerk of the Supreme Court:

**MOTION TO DIRECT THE CLERK TO FILE A PETITION FOR A WRIT OF  
CERTIORARI OUT OF TIME, AS WITHIN TIME**

Petitioner respectfully submits this Motion To Direct The Clerk To File A Petition For A Writ Of Certiorari Out Of Time, As Within Time, and treat the Petition as filed within time, as extended. Accompanying this motion is a related Motion For Leave To File A Petition Under Seal With Redacted Copies For The Public Record, including an unredacted SEALED Supplemental Appendix not for access by the public.

**1) Introduction, and Distinction From Other Movants' Motions To Direct**

Petitioner humbly requests that the Court consider and grant this motion on its own merits, as viewed from a fresh, objective perspective independent of the outcomes of other movants' motions. Petitioner acknowledges that the Court historically has denied most motions to direct the Clerk to file a petition out of time. However, this motion is unlike any of the typical motions to direct the Clerk to file a petition out of time, which typically have arisen from a movant failing to file a petition within time due to the movant neglecting, overlooking, misinterpreting, miscalculating, or misapplying the initial 90-day statutory period under 28 U.S.C. § 2101(c). Rather, this motion has arisen in large part due to Petitioner's waiting on the Clerk's Office for necessary, critical guidance, and Clerk's Office not responding with said guidance within the 90-day period, to enable Petition to file without an extension of time.

## 2) Immediate Procedural Background With The Court

Petitioner's initial 90-day statutory period ended May 12, 2022, as Petitioner was actively awaiting, as explained greater below, critical guidance from the Clerk's Office regarding the procedures (which are not explained in the Court's Rules or website) regarding submission of the sensitive information filed herewith under seal.

Petitioner contacted the Clerk's Office on Monday, May 08, 2022, and inquired about how to format, prepare, print, and file information to avoid having the information become publicly accessible. In an initial return phone call from a first representative of the Clerk's Office on May 08, 2022, Petition was told that, possibly within an hour or two, a more experienced representative would contact Petitioner to explain how to file the information under seal to avoid public access.

After waiting Monday afternoon, Tuesday, and until Wednesday afternoon, and not receiving a follow-up call, Petitioner left another voicemail Wednesday afternoon, May 11, 2022, again requesting guidance and reminding the Clerk's Office that the Petitioner's 90-day period ended the next day. The Clerk's Office did not contact Petitioner on Wednesday or Thursday, at which time the 90-day period ended.

On Friday, May 13, 2022, the Clerk's Office called Petitioner, acknowledged the tardiness of the return call, and explained the procedure for filing a sealed supplemental appendix, which is not mentioned, let alone explained, anywhere in the Court's Rules, on the Court's website, or in the Clerk's memoranda for petition filers. With the newly-received guidance, Petitioner was made aware of these otherwise-unwritten, informal parameters and was able to finalize the Petition accordingly.

After receiving the critical guidance from the Clerk's Office, Petitioner diligently submitted on May 19, 2022, an Application For An Extension Of Time To File A Petition For A Writ Of Certiorari, combined with a Motion For Leave To File The Application As Within Time. The substance of the combined application-motion is presented herein, avoiding the need to attach, and rendering superfluous an attachment of, the combined application-motion as an Exhibit hereto.

The Clerk's Office returned the 2022-05-19 Application as out of time, without addressing the Motion For Leave To File The Application As Within Time, in the Clerk's 2022-05-24 letter. *See Exhibit A hereto.* The Clerk's 2022-05-24 Letter stated that if "the time to file a petition for a writ of certiorari in a civil case has expired (including any habeas action), the Court no longer has the power to review the application or to consider an application for an extension of time to file the petition."

In response to the Clerk's 2022-05-24 letter, Petitioner sent a follow-up letter on June 01, 2022, explaining that Petitioner respectfully and humbly disagrees that the Court "no longer has [said] power" for the reasons stated in Petitioner's 2022-05-19 Motion For Leave To File Application As Within Time, which reasons Petitioner summarized and supplemented in 2022-06-01 letter. *See Exhibit B hereto.*

In response to Petitioner's 2022-06-01 letter, the Clerk's Office sent another reply letter on June 07, 2022, that did not address the reasons stated in Petitioner's 2022-06-01 letter. *See Exhibit C hereto.* The Clerk's 2022-06-07 letter reiterated the reasons of the Clerk's 2022-05-24 letter, and mentioned ancillary historical facts

related to the Court's COVID-related orders, but did not address the merits of why Petitioner had mentioned the Court's COVID-related orders.

In response to the Clerk's 2022-06-07 letter, Petitioner sought further guidance and called the phone number that Claude Alde of the Clerk's Office provided in his signature block of his two letters. Petitioner reached Mr. Alde's voicemail and left a message requesting a return call. After a few days without a return call, Petitioner left another voicemail for Mr. Alde. After still additional days without a return call, Petitioner left a third voicemail for Mr. Alde. Petitioner understood that the Clerk's Office was very busy with several major opinions at the conclusion of the October 2021 Term. However, mindful of Petitioner's 150-day maximum statutory period under 28 U.S.C. § 2101(c), Petitioner emailed Clerk Harris on June 21, 2022, to request further guidance, copying the email address of Deputy Clerk Laurie Wood, who previously had been of significant assistance to Petitioner in explaining the parameters of filing a sealed supplemental appendix. *See* Exhibit D hereto.

In response to Petitioner's 2022-06-21 email, Deputy Clerk Wood called Petitioner the following day, on June 22, 2022, and explained the remaining options available to Petitioner, including the filing of this Motion To Direct The Clerk To File A Petition For A Writ Of Certiorari Out Of Time. Given the unusually high level of activity that the Court experienced leading up to the conclusion of the October 2021 Term, it appeared warranted to wait to file this motion after the conclusion of the Term's main activity, but still within the maximum statutory period under 28 U.S.C. § 2101(c).

**REASONS FOR TREATING AS WITHIN TIME THE EARLIER  
APPLICATION FOR AN EXTENSION OF TIME**

The 2022-05-19 Application was submitted under Rule 13.5 and Rule 30.2. Petitioner respectfully applied to the Supreme Court and under Rule 21.1, Rule 22, and Rule 30.3 to the Honorable Justice Samuel A. Alito, Jr., for good cause shown, for an extension of time and requested that the time be extended to file the Petition. Petitioner initially sought only a short extension of time, because Petitioner needed mainly to prepare the SEALED Supplemental Appendix, and to finalize the printing, packaging, and mailing of the Petition and accompanying papers, as explained below.

As of May 12, 2022, Petitioner already had prepared an otherwise-final draft Petition and a draft motion for leave to file the petition for a writ of certiorari under seal with redacted copies for the public record, to limit public access to the unredacted documents under F.R.C.P. 5.2.(d). However, Petitioner was waiting to hear back from the Clerk's Office regarding how to handle what would become Petitioner's SEALED Supplemental Appendix. In particular, administrative and procedural issues not addressed in the Rules, or in the Court Clerk's Memorandum on filing paid petitions, created ambiguities and uncertainties in how to properly present, assemble, print, and package the papers to avoid inadvertent public disclosures of sensitive information that Petitioner seeks to redact and file under seal. Petitioner diligently contacted the Office of the Clerk to resolve these uncertainties, but in the wait to resolve them, the draft Petition was not filed to avoid inadvertent public disclosures, causing Petitioner to need an extension of time.

Petitioner humbly requested and requests under Rule 13.5, Rule 21.1, and Rule 22 that the Application For An Extension Of Time be treated as filed as within time for the reasons and extraordinary circumstances set forth herein. The extraordinary circumstances justified filing of the 2022-05-19 Application after 10 days before the Application was due under Rule 13.5. Pursuant to 28 U.S.C. § 2101(c), “A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.” Apart from the limitation that the extension period does not exceed sixty days, 28 U.S.C. § 2101(c) does not limit statutorily either when the extension for shall be requested, or when the justice may grant the extension of time for applying. Therefore, the justice is permitted by §2101(c), and under Rule 13.5, to grant an extension request filed within the proposed extension, for good cause shown, and in extraordinary circumstances:

In contrast to the federal statutes, the Rules themselves and strict adherence thereto are subject to the Court’s discretion, not the other way around. The Court’s discretion is exemplified in Rule 10, which emphasizes the Court’s “judicial discretion” and states that the Rule 10 factors, “although neither controlling nor fully measuring the Court’s discretion, indicate the character of the reasons the Court considers” in granting a petition for a writ of certiorari.

**REASONS THAT THE COURT HAS BOTH STATUTORY AUTHORITY AND  
RULE-BASED “POWER TO REVIEW THE PETITION” AND “TO CONSIDER AN  
APPLICATION FOR AN EXTENSION OF TIME TO FILE THE PETITION.”**

The Clerk’s 2022-05-24 letter and 2022-06-07 letter each asserted that if “the time to file a petition for a writ of certiorari in a civil case has expired (including any habeas action), the Court no longer has the power to review the application or to consider an application for an extension of time to file the petition.” Exhibits A, C. Petitioner respectfully and humbly disagrees that the Court “no longer has [said] power” and asserts that, at least under the present situation, the Court has both statutory authority and rule-based “power to review the petition” and “to consider an application for an extension of time to file the petition.” Therefore, Petitioner respectfully asserts that it is within the Court’s statutory authority, power, and sound discretion to consider and grant Petitioner’s motions and application, and to review and grant such a petition.

**1) Statutory Authority Under 28 U.S.C. § 2101(c).**

Statutory authority exists under 28 U.S.C. § 2101(c), which states, “A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.” Thus, 28 U.S.C. § 2101(c) has only two statutory limitations: (1) that good cause is shown, and (2) that the extension period does not exceed sixty days. Apart from these two statutory limitations, 28 U.S.C. § 2101(c) does not limit a justice’s statutory authority regarding when the

justice may grant an extension of time. Furthermore, 28 U.S.C. § 2101(c) also does not address or limit when or how any extension shall be *requested*.

Indeed, 28 U.S.C. § 2101(c) does *not require* that *any request* for an extension of time be filed, let alone require that such a request for an extension of time be filed before the expiration of a time to file a related petition for a writ of certiorari. In the Court's March 19, 2020 Order Regarding Filing Deadlines<sup>1</sup>, the Court implicitly acknowledged this broad statutory authority and corresponding presence of only two statutory limitations, by ordering blanket automatic extensions of such filing deadlines up to the statutory maximum of 150 days, without requiring the filing of any related requests for extension by individual applicant-petitioners, based on a blanket judicial notice of showing of good cause due to COVID-19 difficulties.

The Court's 2020-03-19 Order provided automatic extensions of time to every petition deadline during the COVID-19 crisis, without any individual petitioner filing any individual application for an extension of time. The automatic, no-request-required extensions continued until the Court rescinded the automatic extension in the July 19, 2021 Order Rescinding Prior COVID Orders<sup>2</sup>. Therefore, by statute, each justice is permitted by §2101(c) to grant an extension, with or without a petitioner filing any request for an extension, irrespective of if or when such request may or may not be filed, so long as shown good cause exists and the total response period does not exceed 150 days from the trigger date. Consequently, a justice likewise has statutory

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1 See [https://www.supremecourt.gov/orders/courtorders/031920zr\\_d1o3.pdf](https://www.supremecourt.gov/orders/courtorders/031920zr_d1o3.pdf)

2 See [https://www.supremecourt.gov/orders/courtorders/071921zr\\_4g15.pdf](https://www.supremecourt.gov/orders/courtorders/071921zr_4g15.pdf)



authority to consider and grant a request for an extension of time in which said request is filed within the proposed extension, for good cause shown, and in extraordinary circumstances.

## 2) Power Under The Court's Rules.

The Court has power and discretion over the Court Rules and their implementation. As the Court's 2020-03-19 Order shows, the Court has power under the Court Rules to grant an extension of time, as well as automatic extensions of time, even in the absence of a filing of any individual request for any individual extension of time. The Court's power and discretion are revealed, because Rule 13.5 otherwise requires the filing of an individual application for each extension of time. The Court's 2020-03-19 Order demonstrates that the Court has discretion in applying, and deviating from, the Court Rules, given that the Court Rules, and Rule 13.5 in particular, mandate that "[a]n application to extend the time to file .... must be filed with the Clerk at least 10 days before the date the petition is due, except in extraordinary circumstances." In entering the 2020-03-19 Order, the Court demonstrated that the "extraordinary circumstances" exception even permits the Court to extend the time even without any application for said extension to be filed. Given that the Court has the power and discretion to extend the time without and in the absence of a filing of a request for an extension, the Court therefore has the power and discretion to extend the time with an application filed within the requested extension that includes a showing of good cause and extraordinary circumstances.

Stated differently, because the “extraordinary circumstances” exception permits and empowers the Court to extend the time in the *absence of a filing of any application* for an extension of time, the “extraordinary circumstances” exception likewise permits and empowers the Court to extend the time in the event an application for an extension of time is filed within the requested extension. The well-accepted mechanism under common law to seek permission to file after expiration of a response period is to file a motion for leave to file as within time, which Petitioner did in the combined 2022-05-19 Application For An Extension Of Time To File A Petition For A Writ Of Certiorari and Motion For Leave To File Application As Within Time. In permitting an applicant to show “good cause” and “extraordinary circumstances” under Rule 13.5, the Court Rules implicitly approve of the mechanism of such a motion, apart from which an applicant might not have the means to show good cause and extraordinary circumstances provided for under Rule 13.5.

### **3) Analogous Extensions Under Other Federal Practice.**

Federal statutes likewise condone and permit filing of an application for an extension of time within the requested extension period, so long as the as-extended period does not exceed the statutory maximum. For example, in patent application practice before the United States Patent and Trademark Office, patent applicants commonly file a Petition For An Extension Of Time<sup>3</sup> under 37 CFR 1.136(a) during prosecution of their patent applications. A Petition under 37 CFR 1.136(a) may be filed within the requested extension, after the initial due date, and after expiration

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<sup>3</sup> See <https://www.uspto.gov/sites/default/files/documents/aia0022.pdf>

of initial response period. Under 37 CFR 1.136(a)(2), the patent applicant's "reply must be filed prior to the expiration of the period of extension to avoid abandonment of the application." The Court's consideration and grant of Petitioner's motions and application would be consistent with, and in line with, other federal practices regarding requesting extensions of time.

**4) Good Cause, Extraordinary Circumstances, and No Prejudice.**

Petitioner's as-filed combined 2022-05-19 Application and Motion set forth the detailed facts that demonstrate the good cause and extraordinary circumstances that support Petitioner's requested relief. In summary, Petitioner properly researched important procedural issues having major significance on the presentation and confidentiality of volumes of documents, only to learn that such issues were not addressed in the Court Rules. Petitioner then sought the guidance of the Office Of The Clerk on Monday, May 09, 2022, several days before the Thursday, May 12, 2022 due date, and followed up on Wednesday, May 11, 2022, but the Clerk's Office did not get back to Petitioner until Friday, May 13, 2022. The 2022-05-19 Application and this Motion would not have been needed had the Clerk's Office gotten back to Petitioner before the due date. These extraordinary circumstances present good cause for the Court to grant Petitioner's Motion To Direct, and likewise to grant the Application For An Extension Of Time To File A Petition For A Writ Of Certiorari. Moreover, granting the requested relief would not create any prejudice, as the matters at hand are not particularly time-sensitive to a difference of a few weeks, considering that the underlying litigation and appeals have spanned over four years.

## JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1257(a), over “[f]inal judgments or decrees rendered by the” Supreme Court of New Jersey, as explained in *Cox Broadcasting v. Cohn*, 420 U.S. 469, 482-83 (1975). The Honorable Justice Samuel A. Alito, Jr., has jurisdiction under 28 U.S.C. § 2101(c) and, “for good cause shown, may extend, the time for applying for a writ of certiorari for a period not exceeding sixty days.” Under Rule 22, Justice Alito, another justice, or the Court may grant an application for an extension submitted later than 10 days before the date the petition is due “in extraordinary circumstances” under Rule 13.5.

## PETITION

The Petition seeks review of constitutionally-significant aspects of the Parties’ family court proceedings in New Jersey state court. The Petition is grantable under Rule 10(c) and argues that the state courts impinged on important federal questions of constitutional substantive and procedural Due Process and Equal Protection rights under the Fifth Amendment (U.S. Const. Amend. V), and Fourteenth Amendment (U.S. Const. Amend. XIV) of the U.S. Constitution, in ways that conflict with relevant decisions of the U.S. Supreme Court, summarized below.

### 1) Precedent Supports The Constitutional Right To A Hearing In Questions Of Fact

The U.S. Supreme Court long has held that “no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him.” *Marshall v. Jerrico*, 446 U.S. 238, 242 (1980); *Schweiker v. McClure*, 456 U.S. 188, 195 (1982). “In almost

every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses.” *Goldberg v. Kelly*, 397 U.S. 254, 269 (1970). See U.S. Const. Amend. VI, U.S. Const. Amend. XIV. “Parties whose rights are to be affected are entitled to be heard.” *Baldwin v. Hale*, 68 U.S. (1 Wall.) 223, 233 (1863). Under Rule 8.2, the Court itself requires “a hearing if material facts are in dispute,” before ruling and “[a]fter reasonable notice and an opportunity to show cause” have been provided a respondent of discipline.

**2) The Lower Court Improperly Decided Genuine Issues Of Material Fact Without Any Hearing**

The issues before the family court were very fact-intensive, and the lower court went about making findings of fact, for which there were many substantial genuine issues of very-disputed material facts, without a single plenary hearing or opportunity to present evidence or cross-examine testimony in court. Thus, the lower courts acted in ways that contravened established precedent, deviated from constitutional safeguards, and infringed Petitioner’s constitutional rights, of which the Petition seeks review. The Petition challenges the constitutionality of the lower court’s conduct under Rule 10(c) and does not seek that the Court review the findings of fact, as such, in which “the asserted error consists of erroneous factual findings” under Rule 10.

The motion courts’ three orders and attached lengthy statements of reasons are in the Petition Appendix, and unredacted versions thereof are in the SEALED Supplemental Appendix with the motion for leave to file under seal. Therein, the

motion court made extensive findings of fact, for which facts the court meanwhile demonstrated the existence of substantial genuine issues of material fact, and did so admittedly without even one plenary hearing, and with only a partial oral argument of the Petitioner's initial motion.

## **PARTIES AND LOWER COURT PROCEEDINGS**

The Parties are divorced former spouses living in New Jersey and having minor children in common, relative to which numerous fact-intensive financial and custody-related issues arose that led to post-divorce-judgment litigation in 2018. Appeals and attempts at review thereof followed in 2019-2022, culminating in the New Jersey Supreme Court entering an order denying a motion for reconsideration (Petition Appendix H) of an earlier order denying of a petition for certification (Petition Appendix G), both filed as "SEALED" in the case.

### **1) Preparation Of The Petition Appendix**

As required under this Court's Rules, Petitioner prepared the Appendices to the Petition to include the relevant lower court orders and opinion. (*See, e.g., above, Petition Appendix Table Of Contents*). However, these Appendices discuss in detail the Parties' sensitive personal information, as is common in family court, that comprise purported bases of the lower court's decisions. The Appendices contain sensitive and personal information, including, *inter alia*, discussions of children, schooling, education, disabilities, finances, incomes, employment, unemployment, custody disputes and allegations, protected health information, and mental health information.

## **2) The Lower Courts' Treatment Of The Contents In The Petition Appendix**

Because family court frequently addresses a family's intimate details, NJ state court rules automatically protect against disclosure to the public the family court case files, orders, and statements of reasons. In combining and consolidating two near-time appeals from the family court, the appellate division sealed the file and impounded the record, as indicated on the first page of the appellate division opinion. Likewise, the state supreme court sealed the file and the orders, as indicated by the "SEALED" in each order's header in Petition Appendices G and H.

## **3) Federal Practice Protecting Sensitive Information Against Unneeded Disclosures**

Federal practice has long made available protection against unnecessary public disclosure of sensitive information in litigation. For example, regarding topics applicable to most family law issues, for decades the Court has permitted protection of sensitive information comprising "personal intimacies" that include "personal intimacies of the home, the family, marriage, motherhood, procreation, and child rearing." *Paris Adult Theatre I v. Slaton*, 413 U.S. 49, 65 (1973).

## **4) Petitioner Seeks To Protect Sensitive Information Against Disclosure**

For the protection of Respondent, the Parties' children, and Petitioner, Petitioner seeks to protect the sensitive personal information found in the Appendices from being publicly disclosed when the Petition and Appendix are filed with the Court, which typically involves filed documents being scanned, being uploaded to the Internet, and being made available to the public. Therefore, Petitioner submits the Petition with the aforementioned motion for leave to file the petition for a writ of

certiorari under seal without redaction, and with redacted copies for the public record, limiting public access to the unredacted documents under F.R.C.P. 5.2.(d).

### **EXTRAORDINARY CIRCUMSTANCES**

Petitioner humbly submits that, as described below and herein, the present situation comprises extraordinary circumstances and a showing good cause for the Court, to grant Petitioner's herein Motion To Direct The Clerk To File A Petition For A Writ Of Certiorari Out Of Time, As Within Time, pursuant to granting Petitioner an Application For An Extension Of Time To File.

#### **1) Research Was Conducted And Revealed Many Unanswered Questions**

In recognizing the need to seek protection of the sensitive information by filing a motion for leave to file the petition under seal, Petitioner researched how to properly arrange, present, print, package, and mail the papers to comply with the many applicable Rules and yet avoid inadvertent disclosure to the public if the papers were submitted incorrectly. As a *pro se* petitioner having no prior experience with practice before the Court, Petitioner thoroughly searched the Rules, the Court's website, the Clerk's Memorandum guiding preparation of paid petitions, the Court's online dockets, and the Internet for guidance, but many questions remained unanswered.

#### **2) The Rules And Court Guidance Did Not Address Many Issues**

For instance, the Rules nowhere mention "filing under seal," as such, or associated procedures. The word "seal" appears in the Rules only three times, in unrelated contexts. The Rules address protection of privacy only very briefly, in Rule 34.6, which points to F.R.C.P. 5.2 for this civil case. Neither F.R.C.P. 5.2 nor the Rules



address the details of how F.R.C.P. 5.2 applies to and causes deviations from the Court's very specific formatting, presentation, and printing requirements, which notably differ significantly between petitions and appendices under Rule 33.1 and motions under Rule 33.2. Similarly, the Rules nowhere mention a "sealed supplemental appendix" (or preparation thereof as part of a motion for leave to file under seal), even though the Rules mention "supplemental" sixteen times with respect to preparation, service, and filing of supplemental briefs. Conversely, the Clerk's aforementioned Memorandum addresses "sealed material" only to explain that "sealed material ... should not be submitted electronically." Acting *pro se*, Petitioner is not permitted to electronically submit documents anyway. Otherwise, the Memorandum does not address practical parameters and mechanics of the preparation and presentation of filing under seal either. Furthermore, looking to the online docket for examples also proved unfruitful, as the docket database did not include hyperlinks to view other litigants' motions for leave to file under seal, as those motions themselves were not publicly accessible.

### **3) The Unaddressed Issues And Unanswered Questions Create Significant Risks And Substantial Consequences**

The differences between preparations according to Rule 33.1 versus Rule 33.2 create substantial consequences in the submission of a paper filing, not the least of which is the difference of several thousands of pages of printed paper, and associated expenses, between submitting a 134-page Appendix under Rule 33.1 (e.g., 40 booklets of reformatted content on 6.125"x9.25" 60-pound card stock, plus one copy on 8.5"x11"

20-pound paper), versus under Rule 33.2 (e.g., one original and ten copies on 8.5"x11" 20-pound paper, of differently-formatted content). In essence, an incorrect arrangement, presentation, printing, and submission of otherwise-unchanged content could pose a triple threat, by needlessly incurring thousands of dollars of printing expenses, by incorrectly filing thousands of pages of printouts having sensitive information, and by inadvertently and unintentionally resulting in the sensitive information being made available to the public.

#### **4) Petitioner Sought Assistance Directly From The Office Of The Clerk**

With various uncertainties still unresolved, Petitioner called the Office Of The Clerk on Monday, May 09, 2022, and left a voicemail requesting guidance on preparation of the Petition Appendix. That same Monday afternoon, a representative from the Clerk's Office returned Petitioner's call and answered a few general formatting questions, but the representative indicated that he could not answer the questions about the mechanics and specifics of filing under seal. Rather, the representative stated that he would have a more-experienced colleague of his call later that day, Monday afternoon, May 09, 2022. However, Petitioner did not receive a return call later on Monday, anytime Tuesday, or anytime Wednesday. Not having heard back by Wednesday afternoon, Petitioner on Wednesday afternoon, May 11, 2022, called the Clerk's Office again and left another voicemail, specifically mentioning the imminent filing due date, with the hope of receiving a call back providing the specific guidance needed to properly arrange, print, and file the documents under seal *without needing an extension of time* to file.

#### 5) The Need For An Extension Of Time Arose Unexpectedly

However, as Wednesday ended and Thursday began, the window of opportunity rapidly closed to print and file on Thursday any Petition, Petition Appendix, and motion for leave to file under seal, without needing an extension of time, whether the versions already prepared, or any versions to be prepared in accordance with any not-yet-received guidance from the Clerk's Office. Not expecting not to file without the need for an extension of time, Petitioner also was not able to draft and submit, on short notice, an application for an extension of time by Thursday, May 12, 2022.

As Thursday, May 12, 2022, came to a close, Petitioner still was unsure of what, if any, privacy protection might be available for the sensitive information of Respondent, the Parties' children, and Petitioner, appearing throughout the detailed Appendices, and the specifics of how such privacy protection properly is obtained.

#### 6) Petitioner Later Received The Necessary Critical Assistance From The Clerk's Office

On Friday afternoon, May 13, 2022, Petitioner received a return phone call from a very helpful and knowledgeable Deputy Clerk at the Clerk's Office, who graciously acknowledged the timing of the return phone call. Petitioner and the Deputy Clerk discussed numerous aspects of the 'standard' practices desired by the Clerk's Office for petitioners seeking to file information under seal and to file a motion for leave to file a petition under seal. As acknowledged by the Deputy Clerk, many of these standard practices are not found or specified in the Rules or other guidance prepared by the Clerk's Office. For example, the concept of a "sealed supplemental appendix"

does not appear in the Rules, but commonly is used in a motion for leave to file under seal. Inasmuch as the phone call with the Deputy Clerk was very informative, the Deputy Clerk invited Petitioner to contact the Deputy Clerk again as new questions arose. Accordingly, on Monday, May 16, 2022, Petitioner left a voicemail for the Deputy Clerk, who then sent Petitioner an email permitting Petitioner to ask specific questions by email. The email chain is attached hereto as Exhibit E.

#### **7) Petitioner Sought Clarification And Feedback From The Clerk's Office**

Seeking to memorialize the specific parameters and procedures recommended by the Deputy Clerk, Petitioner drafted an email on Monday, May 16, 2022, to the Deputy Clerk requesting feedback regarding the accuracy of the specific steps described in the email (Exhibit F). On Tuesday, May 17, 2022, the Deputy Clerk sent Petitioner a reply email answering some questions, while indicating that, with respect to the stated scenarios, it understandably was "too difficult to confirm all these specifics without more details or a paper filing to review." The email chain is attached hereto as Exhibit G. In effect, even the Clerk's Office had difficulty formulating in advance the specific mechanics of how Petitioner should proceed in the present situation.

#### **8) Feedback From The Clerk's Office Was Worth The Wait**

In retrospect, it is good that Petitioner did not print and file the versions of the Petition, Petition Appendix, and motion for leave to file under seal as originally finalized and ready on May 12, 2022. Although such versions were in compliance with applicable Rules in general, they would not have been compiled, formatted, or

packaged in accordance with the standard practices later learned from the Clerk's Office, for protection of sensitive information to be filed under seal. The filing thereof may well have resulted in inadvertent and unintentional public disclosure of the sensitive information, contrary to and undermining the purpose of the motion for leave to file under seal. Once information is made available to the public in the Court's online databases, the information presumably is nearly impossible to pull back, as such databases regularly are scraped for information. For example, on February 27, 2022, the State Bar of California announced an investigation into a "huge data breach that exposed confidential records" of about "260,000 nonpublic state bar attorney discipline case records, along with about 60,000 public court case records," when a "public website that aggregates nationwide court case records was able to access and display" the data.<sup>4</sup>

#### **9) Extraordinary Circumstances And Good Cause Are Present And Shown**

Petitioner respectfully submits that the present 'perfect storm' of sensitive information, ambiguities in the Rules, uncertainties in federal practice, lack of available guidance, *pro se* status, and looming due date, combined to form extraordinary circumstances and good cause warranting a grant of Petitioner's Motion To Direct The Clerk To File A Petition For A Writ Of Certiorari Out Of Time, As Within Time, in conjunction with granting an extension of time to file. If necessary

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<sup>4</sup> See [www.cbsnews.com/sanfrancisco/news/state-bar-of-california-investigates-huge-data-breach-that-exposed-confidential-records/](http://www.cbsnews.com/sanfrancisco/news/state-bar-of-california-investigates-huge-data-breach-that-exposed-confidential-records/); and [www.calbar.ca.gov/About-Us/News/Data-Breach-Updates](http://www.calbar.ca.gov/About-Us/News/Data-Breach-Updates).

or appropriate in the Justice's discernment, for consideration of the Motion To Direct To File, As Within Time, as such might impact an application for an extension of time to file, Petitioner humbly requests that Petitioner be credited with the time, back to May 09, 2022, seeking assistance directly from the Office Of The Clerk, such as under a principle of tolling, tacking, equity, or stay, and/or as a timely-submitted but deficient-form request initiated in good faith.

**10) Requested Relief Is Minimal And Non-Prejudicial**


Petitioner has requested only the minimal relief necessary to finalize, print, and file the Petition, Petition Appendix, and motion for leave to file under seal, with the SEALED Supplemental Appendix. The days of extension would not be prejudicial to the public interest or to Respondent's interest. Rather, the extension of time would be in the public interest to confirm and reassure the equitable administration of the Court in relying on substance over form, where possible.

Moreover, Petitioner humbly offers the Court and the Clerk's Office, if the Court or Clerk so desires, to refine and repackage Petitioner's step-by-step outlines (*see* Exhibit F) for use by the Clerk's Office, such as to be posted online, as possible guidance to future petitioners encountering similar issues.

CONCLUSION

Wherefore, Petitioner respectfully requests that the Court, for good cause shown, in view of extraordinary circumstances, and as permitted under Rule 13.5 and 28 U.S.C. § 2101(c), grant this Motion To Direct The Clerk To File A Petition For A Writ Of Certiorari Out Of Time, As Within Time, and as appropriate, grant Petitioner’s Application For An Extension Of Time To File, and extend the time until to the 150-day maximum statutory period.

Executed in:  
106 St. Rt. 23, Ste 203  
Little Falls, NJ 07424  
Friday, July 08, 2022

Respectfully submitted,  
/s/ Kevin Curran, Esq.   
Kevin Curran, Esq.  
*Petitioner-Movant, pro se*

MOTION APPENDIX TABLE OF CONTENTS

Exhibit A: 2022-05-24 Clerk’s Letter (/s/ Claude Alde) to Petitioner .....Exh. A1  
Exhibit B: 2022-06-01 Petitioner’s Letter to the Clerk.....Exh. B1  
Exhibit C: 2022-06-07 Clerk’s Letter (/s/ Claude Alde) to Petitioner .....Exh. C1  
Exhibit D: 2022-06-21 Petitioner’s Email to Clerk Harris.....Exh. D1  
Exhibit E: 2022-05-16 Petitioner’s Emails with Deputy Clerk.....Exh. D1  
Exhibit F: 2022-05-16 Petitioner’s Email to Deputy Clerk.....Exh. E1  
Exhibit G: 2022-05-17 Petitioner’s Emails with Deputy Clerk.....Exh. F1

**SUPREME COURT OF THE UNITED STATES  
OFFICE OF THE CLERK  
WASHINGTON, DC 20543-0001**

May 24, 2022

Kevin Curran  
106 Newark-Pompton Turnpike  
Suite 203  
Little Falls, NJ 07424

RE: Curran v. Curran  
N.J. Sup. Ct. No. XX-427 (Sealed)

Dear Mr. Curran:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case was postmarked May 19, 2022 and received May 24, 2022. The application is returned for the following reason(s):

The application is out-of-time. The date of the lower court judgment or order denying a timely petition for rehearing was February 11, 2022. Therefore the application for an extension of time was due on or before May 12, 2022. Rules 13.1, 30.1 and 30.2. When the time to file a petition for a writ of certiorari in a civil case has expired (including any habeas action), the Court no longer has the power to review the petition or to consider an application for an extension of time to file the petition.

Sincerely,  
Scott S. Harris, Clerk

By:

  
Claude Alde

(202) 479-[REDACTED]

Enclosures





# ~ CURRAN COUNSEL ~

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**BY APPOINTMENT ONLY**

**By USPS Priority Mail 9405503699300262939536**

**June 01, 2022**

To: Supreme Court of United States  
Office of the Clerk  
Honorable Scott S. Harris, Clerk  
c/o Claude Alde  
1 First Street Northeast  
Washington, D.C. 20543-0001  
Tel.: +1 (202) 479-  
@SupremeCourt.gov

**RE: Curran v. Curran, N.J. Supreme Court docket #xx-427 (Sealed)  
Applicant-Petitioner's Letter Reply to Clerk's 2022-05-24 Letter (copy attached) returning  
Applicant-Petitioner's 2022-05-19 Application For An Extension Of Time and Motion For  
Leave To File Application As Within Time (attached for consideration, as per below)**

Dear Clerk of the Supreme Court and Mr. Alde,

I hope that you enjoyed a commemorative Memorial Day this past Monday.

Applicant-Petitioner respectfully acknowledges receipt on Friday, May 27, 2022, of the Clerk's letter sent May 24, 2022 ("2022-05-24 Letter")(see attached copy) that returned Applicant-Petitioner's as-filed 2022-05-19 Application For An Extension Of Time To File A Petition For A Writ of Certiorari and Motion For Leave To File Application As Within Time. The Clerk's 2022-05-24 Letter indicated that Applicant-Petitioner's Application was returned because it "is out-of-time." Applicant-Petitioner acknowledges that the 2022-05-19 Application was beyond the 90-day standard, non-extended statutory response period, but Applicant-Petitioner points out that it is within the 150-day statutory maximum extended response period, and thus not necessarily "jurisdictionally out of time" by statute under Rule 13.2. Therefore, Applicant-Petitioner combined the 2022-05-19 Application with a Motion For Leave To File Application As Within Time, which the Clerk's 2022-05-24 Letter did not address.

The Clerk's 2022-05-24 Letter stated that if "the time to file a petition for a writ of certiorari in a civil case has expired (including any habeas action), the Court no longer has the power to review the application or to consider an application for an extension of time to file the petition." Applicant-Petitioner respectfully and humbly disagrees that the Court "no longer has [said] power" for the reasons stated in Applicant-Petitioner's Motion For Leave To File Application As Within Time. Applicant-Petitioner summarizes and supplements those reasons herein.

Applicant-Petitioner respectfully asserts that, under the present situation, the Court has both statutory authority and rule-based "power to review the petition" and "to consider an



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To: Clerk of the Supreme Court of United States  
Re: Application For An Extension Of Time & Motion To File As Within Time

application for an extension of time to file the petition.” Therefore, Applicant-Petitioner respectfully asserts that it is within the Court’s statutory authority, power, and sound discretion to consider and grant Applicant-Petitioner’s motion and application, and to review and grant such a petition. Applicant-Petitioner humbly requests that the Clerk provide the Application and combined Motion to the Honorable Justice Alito for consideration and approval on the merits.

**Statutory Authority.** Statutory authority exists under 28 U.S.C. § 2101(c), which states, “A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.” Thus, 28 U.S.C. § 2101(c) has only two statutory limitations: (1) that good cause is shown, and (2) that the extension period does not exceed sixty days. Apart from these two statutory limitations, 28 U.S.C. § 2101(c) does not limit a justice’s statutory authority regarding when the justice may grant an extension of time. Furthermore, 28 U.S.C. § 2101(c) also does not address or limit when or how any extension shall be requested.

Indeed, 28 U.S.C. § 2101(c) does *not require* that *any* request for an extension of time be filed, let alone require that such a request for an extension of time be filed before the expiration of a time to file a related petition for a writ of certiorari. In the Court’s March 19, 2020 Order Regarding Filing Deadlines<sup>1</sup>, the Court implicitly acknowledged this broad statutory authority and corresponding presence of only two statutory limitations, by ordering blanket automatic extensions of such filing deadlines up to the statutory maximum of 150 days, without requiring filing of any related requests for extension by individual applicant-petitioners, based on a blanket judicial notice of showing of good cause due to COVID-19 difficulties.

The Court’s 2020-03-19 Order provided automatic extensions of time to every petition deadline during the COVID-19 crisis, without any individual petitioner filing any individual application for an extension of time, until the Court rescinded the automatic extension in the July 19, 2021 Order Rescinding Prior COVID Orders<sup>2</sup>. Therefore, by statute, each justice is permitted by §2101(c) to grant an extension, with or without filing any request for an extension, irrespective of when such request may be filed, so long as shown good cause exists and the total response period does not exceed 150 days from the trigger date. Consequently, a justice likewise has statutory authority to consider and grant a request for an extension of time in which said request is filed within the proposed extension, for good cause shown, and in extraordinary circumstances.

**Power Under Court Rules.** The Court has power and discretion over the Court Rules and their implementation. As the Court’s 2020-03-19 Order shows, the Court has power under the Court Rules to grant an extension of time, as well as automatic extensions of time, even in the absence of filing any individual request for any individual extension of time. The Court’s power and discretion are revealed, because Rule 13.5 otherwise requires the filing of an individual application for each extension of time. The Court’s 202-03-19 Order demonstrates that the Court

<sup>1</sup> See [https://www.supremecourt.gov/orders/courtorders/031920zr\\_d1o3.pdf](https://www.supremecourt.gov/orders/courtorders/031920zr_d1o3.pdf)

<sup>2</sup> See [https://www.supremecourt.gov/orders/courtorders/071921zr\\_4g15.pdf](https://www.supremecourt.gov/orders/courtorders/071921zr_4g15.pdf)



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To: Clerk of the Supreme Court of United States  
Re: Application For An Extension Of Time & Motion To File As Within Time

has discretion in applying, and deviating from, the Court Rules, given that the Court Rules, and Rule 13.5 in particular, mandate that “[a]n application to extend the time to file .... must be filed with the Clerk at least 10 days before the date the petition is due, except in extraordinary circumstances.” In entering the 2020-03-19 Order, the Court demonstrated that the “extraordinary circumstances” exception even permits the Court to extend the time even without any application for said extension to be filed. Given that the Court has the power and discretion to extend the time without and in the absence of filing a request for an extension, the Court therefore has the power and discretion to extend the time with an application filed within the requested extension that includes a showing of good cause and extraordinary circumstances.

Stated differently, because the “extraordinary circumstances” exception permits and empowers the Court to extend the time in the *absence of filing any application* for an extension of time, the “extraordinary circumstances” exception likewise permits and empowers the Court to extend the time in the event an application for an extension of time is filed within the requested extension. The well-accepted mechanism under common law to seek permission to file after expiration of a response period is to file a motion for leave to file as within time, which Applicant-Petitioner did in the combined 2022-05-19 Application For An Extension Of Time To File A Petition For A Writ Of Certiorari and Motion For Leave To File Application As Within Time. In permitting an applicant to show “good cause” and “extraordinary circumstances” under Rule 13.5, the Court Rules implicitly approve of the mechanism of a motion for leave to file as within time, apart from which an applicant would not have the means to show good cause and extraordinary circumstances provided for under Rule 13.5.

**Federal Practice.** Federal statutes likewise condone and permit filing of an application for an extension of time within the requested extension period, so long as the as-extended period does not exceed the statutory maximum. For example, in patent application practice before the United States Patent and Trademark Office, patent applicants commonly file a Petition For An Extension Of Time<sup>3</sup> under 37 CFR 1.136(a) during prosecution of their patent applications. A Petition under 37 CFR 1.136(a) may be filed within the requested extension, after the initial due date, and after expiration of initial response period. Under 37 CFR 1.136(a)(2), the applicant’s “reply must be filed prior to the expiration of the period of extension to avoid abandonment of the application.” The Court’s consideration and grant of Applicant-Petitioner’s motion and application would be consistent with, and in line with, other federal practices regarding requesting extensions of time.

**Good Cause, Extraordinary Circumstances, and No Prejudice.** Applicant-Petitioner’s accompanying as-filed combined 2022-05-19 Application and Motion set forth the detailed facts that demonstrate the good cause and extraordinary circumstances that support Applicant-Petitioner’s requested relief. In summary, Applicant-Petitioner properly researched important procedural issues having major significance on the presentation and confidentiality of volumes of

<sup>3</sup> See <https://www.uspto.gov/sites/default/files/documents/aia0022.pdf>



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To: Clerk of the Supreme Court of United States  
Re: Application For An Extension Of Time & Motion To File As Within Time

documents, only to learn that such issues were not addressed in the Court Rules. Applicant-Petitioner then sought the guidance of the Office Of The Clerk on Monday, May 09, 2022, several days before the Thursday, May 12, 2022 due date, and followed up on Wednesday, May 11, 2022, but the Clerk's Office did not get back to Applicant-Petitioner until Friday, May 13, 2022. The 2022-05-19 Application and Motion would not have been needed had the Clerk's Office gotten back to Applicant-Petitioner before the due date. These extraordinary circumstances present good cause for the Court to grant Applicant-Petitioner's Motion For Leave To File Application As Within Time, and likewise to grant the combined Application For An Extension Of Time To File A Petition For A Writ Of Certiorari. Moreover, granting the requested relief would not create any prejudice, as the matters at hand are not particularly time-sensitive to a difference of a few weeks, considering that the underlying litigation and appeals have spanned over four years.

**Summary.** Applicant-Petitioner respectfully and humbly requests that the Clerk provide to the Honorable Justice Alito Applicant-Petitioner's attached re-submission of the as-filed combined 2022-05-19 Application For An Extension Of Time To File A Petition For A Writ Of Certiorari and Motion For Leave To File Application As Within Time, and that Justice Alito likewise consider, approve, and grant them on the merits.

Thank you for your attention to this matter.

Respectfully submitted,  
/s/ Kevin M. Curran  
Kevin M. Curran, Esq.

**Enclosures:**

- Applicant-Petitioner's as-filed-stamped 2022-05-19 Application For An Extension Of Time To File A Petition For A Writ Of Certiorari and Motion For Leave To File Application As Within Time (original and two hard copies)
- Applicant-Petitioner's as-filed-stamped 2022-05-19 Certificate Of Service (original and copy)

**CC:** John E. Clancy, Esq. (via USPS Priority Mail Label 9405503699300262939550, without as-filed enclosures being re-submitted, with copies of as-filed-stamped cover pages, with copy of Clerk's 2022-05-24 Letter)

**CERTIFICATE OF SERVICE**

I certify, in compliance with 28 U.S.C. §1746(2), that copies hereof are being served on, by depositing an envelope containing the above documents in the United States Postal Service with first-class postage prepaid and properly addressed to, Respondent's Counsel, John E. Clancy, Esq., of Townsend, Tomai & Newmark, L.L.C., 100 South Jefferson Road, Suite 200, Whippany, New Jersey 07981, tel. (973) 539-0075, fax (973) 539-4151.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 01, 2022  
USPS Priority Label  
9405503699300262939550

/s/ Kevin Curran  
Kevin Curran  
*Applicant-Petitioner*

**SUPREME COURT OF THE UNITED STATES  
OFFICE OF THE CLERK  
WASHINGTON, DC 20543-0001**

June 7, 2022

Kevin Curran  
106 Newark-Pompton Turnpike  
Suite 203  
Little Falls, NJ 07424

RE: Curran v. Curran  
N.J. Sup. Ct. No. XX-427 (Sealed)

Dear Mr. Curran:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case was originally postmarked May 19, 2022 and received again on June 6, 2022. The application is returned for the following reason(s):

Your papers are returned for failure to reflect the changes requested in prior correspondence.

The application is out-of-time. The date of the lower court judgment or order denying a timely petition for rehearing was February 11, 2022. Therefore the application for an extension of time was due on or before May 12, 2022. Rules 13.1, 30.1 and 30.2. When the time to file a petition for a writ of certiorari in a civil case has expired (including any habeas action), the Court no longer has the power to review the petition or to consider an application for an extension of time to file the petition.

On March 19, 2020, the Court extended the deadline to file petitions for a writ of certiorari in all cases due on or after the date of that order to 150 days from the date of the lower court judgment, order denying discretionary review, or order denying a timely petition for rehearing. This is the maximum extension allowed by statute and rule, so the Court will not docket extension requests with respect to cert petitions covered by this order.

The Court's July 19, 2021 order rescinds that extension in any case in which the relevant lower court judgment, order denying discretionary review, or order denying a timely petition for rehearing was issued on or after July 19, 2021; for those cases, the deadline to file a petition for a writ of certiorari is as provided by Rule 13. For cases in which the relevant lower court judgment, order denying discretionary review, or order denying a timely petition for rehearing was issued before July 19, 2021, the deadline remains extended to 150 days from that judgment or order.

Sincerely,  
Scott S. Harris, Clerk

By:

  
Claude Alde

(202) 479-3[REDACTED]

Enclosures

**From:** Kevin@CurranCounsel.com  
**Sent:** Tuesday, June 21, 2022 19:50  
**To:** [REDACTED]@SupremeCourt.gov'  
**Cc:** 'L [REDACTED] Wood'  
**Subject:** Motion For Leave To File Application As Within Time for Application For Extension of Time to file a Petition For Writ of Certiorari  
**Attachments:** 2022-05-24 SCOTUS Clerk Letter returning 2022-05-19 Application .PDF; 2022-06-01 Petitioner Letter Reply to Clerk Letter rejecting Application For Extension of Time.pdf; 2022-06-07 SCOTUS Clerk Letter returning 2022-06-01 letter and 2022-05-19 Application .PDF

Dear Clerk Harris,

I regret the need to contact you, but I have not heard back from Claude Alde in response to three voicemails left seeking clarification of the two attached letters, dated May 24, 2022, and June 07, 2022, that Mr. Alde sent on your behalf. Also attached for your reference is my reply letter dated June 01, 2022.

Mr. Alde's 2022-05-24 letter returned my 2022-05-19 Application For An Extension Of Time To File A Petition For Writ Of Certiorari as out-of-time. However, Mr. Alde's 2022-05-24 letter did not mention or address my Motion For Leave To File The Application As Within Time that accompanied the 2022-05-19 Application For An Extension and that addressed the out-of-time issue. I submitted my 2022-05-19 Application and Motion after clarifying various issues regarding submissions under seal with the assistance of Deputy Clerk Laurie Wood (copied herein). The Motion For Leave and the Application For An Extension were filed after the 90-day statutory due date, but before the 150-day statutory maximum, which expires July 11, 2022 (thus, time is of the essence). Mr. Alde's 2022-05-24 letter asserted, "When the time to file a petition for a writ of certiorari in a civil case has expired (including any habeas corpus), the Court no longer has the power to review the petition or consider an application for an extension of time to file the petition." My 2022-06-01 letter addressed this assertion that "the Court no longer has the power" and argued using statutory support, rule-based support, and the Court's own practice to refute the assertion. Mr. Alde's 2022-06-07 letter did not address any of my arguments, but simply restated the earlier-stated position.

I am seeking a substantive consideration of my assertion that the Court indeed does have "the power to review the petition or consider an application for an extension of time to file the petition." In summary, as explained in detail in my 2022-06-01 letter, the statute includes no such limitation and does not require any request as a condition precedent to grant an extension of time (implicitly avoiding any statutory restriction on the timing of a request). Likewise, the rules are subject to the Court's discretion, and, with the Court's 2020-03-19 Order re COVID, the Court demonstrated that the Court may create an extension of time to file a petition even without any request being submitted – even though the Rules include no basis for an extension in the absence of a request, thereby demonstrating that the Court "has the power" to grant an extension of time even if the request for the extension is filed into the proposed extension period. Hence, the Court indeed does have the power, whether or not the Court chooses to use it.

Please advise me how I can obtain a decision on the merits on my arguments and this question of whether, regarding an application submitted into the proposed extension period, the Court "has the power to review the petition or consider an application for an extension of time to file the petition." For example, please let me know if there is a need to file a new regular motion under Rule 21 (with one original and 10 copies under Rule 33.2), possibly as an alternative to the previously-submitted Motion For Leave To File Application As Within Time with the Application For An Extension Of Time submitted under Rule 30.3 and Rule 22 (with one original and 2 copies under Rule 33.2). Because the Court's 2020-03-19 Order re COVID may have evidenced a precedential shift in SCOTUS practice, I am not sure of the applicability of historical motion types, such as a "motion to file out of time," or a "motion to direct the Clerk to file a petition for writ of certiorari out of time." In particular, the petition

itself is basically ready, but not otherwise printed, mailed, and submitted, so it would seem inapposite to request that the Clerk be directed to file a petition that has not yet been submitted. Hence, I sought an extension of time before submitting the petition. Your guidance would be greatly appreciated.

Respectfully submitted,  
Kevin

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**Kevin M. Curran, Esq.**

Admitted to NJ, NY & IL Bars  
USPTO Registration 43,571

**CURRAN COUNSEL**

TEL +1-650-283-0469

[Kevin@CurranCounsel.com](mailto:Kevin@CurranCounsel.com)

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AND IT AND ITS CONTENTS MAY BE PRIVILEGED & CONFIDENTIAL.  
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**Kevin@CurranCounsel.com**

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**From:** Kevin@CurranCounsel.com  
**Sent:** Monday, May 16, 2022 16:11  
**To:** 'L [REDACTED] Wood'  
**Subject:** RE: sealed material

Great, thank you! I will send my questions shortly.

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**Kevin M. Curran, Esq.**

Admitted to NJ, NY & IL Bars  
USPTO Registration 43,571

**CURRAN COUNSEL**  
TEL +1-650-283-0469  
[Kevin@CurranCounsel.com](mailto:Kevin@CurranCounsel.com)

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**From:** L [REDACTED] Wood [REDACTED]@supremecourt.gov>  
**Sent:** Monday, May 16, 2022 16:00  
**To:** 'kevin@currancounsel.com' <kevin@currancounsel.com>  
**Subject:** sealed material

Mr. Curran,

I'm writing because you requested my email address. Please note, we can't accept filings by email and we review the filings at the time we receive the paper filing in our Office.

Best,

L [REDACTED]

L [REDACTED] Wood  
Deputy Clerk  
Supreme Court of the United States  
202.479.3 [REDACTED]

**From:** Kevin@CurranCounsel.com  
**Sent:** Monday, May 16, 2022 16:51  
**To:** 'L [REDACTED] Wood'  
**Subject:** Procedures for filing under seal for different scenarios

Dear Deputy Clerk Wood,

Thank you for assisting me with my questions regarding filing under seal. I appreciate that you called me on Friday, May 13, 2022, to discuss the questions that I mentioned in my voicemails to the Clerk's Office on Monday, May 09, 2022, and follow-up Wednesday, May 11, 2022. You've been a great help already.

Below is a summarization of my mental notes of our discussion on Friday. If you would be so generous, I would appreciate your assessment and correction of the accuracy of my understanding of the processes to file documents under seal. My understanding is as follows:

1. Scenario #1: Assuming that the Petition For Writ Of Certiorari itself **does not** need to be redacted; only the Appendices are to be **filed under seal without redactions**

- a. Petition:

- i. Prepare a petition, without redactions, including a table of contents for the Appendices with some information identifying the Appendices' contents
  1. Each booklet of the petition is double-sided printed on 6.125"x9.25" 60# white paper, side-bound (e.g., two staples covered with tape), with 65# white cover stock front and back covers;
  2. 40 booklets of the petition are printed
  3. Also printed and included is one copy of the petition having the same formatting and typesetting as the booklet, but printed on 8.5"x11" 20# white paper
    - a. Question: Should the 8.5"x11" copy be left unbound, except for a binder clip, to facilitate scanning? Or should it be bound with a single staple?
- ii. Prepare a single page original (no copies) of the certificate of service on 8.5"x11" paper submitted together with the petition
- iii. Prepare a single page original (no copies) of the certificate of compliance on 8.5"x11" paper submitted together with the petition
- iv. Mail 40 booklets of the petition, along with one copy of the petition having the same formatting and typesetting as the booklet, but printed on 8.5"x11" 20# white paper
- v. Accompany the mailing of the petition with the single-page certificate of service
- vi. Accompany the mailing of the petition with the single-page certificate of compliance
- vii. Accompany the mailing of the petition with the motion documents in the next section

- b. Motion:

- i. Prepare a motion for leave to file a petition for writ of certiorari under seal, arguing why filing under seal is appropriate.
- ii. Prepare an Appendix having unredacted Appendices to be filed under seal
  1. Question: As an attachment to a motion, should the Appendix to be filed under seal be printed on 8.5"x11" paper?
  2. Question: As an attachment to a motion, may the Appendix to be filed under seal be printed on 6.125"x9.25" paper, bound separately from the petition?
  3. Question: May the Appendices be formatted using the 6.125"x9.25" formatting even if printed on 8.5"x11" paper?
- iii. Mail 1 original and 10 copies of the motion and motion attachments, each double-sided printed on 8.5"x11" white 20# paper
- iv. Accompany the motion with a package labeled "SEALED" that contains the unredacted Appendices
- v. Prepare a single page original (no copies) of the certificate of service on 8.5"x11" paper submitted together with the motion

- vi. Accompany the mailing of the motion with the single-page certificate of service
2. Scenario #2: Assuming that the Petition For Writ Of Certiorari itself **does not** need to be redacted; only the Appendices need to be **filed under seal with redactions, the redacted version for the public record**
  - a. Petition: same as above
  - b. Motion:
    - i. Prepare a motion for leave to file a petition for writ of certiorari under seal with redacted copies for the public record, arguing why filing under seal and redaction are appropriate.
    - ii. Prepare an Appendix having redacted Appendices to be filed under seal, with redacted copies for the public record
      1. Question: Should the motion include only the redacted version of the Appendices?
      2. Question: Should the motion include the unredacted version as well as the redacted version?
    - iii. Mail 1 original and 10 copies of the motion and motion attachments, each double-sided printed on 8.5"x11" white 20# paper
    - iv. Accompany the motion with a package labeled "SEALED" that contains the redacted Appendices (and any unredacted Appendices)
    - v. Prepare a single page original (no copies) of the certificate of service on 8.5"x11" paper submitted together with the motion
    - vi. Accompany the mailing of the motion with the single-page certificate of service
3. Scenario #3 Assuming that the Petition For Writ Of Certiorari itself **does** need to be redacted and be **filed under seal with redactions, the redacted version for the public record**
  - a. Petition: same as above, except as the petition is an attachment to the motion comprising 10+1 copies on 8.5"x11" paper, not 40 booklets on 6.125"x9.25" paper
  - b. Motion: same as above for Scenario #2, except that the petition is an attachment to the motion comprising 10+1 copies on 8.5"x11" paper
    1. Question: Should the motion include only the redacted version of the Petition?
    2. Question: Should the motion include the unredacted version as well as the redacted version?

Other general questions:

- A. Is there a street address or post office box address included in the mailing address of Supreme Court of the United States, Office of the Clerk, Washington, D.C. 20543-0001?
- B. Should or may a motion printed on 8.5"x11" paper be printed double-sided?
- C. Should or may a motion printed on 8.5"x11" paper be printed on standard 20#-pound white office paper?
- D. Should or may a scan-copy of a petition printed on 8.5"x11" paper be printed double-sided or single-sided?
- E. Should or may a scan-copy of a petition printed on 8.5"x11" paper be printed on standard 20#-pound white office paper or 60# white card stock?
- F. What should the margins be for a document printed on 8.5"x11" paper?
- G. May an Appendix printed on 8.5"x11" paper be a photocopy image reproduction of its original document?

Thank you in advance. I apologize that I could not decipher the details for these scenarios from the Court Rules, as the Rules do not appear to directly address these scenarios. If the Clerk's Office is interested, I would be happy to refine these step-by-step summarizations and present them in a manner suitable for the Clerk's Office to post on the Court's website for others' future reference.

Best regards,  
Kevin

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**Kevin@CurranCounsel.com**

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**From:** Kevin@CurranCounsel.com  
**Sent:** Tuesday, May 17, 2022 14:11  
**To:** 'L [REDACTED] Wood'  
**Subject:** RE: Procedures for filing under seal for different scenarios

Dear [REDACTED] Wood,

Thank you for your prompt response and the answers below, which are appreciated. As suggested, I will give you a call for remaining questions.

Much obliged,  
Kevin

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**From:** L [REDACTED] Wood [REDACTED]@supremecourt.gov>  
**Sent:** Tuesday, May 17, 2022 11:19  
**To:** 'Kevin@CurranCounsel.com' <Kevin@CurranCounsel.com>  
**Subject:** RE: Procedures for filing under seal for different scenarios

Mr. Curran,  
Thanks for your email. In response to your general questions:

- You may mail your paper filing to: Supreme Court of the United States, Clerk's Office, 1 First Street, NE, Washington, DC, 20543.
- Filings submitted on 8.5x11 paper may be single or double sided.
- The rules do not prescribe any particular weight of paper for 8.5x11 filings, so regular printer paper is standard.
- The rules do not prescribe any particular margins for 8.5x11 filings, so we usually advise standard 1" margins.
- As we discussed on the phone, if you are submitting appendix items in a supplemental appendix on 8.5x11 inch paper, you do not need to retype or type-set these appendices—you can use a photocopy of the original court order, etc. as long as it is legible.

As for your scenarios, it is too difficult to confirm all these specifics without more details or a paper filing to review. Once you've decided on the approach for your filing, I would be happy to address any lingering questions. Please give me a call if you have any remaining questions—it is easier to get the details needed by phone.

Best,

██████████ Wood  
Deputy Clerk  
Supreme Court of the United States  
202.479.3██████████

**From:** [Kevin@CurranCounsel.com](mailto:Kevin@CurranCounsel.com) <[Kevin@CurranCounsel.com](mailto:Kevin@CurranCounsel.com)>

**Sent:** Monday, May 16, 2022 4:51 PM

**To:** ██████████ Wood ██████████ <[██████████@supremecourt.gov](mailto:██████████@supremecourt.gov)>

**Subject:** Procedures for filing under seal for different scenarios

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Kevin

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