

No. A-\_\_\_\_\_

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**In the Supreme Court of the United States**

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Terrioues Owney, Applicant,

v.

United States of America

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**APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A  
PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE FIFTH CIRCUIT**

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Criminal Justice Act  
Counsel for Applicant

To the Honorable Samuel A. Alito, Jr., Justice of the United States Supreme Court and Circuit Justice for the United States Court of Appeals for the Fifth Circuit:

Under this Court's Rules 13.5, 33, 30.2, and 30.3, Applicant Terrioues Owney applies for a 50-day extension of time – to and including December 1, 2022 – within which to file a petition for writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case. The Fifth Circuit entered a judgment on May 12, 2022. *See* App. A, 1-76. The court subsequently entered a judgment on July 13, 2022, denying petitioners' (including Owney) petition for en banc hearing. *See* App. B, 1-4. Unless extended, the time for petitioning for a writ of certiorari will expire on October 12, 2022.<sup>1</sup> Jurisdiction of this court is based upon 28 U.S.C. 1254(1).

1. This court has recognized that Louisiana prosecutors have apparent difficulty in complying with their constitutional discovery obligations. *Kyles v. Whitley*, 514 U.S. 419 (1995), *Connick v. Thompson*, 540 U.S. 668 (2004).
2. Applicant herein was one of 14 individuals charged in a sprawling 52-page, 45-count federal indictment, for crimes including a RICO conspiracy and various other offenses. The defendants were alleged to have distributed drugs, principally heroin, and committed numerous acts of violence.
3. After 10 co-defendants underwent a four-week trial (four defendants entered pleas and became witnesses for the government), defense counsel were provided with exculpatory, material information concerning two chief cooperating witnesses. The information had not been disclosed by the Government. Owney, among others, filed motions for new trial based in part on the *Brady v. Maryland*, 373 U.S. 83 (1963) violation which were denied.

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<sup>1</sup> The actual date is October 11, 2022, a Sunday.

4. The court of appeals denied relief on the issue, viewing the materiality with deference to the Government's assertions that the suppressed evidence was cumulative and would have been indifferent to a verdict. Finding the issue "a close one," the court dismissed the impact of the letter – n which a defendant/government witness admitted to fabricating his entire testimony and the case against the remaining co-defendants – because "impeachment of these cooperating witnesses was devastating." The court denied an *en banc* petition to review this ruling.
5. In a series of cases, *Brady, Smith v. Cain*, 132 S.Ct. 627 (2012), and *Wearry v. Cain*, 577 U.S. 385 (2016), this court informed reviewing courts that it should not assess materiality in a light most favorable to the prosecutors who suppressed the evidence and kept it from the jury but rather in a most favorable to the defendant who should have been given a chance to present the evidence to the jury. *See Cone v. Bell*, 556 U.S. 449 (viewing the suppressed evidence in the light most favorable to the defendant).
6. Undersigned counsel requests the 50-day extension of time, to and including December 1, 2022, within which to file a petition for a writ of certiorari. This case presents an important question whether the reviewing court should consider undisclosed during trial, but disclosed after trial, material evidence in a light most favorable to the Government or in a light most favorable to the defendant, particularly when the court itself views the issue as "a close call."
7. Counsel for Applicant is appointed under the Criminal Justice Act. Since the opinions issued herein, Counsel has been appointed to at least five other federal appeals. Moreover, Counsel has a private appellate practice in which he has had numerous deadlines and has presented seven oral arguments since July 2002 and has one scheduled for October 18, 2022 before the

Louisiana Supreme Court on an *res novo* issue of criminal procedure. Moreover, counsel has appeared and argued three times before the United States Fifth Circuit Court of Appeals since January 2002. And for the record, Counsel has appeared and argued before this court. *Montgomery v. Louisiana*, 577 U.S. 190 (2016).

8. Counsel respectfully submits that the requested 50-day extension is supported by good cause.

Respectfully submitted:

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