

No. 22A__

IN THE
Supreme Court of the United States

ADREAN L. SMITH,

Applicant,

v.

GARY A. BOUGHTON, WARDEN,

Respondent.

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

To the Honorable Amy Coney Barrett, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Seventh Circuit:

1. Pursuant to Supreme Court Rules 13.5, 22, and 30, Applicant Adrean Smith, through counsel, respectfully requests a thirty-day extension of time, up to and including December 2, 2022, to file a petition for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit, to review *Adrean L. Smith v. Gary A. Boughton, Warden*, No. 17-2192 (7th Cir.). The Seventh Circuit issued its opinion on August 4, 2022. A copy of that order is attached as Appendix A. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1). The time to file a petition for a writ of certiorari will otherwise expire on November 2, 2022. This Application for Extension of Time is timely because it has been filed on October 18, 2022, more than ten days prior to the date on which the time for filing the petition is to expire.

2. The decision of the Seventh Circuit presents important and recurring statutory and constitutional questions. First, this Court has long held that a habeas claim is properly before a federal court “despite variations in the legal theory or factual allegations urged in its support” before state and federal courts, so long as “the ultimate question for disposition” remains the same. *Picard v. Connor*, 404 U.S. 270, 277 (1971). Yet the Seventh Circuit held below that Mr. Smith had failed to exhaust his state remedies because in state court he argued that he unambiguously invoked his right to remain silent, but in federal court he argued that he unambiguously invoked his right to remain silent even if there was some ambiguity as to the *scope* of that invocation. This heightened exhaustion requirement imposes a formidable barrier to habeas relief that can be found nowhere in the governing statute or this Court’s precedents. Second, this Court held in *Miranda v. Arizona*, 384 U.S. 436 (1966), and *Connecticut v. Barrett*, 479 U.S. 523 (1987), that an individual’s right to remain silent includes a right to cut off police questioning, and that a waiver of this right must be construed narrowly. Nonetheless, the Court below held that no constitutional violation occurred when police extracted inculpatory statements from Mr. Smith through continued questioning after he repeatedly told police, “I don’t want to talk,” and “I don’t want to talk about this.” The decision below implicates how all individuals subjected to custodial interrogation may exercise their right to remain silent. This issue is of great importance and warrants this Court’s review.

3. Good cause exists for this motion. Counsel for Mr. Smith have had recently and have in the remaining period for preparing a petition substantial preexisting commitments including:

a. Kelly C. Holt, who was appointed by the Seventh Circuit to serve as Mr. Smith's counsel under the Criminal Justice Act and represents Mr. Smith pro bono, intends to serve as Mr. Smith's primary counsel in connection with his petition for certiorari; Ms. Holt is in the process of applying for admission to the Bar of the Supreme Court of the United States. Within the last month, Ms. Holt has drafted briefs filed in Oklahoma, West Virginia, and New York State courts, as well as the United States Court of Appeals for the Second Circuit. Ms. Holt has an additional brief due in New York State court on November 2, 2022. Ms. Holt also serves as appointed pro bono counsel in *Mann v. United States*, No. 21-1747 (6th Cir.), in which she filed the appellant's opening brief on August 29, 2022. Finally, Ms. Holt has ongoing obligations in connection with expert discovery in *In re Paraquat Products Liability Litigation*, Case No. 3:21-md-03004 (S.D. Ill.), and *Paraquat Cases*, JCCP 5031 (Ca. Sup. Ct.).

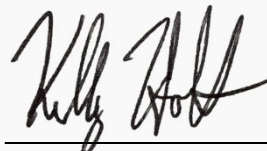
b. Rajeev Muttreja assisted Ms. Holt before the Seventh Circuit and is doing the same with the proceedings before this Court. After the decision below was issued, he has had lead responsibility for significant briefs filed in cases pending in the U.S. Court of Appeals for the Second

Circuit; the U.S. District Courts for the Southern District of California, Middle District of Georgia, Northern District of Illinois, Southern District of New York, Western District of New York, District of South Carolina; and the state courts of Delaware, Kentucky, and Texas. Many of these actions also present ongoing obligations, including additional briefing deadlines before the current deadline for Mr. Smith's petition for certiorari.

WHEREFORE, Petitioner respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari for thirty days, up to and including December 2, 2022.

Dated: October 18, 2022

Respectfully submitted,



KELLY C. HOLT

Counsel of Record

RAJEEV MUTTREJA

JONES DAY

250 Vesey Street

New York, NY 10281

(212) 326-3939

kholt@jonesday.com

Counsel for Applicant