

No. 23-\_\_\_\_\_

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

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LYNDON FITZGERALD PACE,

*Petitioner,*

v.

SHAWN EMMONS, Warden,  
Georgia Diagnostic and Classification Prison,

*Respondent.*

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

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TO THE HONORABLE CLARENCE THOMAS,  
Associate Justice of the Supreme Court of the United  
States, and Circuit Justice for the United States Court of  
Appeals for the Eleventh Circuit:

The Petitioner, Lyndon Fitzgerald Pace, through undersigned counsel and pursuant to 28 U.S.C. § 2101(c) and Supreme Court Rules 13.5 and 30.2, respectfully requests an extension of sixty (60) days to file his Petition for Writ of Certiorari in this Court. The decision he seeks

to have reviewed is the decision of the United States Court of Appeals for the Eleventh Circuit entered on May 11, 2023 (*see* Attachment A) and for which his Petition for Rehearing En Banc was denied on July 11, 2023 (*see* Attachment B). Petitioner's time to petition for a Writ of Certiorari in this Court expires October 9, 2023, greater than ten (10) days from today's date. Mr. Pace invokes the jurisdiction of this Court pursuant to 28 U.S.C. § 1254.

Petitioner shows the following good cause in support of this request (*see* 28 U.S.C. § 2101 (c) and Supreme Court Rules 13.2 and 30.2):

1. Mr. Pace is a death-sentenced prisoner in the custody of Respondent Warden Emmons. A panel of the Eleventh Circuit Court of Appeals affirmed the denial of relief by the United States District Court for the Northern District of Georgia. *See* Attachment A, *Pace v. Warden, Georgia Diagnostic and Classification Prison*, 2023 WL 3376683 (unpublished).

2. Petitioner is compelled to request an extension of time in which to file this Petition for good cause. First, counsel has had and continues to have pressing professional obligations. Undersigned counsel is sole counsel in this case. Counsel's full caseload includes a number of capital cases in federal court, including as co-counsel in *Pye v. Warden*, No. 23-10, whose Petition for Writ of Certiorari from the *en banc* decision of the Eleventh Circuit was filed July 7, 2023 and is currently pending before this Court. Following the grant of a 45-day extension of time, the Warden's brief in opposition in the *Pye* case is currently due September 25, 2023, making Mr. Pye's reply

in that case due the same week as Mr. Pace's Petition is currently due.

3. Moreover, one of the issues presented in the *Pye* case, the Eleventh Circuit's misapplication of the AEDPA and continued noncompliance with this Court's decision in *Wilson v. Sellers*, 138 S. Ct. 1188 (2018), presenting a split with the other circuits, is also presented in Petitioner's case. This Court's decision whether to grant certiorari on this issue in *Pye* will necessarily impact Mr. Pace's case. Because that decision will come after Mr. Pace's Petition is currently due in this Court, extending the time to file Mr. Pace's Petition will best serve judicial economy.

4. Additionally, the Eleventh Circuit improperly applied the AEDPA to the federal constitutional issues in this case, including counsel's ineffective assistance under *Strickland v. Washington*, 466 U.S. 668 (1984), and prosecutorial misconduct so extreme that one panel member wrote separately to express "disgust at how outrageous the prosecution's conduct in closing argument was," *Pace*, 2023 WL 3376683 at \*41 (Rosenbaum, J., concurring); *Darden v. Wainwright*, 477 U.S. 168 (1986); *Donnelly v. DeChristoforo*, 416 U.S. 637 (1974). A Petition for Writ of Certiorari is essential, and counsel respectfully asks for additional time in which to properly winnow these issues for consideration by this Court.

## CONCLUSION

Mr. Pace asks this Court to extend the deadline to file the Petition for Writ of Certiorari by sixty (60) days, up to and including December 8, 2023.

Respectfully Submitted,

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September 14, 2023