

App. No. ____

IN THE SUPREME COURT OF THE UNITED STATES

ELZIE BALL, NATHANIEL CODE, and JAMES MAGEE,
Petitioners,

v.

JAMES M. LEBLANC, Secretary, Department of Public Safety and Corrections;
DARREL VANNOY, Warden, Louisiana State Penitentiary;
LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS; Warden JAMES CRUZ,
Respondents.

**PETITIONERS' APPLICATION TO EXTEND TIME
TO FILE PETITION FOR A WRIT OF CERTIORARI**

To the Honorable Justice Alito, as Circuit Justice for the United States Court
of Appeals for the Fifth Circuit:

Pursuant to 28 U.S.C. § 2101(c) and Supreme Court Rules 13.5, 22, and 30.3,
petitioners Elzie Ball, Nathaniel Code, and James Magee respectfully request that
the time to file a Petition for a Writ of Certiorari in this case be extended for sixty
days to and including August 6, 2018. The court of appeals issued its opinion on
January 31, 2018. *See* App. A, *infra*. The court denied a timely petition for rehearing
en banc on March 9, 2018. *See* App. B, *infra*. Absent an extension of time, the petition
therefore would be due on June 7, 2018. Petitioners are filing this application at least
ten days before that date. *See* Sup. Ct. R. 13.5. This Court has jurisdiction under
28 U.S.C. § 1254(1) to review this case.

BACKGROUND

This case presents important questions about how the Prison Litigation Reform Act of 1995 (PLRA) can restrict the authority of federal courts to remedy ongoing constitutional violations.

Louisiana State Penitentiary at Angola is the largest maximum security prison in the United States. In the summer, the heat index inside the prison cells on death row inevitably soars to dangerous levels—often exceeding 100 degrees. For prisoners on death row, who spend 23 hours each day in small cells in this extreme heat without air conditioning, the risk of serious heat-related illness and injury are very high. Petitioners are three death row inmates who, due to medical conditions, are particularly susceptible to overheating.

In 2013, after exhausting their administrative remedies, petitioners sued respondents for violations of the Eighth Amendment based on exposure to excessive heat without adequate remedial measures. After a trial, the district court found the heat conditions at Angola posed a substantial risk of serious harm to petitioners, and further found that respondents had been deliberately indifferent to that risk, thus violating petitioners' Eighth Amendment right to be free from cruel and unusual punishment. Based on uncontroverted expert testimony, the court found that the only way to remedy the ongoing constitutional violation was to lower the heat index. Accordingly, the court ordered the prison to maintain the heat index in the death row tiers below 88 degrees Fahrenheit—the level above which the court found that

petitioners face a substantial risk of severe harm. The prison responded with a heat management plan that included air conditioning, while also appealing.

In its 2015 opinion, the Fifth Circuit affirmed the district court's finding that respondents violated the Eighth Amendment. But the court vacated the injunction on the grounds that its scope violated the PLRA, and ordered the district court to impose a less burdensome remedy.

After attempts at a more modest remedy failed to correct the constitutional violation, petitioners sought modification of the prison's heat management plan in the district court. In 2016, following three evidentiary hearings, the district court again concluded that the only way to remedy the ongoing constitutional violation was to maintain the heat index below 88 degrees. It therefore ordered the prison to keep the heat index in petitioners' cells below 88 degrees using a combination of measures that the prison itself had already implemented.

Respondents again appealed, and the Fifth Circuit again reversed. Over dissent, and relying on its prior opinion and the mandate rule, the court held that as a matter of law the PLRA never permits a court to order a prison to maintain a maximum heat index. The Fifth Circuit therefore vacated the district court's injunction.

The court of appeals denied petitioners' timely petition for rehearing en banc.

REASONS FOR GRANTING AN EXTENSION OF TIME

The time to file a Petition for a Writ of Certiorari should be extended for sixty days to and including August 6, 2018, for several reasons.

First, good cause exists for this application. Petitioners only recently retained the undersigned counsel for the filing of a petition for a writ of certiorari before this Court. The record in the case is substantial, including a full bench trial, multiple additional evidentiary hearings, and two appeals. Additional time is necessary for counsel to review the substantial record in the case as well as the decisions of other courts of appeals in order to prepare a clear and concise petition for the Court's review.

Second, the parties are engaged in discussions that may resolve this controversy, which would benefit from additional time.

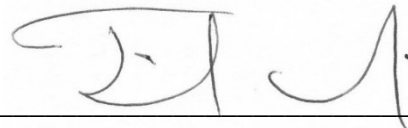
Third, the petition is likely to be granted. The Fifth Circuit's holding conflicts with decisions of this Court and other circuit courts, and misconstrues the PLRA. The issues presented by this case are also of national importance. Prisoners across the country face unconstitutional exposure to oppressive heat. There have already been documented deaths and serious injuries from this exposure. Without access to appropriate remedies, many more will be injured or die.

Finally, no prejudice would arise from the extension. Whether the extension is granted or not, the petition will not be considered until after the Court's summer recess—and in time to be resolved next Term if granted. Moreover, respondents have advised that they do not oppose this request for an extension.

CONCLUSION

For the foregoing reasons, the time to file a Petition for a Writ of Certiorari in this matter should be extended for sixty days to and including August 6, 2018.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'T. Singh', written over a horizontal line.

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