

No. 24A \_\_\_\_\_  
(CAPITAL CASE)

---

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

---

BRYAN CHRISTOPHER BELL & ANTWAUN KYRAL SIMS, APPLICANTS,

v.

STATE OF NORTH CAROLINA, RESPONDENT.

---

**APPLICATION FOR AN EXTENSION OF TIME  
TO FILE A PETITION FOR A WRIT OF CERTIORARI  
TO SUPREME COURT OF NORTH CAROLINA**

---

DAVID ANDREWS  
OFFICE OF THE APPELLATE DEFENDER  
123 West Main Street, Suite 500  
Durham, NC 27701

DIONNE R. GONDER  
P.O. Box 692  
Mebane, NC 27302

JOHN R. MILLS  
*Counsel of Record*  
PHILLIPS BLACK, INC.  
1721 Broadway, Suite 201  
Oakland, CA 94612  
(888) 532-0897  
j.mills@phillipsblack.org

*Counsel for Applicants*

May 16, 2025

---

## APPLICATION

To the Honorable John G. Roberts, Jr., Chief Justice of the Supreme Court of the United States and Circuit Justice for the North Carolina Supreme Court:

Pursuant to Rule 13.5 of the Rules of this Court and 28 U.S.C. § 2101(c), applicants Bryan Christopher Bell and Antwaun Kyril Sims respectfully request a 60-day extension of time, to and including Monday, August 18, 2025, within which to file a petition for a writ of certiorari to review the judgments of the North Carolina Supreme Court in their respective cases.

1. In each case, the North Carolina Supreme Court issued a decision on March 21, 2025 in published opinions. *See State v. Sims*, 912 S.E.2d 767 (N.C. 2025) (Appendix A); *State v. Bell*, 913 S.E.2d 142 (N.C. 2025) (Appendix B). Unless extended, the time to file a petition for certiorari will expire on Thursday, June 18, 2025. This application is being filed more than ten days before the petition is currently due and is supported by good cause, as set forth below. *See* Sup. Ct. R. 13.5. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1257(a).

2. Mr. Bell and Mr. Sims were co-defendants, tried jointly, and their cases were resolved on identical grounds. Thus, their cases, which will be presented jointly, present identical and important questions of federal law: (1) whether a state court must adjudicate a federal constitutional claim properly presented to it; and (2) whether evidence of intentional discrimination in jury selection based on gender,

arising post-trial, can serve as the basis for establishing a violation of the Equal Protection Clause.

3. Mr. Bell and Mr. Sims were jointly tried and convicted of murdering Elleze Kennedy. App. 43a. Assistant District Attorney Gregory Butler (“ADA Butler”) represented the State in their trial. Mr. Sims was seventeen years old at the time of the offense, and he was sentenced to life without the possibility of parole. App. 2a. Mr. Bell was sentenced to death. App. 42a.

4. After their respective convictions and sentences were affirmed on direct appeal, both Mr. Bell and Mr. Sims pursued post-conviction relief, each filing a Motion for Appropriate Relief. App. 2a; App. 48a.

5. While those proceedings were pending, ADA Butler prepared an affidavit concerning his use of jury strikes in a number of capital trials, including this one. The affidavit was in response to a claim arising under North Carolina’s Racial Justice Act. In this case, he sought to explain why his use of a jury strike was race neutral, offering the following:

Has 2 children age of [d]efendants. Has an illness rheumatoid arthritis. Can flare up at any time and incapacitate her. State has only used 12 of its 28 preempts and 10 jurors were seated, all female. State was looking for male jurors and potential foreperson. Was making concerted effort to send male jurors to the [d]efense as they were taking off every male juror. Batson motion denied, no [prima facie] case but allowed state to give reason on the record.

App. 48a.

6. In light of the affidavit, Mr. Sims and Mr. Bell amended their respective Motions for Appropriate Relief, alleging a violation of *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127 (1994). App. 7a; App. 48a. Initially, the Superior Court held that the claims were procedurally barred because there was no objection related to gender discrimination during jury voir dire. App. 49a. Mr. Sims and Mr. Bell sought review at the North Carolina Supreme Court, including on the *J.E.B.* claim. In response, the State requested a remand for an evidentiary hearing on the claim, which the North Carolina Supreme Court allowed. App. 50a.

7. On remand, the Superior Court found that it was more likely than not that ADA Butler discriminated on the basis of gender. In reaching this conclusion, the Superior Court relied on statements by ADA Butler during jury selection, his affidavit, the State's use of peremptory strikes in an unrealed capital case, a comparative analysis of the struck female juror and male prospective jurors the State accepted, and statistical evidence concerning ADA Butler's use of peremptory strikes. App. 50a.

8. The Superior Court did not alter its findings on whether the claim was procedurally barred. Thus, the North Carolina Supreme Court had before it claims both that ADA Butler discriminated on the basis of gender and that any claim in that regard was procedurally barred.

9. In both the cases of Mr. Sims and Mr. Bell, the North Carolina Supreme Court ruled that the claim was procedurally barred. In doing so, it invoked a

procedural rule of general application that it had never before invoked to foreclose review of a claim based on extra-record evidence. It explained that it did so because Mr. Sims and Mr. Bell could have raised a *J.E.B.* claim at trial. The North Carolina Supreme Court did not explain how they could have obtained ADA Butler's affidavit prior to when they did.

10. Both Mr. Bell's and Mr. Sims' cases involve the same facts, the same procedural rule, and the same legal issues. To resolve both cases, the North Carolina Supreme Court undertook identical reasoning on identical facts. Without disturbing the Superior Court's factual finding that ADA Butler intentionally discriminated on the basis of gender, it held that the claim was procedurally barred. The resolution of the *J.E.B.* claim squarely implicates the questions presented.

11. Competent review of the record in these cases, including Mr. Bell's capital case, requires more time than is currently available under the current deadline. This is particularly so because undersigned counsel Mr. Mills—who will undertake the representation of both Mr. Bell and Mr. Sims in proceedings before this Court—is new to the case and is still familiarizing himself with the record.

12. Moreover, undersigned counsel has multiple competing obligations in capital cases and cases before this Court that make it impossible to competently complete the petition, for which he bears primary responsibility, in the given timeframe. Undersigned counsel has due before this Court a petition for writ of certiorari in the capital case of *Spreitz v. Arizona*, 24-\_\_\_ (U.S.) on June 6, 2025. Also

before this Court, he has a petition due on June 25, 2025 in *Skinner v. Louisiana*, 24-\_\_\_ (U.S.). And in *Hutchinson v. Florida*, No. 24-7079 (U.S.), he filed an amicus brief on behalf of a group of Mental Health Advocates on May 1, 2025.

13. Undersigned also has oral argument before the Tenth Circuit in the capital case of *Andrew v. White*, No. 15-6190 (10th Cir.) after supplemental briefing was completed in light of this Court's recent decision. *Andrew v. White*, 604 U.S. \_\_\_, 145 S. Ct. 75 (2025) (per curiam). That briefing was filed between April 7 and May 7, 2025. In *State v. Payne*, No. CR-25-0045-PC, another capital case, undersigned filed a reply in support of a petition for review at the Arizona Supreme Court on May 5, 2025. On the same day, he filed another reply in support of a petition for review at the Arizona Supreme Court in *State v. Nordstrom*, No. CR-25-0073-PC, another capital case. These matters make it impossible to competently complete the petition in the currently allotted timeframe.

14. Counsel for Mr. Bell and Mr. Sims also have substantial limitations and obligations that make it impossible for them to complete the petition in a timely manner. First, neither counsel are experienced Supreme Court practitioners, and one of them is not admitted before in this Court.

15. Second, each of them has other substantial professional obligations of their own, making timely completion of the petition impossible. Mr. Andrews, counsel for Mr. Sims, has been working on other matters in the North Carolina Court of Appeals. On April 23, 2025, Mr. Andrews filed a supplemental brief in *State v.*

*Walker*, No. COA24-732. The following day, he filed the opening brief for the appeal in *In re C.A. I*, No. COA25-294. Then, on May 12, 2025, Mr. Andrews filed the opening brief for *State v. Stancil*, No. COA25-251. He is also currently preparing the opening brief for *In re C.A. II*, No. COA25-407, which is due on May 29, 2025.

16. Ms. Gonder, counsel for Mr. Bell, is a full-time law professor. Since the date of the North Carolina Supreme Court's decision, she has been obligated to complete multiple intensive teaching duties necessary to complete the spring semester and to allow multiple graduating students to be certified for their graduation on May 10, 2025. These duties involved classroom teaching through April 23, 2025, the drafting and administration of a three-hour exam on May 8, 2025, holding office hours and a review session to help students prepare for exams, and the continued grading of exam essay questions to satisfy a grading submission deadline of May 29, 2025.

17. In addition, as the sole director and supervising attorney for a criminal defense clinic, Ms. Gonder has had continuing duties to consult with and closely supervise law students as they represented thirty clients in ongoing state criminal cases since March 21, 2025, to appear with the students and their clients in fourteen different sessions of court in two North Carolina counties, to conduct in-depth student performance evaluations for grading purposes, and to review and verify students' completion of more than 640 hours of clinical work for the semester. As counsel of record for all clinic cases not resolved by the end of the law school semester, between

the date of this motion and 19 June, 2025, Ms. Gonder is handling state criminal court appearances for eight clients, including at least two cases which are to be tried.

Accordingly, applicant respectfully requests that an order be entered extending the time to file a petition for certiorari to and including Monday, August 18, 2025.

Respectfully submitted,

DAVID ANDREWS  
OFFICE OF THE APPELLATE DEFENDER  
123 West Main Street, Suite 500  
Durham, NC 27701

DIONNE R. GONDER  
P.O. Box 692  
Mebane, NC 27302

JOHN R. MILLS  
*Counsel of Record*  
PHILLIPS BLACK, INC.  
1721 Broadway, Suite 201  
Oakland, CA 94612  
(888) 532-0897  
j.mills@phillilpsblack.org

*Counsel for Applicant*

May 16, 2025