

App. No. _____

In the Supreme Court of the United States

CHARLES ALBERT MASSEY, III, Applicant

v.

CHADWICK DOTSON, Director Virginia Department of Corrections, Respondent

**APPLICATION TO JUSTICE ROBERTS FOR 60- DAY EXTENSION OF
TIME TO FILE PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT**

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To the Honorable Justice John G. Roberts, as Circuit Justice for the United States Court of Appeals for the Fourth Circuit:

Applicant, pursuant to this Court's Rules 13.5, 22, 30.2, and 30.3, respectfully requests that the time in which he may file a petition for a writ of certiorari be extended for 60 days until February 27, 2026. The United States Court of Appeals for the Fourth Circuit issued its per curiam opinion on September 2, 2025 (Exhibit B) and denied a petition for rehearing on September 30, 2025 (Exhibit A). If an extension of time is not granted, the filing deadline for a petition would be December 29, 2025. This Court has jurisdiction over the matter pursuant to 28 U.S.C. § 1254(1). The Virginia Solicitor General's office reported to undersigned counsel that it does not oppose this application.

Background

On September 4, 2013, Massey was arrested for two counts of rape¹ and one count of simple abduction² of P.E. in Fairfax County, Virginia. On November 1, 2013, P.E. testified at a preliminary hearing on these charges in the Fairfax County

¹ In violation of Virginia Code § 18.2-61, which carries a sentence of 5 years to life in prison.

² In violation of Virginia Code § 18.2-47, which carries a sentence of 1 to 10 years in prison or up to 12 months in jail.

Juvenile & Domestic Relations Court. The court found probable cause and certified Massey's charges to the grand jury.

On November 10, 2013, nine days after the preliminary hearing, P.E. passed away due to an alcohol and drug overdose.

On November 18, 2013, a Fairfax County grand jury returned four indictments against Massey in the Fairfax Circuit Court. In addition to the charges pending at preliminary hearing, the grand jury indicted Massey on a new charge, abduction with the intent to defile under Virginia Code § 18.2-48, requiring that the abduction be carried out with an "intent to defile." This charge carried a potential penalty of 20 years to life in prison and was the most serious charge brought against Massey. Massey was not represented on this charge at preliminary hearing because it did not then exist.

During pretrial litigation, Massey moved to exclude P.E.'s preliminary hearing testimony from evidence at his trial on evidentiary and Confrontation Clause grounds. The trial court initially granted his motion on evidentiary grounds for failing to meet the criteria under Rule 2:804(b)(1) of the Virginia Rules of Evidence (Hearsay Exceptions; Declarant Unavailable) regarding the right and opportunity to cross-examine. However, after a failed interlocutory appeal by the prosecution, the prosecution moved to reconsider the trial court's ruling excluding P.E.'s preliminary hearing testimony. Ultimately, the Fairfax Circuit Court reversed its prior ruling,

allowing the Commonwealth to admit P.E.'s preliminary hearing testimony into evidence at Massey's trial.

Massey was tried before a jury between January 26 to January 30, 2015 and P.E.'s preliminary hearing testimony was admitted against him through a surrogate witness, a friend of P.E., who read P.E.'s preliminary hearing testimony to the jury. On January 30, 2015, the jury found Massey guilty of all charges. Post-trial, the trial court set aside the abduction charge on other grounds but upheld Massey's convictions for two counts of rape and abduction with intent to defile. On August 26, 2015, Massey was sentenced to 62 years in prison, with 10 years suspended.

Massey timely noted his appeal to the Virginia Court of Appeals where he continued to raise Confrontation Clause challenges to the admissibility of the preliminary hearing, including arguing that he did not have the opportunity to cross-examine P.E. on the charge brought after her death. On December 13, 2016, the Court of Appeals affirmed Massey's convictions in a published opinion. *Massey v. Commonwealth*, 67 Va. App. 108, 793 S.E.2d 816 (2016). Massey timely noted his appeal to the Supreme Court of Virginia and on June 16, 2017, the Virginia Supreme Court denied his petition for appeal without additional reasoning. Massey filed a petition for rehearing, which the court denied on October 6, 2017.

On January 29, 2018, Massey filed a petition for writ of certiorari to the United States Supreme Court continuing to raise his Confrontation Clause challenges to the

admissibility of the preliminary hearing against him. On March 19, 2018, the Supreme Court denied his petition.

On October 5, 2018, Massey filed a timely state habeas petition in the Fairfax Circuit Court raising other grounds. On January 15, 2020, the Fairfax Circuit Court dismissed the habeas petition. On April 15, 2020, Massey timely appealed the dismissal of his habeas petition to the Virginia Supreme Court, which was refused on October 2, 2020.

On October 21, 2021, Massey filed a federal habeas petition pursuant 28 U.S.C. § 2254 in the United States District Court for the Eastern District of Virginia asserting, amongst other claims, the preliminary hearing was admitted at his trial in violation of the Confrontation Clause—including arguing that he did not have the opportunity to cross-examine P.E. on the new charge brought after preliminary hearing. His petition was filed out of time but Massey argued the doctrine of equitable tolling should apply. On December 30, 2022, the Director of the Virginia Department of Corrections filed a motion to dismiss and brief in support. On February 3, 2023, Massey filed a reply. On December 1, 2023, the district court granted Massey’s motion to file his petition out of time, applying the doctrine of equitable tolling, but granted the Director’s motion to dismiss on the merits. The district court would later deny a certificate of appealability.

Massey timely appealed to the Fourth Circuit where he continued to litigate his Confrontation Clause challenges to the admissibility of the preliminary hearing transcript against him in his trial, including that he did not have counsel at his preliminary hearing on the most serious charge against him because it did not then exist. The Fourth Circuit denied a certificate of appealability in its opinion dated September 2, 2025 and denied his petition for rehearing on September 30, 2025.

Massey continues to contend that the trial court's admission of the preliminary transcript against him at his trial violated the Confrontation Clause, especially where the prosecution indicted the most serious charge against him after the complaining witness' death, undermining his opportunity to cross-examine on the charge. He contends this contravenes established Confrontation Clause precedent and wishes to seek review in this Court. *Pointer v. Texas*, 380 U.S. 400, 401 (1965) (reversing Pointer's robbery conviction where he lacked representation at preliminary hearing and thereby could not effectively cross-examine the witness against him, which testimony was admitted against him at trial after the witness became non-available).

Reasons For Granting an Extension of Time

This case has a lengthy record spanning over ten years. Further research is required on how different courts handle the admissibility of preliminary hearing testimony at trial when a witness becomes unavailable, particularly if new charges

are filed after the preliminary hearing. There was also a delay in confirming the applicant's intent to seek certiorari. Counsel has confirmed that Massey plans to request review of the Fourth Circuit's decision, and counsel was retained to file a certiorari petition on November 11, 2025—over 40 days after the denial of his rehearing request in the Fourth Circuit on September 30, 2025.

In addition, the holidays are approaching and undersigned counsel has an otherwise heavy workload, including a federal capital case, a state appeal, and other federal and state matters. Lastly, Massey is currently incarcerated in a Virginia penitentiary that has been subject to lockdowns and wishes to review his petition before it is filed. Granting a sixty-day extension for filing the petition will ensure that Massey's claims are presented fully and fairly.

Conclusion

Based on the foregoing, the applicant respectfully requests that the time to file a writ of certiorari in the above-captioned matter be extended 60 days to and including February 27, 2026.

Dated this 15th day of December, 2025.

Respectfully submitted
By Counsel

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