

No. 24-

IN THE

Supreme Court of the United States

CHRISTOPHER MICHAEL MONTOYA,

Applicant,

v.

STATE OF ARIZONA,

Respondent.

On Petition for a Writ of Certiorari to the
Supreme Court of Arizona

**ON APPLICATION FOR AN EXTENSION OF TIME TO FILE PETITION
FOR A WRIT OF CERTIORARI**

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THIS IS A CAPITAL CASE

TO THE HONORABLE ELENA KAGAN, as Circuit Justice for the United States Court of Appeals for the Ninth Circuit:

In accordance with this Court's Rules 13.5, 22, 30.2, and 30.3, Petitioner, Christopher Michael Montoya, by and through undersigned counsel, respectfully requests that the time for filing his Petition for Writ of Certiorari be extended for 60 days, up to and including Monday, January 13, 2025. The Arizona Supreme Court issued its decision on August 15, 2024. Absent an extension of time, the Petition would be due on November 13, 2024.

This Application is being filed more than ten days before the present due date of November 13, 2024. This Court has jurisdiction to entertain the Petition for Writ of Certiorari under 28 U.S.C. § 1257(a).

Petitioner's counsel has consulted with Assistant Attorney General Jason Gannon, who filed the State's responding brief in the Arizona Supreme Court, and the State does not oppose the extension.

Background

This case represents an important question of whether the Arizona Supreme Court misinterpreted this Court's precedent and improperly relied upon now-abrogated language in a footnote in *Witherspoon v. Illinois*, 391 U.S. 510 (1968), when it affirmed the trial court's denial of Petitioner's motion to strike a biased juror

for cause pursuant to *Morgan v. Illinois*, 504 U.S. 719 (1992), and its progeny. Because Arizona eliminated peremptory strikes just months before *voir dire* in Petitioner's case, the biased juror was seated on the jury and voted for death, in violation of Petitioner's right to an impartial jury under the Sixth and Fourteenth Amendments to the United States Constitution.

The Arizona Supreme Court upheld the trial court's denial of the motion to strike for cause. *State v. Montoya*, ___ Ariz. ___, 554 P.3d 473 (2024) (attached). The ruling misapplies this Court's precedent by conflating Petitioner's for-cause challenge under *Morgan* with this Court's jurisprudence related to improper removal of venirepersons under *Witherspoon*. In addition, the court relied upon language in a footnote in *Witherspoon* that was abrogated by this Court in *Wainwright v. Witt*, 469 U.S. 412 (1985). Finally, the court refused to review the trial court's decision under a heightened standard of scrutiny than it applied to such challenges prior to Arizona's elimination of peremptory strikes, thereby depriving Petitioner and other Arizona defendants of meaningful appellate review of trial judges' decisions on for-cause strikes that are, as the trial judge noted here, "close calls."

Reasons for Granting an Extension of Time

Counsel has been working diligently on the Petition, but it is not yet completed. In addition, undersigned counsel Kerri Chamberlin has substantial other commitments during the relevant time period, including:

- *State v. Boyston*, Maricopa County Superior Court Cause No. CR2004-007442, co-counsel, capital case on initial state post-conviction review, with an evidentiary hearing scheduled for November 14, 2024;
- *State v. Champagne*, Maricopa County Superior Court Cause No. CR2013-000177, co-counsel, capital case on initial state post-conviction review;
- *State v. Naranjo*, Maricopa County Superior Court Cause No. CR2007-119504, supervisory counsel, capital case on initial state post-conviction review;
- *State v. Smith*, Maricopa County Superior Court Cause No. CR2015-106788, supervisory counsel, capital case on initial state post-conviction review;
- *State v. Sanders*, Maricopa County Superior Court Cause No. CR2009-157459, supervisory counsel, capital case on initial state post-conviction review; and
- *State v. Rogovich*, Maricopa County Superior Court Cause No. CR1992-002443, supervisory counsel, capital case on successive state post-conviction review.

Notably, a substantial portion of counsel's time will be dedicated to preparing for an evidentiary hearing in *State v. Boyston* above, which is scheduled for November 14, 2024. The case itself has been pending since 2004, and the state post-conviction proceedings have been pending since 2013. This evidentiary hearing is the culmination of the decade-long state post-conviction proceedings, and the determination of this issue could overturn defendant's multiple death sentences and result in a new penalty phase trial.

For these reasons, Petitioner Christopher Michael Montoya prays for a 60-day extension of time in which to file the Petition for Writ of Certiorari, up to and including Monday, January 13, 2025.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 29th day of October, 2024.

Respectfully submitted,



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