

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

---

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

---

MATTHEW SPAETH,  
*Petitioner,*

v.

UNITED STATES OF AMERICA,  
*Respondent.*

---

On Petition for a Writ of Certiorari to the  
United States Court of Appeals for the Tenth Circuit

---

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

---

MELODY BRANNON  
Federal Public Defender

DANIEL T. HANSMEIER  
Appellate Chief  
*Counsel of Record*

PAIGE A. NICHOLS  
Assistant Federal Public Defender  
KANSAS FEDERAL PUBLIC DEFENDER  
500 State Avenue, Suite 201  
Kansas City, Kansas 66101  
Phone: (913) 551-6712  
Email: daniel\_hansmeier@fd.org  
*Counsel for Petitioner*

---

To the Honorable Neil M. Gorsuch, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Tenth Circuit:

Petitioner Matthew Spaeth, by undersigned counsel, prays for a 30-day extension of time, to and including Monday, December 11, 2023, in which to file a petition for a writ of certiorari. In support of this request, counsel states as follows:

1. On June 12, 2023, the United States Court of Appeals for the Tenth Circuit affirmed the district court's dismissal of Mr. Spaeth's 28 U.S.C. § 2255 motion.

(Attachment A.) On August 11, 2023, the United States Court of Appeals for the Tenth Circuit denied Mr. Spaeth's timely petition for rehearing and petition for rehearing en banc. (Attachment B.)

2. Mr. Spaeth has ninety days from the date of the denial of the petition for rehearing to file a petition for a writ of certiorari. Sup. Ct. R. 13.3. The petition is therefore due on November 9, 2023. This application is being filed at least ten days before that date.

3. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

4. Mr. Spaeth's appeal is one of a large number of cases involving the Kansas United States Attorney's Office's intentional intrusions into attorney-client communications with no legitimate law-enforcement purpose. *See United States v. Orduno-Ramirez*, 61 F.4th 1263, 1267 (10th Cir. 2023) ("As the district court put it, the USAO committed 'systemic prosecutorial misconduct' with 'far reaching implications in scores of pending [] cases,' and exacerbated the harm by 'delay[ing] and obfuscat[ing] th[e] investigation' into its misconduct."). Below, the Tenth

Circuit held that Mr. Spaeth could not challenge his conviction or sentence, however, because of this Court's decision in *Tollett v. Henderson*, 411 U.S. 258 (1973). Attach. A at 11-19.

5. The Tenth Circuit's published opinion in this appeal forecloses relief not just for Mr. Spaeth, but for some thirty-plus other defendants. The district court recently started to deny relief in other cases based on the decision in this case. Those cases will soon reach the Tenth Circuit. The Tenth Circuit will undoubtedly affirm based on the decision in this case. And those defendants will then have to seek certiorari in this Court, raising the identical question Mr. Spaeth intends to raise in this Court.

6. Rather than file piecemeal petitions in this Court, we intend to file a single joint petition. A single joint petition will save judicial resources and the resources of the parties. To file a joint petition, however, the Tenth Circuit must first affirm in the other cases identically situated to this case. Through expedited proceedings, we think that this can be accomplished within the next five weeks.

7. To file a joint petition, we need additional time. For this reason, Petitioner Matthew Spaeth respectfully requests that an order be entered extending the time in which to petition for a writ of certiorari by 30 days, to and including, Monday, December 11, 2023. *See* Sup. Ct. R. 13.5.

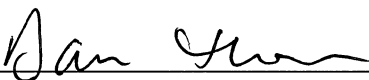
8. Additionally, counsel who litigated this case in the Tenth Circuit and is most familiar with it has been unable to complete the petition to date and will be unable to complete it by the current due date given other obligations since the Tenth

Circuit denied Mr. Spaeth’s petition for panel rehearing or rehearing en banc, including the post-judgment management of 30-plus related 28 U.S.C. § 2255 actions in the district court; *United States v. Dewey*, 10th Cir. Appeal No. 23-3055 (reply brief filed Sept. 22, 2023); *United States v. Hay*, 10th Cir. Appeal No. 22-3276 (reply brief filed Sept. 22, 2023); *United States v. Briscoe*, 10th Cir. Appeal No. 23-3109 (opening brief due Oct. 20, 2023); and *United States v. Peppers*, 10th Cir. Appeal Nos. 23-3112, 23-3113 (consolidated opening brief due Oct. 25, 2023).

9. Given their own current caseloads, no other attorney in the Office of the Federal Public Defender is in a position to file the petition by its current due date. For this reason as well, we respectfully request that an order be entered extending the time in which to petition for a writ of certiorari by 30 days, to and including, Monday, December 11, 2023. *See* Sup. Ct. R. 13.5.

Respectfully submitted,

MELODY BRANNON  
Federal Public Defender



---

DANIEL T. HANSMEIER  
Appellate Chief  
*Counsel of Record*  
KANSAS FEDERAL PUBLIC DEFENDER  
500 State Avenue, Suite 201  
Kansas City, Kansas 66101  
Phone: (913) 551-6712  
Email: daniel\_hansmeier@fd.org  
*Counsel for Petitioner*