

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

DUSTIN NGUYEN —PETITIONER

(Your Name)

VS.

UNITED STATES OF AMERICA —RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

(NAME OF COURT THAT LAST RULE ON MERITS OF YOUR CASE)

MOTION FOR LEAVE TO FILE AN OUT OF TIME
PETITION FOR WRIT OF CERTIORARI

(Your Name)

DUSTIN NGUYEN, REG. NO. 19389-030

(Address)

FCI SANDSTONE P.O. BOX 1000

(City, State, Zip Code)

SANDSTONE, MN 55072

(Phone Number)

N/A

Motion for Two Day Extension
to File a Petition for Writ of Certiorari

Dustin Nguyen, Petitioner pro se, respectfully requests this Court to grant a two day extension to his Writ of Certiorari deadline, moving the date to January 5, 2024.

Nguyen premises his request on four points: (a) the language in 28 U.S.C. 2101(c) authorizes a Supreme Court Justice to extend the time applying for a Writ of Certiorari for a period not exceeding sixty days; (b) there were extraordinary and extenuating circumstances that led to Nguyen's untimely filing; (c) One of Nguyen's questions have merit worth examining that widely effects the rest of this country (and have never before been addressed by this Court); and (d) the filing (specifically the date the Writ was filed on) was done in good faith. Nguyen submits this Motion to substantiate Nguyen's claims, under oath, in hopes the Court will grant the extension request and file Nguyen's Writ as timely.

To establish good cause below, Nguyen states:

Background

Nguyen's 8th Circuit Court of Appeals en banc was denied on October 5, 2023. Nguyen filed his Writ of Certiorari with this Court on January 5, 2024 (via Prison Mailbox Rule) and received this Court's January 18 denial as untimely on January 25. This motion follows.

Argument

I. 28 U.S.C. 2101(c) gives Justice's the jurisdiction and authority to grant Nguyen's request for an extension.

Nguyen's Writ of Certiorari would not be the first of its kind to reach this Court just slightly over the statutory due date set for the petitioner. Some of these examples would be lucky enough to still receive examination on the merits despite the high bar set by the Supreme Court's Rule 13.5 which states "an application for extension ... be filed 10 days before the petition is due." See Teague v. Regional Commissioner of Customs, 394 U.S. 977 (1969); See Also Ray v. Pierson, 386 U.S. 547 (1967). No explanation was offered in either case to illuminate the "appropriate circumstances" to determine how the issue's importance persuaded the Justice's to exercise their power to waive the time requirement.

The language of the statute allows for a "period not exceeding sixty days", but Nguyen is only asking for two days. His reasons regarding circumstances and the importance of the Court weighing the merits of at least two of Nguyen's proffered questions are further explained in the next sections.

II. Extraordinary circumstances at Nguyen's institution prevented timely filing of his Writ of Certiorari.

A. Inmate Security Event

On November 25, 2023, an unexpected fight broke out between two interracial groups resulted in multiple serious injuries that required outbound medical attention. See Notice to Inmate Population, attached as Exhibit A. Nguyen's facility was on a severely modified

lockdown for 2-3 weeks, closing down many of the institution's inmate accessible departments. This included Sandstone's Legal Law Library (Law Library). Nguyen had no access during this time to his (at the time) partially written motion and all of his case notes and files, which was saved in memory on one of the typewriters in the Law Library, the copy machine and the Electronic Law Library (ELL) which can only be accessed by the computers in the Law Library.

This incident substantially delayed Nguyen's ability to cognizantly piece together his Writ of Certiorari and respectfully requests this Court to consider it an extraordinary and extenuating circumstance that would warrant the two day extension.

B. FCI Sandstone's month long compound wide staff training.

During the month of January, FCI Sandstone requires its staff members to go through a four week rotational training period, pulling them away from their normally designated position within the facility to instruct them in other positions they may be expected to fill due to staff shortages or renewing safety protocol and procedures. Education staff is not exempt and thus were required to modify the education building's schedule to accommodate for their training. For almost all of January, access to the building (which includes the Law Library) was cut by 50%, closing at nights and a few Sundays.

This delay also substantially delayed Nguyen's ability to efficiently piece together his Writ of Certiorari and respectfully requests this Court to consider it an extraordinary and extenuating circumstance that would warrant the two day extension.

III. Nguyen Question Three raises the interrelation between the fundamental right to participate in one's own trial and interference with the statute to have an interpreter because English is their second language, a novel matter worthy of this Court's intervention.

Nguyen believes that one of his questions presented in his Certiorari holds significant import to this country and is worth the Justices exercising the power given to them by §2101(c).

Specifically, Nguyen's question revolves around the novel concept of the statutory protection to have an interpreter present during a defendant's criminal proceedings and whether a defendant needs to show prejudice in order to receive relief on significant interference with the fundamental right to be present and participate in one's own trial, when a person cannot understand what is going on. The interpreter statute, 28 U.S.C. §1827, requires the court to provide the defendant with an interpreter, if it is determined that English is not their first language. Here an interpreter was provided who spoke a completely different dialect than Nguyen, and who was later dismissed without his knowledge or consent.

The writ raises the question of what happens when the court, or attorney, fails to provide the safeguards required by the Interpreter Act; thus preventing the defendant from understanding or making cognizant decisions during their criminal proceedings. Specifically questions like: Whether the interference is a structural error (per se prejudice) or a procedural error (cause and prejudice standard)? Put another way: Is it structural error when a the defendant had no actual opportunity to make key decisions in his own trial because he could not understand his court appointed interpreter or there was no interpreter; Does an interpreter (who speaks the correct dialect) have to be present at all critical

stages of the criminal trial (investigation, trial prep, decision to plea, plea, trial, sentence, and appeal)?

This question alone warrants the Justice's attention to prevent what happened to Nguyen from being repeated in the future and, if made retroactive, can remedy existing travesties.

IV. Nguyen's initial calculation of the Writ's deadline was made in good faith.

When initially preparing to file his Writ of Certiorari, Nguyen calculated the ninety days after his en banc to determine when his due date would be. Though this Court's denial based on untimeliness makes it clear that Nguyen's calculation was off (by two days), the understanding of the January 5 deadline was made in good faith and in no way was used as an attempt to deceive the Court. If Nguyen thought that he would have not met the believed January 5 deadline (or even the later discovered actual January 3 deadline) he would have filed an extension under Rule 13.5 or 28 U.S.C. §2101(c) well before the date were to pass. Nguyen asks for the Court's forgiveness and understanding in his unintended error. He respectfully asks the Court accept this humbly brought *mia culpa* and allow for the granting of the requested two day extension to Nguyen's Writ of Certiorari.

Requested Relief

For the reasons outlined above, Nguyen respectfully requests the following relief:

1. GRANT the two day extension to Nguyen's Writ of Certiorari deadline to January 5, 2024 to allow for a timely filing under the authority bestowed under 28 U.S.C. §2101(c) to review all of Nguyen's questions;

- OR in the alternative -

2. GRANT IN Part the two day extension to review a specific question due to the significant impact the Justice's feel would be gained through examination of subject matter;

AND

3. Any other relief permissible under law.

RESPECTFULLY SUBMITTED THIS 1 DAY OF FEBRUARY, 2024



Dustin Nguyen
19389-030 Unit K-3
FCI Sandstone
P.O. Box 1000
Sandstone, MN 55072

NOTICE TO THE INMATE POPULATION

INMATE BULLETIN

Disruptive Inmate Behavior – Update 12/06/2023

On Saturday, November 25, 2023, at approximately 7:00 p.m., a large-scale disturbance occurred in the Indoor Recreation area. More specifically, inmates were observed assaulting other inmates with free weights, dumbbells, pool cues, and pool balls. Subsequent inmate disturbances transpired in Units K-1 and K-3.

Inmate programs remain suspended. Limited commissary, recreation, and food service schedules have been posted to TRULINCS. Grab and go meals will continue through this weekend. Visitation for this weekend is canceled.

As we evaluate plans for next week, you are reminded to follow all staff directives as well as rules and regulations found in the A&O handbook.

An investigation continues regarding the incidents. The institution will remain on modified operations as intelligence is gathered to ensure the safety and security of inmates and staff.