

No. A-_____

In the Supreme Court of the United States

BRUCE SANDS, JR., PETITIONER

v.

PATRICIA V. BRADLEY,
IN HER CAPACITY AS WARDEN
RESPONDENT

*APPLICATION FOR AN EXTENSION OF TIME TO FILE
A PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT*

**APPLICATION OF PETITIONER TO THE
HONORABLE ELENA KAGAN AS CIRCUIT JUSTICE**

UNOPPOSED APPLICATION FOR EXTENSION OF TIME

To the Honorable Elena Kagan, Associate Justice of the Supreme Court and
Circuit Justice for the Court of Appeals for the Ninth Circuit:

Pursuant to 28 U.S.C. §§ 1254, 2101(c) and Supreme Court Rules 13.5 and 22,
Applicant Bruce Sands respectfully requests a 60-day extension of time from Wednes-
day, September 6, 2023, up to and including Monday, November 6, 2023, within which
to file a petition for writ of certiorari.

The Office of the Solicitor General has consented to this extension.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

Sands seeks review for the judgment of the Ninth Circuit in *Sands v. Bradley*, Case No. 21-55759 (9th Cir. June 8, 2023),¹ attached as Exhibit A.

JURISDICTION

The judgment of the Ninth Circuit issued on June 8, 2023. This Court has jurisdiction over any timely filed petition under 28 U.S.C. §§ 1254 and 2101(c). Under Rules 13.1, 13.3, and 30.1 of the Rules of this Court, a petition for certiorari is due to be filed on or before September 6, 2023. As required by Rule 13.5, Sands files this application more than 10 days in advance of that date.

REASONS JUSTIFYING AN EXTENSION OF TIME

Applicant requests this 60-day extension because of the importance of the issues presented and undersigned counsel’s need for additional time to prepare a petition that will assist the Court in deciding whether to grant certiorari.

Importance of issues presented. As this Court—just last Term—indicated an inmate could do, Sands sought a writ of habeas corpus under 28 U.S.C. § 2241 to “challenge[] ‘the legality of his *detention*’ without attacking the validity of his *sentence*.” See *Jones v. Hendrix*, 599 U.S. ___, 143 S. Ct. 1857, 1867 (June 22, 2023). His petition alleges that under no set of circumstances could his ongoing imprisonment satisfy the Eighth Amendment and therefore he is entitled to immediate release. Sands alleges that his severe preexisting health conditions increase his risk of death

¹ The decision is reported under the caption of the companion case: *Pinson v. Carvajal*, 69 F.4th 1059 (9th Cir. 2023). Sands’s case is mis-captioned in the Ninth Circuit, an error that counsel is currently addressing.

and serious bodily injury should he catch COVID-19 and thus knowingly confining him in poorly-ventilated living conditions with prisoners testing positive for COVID-19 constitutes deliberate indifference. Pursuant to Section 2241, he sought to challenge the fact or duration of his confinement. The district court dismissed his petition for lack of jurisdiction without reaching the merits of his Eighth Amendment claim.

The Ninth Circuit affirmed, holding that the district court lacked habeas jurisdiction under Section 2241 for Sands’s claims regarding his conditions of confinement. In doing so, it openly split with other circuits which had found habeas jurisdiction over claims based on similar prison conditions, including for medically-vulnerable inmates. Compare Op. 27 & n. 12 (noting that “our sister circuits go astray”), with *Wilson v. Williams*, 961 F.3d 829, 838 (6th Cir. 2020) (courts have habeas jurisdiction under Section 2241 to adjudicate medically-vulnerable inmates’ claims regarding prison conditions), and *Hope v. Warden York Cty. Prison*, 972 F.3d 310, 324 (3d Cir. 2020) (habeas jurisdiction is “a means of challenging unconstitutional conditions of confinement”).

The Ninth Circuit’s decision punctuates a split on a question that this Court has “left open”—i.e., “whether [inmates] might be able to challenge their confinement conditions via a petition for a writ of habeas corpus.” *Ziglar v. Abbasi*, 582 U.S. 120, 144 (2017); see also, e.g., *Aamer v. Obama*, 742 F.3d 1023, 1037—1038 (D.C. Cir. 2014) (acknowledging split among circuits as to whether habeas jurisdiction exists under Section 2241 for claims about conditions of confinement); *Spencer v. Haynes*, 774 F.3d 467, 470—471 (8th Cir. 2014) (same); *Farabee v. Clarke*, 967 F.3d 380, 395

(4th Cir. 2020) (same); *Poree v. Collins*, 866 F.3d 235, 243—244 (5th Cir. 2017) (same). An extension of time is warranted to ensure that this exceptionally important question of habeas jurisdiction is appropriately addressed.

Even beyond that, the Ninth Circuit’s ruling runs contrary to a premise that this Court assumed just a few months ago in *Jones*: that habeas jurisdiction under Section 2241 remain available to prisoners proceeding on “manner-of-detention challenges.” *Jones*, 143 S. Ct. at 1867. An extension of time is warranted to allow counsel to adequately prepare a petition addressing these intersecting precedents on the exceptionally important question of habeas jurisdiction in the wake of *Jones*.

New counsel’s need for additional time. Applicant has secured pro bono counsel to file his petition and is in the process of onboarding that counsel. New counsel was not involved in the proceeding below and will require additional time to familiarize themselves with the record, research the complex legal issues presented, and prepare a petition that fully and concisely addresses the important issues of habeas jurisdiction raised by the decision below. Preparing the petition will require careful study of habeas precedents and history to fully present the issues in a manner that will be most helpful to the Court.

Undersigned counsel has substantial professional commitments warranting an extension, including an opening brief in *United States v. Rico* (9th Cir. No. 23-807) currently due on August 28, 2023, an opening brief in *United States v. Millender* (9th Cir. No. 22-50166) currently due on August 30, 2023, an opening brief in *United States v. Plascencia* (9th Cir. No. 22-50221) currently due on October 2, 2023, an

opening brief in *United States v. Fleming* (9th Cir. No. 23-1515) currently due on October 17, 2023, and an answering brief in *United States v. Wilson* (9th Cir. No. 23-50016) currently due on October 19, 2023. Anticipated pro bono counsel also has substantial professional commitments warranting extension. These include: argument before the Ninth Circuit in *Davis v. Pinterest, Inc.* (No. 22-15804) in San Francisco, California, on August 24, 2023 (the day before this Application is due); argument before the Second Circuit in *S.E.C. v. Yin* (No. 23-575) in New York, New York, on September 5, 2023 (the day before the petition is currently due); argument before the Ninth Circuit in *Best Carpet Values, Inc. v. Google LLC* (No. 22-15899) in San Francisco, California, on September 13, 2023.

CONCLUSION

Applicant respectfully requests a 60-day extension, up to and including to and including Monday, November 6, 2023, within which to file a petition for certiorari.

Respectfully submitted,



CUAUHTEMOC ORTEGA
Federal Public Defender
ANDREW TALAI
Deputy Federal Public Defender
321 E. 2nd Street
Los Angeles, CA 90012
(213) 894-7571
Andrew_Talai@fd.org

Counsel for Applicant

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