

NO. \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

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DALE W. EATON,

*Petitioner,*

v.

MICHAEL PACHECO, WARDEN,  
WYOMING STATE PENITENTIARY,

*Respondent.*

\_\_\_\_\_◆\_\_\_\_\_

ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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RESPONDENT'S OBJECTION TO PETITIONER'S  
APPLICATION FOR EXTENSION OF TIME IN WHICH TO FILE HIS  
PETITION FOR A WRIT OF CERTIORARI

\_\_\_\_\_◆\_\_\_\_\_

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**TO: THE HONORABLE SONIA SOTOMAYOR, ASSOCIATE  
JUSTICE OF THE SUPREME COURT OF THE UNITED  
STATES AND CIRCUIT JUSTICE FOR THE UNITED STATES  
COURT OF APPEALS FOR THE TENTH CIRCUIT**

COMES NOW Respondent, Michael Pacheco, by and through the Wyoming Attorney General's Office, and submits to this Court his objection to Petitioner Dale W. Eaton's application for an extension of time in which to file his petition for a writ of certiorari. In support of this objection, Warden Pacheco states as follows:

1. In 2004, a Wyoming jury convicted Eaton of first-degree murder and other crimes for the 1988 murder of Lisa Marie Kimmell. The jury recommended Eaton receive the death penalty and the state district court imposed that sentence on June 3, 2004. The Wyoming Supreme Court upheld Eaton's conviction and sentence on August 18, 2008.

2. On August 13, 2010, Eaton filed his petition for a writ of habeas corpus under 28 U.S.C. § 2254 in the United States District Court, District of Wyoming, raising various claims regarding his conviction and sentence. On November 20, 2014, the district court granted a conditional writ and vacated the death sentence, finding Eaton received ineffective assistance of counsel in the sentencing phase of his trial. Warden Pacheco did not appeal this order. However, Eaton requested that the writ be modified to prohibit the State of Wyoming from again seeking the death penalty, which the district court denied. Despite the fact that Eaton prevailed on his sentencing claim and is not under a death sentence at this time, he appealed the district court's decision denying the modification and its order granting summary

judgment in favor of Warden Pacheco regarding counsel's performance in the guilt phase to the United States Court of Appeals for the Tenth Circuit.

3. On July 23, 2019, the Tenth Circuit affirmed the district court's orders. On September 3, 2019, Eaton requested a rehearing or in the alternative a rehearing en banc. The court denied the request, but did grant Eaton's subsequent request that issuance of its mandate be stayed until this Court's proceedings regarding a possible petition for writ of certiorari is concluded.

4. Eaton asserts the issues he intends to raise in his petition before this Court are "complex." Warden Pacheco, however, believes these issues are rooted in straightforward habeas corpus principles. Further, some of these issues have morphed at this late stage of the proceedings into issues that Eaton never presented to the district court and he only moderately brought to the Tenth Circuit's attention in his reply brief. *See Eaton v. Pacheco*, 931 F.3d 1009, 1025 n. 15 (10th Cir. 2019) ("Eaton attempts to make a new-claim argument for the first time in his reply brief. But arguments advanced for the first time in a reply brief are waived.").

5. Additionally, Eaton has already had additional time to formulate these issues when he raised them as the basis for his petition for rehearing in the Tenth Circuit. He also benefits from the unusual circumstance of being represented by three CJA appointed appellate attorneys instead of the two that is routine in the *Tenth Circuit*. *Order filed August 16, 2016* ("CJA counsel are again cautioned that this extraordinary departure from this court's practice of appointing two CJA attorneys in capital habeas appeals heightens the expectation that counsel will carry out this

representation in a manner that minimizes inefficiencies and avoids duplication of effort.).

6. All of the factors weigh against a finding of the good cause necessary to grant Eaton an extension of time to file his petition for a writ of certiorari. While his counsel asserts his request is not done to delay the resolution of this litigation, the State of Wyoming has been unable to move forward with state court proceedings in the five years since the federal district court granted Eaton a conditional writ of habeas corpus and vacated his death sentence. This request further prolongs the State of Wyoming's ability to seek a resolution of this matter.

WHEREFORE, for the foregoing reasons, Warden Pacheco respectfully requests that Justice Sotomayor deny Eaton's application for an extension of time in which to file his petition for a writ of certiorari.

Respectfully submitted,

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—◆—  
**CERTIFICATE OF SERVICE**  
—◆—

I, Jenny L. Craig, a member of the Bar of this Court, hereby certify in accordance with Rule 29.5(b) of the Rules of the Supreme Court that on the 16th day of December, 2019, I served a true and correct copy of RESPONDENT'S OBJECTION TO PETITIONER'S APPLICATION FOR EXTENSION OF TIME IN WHICH TO FILE HIS PETITION FOR A WRIT OF CERTIORARI by placing the same in the United States Mail, postage pre-paid, addressed as follows:

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United States Supreme Court  
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(Sent Original + 2 Copies)  
(Via Federal Express)

*Counsel for Petitioner*

I further certify that all parties required to be served have been served.

/s/ Jenny L. Craig  
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