

No. 23A603

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IN THE  
SUPREME COURT OF THE UNITED STATES

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

*Applicant,*

v.

THE COUNTY OF HARRISON, TEXAS,

*Respondent.*

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

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APPLICATION FOR SECOND EXTENSION OF TIME  
TO FILE 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 Rule 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 additional extension of twenty-two (22) 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. By order dated January 4, 2024, Justice Alito extended the time for filing a petition for certiorari from January 9, 2024 to February 8, 2024. With the requested extension, the petition would be due on March 1, 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 held that the Constitution forbids the use of visible shackles on a defendant during both the guilt and penalty phases 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 decide 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.

4. In *United States v. Sanchez-Gomez*, 138 S. Ct. 1532 (2018), the United States sought review, in part, to resolve a circuit split over whether *Deck* extends to criminal proceedings outside of a jury. The en banc Ninth Circuit had answered this

question in the affirmative; the Second and Eleventh Circuits disagreed. The Court granted the petition for a writ of certiorari but resolved *Sanchez-Gomez* on jurisdictional grounds and so did not weigh in on this split. *Id.* at 1542. The Fifth Circuit's decision deepens this split.

5. Additionally, contra the Fifth Circuit, several state courts have held that an assessment of need is necessary for juvenile shackling. *See In re Staley*, 364 N.E.2d 72, 73 (Ill. 1977); *In re. R.W.S.*, 728 N.W.2d 326 (N.D. 2007); *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).

6. In sum, this case presents substantial and recurring questions on which the federal circuits and state courts of last resort are divided. In view of the disagreements in the lower courts, there is a reasonable prospect that this Court will grant the petition and therefore it is desirable that these important questions be fully addressed in the petition.

7. Respondent does not oppose this request.

8. Mr. Cirkiel, Mr. Long, and the University of Virginia Supreme Court Litigation Clinic are working diligently to prepare the petition, but additional time is needed to complete, print, and file Applicant's petition. Mr. Long was recently engaged for the first time in the case, and additional time is necessary to allow him to complete review of the record of the case, to conclude research on the authorities supporting this Court's review, and to finish preparing the petition and appendix for filing. Mr. Long also faces deadlines in several other matters with earlier due dates,

including: an amicus brief on behalf of a group of food & drug law scholars in *United States Food & Drug Administration v. Alliance for Hippocratic Medicine* and *Danco Laboratories, L.L.C. v. Alliance for Hippocratic Medicine*, Nos 23-235 & 236 (U.S., brief due Jan. 30); and a combined opposition to the government's cross-motion for summary judgment and reply in support of plaintiff's motion for summary judgment in *Boehringer Ingelheim Pharmaceuticals, Inc. v. U.S. Department of Health and Human Services*, No. 3:23-CV-01103-RNC (D. Conn, brief due January 26).

9. In addition, an additional extension is needed for Clinic faculty. The Clinic anticipates filing at least two other petitions for a writ of certiorari in the coming months. Moreover, in early January, the Clinic's Director Mr. Wang contracted and received medical treatment for the COVID-19 virus. The illness significantly impacted his ability to participate in this and other litigation, and he remains in recovery.

10. Finally, Mr. Cirkiel has faced several overlapping deadlines in other matters during the 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.

11. In light of the foregoing obligations, Applicant would face significant challenges completing the petition by the current due date.

For these reasons, Applicant requests this Court grant an extension of twenty-two days, up to and including March 1, 2024, within which to file a petition for a writ of certiorari in this case.

Respectfully submitted,

\_\_\_\_\_/s/ Xiao Wang\_\_\_\_\_

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