

App. No. _____

IN THE SUPREME COURT OF THE UNITED STATES

NEVADA DEPARTMENT OF CORRECTIONS, *et al.*,

Petitioners,

v.

PHILIP GALANTI,

Respondent.

**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 NINTH CIRCUIT**

TO THE HONORABLE ELENA KAGAN, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE NINTH CIRCUIT:

Pursuant to this Court's Rule 13.5, the Defendants Nevada Department of Corrections, James Dzurenda, Brian Williams, Kim Peterson, Moore, Ritz, and Nash, respectfully request a 30-day extension of time, up to and including Wednesday, August 23, 2023, within which to file a petition for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit.

The Ninth Circuit issued an opinion on April 25, 2023. Unless extended, the time within which to file a petition for a writ of certiorari will expire on July 24, 2023. This application has been filed more than 10 days before this date. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). A copy of the Ninth Circuit’s opinion is attached as Exhibit A.

1. This case raises an important question of federal law involving the application of *Heck v. Humphrey*, 512 U.S. 477 (1994). Plaintiff Philip Roy Galanti was formerly incarcerated in the Nevada Department of Corrections. In a complaint filed under 42 U.S.C. § 1983, Galanti alleged that as he neared the end of his prison term, he completed tasks—obtaining a high school diploma and two vocation certificates—and that he was improperly denied time-credits that would have shortened the maximum term of his imprisonment. But Galanti failed to obtain habeas corpus relief before he discharged his sentence.

So, Galanti filed an action under 42 U.S.C. § 1983 that challenged the denial of those time-credits. Defendants moved to dismiss Galanti’s complaint, including asserting a defense based upon this Court’s decision in *Heck*. The district court granted the motion to dismiss on grounds

other than the Defendants' *Heck* argument. But when Galanti appealed, Defendants asserted *Heck* as an alternative ground for affirming the judgment on appeal. And the Ninth Circuit reversed the district court's judgment, rejecting Defendants' *Heck* argument under *Nonnette v. Small*, 36 F.3d 872, 875–76 (9th Cir. 2002).

2. This case presents a straightforward, clean split of authority that merits this Court's review. A seven-to-four split exists on application of *Heck* in the circumstances presented in this case—when a writ of habeas corpus is no longer an available remedy because of the plaintiff's release from custody. Six other circuits have sided with the Ninth Circuit in declining to apply *Heck* when a former inmate can no longer pursue a habeas remedy after being released from custody. *See, e.g., Cohen v. Longshore*, 621 F.3d 1311, 1315-17 (10th Cir. 2010). But four circuits would have reached the opposite conclusion and affirmed the district court's dismissal of Galanti's complaint under *Heck*. *Id.* at 1315.

3. The State of Nevada's Solicitor General, Heidi Parry Stern, has a pre-planned family vacation, from July 28th to August 7th. The Solicitor General's Office also has a very complex case coming before the Nevada Supreme Court for oral argument on August 8th, which will

require significant preparation time. The case is *Sullivan, P.E. v. Lincoln Co. Water District*, Nevada Supreme Court Case No. 84739, consolidated with cases 84741, 84742 and 84809.

Additionally, the Deputy Solicitor General who will be aiding in drafting the petition for writ of certiorari has been charged with handling several matters because of the unexpected absence of a colleague, including a brief filed in the U.S. Court of Appeals for the Ninth Circuit on July 12. In addition to that responsibility, he is drafting a merits brief due August 2 in the Supreme Court of Nevada and representing the Nevada governor in a constitutional challenge to a recently enacted elections law. He is also often tasked with responding to time-sensitive internal government issues, including one that arose this week. He has a pre-planned vacation from July 14 to July 24.

In light of the foregoing, Petitioners are seeking a 30-day extension. Counsel for Respondent, Ms. Leah Spero, indicated Respondent does not oppose Petitioners' request for additional time to file the petition for writ of certiorari.

Accordingly, Petitioners respectfully request the entry of an order extending their time to file a petition for writ of certiorari by 30 days, up to and including Wednesday, August 23, 2023.

Respectfully submitted,

AARON D. FORD
Attorney General

/s/ Heidi Parry Stern
HEIDI PARRY STERN
Solicitor General
Counsel of Record
Office of the Nevada Attorney General
555 E. Washington Ave.
Suite 3900
Las Vegas, Nevada 89101
Telephone: (702) 486-3420
HStern@ag.nv.gov

July 14, 2023

EXHIBIT A

EXHIBIT A