

No. 26A-_____

IN THE
Supreme Court of the United States

ROBERT MATTHEW CALDWELL,
Applicant,

v.

COMMONWEALTH OF VIRGINIA,
Respondent.

On Petition for a Writ of Certiorari to the
Court of Appeals of Virginia

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

Jessiah S. Hulle
GENTRY LOCKE
10 Franklin Road SE
Suite 900
Roanoke, VA 24011

Jeffrey L. Fisher
Counsel of Record
STANFORD LAW SCHOOL
SUPREME COURT
LITIGATION CLINIC
559 Nathan Abbott Way
Stanford, CA 94305
(650) 724-7081
jlfisher@law.stanford.edu

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

TO: Chief Justice John G. Roberts, Jr., Circuit Justice for the Fourth Circuit:

Under this Court’s Rules 13.5 and 22, Applicant Robert Matthew Caldwell requests an extension of sixty (60) days to file a petition for a writ of certiorari in this case. His petition will seek review of the decision of the Virginia Court of Appeals in *Caldwell v. Commonwealth*, 921 S.E.3d 231 (Va. App. 2025), in which the court upheld his conviction and sentence for driving under the influence of drugs. A copy of the decision is attached. In support of this application, Applicant states:

1. The Virginia Court of Appeals issued its decision in this case on October 21, 2025. The Virginia Supreme Court denied review on June 4, 2026. *See* App. 16. Without an extension, the petition for a writ of certiorari would be due on September 2, 2026. With the requested extension, the petition would be due on November 1, 2026. This Court’s jurisdiction is based on 28 U.S.C. § 1257(a).

2. This case involves the application of the Sixth Amendment’s Confrontation Clause to a certification prepared as part of a forensic investigatory analysis—specifically, to a phlebotomist’s formal attestation that (among other things) she followed certain protocols while obtaining a blood sample from the “accused.” App. 3-4.

This issue arises in a prosecution that began with a traffic stop. After observing erratic driving, a Montgomery County (Virginia) police officer stopped

Applicant. When Applicant's responses to roadside sobriety tests indicated the possibility of drug use, the officer arrested Applicant and took him to a hospital to obtain a blood draw. With the officer watching, a nurse named Kelly Patteson conducted the blood draw. A toxicologist then tested Applicant's blood and determined that it contained methamphetamine at 1.6 milligrams per liter—a level that “could cause incoordination and more risk taking behavior.” App. 3.

The Commonwealth charged Applicant with driving under the influence of drugs, third offense or subsequent offense within ten years. Prior to trial, the Commonwealth served notice “that it intended to introduce a certificate of analysis pertaining to the blood draw,” which “included a blood withdrawal certificate affixed onto the first page.” App. at 2-3. The blood withdrawal certificate included Applicant's name, the arresting officer's name, and the date and time of the blood draw. *Id.* at 3. It also contained the following attestation by Patteson: “I certify that the blood in the vial to which this Certificate is attached was withdrawn from the above named accused. I am a qualified pursuant to Va. Code § 18.2.268.5 to withdraw blood & the blood was taken in compliance with Va. Code § 18.2.268.5.” App. at 3-4. Va. Code § 18.2-268.5, in turn, requires blood draws to be taken in a particular manner to avoid contamination or spoilation.

Applicant objected that introducing the blood withdrawal certificate at trial without putting Patteson on the stand would violate the Confrontation Clause. He explained that the Confrontation Clause forbids the admission of testimonial evidence absent an opportunity for cross-examination and that this

Court had held in *Melendez-Diaz v. Massachusetts*, 557 U.S. 309 (2009), that a forensic analyst's certificate of analysis is testimonial.

The trial court overruled Applicant's objection, and the Virginia Court of Appeals affirmed. As relevant here, the Court of Appeals distinguished *Melendez-Diaz* on the ground that Patteson's out-of-court statements were "not accusatory,"—in other words, "only probative as to the quality control of the blood sample, rather than as to the scientific analysis conducted on the sample." App. 12-13. Instead of serving an "evidentiary" purpose, therefore, the Virginia Court of Appeals deemed Patteson's statements on the certificate to be "recordkeeping statements serving an administrative purpose." *Id.* at 13.

3. This case is a serious candidate for plenary review. Two other state courts have concluded, like the Virginia Court of Appeals, that formalized certifications prepared to buttress forensic analyses are not testimonial. *See State v. Costello*, 2018 WL 1322779 (N.M. Ct. App. 2018) (unpublished decision); *M.D. v. State*, 90 N.E.3d 1215, 1222-23 (Ind. Ct. App. 2017), *vacated on other grounds*, 108 N.E.3d 301 (Ind. 2018). By contrast, three state courts of last resort have held, relying on *Melendez-Diaz*, that certifications just like the one here are testimonial. *See City of Reno v. Howard*, 318 P.3d 1063 (Nev. 2014); *State v. Lutz*, 820 N.W.2d 111 (N.D. 2012); *State v. Sorensen*, 814 N.W.2d 371 (Neb. 2012). In the view of those courts, formalized out-of-court statements that describe a phlebotomist's qualifications and procedures as mandated by state law are no

less prepared for evidentiary purposes when prepared as part of DUI investigations than statements pronouncing the results of blood tests themselves.

This disagreement over how to apply the Confrontation Clause in this frequently recurring situation is ripe for this Court's consideration. Furthermore, the holding of the Virginia Court of Appeals' is incorrect. The blood withdrawal certificate was a formalized document created in conjunction with a law enforcement operation against "the above named accused"—that is, Applicant. App. 3-4. And it helped prove that Applicant was under the influence of drugs—an element of the crime with which he was charged. As such, the certification was testimonial under any definition of the term. Contrary to the Virginia Court of Appeals' assertion, there is not some category of witness statements that are "helpful to the prosecution, but somehow immune from confrontation." *Melendez-Diaz*, 559 U.S. at 314.

4. This application for a 60-day extension seeks to accommodate Applicant's legitimate needs. Applicant has only recently affiliated undersigned counsel at the Stanford Law School Supreme Court Litigation Clinic. The extension is needed for new counsel to fully familiarize themselves with the record, decision below, and relevant case law, and to allow counsel adequate time to prepare the petition for certiorari. The press of other business and deadlines means these tasks will take several weeks. In addition, the requested extension will allow the Clinic to slot this case in its fall quarter of operation, which begins on September 21, 2026.

5. For these reasons, Applicant requests that the due date for his petition for a writ of certiorari be extended to November 1, 2026.

Respectfully submitted,

By: _____



Jessiah S. Hulle
GENTRY LOCKE
10 Franklin Road SE
Suite 900
Roanoke, VA 24011

Jeffrey L. Fisher
Counsel of Record
STANFORD LAW SCHOOL
SUPREME COURT
LITIGATION CLINIC
559 Nathan Abbott Way
Stanford, CA 94305
(650) 724-7081
jlfisher@law.stanford.edu

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