

No. ____

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 2021

LESTER J. SMITH, on behalf of himself and all others similarly situated
Petitioner,

v.

BRIAN OWENS, Commissioner of GDOC in his official and individual capacities and Gregory
Dozier, Commissioner of GDOC in his official and individual capacities,
Respondents.

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

APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR WRIT OF
CERTIORARI

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Counsel of Record for Petitioner

To the Honorable Clarence Thomas, Associate Justice of the Supreme Court of the United States
and Circuit Justice for the Eleventh Circuit:

Petitioner, Lester J. Smith, prays for a 60-day extension to file a petition for writ of certiorari in this Court to and including Friday, May 27, 2022.

The final decision of the United States Court of Appeals for the Eleventh Circuit denying rehearing en banc was filed December 29, 2021. Thus, Petitioner's time to file a petition for writ of certiorari currently expires on Tuesday, March 29, 2022. Pursuant to Rule 13.5, this application is being filed more than ten days before that date. Also pursuant to Rule 13.5, copies of the opinions below are attached hereto. Jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

The Eleventh Circuit's opinion presents several important issues, on which the circuits are divided, concerning the application of the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc-1, and this Court's decision in *Holt v. Hobbs*, 574 U.S. 352 (2015). The principal issue is whether RLUIPA required the Georgia Department of Corrections (GDOC) to accommodate Mr. Smith's sincere religious need, as a devout Muslim, to grow an untrimmed beard. The Eleventh Circuit majority held that the assertion by prison officials that untrimmed beards might "plausibly" pose "risks" to prison safety and security were sufficient to satisfy strict scrutiny under RLUIPA. Slip Op. 21. The panel also held that GDOC could justify a refusal to permit untrimmed beards, despite the fact that they are accommodated in the vast majority of state prison systems and the federal Bureau of Prisons, without even considering the various alternative means by which the prison could advance its compelling interests without burdening Mr. Smith's sincere religious exercise. *Id.* at 25 (citation omitted). In dissent, Judge

Martin correctly recognized that these holdings effectively reinstate the unquestioned deference that the Eleventh Circuit and other circuits had given to prison officials prior to *Holt*, and render this Court’s decision in *Holt* *all* but “meaningless” in that Circuit. *Id.* at 40 (Martin, J., dissenting).

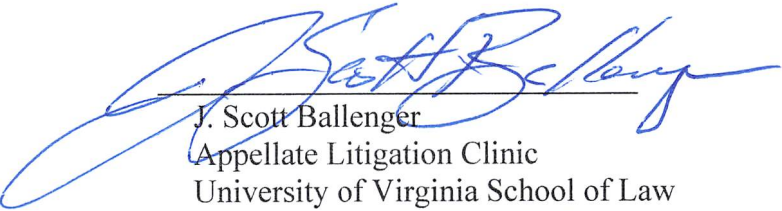
Undersigned counsel J. Scott Ballenger is the Director of the Appellate Litigation Clinic at the University of Virginia School of Law and lead counsel for Mr. Smith on appeal. In addition to my teaching responsibilities, I am lead counsel for Union Pacific in No. 20-807, *Bradley LeDure v. Union Pacific Railroad Company*, and will be arguing that case for Union Pacific before the Court on March 28, 2022—the day before this petition is currently due. I am also lead counsel with principal responsibility for a complex opening brief due in the Third Circuit on March 29, 2022, No. 20-3137 in the Third Circuit, *Andrew Jones v. United States*. That too is an Appellate Litigation Clinic case and the students in the clinic will be working hard on that brief over the next month, limiting their ability to assist with a petition for Mr. Smith.

For purposes of seeking this Court’s review, Mr. Smith has also very recently retained attorneys at the Becket Fund for Religious Liberty as co-counsel. These attorneys are working expeditiously to get up to speed on the materials relevant to this case, which includes a full trial record. They are also obligated to meet a number of filing deadlines in other matters during the next several weeks. Among other filing deadlines, counsel from Becket representing Mr. Smith have a reply brief in this Court due to be filed on March 28th in *Dr. A v. Hochul* (No. 21-1143), appellate briefs due on March 28th in both the Third and Sixth Circuits, a third brief due on March 29th in a state appellate court, and a summary judgment brief due on April 7th in the Northern District of California. All Becket counsel representing Mr. Smith will also be attending a previously-scheduled conference from March 8th to the 12th. Additional time would allow

Becket's counsel to better represent Mr. Smith's interests and best present this important legal issue to the Court.

Petitioner respectfully requests that the time to file a petition for writ of certiorari be extended by 60 days, to and including May 27, 2022. That extension will make it possible for Smith's counsel to meet professional obligations in this Court and others.

Respectfully submitted,



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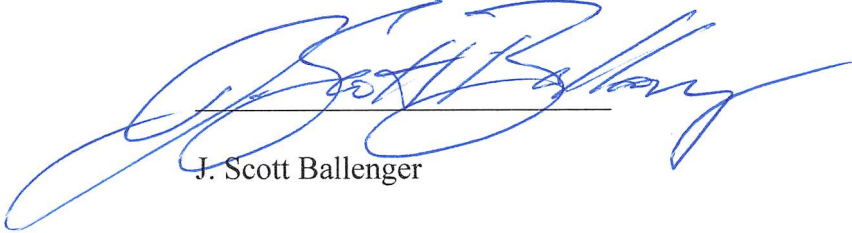
Counsel of Record for Petitioner

March 8, 2022

CERTIFICATE OF SERVICE

I, James Scott Ballenger, a member of the Bar of this Court, hereby certify that on this day March 8, 2022 I caused a copy of this Application for Extension of Time To File Writ of Certiorari to be served by first class mail and by email upon counsel of record for Respondents listed below:

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