

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

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IN THE  
SUPREME COURT OF THE UNITED STATES

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ANDREW J.J. WOLF - PETITIONER

VS.

JOSH TEWALT, Director, IDOC; et al. - RESPONDENTS

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

Petitioner pro se, Andrew J.J. Wolf, in the above-captioned cause, pursuant to Supreme Court Rule 30, requests this Court to grant Petitioner a Ninty (90) day extension of time to file his Petition for Writ a Writ of Certiorari.

**HISTORY OF ACTION**

Petitioner had brought forth a civil rights case before the United States District Court, which upon its successive review order by a screening Judge was dismissed with prejudice pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii) & 1915A(b)(1).

Petitioner appealed to the Ninth Circuit Court of Appeals, which on December 15, 2022 issued its Memorandum, 2022 U.S. App. LEXIS 34631 (9th Cir. 12/15/22), with a copy of it attached hereto purusant to Supreme Court Rule 13.5.

Petitioner then on March 19, 2023 submitted to the Ninth Circuit Court of Appeals a timely Petition for Rehearing and/or Rehearing En Banc, which the Court denied on May 16, 2023. See 2023 U.S. App. LEXIS 12257 (9th Cir. 6/16/2023,

with a copy of it attached hereto pursuant to Supreme Court Rule 13.5, and making petitioner's Petition for Writ of Certiorari due on or before August 16, 2023.

GROUNDS FOR EXTENSION

Petitioner seeks a Ninety (90) day extension of time to file his Petition for Writ of Certiorari, making his new deadline for filing it on or before **November 14, 2023.**

Petitioner is not seeking this extension is not an attempt to dealy these proceedings whatsoever.

Presently Idaho Department of Correction ("IDOC") staff members, Access to Courts Coordinator Sandi Frelly, and Property Corporal Elizabeth Noble have chose to use IDOC Standard Operating Procedures (SOPs) as a means of inentional obstruction in Petitioner's attempts to have full access to his personal property as well as his legal property so as to not be able to meet the present deadline with this Court. All in violation of the Due Process Clause of the 14th Amendment, and right to prusue civil rights litigation in the federal courts, which has violated Petitioners First Amendment Right under the U.S. Constitution.

With these IDOC officials present actions of hindring and impedeing his access to his personal property papers and legal papers for this case he is not able to meet the current deadline of August 16, 2023 to submit his Petition for A Writ of Certiorari.

Petitioner has set forth more detailed facts in the accompanying Affidavit In Support of Extension of Time to File Petition for a Writ of Certiorari, and by this reference is incorporated herein as if restated in its entirety.

Petitioner seeks an additional 90 days to file his Petition making the new deadline on or before **November 14, 2023.**

### LEGAL ARGUMENT

Petitioner has set forth facts within his accompanying Affidavit regarding as to how IDOC Prison officials have intentionally implemented IDOC Standard Operating Procedures 405.02.01.001, Access to Courts (SOP 405) and Standard Operating Procedure 320.02.01.001, Property: State Issued and Inmate Personal Property (SOP 320) as a means of intentional administrative obstruction, of official interference with individual presentation of his claims to the courts.

Petitioner has set forth facts that SOP 405 and SOP 320 violates the Fourteenth Amendment Due Process Clause due to their intentional administrative obstruction, of official interference with his presentation of claims to the courts that is the heart of this issue.

Just one year after this Court in Lewis v. Casey, 518 U.S. 343, 351 (1996) held that one had to prove an "actual injury" and not just a theoretical deficiency in the state's access to courts program, that is, the inmate must show "that the alleged shortcomings in the library or legal assistance program hindered his efforts to pursue a legal claim. *Id.* at 351. The Alaska Supreme Court in Mathis v. Sauser, 942 P.2d 1117, 1120-23 (Alaska 1997) had determined that a prisoner need not show an actual injury when prison officials have intentionally implementing administrative obstruction of "past or imminent official interference with individual inmates' presentation of claims to the courts. *Id.* at 1123.

In line of cases, this Court has "held that the First Amendment right to petition the government includes the right to file other civil actions in court that have a reasonable basis in law or fact." Silva v. Di Vittorio, 658, F.3d 1090, 1102 (9th Cir. 2011) (internal citations omitted). "This right ... forbids states from "errect[ing] barriers that impede the right of access of incarcerated

persons." John L. Adams, 969 F.2d 228, 235 (6th Cir. 1992) (emphasis added), Silva v. Di Vittorio, 658 F.3d at 1102. "[P]risoners also have a right to, protected by the First Amendment right to petition and the Fourteenth Amendment right to substantive due process, "to pursue legal redress for claims that have a reasonable basis in law or fact." Snyder v. Nolen, 380 F.3d 279, 291 (citing Johnson v. Atkins, 999 F.2d 99, 100 (5th Cir. 1993)). Silva supra, 658 F.3d at 1102.

It has been observed that "intentional obstruction of a prisoner's access to courts is precisely the sort of oppressing that the Fourteenth Amendment and Section 1983 are intended to remedy." Morello v. James, 810 F.2d 344, 347 (2d Cir. 1987). The relevance of intent was similarly recognized in Harris v. Ostrout, 65 F.3d 912 (11th Cir. 1995), where the court noted that "the First Amendment grants prisoners a limited right of access to courts. The state may not burden this right with practices that are not reasonably related to legitimate penological objectives, nor act with intent of chilling the First Amendment Right. *Id.* at 918. (citations omitted, emphasis added). These holdings may be viewed as elaborations of the fundamental principle established in Ex parte Hull, 312 U.S. 546 (1941) that a state and its officers may not usurp the court's function by pre-judging in any way the merits of an inmate's legal claims.

The Idaho and U.S. Constitutions precludes any action aimed at impeding an inmate's access to the courts as Petitioner has demonstrated in his accompanying affidavit.

As for any penological objectives that may arise, Petitioner pointed out in his affidavit that he has always maintained 3 cft. of personal papers and then stores his excess legal materials. Then obtains them as needed to file pleadings with the Court's and returns them for storage when the filing is made. Therefore

there is no penological reason to deny Petitioner access to the stored legal materials needed to file his Petition for a Writ of Certiorari.

CONCLUSION

For the reasons set forth above, and in the accompanying affidavit, Petitioner seeks this Court to grant his motion for extension of time to file the petition for a writ of certiorari, and any further relief as allowed by law.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on **August 4, 2023**.

  
Andrew J.J. Wolf, Petitioner

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IN THE  
SUPREME COURT OF THE UNITED STATES

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ANDREW J.J. WOLF - PETITIONER

VS.

JOSH TEWALT, Director, IDOC; et al. - RESPONDENTS

**AFFIDAVIT IN SUPPORT OF MOTION FOR EXTENSION OF TIME TO FILE  
A PETITION FOR A WRIT OF CERTIORARI**

STATE OF IDAHO        )  
                          : ss.  
County of ADA         )

Andrew J.J. Wolf, after being duly sworn upon his oath deposes and says as follows:

1. I am of sound mind and the Petitioner in this case, and I offer the following to show good cause for this Court to grant my request for an extension of time to file a Petition for Writ of Certirari.

2. I am seeking a NINETY (90) day extension to file me Petition for a Writ of Certiorari, making my new deadline November 14, 2023.

3. The Ninth Circuit Court of Appeals field its Memorandum affirming the district court's Order on December 15, 2022, 2022 U.S. App. LEXIS 34621 (9th Cir. 12/15/2022). See a copy of this Memorandum attached hereto as Exhibit

1.

4. I then submitted on March 19, 2023 a Petition for Rehearing and/or Rehearing En Banc. The Ninth Circuit Court of Appeals denied this on May 16, 2023, 2023 U.S. App. LEXIS 12257 (9th Cir. 5/16/2023). See a copy of this Order attached hereto as Exhibit 2.

5. Currently the deadline for filing a Petition for a Writ of Certiorari is August 6, 2023, Sunday, making it due August 7, 2023.

6. I have not had any contact with respondents counsel regarding this extension of time I am seeking, and it is not intended to hinder or delay these proceedings whatsoever.

7. The reason for my extension is due to Idaho Department of Corrections ("IDOC") Access to Courts Coordinator Sandi Frelly having taken all but 3 cubic feet of Petitioner's legal documents, as well as Idaho State Correctional Center Property Cpl. Elizabeth Nobel refusing to permit Petitioner access to other property of mine which the officer who inventoried it claimed it was excess when it was not. Additionally, Cpl. Nobel and Frelly are retaliating against me for exercising my right to redress government officials in a current court case that concerns property and access to courts issues.

8. On June 22, 2023, Sandi Frelly and ISCC Paralegal Krisin Perales came to my cell and had me give them all but 3 cubic feet of legal papers to them, with the remaining 16 boxes being taken to the designated area for excess legal storage.

9. When this was done I verbally requested that I be permitted to have 2 boxes related to this case, along with 3 other boxes related to another case so I could meet the current filing deadline in this case and the other case. Frelly denied this request.

10. On June 27, 2023, I was then placed in Segregation pending a Special Investigation, and was not released from it and returned to my living Unit until July 3, 2023, and I did not get any of my personal property back until July 5, 2023.

11. The Unit staff member who inventoried my property when I was placed in segregation was Cpl. J. Ward, who chose to take all of my legal materials he could identify and send them to the ISCC Paralegal on June 27, 2023, and then took my personal papers and confiscated them as excess papers, when IDOC Standard Operating Procedure 320.02.01.001, Property: State Issued and Inmate Personal Property allows me to have 3 cft. of papers. These items have not been returned to me at all, and contain legal documents as well.

12. Cpl. Noble on July 5, 2023, chose to take my JP7 Tablet, a device we are allowed to have that has features such as a calendar, Lexis/Nexis access, and other means to store legal research I have done so as I could prepare my Petition for Writ of Cert. in this case and forward it to Investigations. I have not received it back from them, and have currently begun the exhaustion of my administrative remedies to have it returned so I may be able to file my petition with this Court.

13. On or about July 14, 2023, IDOC Access to Courts Coordinator Sandi Frelly had me come to ISCC Property to go through some of the stored legal boxes she had taken. I told her I needed to go through the boxes that Property had stored as being confiscated as they contained legal documents for this case as well as others. She refused to do this. I then told her we were done with her retaliatory actions and her attempts to place barriers in place with a Standard Operating Procedure 405.02.01.001, Access to Courts, ("SOP 405), and SOP



320.02.01.001 Property: State Issued and Inmate Personal Property ("SOP 320). Copies of these two SOPs can be viewed at IDOC's web site, [www.idoc.idaho.gov](http://www.idoc.idaho.gov), keyword search "320.02.01.001" and "405.02.01.001", with property limits listed in SOP 320 under "References" with a hyperlink to them.

14. Due to Ms. Frelly's actions I informed her we were done attempting to resolve any issues verbally as she was refusing to cooperate with me due to ongoing litigation that directly involved her and her barriers she was placing in my attempt to have access to my legal materials and I would communicate this with her attorney of record, and told her we were done. She left.

15. Ms. Frelly then returned in less than 5 min with the two boxes of legal materials that were directly related to this case and informed me that the stuff was not a current case, and was going to have property store it as excess papers which I would have 45-days to initiate my administrative remedies on, mail out, have picked up or destroy.

16. I attempted to explain to Frelly that the ISCC Paralegal Perales had sent me the Ninth Circuit Pacer Notification on or about 5/16/2023 and also had been fully aware I had requested a Petition for a Writ of Certiorari and based upon the packet that was provided to me my filing deadline was 90 days from 5/16/2023 making it on or about 8/16/2023. Frelly told me it was not active and refused to let me have it or store it in legal storage.

17. On 8/4/2023 Frelly came to my Unit and asked me when I wanted to go through my legal stuff she was storing. I informed her we were not going to do that as she was refusing to provide me with the materials I needed to file my petition in this case, and she was being uncooperative in the matters due to her using SOP 320 and SOP 405 as a means to prevent me from presenting my claims

to this Court as well as the Ninth Circuit on a Appeal which the Opening Appellant's Brief is Due on 8/28/2023, and a state district court Appeal of a Habeas Corpus concerning her and Cpl. Noble's actions on these particular matters.

18. Frelly then sent me a ISCC Resource Center Response regarding our 8/4/2023 encounter in my unit at my cell. In this response she asked me for documentation to prove that this case was still opened. I responded to this with my second step in the exhaustion of administrative remedies by sending her a "Resident Concern Form" which I provided the dates from the Ninth Circuit's Memorandum and Order the ISCC Resource Center, her office she supervises, sent to me which she can verify by looking at the Resource Center Activity Log under my name and IDOC Number. I am still awaiting a reply to this Resident Concern Form.

19. IDOC SOP 320 under Property Limits states I am authorized 3 cft. of papers, which can be personal or legal. I have always made it personal papers due to the fact SOP 405 permits me to store excess legal materials, and when I need them I obtain them from storage to utilize and then return them when I have completed the filing.

20. Presently the way respondents have written SOP 405, Access to Courts and SOP 320 Property, it has been done in a manner so as to erect barriers in a prisoner, such as myself, to hinder and impede my ability to present my claims to the Courts so as to challenge my sentences and conditions of confinement. This violates the Fourteenth Amendment due process clause, and my First Amendment right to petition the government in civil actions in court that have a reasonable basis in law or fact.

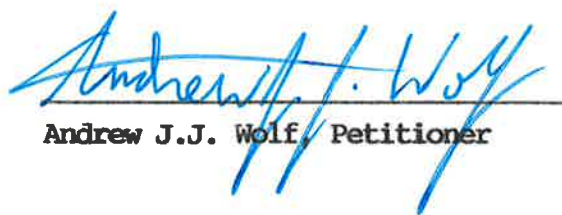
21. Additionally, Freely and Noble's actions have also undermined these protections as they have taken an adverse action against me, all because of me being a prisoner who attempts to ensure his civil rights are protected, which is protected conduct, and now has chilled my right to exercise my First Amendment Rights, which does not reasonably advance a legitimate correctional goal in my request to have the stored excess legal materials so I may present my claims to this Court, and other courts then return them to storage when completed until I need them again for a filing.

22. These actions I have described above, will result in another violation of my First Amendment Rights to access the courts if I am not permitted the materials so I may meet the deadline for filing the petition for writ of cert of August 16, 2023, and my proposed new deadline of November 14, 2023, due to the fact I cannot meet the current 8/16/23 due to Noble and Freely's actions and nonactions in this matter.

23. For these reasons I have set forth good cause for the granting of a extension of time for filing a Petition for Writ of Certiorari, with my new deadline for filing of on or before November 14, 2023.

This ends my affidavit.

Date: August 4, 2023.

  
Andrew J.J. Wolf, Petitioner

CERTIFICATION UNDER PENALTY OF PERJURY

I certify under penalty of perjury pursuant to the law of the State of Idaho I have read the foregoing AFFIDAVIT IN SUPPORT OF MOTION FOR EXTENSION OF TIME TO FILE A PETITION FOR WRIT OF CERTIORARI, and it is true and correct to the best of my knowledge and belief.

Dated: August 4, 2023

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Andrew J.J. Wolf, Petitioner