

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

Lane Mitchell A/K/A Lane Douglas Mitchell,
Applicant,

v.

State of Mississippi,
Respondent.

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

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

Pursuant to this Court's Rules 13.5, 22, and 30, Applicant Lane Mitchell respectfully requests a 60-day extension of time, to and including November 13, 2026, within which to file a petition for a writ of *certiorari* to review the judgment below in this case. As discussed herein, this case involves an important question of federal constitutional law upon which state courts of last resort are divided: how to identify an acquittal in mixed legal/factual rulings, and whether the Fifth Amendment's Double Jeopardy Clause prohibits retrial when a judgment of acquittal is entered rightly or wrongly, *Fong Foo v. United States*, 369 U.S. 141 (1962), and when a judgment of acquittal is based on a mixed question of fact and law. The petition will seek review of the Mississippi Court of Appeals' judgment

permitting Mr. Mitchell to be retried after a four-day jury trial ended with the circuit court's entering a Judgment of Acquittal after receiving all evidence. The contemplated petition presents an important question under the Double Jeopardy Clause concerning when a trial court's termination of a prosecution constitutes an acquittal for federal constitutional purposes.

The Mississippi Supreme Court dismissed Mr. Mitchell's previously granted petition for writ of *certiorari* on June 15, 2026. *See* Appendix D. The time to file a petition for a writ of *certiorari* to this Court therefore expires September 14, 2026, absent an extension. Consistent with Rule 13.5, this application is being filed at least 10 days before that date. Mr. Mitchell has not previously sought an extension of time from this Court. This Court's jurisdiction will be invoked under 28 U.S.C. § 1257(a).

1. In 2023, Mr. Mitchell was tried before a jury in the Circuit Court of Union County, Mississippi, on a charge of attempted murder. The trial proceeded for four days. After the jury had been sworn and impaneled, after the State and Defense had presented their evidence, and after both sides had rested, the circuit court determined that Mr. Mitchell's constitutional right to compulsory process under the Sixth Amendment had been violated and made factual findings on the record. Before submitting the case to the jury, the court entered a Judgment of Acquittal. *See* Appendix E. The court stated that its ruling applied the law "to the facts that [it knew had] been established now that the case is over."

2. The State appealed. On July 15, 2025, the Mississippi Court of Appeals, sitting *en banc*, reversed and remanded for a new trial. *See State v. Mitchell*, No. 2023-KA-00771-COA (Miss. Ct. App. July 15, 2025), attached as Appendix A. The Mississippi Court of Appeals concluded that the circuit court's disposition was not an acquittal, but instead a dismissal of the indictment against Mr. Mitchell, and that he could be retried. Four judges dissented from the majority disposition, finding that the State did not have statutory authority to appeal the trial court's judgment and, among other findings, that double-jeopardy concerns certainly would arise in a retrial.

3. The Mississippi Court of Appeals denied rehearing on October 28, 2025, with four judges voting to grant rehearing. *See* Appendix B.

4. Mr. Mitchell then sought *certiorari* in the Mississippi Supreme Court. *See* Appendix C. That court granted *certiorari* on February 11, 2026, but on June 15, 2026, sitting *en banc*, dismissed the previously granted writ on its own motion, stating that “[u]pon further consideration” there was “no need for further review.” *See* Appendix D.

5. Mr. Mitchell is presently scheduled to be retried before the Circuit Court of Union County beginning on March 22, 2027.

6. The contemplated petition will ask whether the Double Jeopardy Clause permits retrial where a jury trial has proceeded through the close of all evidence, the trial court removes the case from the jury, and enters a judgment of acquittal based on constitutional violations evaluated in light of the evidence developed at

trial, but does not separately characterize the prosecution’s evidence as legally insufficient. This Court has repeatedly held that whether an acquittal occurred turns on the substance of the ruling rather than its label. *See United States v. Martin Linen Supply Co.*, 430 U.S. 564, 571 (1977); *United States v. Scott*, 437 U.S. 82, 96–97 (1978); *Evans v. Michigan*, 568 U.S. 313 (2013); *McElrath v. Georgia*, 601 U.S. 87 (2024).

7. Notwithstanding this Court’s precedent, lower state courts are divided in their application of that precedent and their approach to identifying an acquittal in a mixed legal/factual ruling and determining the effect of such rulings. The broader doctrinal problem is that lower courts agree that substance controls over labels, but they do not apply a uniform test for determining substance when a termination involves both legal or constitutional grounds and the trial evidence. There are generally two approaches: the stricter approach requires the court record to demonstrate an actual legal-insufficiency determination, while the more functional approach assesses the court’s ruling as a whole and whether criminal liability was resolved, consistent with *Evans*. *See, e.g., People v. Hatch*, 22 Cal. 4th 260, 991 P.2d 165 (2000) (stricter approach); *State v. Kruelski*, 250 Conn. 1, 737 A.2d 377 (1999) (same); *Kendall v. State*, 429 Md. 476, 56 A.3d 223 (2012) (same); *State v. Bruno*, 293 Conn. 127, 975 A.2d 1253 (2009) (same); *cf. State v. Karpov*, 195 Wash. 2d 288, 458 P.3d 1182 (2020) (functional approach); *State v. Taylor*, 371 Md. 617, 810 A.2d 964 (2002) (same); *State v. Lee*, 91 Hawai‘i 206, 982 P.2d 340 (1999) (same); *State v. Bolick*, 512 So. 2d 960 (Fla. 2d DCA 1987) (same).

8. The petition will address whether the Mississippi Court of Appeals' treatment of Mr. Mitchell's judgment of acquittal is consistent with this Court's decisions and will examine the differing approaches lower courts have taken when distinguishing a substantive acquittal from a procedural or constitutional dismissal in mixed legal-and-factual circumstances. The petition will also address review under 28 U.S.C. § 1257(a) before the ordered retrial, where the asserted Double Jeopardy right is a right not to be subjected to the second trial itself.

9. Mr. Mitchell respectfully requests additional time to file his petition for three principal reasons. First, the contemplated petition requires substantial research concerning the interaction of this Court's Double Jeopardy precedents with the finality requirements governing review of state-court judgments authorizing retrial. Counsel is reviewing decisions from federal courts of appeals and state courts of last resort applying *Martin Linen*, *Scott*, *Evans*, and *McElrath* in order to accurately present the disagreement among lower courts and the grounds for this Court's review.

10. Second, the record and procedural history are substantial and unusual. The case proceeded through a multi-day jury trial, a Judgment of Acquittal, an appeal by the State, rehearing proceedings, a petition for writ of *certiorari* to the Mississippi Supreme Court, that court's initial grant of *certiorari*, and its later dismissal of the writ on its own motion. Additional time will permit counsel to review that record, frame the federal Question Presented with precision, and prepare the petition and appendix without unnecessarily expanding the petition

into state-law issues concerning Mississippi's statutory limits on prosecution appeals.

11. Third, counsel of record and the defense team have a number of substantial competing commitments, including several state-court trials and/or hearings, mediations, depositions, and criminal court terms. Several of these obligations have been scheduled months in advance.

12. The requested extension is sought in good faith and not for purposes of delay. Mr. Mitchell's retrial is presently scheduled for March 2027, and an extension to November 13, 2026, will leave time for the petition to be filed and considered before the presently scheduled retrial.

13. Undersigned counsel reached out to the Respondent to inquire whether they would agree to this filing for extension of time. Counsel for Respondent stated that "the State cannot agree to that extension" with no stated reason or explanation.

14. For these reasons, Mr. Mitchell respectfully requests that the time within which to file a petition for a writ of *certiorari* be extended by 60 days, to and including November 13, 2026.

Respectfully submitted,

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