

No. A-_____

In the Supreme Court of the United States

Demetrius Jackson,

Petitioner,

v.

Ohio,

Respondent.

**Application for an Extension of Time to File a Petition
for a Writ of Certiorari to the Ohio Supreme Court**

To the Honorable Sonia Sotomayor, Associate Justice of the United States and
Circuit Justice for the Sixth Circuit:

Pursuant to Rule 13.5 of this Court, Demetrius Jackson respectfully requests a 30-day extension of time, to and including March 21, 2019, in which to file a petition for a writ of certiorari in this Court. The Court has jurisdiction under 28 U.S.C. § 1257(a).

The final judgment of the Ohio Supreme Court was entered on November 21, 2018, so Mr. Jackson's time to file a petition for a writ of certiorari currently expires on February 19, 2019. Copies of the Ohio Supreme Court's opinion and its subsequent order denying review after remand are attached.

1. Where the victim of a crime is a child, a Child Protective Services ("CPS") caseworker employed by the state often investigates the incident alongside the police. The caseworker is typically required by law to share any information obtained during

her investigation with the police and the prosecutor. During these investigations, caseworkers routinely conduct custodial interrogations of arrested suspects.

The lower courts are deeply divided over whether these interrogations are governed by the Fifth and Sixth Amendments.

In several jurisdictions, these interrogations *are* governed by the Fifth and Sixth Amendments, on the ground that CPS caseworkers are agents of the state. *See Jackson v. Conway*, 763 F.3d 115, 135-40 (2d Cir. 2014) (holding on habeas review that this view is clearly established law); *Buster v. Commonwealth*, 364 S.W.3d 157, 164-65 (Ky. 2012); *State v. Harper*, 613 A.2d 945, 947-49 (Me. 1992); *Blanton v. State*, 172 P.3d 207, 210-11 (Okla. Ct. Crim. App. 2007); *State v. Oliveira*, 961 A.2d 299, 307-11 (R.I. 2008). The Third Circuit and the New Jersey Supreme Court have taken the same view in strongly-worded dicta. *Saranchak v. Beard*, 616 F.3d 292, 304 (3d Cir. 2010); *State v. P.Z.*, 703 A.2d 901, 910-11 (N.J. 1997).

In several other states, lower courts have reached the same holding. *People v. Kerner*, 538 N.E.2d 1223, 1225 (Ill. App. Ct. 1989); *State v. Dixon*, 916 S.W.2d 834, 836-37 (Mo. Ct. App. 1996); *State v. Helewa*, 537 A.2d 1328, 1331-32 (N.J. App. Div. 1988); *People v. Wilhelm*, 822 N.Y.S.2d 786, 792-93 (N.Y. App. Div. 2006); *State v. Morrell*, 424 S.E.2d 147, 152-53 (N.C. Ct. App. 1993); *Commonwealth v. Ramos*, 532 A.2d 465, 468 (Pa. Super. Ct. 1987); *State v. Nason*, 981 P.2d 866, 870 (Wash. Ct. App. 1999).

On the other side of the split, four state high courts, including the Ohio Supreme Court below, hold that these interrogations are *not* governed by the Fifth and Sixth

Amendments. These courts reason that CPS caseworkers are *not* agents of the state, even where they are obliged to share the information learned during an interrogation with the police, unless a police officer directs and controls the interrogation. See *State v. Jackson*, --- N.E.3d --- (Ohio 2018) (decision below); *State v. Bernard*, 31 So. 3d 1025, 1035-36 (La. 2010); *Hennington v. State*, 702 So. 2d 403, 408-09 (Miss. 1997); *Wilkerson v. State*, 173 S.W.3d 521, 528-33 (Tex. Ct. Crim. App. 2005).

2. Demetrius Jackson was arrested, charged with raping a minor, and taken to jail, where he asserted his *Miranda* rights and refused to speak with the police. He was assigned an attorney. A few days later, a CPS caseworker employed by the state visited the jail to interrogate Jackson. Jackson's attorney was not present. There is no dispute that this interrogation would have violated the Fifth and Sixth Amendments had it been conducted by a police officer. During the interrogation, Jackson made a damaging statement which became a crucial piece of evidence at his trial. Jackson was convicted of rape and kidnapping.

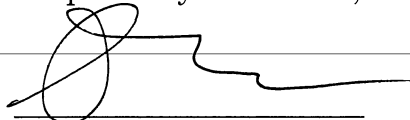
3. The Ohio Court of Appeals reversed Jackson's convictions on the ground that the interrogation by the CPS caseworker violated the Fifth and Sixth Amendments. The Ohio Supreme Court reversed the Court of Appeals' judgment. The Ohio Supreme Court held that the admission into evidence of Jackson's statement did not violate the Fifth or Sixth Amendments, because Jackson's interrogator was a CPS caseworker rather than a police officer. The Ohio Supreme Court remanded the case to the Court of Appeals so the Court of Appeals could consider the remaining assignments of error it had not addressed. On remand, the Court of Appeals resolved

all remaining issues in favor of the state and thus affirmed Jackson's conviction. The Ohio Supreme Court denied review.

4. Good cause exists for an extension of time to prepare a certiorari petition in this case. Undersigned counsel of record was not involved in this case below. He needs time to familiarize himself with the full record and to research the child protective laws of all fifty states, so that the certiorari petition can explain, as precisely as possible, the scope and practical effects of the lower court conflict. In addition, counsel has a long-planned family vacation scheduled for the holidays.

For these reasons, we request a 30-day extension of time, to and including March 21, 2019, in which to file a petition for a writ of certiorari.

Respectfully submitted,



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