

No. 23A-

IN THE
SUPREME COURT OF THE UNITED STATES

ANGELA GERMAINE SPENCER, BY AND
THROUGH NEXT FRIEND AND MOTHER OF A.S.,
A MINOR,

Applicant,

v.

THE COUNTY OF HARRISON, TEXAS,

Respondent.

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

APPLICATION FOR EXTENSION OF TIME TO FILE
A PETITION FOR A WRIT OF CERTIORARI

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**APPLICATION FOR EXTENSION OF TIME IN WHICH TO FILE A
PETITION FOR A WRIT OF CERTIORARI**

TO: The Honorable Samuel A. Alito, Jr., Associate Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Fifth Circuit:

Pursuant to 28 U.S.C. § 2101(c) and Rules 13.5 of the Rules of this Court, Applicant Angela Germaine Spencer, by and through next friend and mother of A.S., a minor, respectfully requests an extension of thirty (30) days in which to file a petition for a writ of certiorari in this case. The U.S. Court of Appeals for the Fifth Circuit issued its decision on August 7, 2023. *See Spencer by and through A.S. v. County of Harrison Texas*, 2023 WL 5031486 (5th Cir. Aug. 7, 2023); App. Exh. 2. The Fifth Circuit denied the petition for rehearing en banc on October 11, 2023. App. Exh. 1.

Absent extension, the time to file a petition for writ of certiorari will be January 9, 2024. With the requested extension, the petition would be due on February 8, 2024. This application is being filed more than ten days before the petition is due. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1253(1). In support of this application, Applicant states:

1. This case is a serious candidate for review. In *Deck v. Missouri*, 544 U.S. 622, 626 (2005), this Court forbade the use of visible shackles on a defendant during both the guilt and penalty phase of a criminal trial, absent the existence of “a special need.” The Court explained that this prohibition “has deep roots in the common law”

and “forms part of the Fifth and Fourteenth Amendments’ due process guarantee.” *Id.* at 626–27. The rule reinforces three foundational principles: the presumption of innocence, the right to counsel, and the dignity of the judicial process. *Id.* at 630–32. *Deck* did not address whether an individualized investigation of need is necessary for (1) pre-trial or trial proceedings outside the presence of a jury or (2) juvenile proceedings.

2. This matter presents both those questions for review. In 2018, A.S. was taken into custody following incidents involving the hitting, biting, and scratching of staff members at his elementary school. A.S. was ten years old at the time. A.S., a Black male student, has ADHD and is disabled. While in detention, A.S. was evaluated and supervised by detention officials. There were no reports of further incidents or behavior warranting disciplinary action during A.S.’s detention. Nevertheless, Harrison County had a policy of routine shackling of juveniles prior to and during pre-trial proceedings. Pursuant to that policy, A.S. was shackled, without an assessment of need, during his appearance before a juvenile court judge. At the end of this hearing, he was released to his mother. The Fifth Circuit rejected A.S.’s constitutional claims, brought under 42 U.S.C. § 1983.

3. Although the Fifth Circuit declined to recognize a right to an individualized determination of need in this context, other courts have done so. In *United States v. Sanchez-Gomez*, 138 S. Ct. 1532 (2018), the Court granted review to resolve a circuit split over whether *Deck* extends to criminal proceedings outside of a jury. The en banc Ninth Circuit has answered this question in the affirmative; the

Second and Eleventh Circuits have held otherwise. The Court subsequently dismissed *Sanchez-Gomez* on jurisdictional grounds, and so did not decide these questions. *Id.* at 1542.

4. Additionally, several state courts have recognized that an assessment of need is necessary for juvenile shackling. See *In re Staley*, 364 N.E.2d 72, 73 (Ill. 1977); *State ex rel. Juv. Dep't of Multnomah Cnty. v. Millican*, 906 P.2d 857 (Ore. Ct. App. 1995); *State v. E.J.Y.*, 55 P.3d 673 (Wash. Ct. App. 2002).

5. In sum, this case presents substantial and recurring questions on which the federal circuit courts and state courts of last resort are divided. As a result of these splits, there is a reasonable prospect that this Court will grant the petition, such that it warrants additional time for these important questions to be fully addressed.

6. Mr. Cirkiel and the University of Virginia Supreme Court Litigation Clinic are working diligently to prepare the petition, but need additional time to complete, print, and file Applicant's petition. Applicant recently requested assistance from the Clinic, after the petition for rehearing en banc was denied. The extension is needed for Clinic faculty and staff to fully familiarize themselves with the record, the decisions below, and the relevant case law. In addition, Mr. Cirkiel faces several overlapping deadlines in other matters during the existing time for preparation of a petition for writ of certiorari in this case, including an en banc argument before the Fifth Circuit on January 23, 2024. In light of the Clinic and Mr. Cirkiel's obligations, including preparing three petitions for certiorari and assisting with various circuit

court proceedings, the Clinic would face significant challenges completing the petition by the current due date.

For these reasons, Applicant requests this Court grant an extension of thirty days to and including February 8, 2024, within which to file a petition for a writ of certiorari in this case.

Respectfully submitted,

_____/s/ Xiao Wang_____

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