

Case No. \_\_\_\_\_

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**IN THE SUPREME COURT OF THE UNITED STATES**

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STATE OF KANSAS,  
*Petitioner*

v.

TIMOTHY C. BOETTGER,  
*Respondent*

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**APPLICATION FOR AN EXTENSION OF TIME  
IN WHICH TO FILE A PETITION FOR A WRIT  
OF CERTIORARI TO THE KANSAS SUPREME COURT**

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

Pursuant to 28 U.S.C. § 2101(c) and Rules 13.5, 22, and 30.2 of this Court, the  
State of Kansas respectfully requests a 32-day extension of time in which to file a  
petition for a writ of certiorari in this Court, to and including Monday, February 24,  
2020. The Kansas Supreme Court entered judgment on October 25, 2019. *See State  
v. Boettger*, Case No. 115387, 450 P.3d 805 (Kan. 2019). A copy of the Kansas Supreme  
Court's opinion is attached as Exhibits 1. This Court's jurisdiction would be invoked

under 28 U.S.C. § 1257(a). Kansas's time to file a writ of certiorari in this Court will currently expire on January 23, 2020. This application is being filed more than 10 days before the date, and no prior application has been made in this case.

This case concerns the *mens rea* necessary to sustain a conviction for a true threat. Kansas law makes it a crime to utter a threat “in reckless disregard of the risk of causing” the listener to be in fear of violence. Kan. Stat. Ann. § 21-5415(a)(1). The Kansas Supreme Court held that the First Amendment precludes imposition of criminal liability for recklessly uttered threats. (The Kansas Supreme Court reached the same conclusion in another case decided on the same day. *See State v. Johnson*, Case No. 116453, 450 P.3d 790 (Kan. 2019). Kansas is seeking a similar extension with regard to that decision, too.). That holding conflicts with the holdings of the Supreme Courts of Georgia and Connecticut, which have held that the First Amendment permits imposition of criminal liability under similar state statutes. *See State v. Taupier*, 193 A.3d 1 (Conn. 2018); *Major v. State*, 800 S.E.2d 348 (Ga. 2017). *See also Elonis v. United States*, 135 S. Ct. 2001 (2015) (declining to answer this question with regard to 18 U.S.C. § 875 despite separate opinions from Justices Alito and Thomas urging resolution).

Undersigned counsel is working diligently to prepare a petition for writ of certiorari, but additional time is necessary to complete and file a petition for writ of certiorari. In particular, the State recently presented three arguments to this Court in twenty-eight days. *See Kahler v. Kansas*, Case No. 18-6135 (argued October 7, 2019); *Kansas v. Garcia*, Case No. 17-834 (argued October 16, 2019); *Kansas v. Glover*,

Case No. 18-556 (argued November 4, 2019). Preparation for those arguments consumed considerable resources within the office and caused a backlog of work that has not yet been resolved. In addition, undersigned counsel anticipates that multiple holidays in December will reduce staffing within the office. The State of Kansas therefore requests a modest extension of 32 days.

Wherefore, the State of Kansas respectfully requests that an Order be entered extending the time to file a petition for writ of certiorari up to and including February 24, 2020.

Respectfully submitted,



/s/

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December 17, 2019