

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

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IN THE  
Supreme Court of the United States

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D'ANDRE M. JOHNSON,  
SECOND LIEUTENANT,  
UNITED STATES AIR FORCE,  
*Petitioner,*

v.

UNITED STATES OF AMERICA,  
*Respondent.*

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Application for Extension of Time to File a Petition for a Writ of  
Certiorari to the United States Court of Appeals for the Armed Forces

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To the Honorable John G. Roberts, Chief Justice of the United States:

Pursuant to Supreme Court Rules 13.5, 22, and 30.2, the Petitioner, Second Lieutenant (2d Lt) D'Andre M. Johnson, respectfully requests a 60-day extension of time to, and including, October 5, 2023, to file a Petition for a Writ of Certiorari. In support of this application, Petitioner states the following:

1. 2d Lt Johnson was tried by general court-martial before a panel of officer members at Moody Air Force Base (AFB), Georgia, on October 22 - 23, 2018, and November 26 - December 1, 2018. Contrary to 2d Lt Johnson's pleas, the panel found him guilty of one charge and two specifications of sexual assault, in violation of Article

120, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 920. *United States v. Johnson*, 2020 CCA LEXIS 364, \*1 (A.F. Ct. Crim. App. 16 October 2020) (unpub. op.). The panel sentenced 2d Lt Johnson to a dismissal, ten years confinement, and total forfeiture of pay and allowances. *Id.* at \*2. The Convening Authority approved the adjudged sentence. *Id.*

2. On direct appeal, 2d Lt Johnson challenged whether, *inter alia*, the conditions of his confinement at Lowndes County Jail (LCJ), Georgia, were cruel and unusual in violation of the Eighth Amendment to the United States Constitution and Article 55, UCMJ, 10 U.S.C. § 855, or, in the alternative, whether these conditions rendered his sentence inappropriately severe. *Id.* On October 16, 2020, the Air Force Court of Criminal Appeals (Air Force Court) affirmed the findings and sentence. *Id.* at \*2-3. Citing *United States v. Jessie*, 79 M.J. 437, 441 (C.A.A.F. 2020), the Air Force Court declined to consider affidavits detailing 2d Lt Johnson's confinement conditions when conducting its sentence appropriateness review. *Id.* at \*56 n.12. The Court of Appeals for the Armed Forces (CAAF) subsequently affirmed the findings, but reversed as to the sentence. *United States v. Johnson*, 81 M.J. 451 (C.A.A.F. 2021) (order). CAAF then remanded the case to the Air Force Court for further review under Article 66, UCMJ, 10 U.S.C. § 866. *Id.* On July 19, 2022, the Air Force Court affirmed the sentence by a divided vote. *United States v. Johnson*, 2022 CCA LEXIS 413, \*6 (A.F. Ct. Crim. App. 19 July 2022) (unpub. op.).

3. On December 15, 2022, CAAF again granted review on whether military officials acted with deliberate indifference in sending 2d Lt Johnson to LCJ and

whether he suffered cruel and unusual punishment. *United States v. Johnson*, 83 M.J. 141 (C.A.A.F. 2022) (order granting review.). CAAF ordered that no briefs should be filed as review was granted in conjunction with a similar case, *United States v. Pullings*, 83 M.J. 205 (C.A.A.F. 2023). *Id.* On May 8, 2023, CAAF affirmed the Air Force Court's decision. *United States v. Johnson*, 2023 CAAF LEXIS 303 (C.A.A.F. 2023) (order).

4. The time for petitioning this Court for a writ of certiorari expires on August 6, 2023. This Application is being filed more than 10 days before that date. Attached to this application are copies of the Air Force Court and CAAF opinions (Attachments A – D).

5. This Honorable Court has jurisdiction under 28 U.S.C. § 1259(3).

6. This case presents an opportunity for this Court to resolve, *inter alia*, deficiencies in how cruel and unusual punishment claims are resolved across the Department of Defense and to bring those processes in line with those recognized by the federal courts.

7. 2d Lt Johnson consents to undersigned counsel disclosing the following reason why an extension of time is needed. 2d Lt Johnson originally intended to withdraw from appellate review for various reasons. However, after completing the necessary paperwork to effectuate a withdrawal, 2d Lt Johnson changed his mind and decided he wanted to petition this Court for review. When he made that decision, approximately 65 of the 90 days to file a writ of certiorari had passed. Although

Counsel has prioritized this case, Counsel cannot draft and have his writ of certiorari printed in the remaining time.

8. Additionally, the printing must be processed through a federal government agency (the Air Force) which has payment and processing requirements that a private firm does not. The procurement process for a printing job cannot be forecasted with certainty and often has delays.

9. For the foregoing reasons, Petitioner respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari up to, and including, October 5, 2023.

Respectfully submitted,



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July 20, 2023