

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

**SCOTT BREIMEISTER,
Petitioner – Appellant**

V.

**UNITED STATES OF AMERICA,
Respondent – Appellee**

**PETITIONER’S UNOPPOSED APPLICATION FOR AN EXTENSION
OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI**

To the Honorable Samuel A. Alito, Associate Justice of the Supreme Court of
the United States and Circuit Justice for the Fifth Circuit:

I.

Pursuant to Supreme Court Rule 13.5, petitioner Scott Breimeister respectfully
requests a 60-day extension of time, until October 2, 2025, to file a petition for a writ
of certiorari.

This is an interlocutory appeal from the district court’s denial of petitioner’s
motion to bar a retrial based on Double Jeopardy. The Fifth Circuit issued its
decision on April 7, 2025, and denied rehearing on May 5, 2025. A copy of the
opinion and the order denying rehearing are attached. This Court has jurisdiction
under 28 U.S.C. § 1254(1).

Without an extension, a petition for a writ of certiorari would be due on August 3, 2025. *See* U.S.S.Ct.R. 13.1. This application is filed more than 10 days before that date. Petitioner has not previously applied for an extension.

An extension is necessary because the mother of counsel for petitioner unexpectedly died in the Texas Hill Country Flood on July 4, 2025. A copy of her obituary and a newspaper article are attached. Counsel spent three days working with law enforcement to locate and identify her body; two days arranging for transport of her body to the Travis County Medical Examiner's Office for an autopsy and confirmation of identity; and four days planning the funeral, including preparing the obituary and eulogy. She was buried on July 13, 2025. Counsel also has needed to care for and comfort his father, who miraculously survived the same flood but lost his wife of 57 years. As a result of this unexpected incident, counsel missed two weeks of work. He needs more time to prepare the petition.

II.

In the sixth week of a multi-defendant healthcare fraud conspiracy trial, the district court declared a mistrial *sua sponte* based on governmental misconduct over petitioner's written opposition. After the defendants had caught the government instructing a witness to provide false or misleading testimony and create false or misleading summary exhibits, the government produced interview reports that had been suppressed for witnesses who had already testified and identified

inconsistencies between their testimony and those reports; and it produced previously undisclosed, handwritten notes from hundreds of witness interviews. Many of those handwritten notes, made by case agents and a trial prosecutor, contained information favorable to the defendants that had been omitted from the interview reports produced to the defendants before and during trial.

Six months after declaring a *sua sponte* mistrial, the district court denied petitioner's motion to bar a retrial based on Double Jeopardy. Petitioner contends that the government cannot retry him where the court declared a mistrial *sua sponte* based on governmental misconduct over his objection. The Fifth Circuit affirmed the order denying the Double Jeopardy motion in a published opinion.

III.

The Fifth Circuit held that petitioner forfeited his Double Jeopardy claim by consenting to the mistrial; that, even if he preserved the claim, manifest necessity existed for the mistrial; and that the district court did not err in denying an evidentiary hearing and depositions on whether to bar a retrial. That decision conflicts with decisions of this Court regarding preservation of a Double Jeopardy claim and the duty to resolve any doubt in favor of petitioner, to apply strict scrutiny to the mistrial declaration, and to hold the government to its "heavy burden" to justify a retrial where it caused the mistrial.

CONCLUSION

The unexpected death of counsel's mother, the disruption to his work schedule caused by that tragedy, and the time that he needs to regain his focus so he can provide effective assistance to petitioner collectively warrant a 60-day extension of time to file the petition for a writ of certiorari.

Petitioner respectfully requests that the Court grant this application and enter an order extending the time to file the petition for a writ of certiorari until October 2, 2025.

Dated: July 23, 2025

Respectfully submitted,

/s/ Josh Schaffer

Josh Schaffer

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SCOTT BREIMEISTER

CERTIFICATE OF SERVICE

I served a copy of this document on counsel of record for the Government by electronic filing on July 23, 2025.

/s/ Josh Schaffer

Josh Schaffer

CERTIFICATE OF CONFERENCE

I conferred with Jeremy Sanders, counsel for the Government on appeal, on July 21, 2025. He told me that the Government does not oppose the requested relief.

/s/ Josh Schaffer
Josh Schaffer