

No. _____

IN THE
Supreme Court of the United States

EDDIE TARDY,

Petitioner,

v.

CORRECTIONS CORPORATION OF AMERICA, N/K/A/ CORECIVIC, ET AL.,

Respondents.

**APPLICATION TO THE HONORABLE BRETT M. KAVANAUGH 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 SIXTH CIRCUIT**

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To the Honorable Brett M. Kavanaugh, as Circuit Justice for the United State Court of Appeals for the Sixth Circuit:

Pursuant to this Court's Rules 13.5, 22, 30.2, and 30.3, Petitioner Eddie Tardy respectfully requests that the time to file his Petition for Writ of Certiorari in this matter be extended 60 days, up to and including August 7, 2023. The Court of Appeals issued its opinion on January 13, 2023. (Appendix ("App.")), and the Sixth Circuit denied rehearing en banc on March 9, 2023. Absent an extension of time, the Petition for Writ of Certiorari would be due on June 7, 2023. Petitioners file this Application more than 10 days before that date. See S. Ct. R. 13.5. This Court would have jurisdiction over the judgment under 28 U.S.C. 1254(1). Respondents, through their counsel, do not object to a 60-day extension.

Background

Respondent CoreCivic operates private prisons. Several years ago, the company's stockholders brought a class action alleging securities fraud. After CoreCivic settled that suit, Ms. Marie Newby moved to intervene, seeking documents produced in the securities action that would help establish CoreCivic's responsibility for the death of her son in one of its prisons. The district court unsealed most, but not all, of the documents Newby sought. She appealed, but before the Sixth Circuit could decide her case, she settled with CoreCivic and moved to voluntarily dismiss her appeal.

At the same time, Petitioner Mr. Eddie Tardy moved to intervene in the appeal, seeking permission to take Newby's place. See Fed. R. Civ. P. 24(b). Like

Ms. Newby, Mr. Tardy had a son who died in a CoreCivic prison. He seeks documents both on his own behalf but also to vindicate the public right of access to judicial records.

The Sixth Circuit panel majority acknowledged the “common-law right of public access to court records,” flowing from “the ‘long-established legal tradition’ allowing the public to inspect and copy judicial records.” App.3 (citations omitted). But the majority erroneously interpreted a statement of Mr. Tardy’s counsel at oral argument as conceding that “he had not suffered any adverse effects” from the inability to access the documents CoreCivic produced in litigation, App.5, and absent those adverse effects, the majority held that Mr. Tardy lacked standing, so the case could not proceed. App.4–5.

Judge Julia Smith Gibbons vehemently dissented. She criticized the majority’s analysis for failing to heed this Court’s decisions in *Public Citizen v. United States Department of Justice*, 491 U.S. 440 (1989), and *Federal Election Commission v. Akins*, 524 U.S. 11 (1998), and for reaching “a result that puts [the Sixth Circuit] at odds with [its] sister circuits.” App.8 (Gibbons, J., dissenting). Judge Gibbons explained that while the panel majority followed the Fifth Circuit’s decision in *Campaign Legal Center v. Scott*, 49 F.4th 931, 938 (5th Cir. 2022), the panel’s decision conflicted directly with the Fourth and Eleventh Circuits, both of which “have held that intervenors have standing to vindicate the public’s First Amendment right of access to judicial records.” App.11–12, citing *Doe v. Pub. Citizen*, 749 F.3d 246, 262–65 (4th Cir. 2014), and *Brown v. Advantage Eng’g, Inc.*,

960 F.2d 1013, 1016 (11th Cir. 1992). Moreover, the panel majority’s decision conflicts implicitly with decisions of the First and Third Circuits, which “have held that intervenors have standing to seek modification of discovery-related protective orders, suggesting *a fortiori* that they would also have standing to seek unsealing of documents on a court’s docket.” App.12, citing *Pub. Citizen v. Liggett Grp., Inc.*, 858 F.2d 775, 787 (1st Cir. 1988), and *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 777 (3d Cir. 1994). Judge Gibbons also concluded that when the entirety of the Fifth Circuit’s precedent is considered, the majority’s opinion makes the Sixth Circuit “the *only* one to hold that intervenors categorically lack standing to vindicate the public right of access to information.” App.12 (emphasis added).

The issues presented by this decision are of immense jurisprudential significance. Transparency in court proceedings promotes confidence in the judicial system and the fair administration of justice. It also encourages judges to act impartially and consistently. By requiring unsealing proponents to demonstrate “adverse effects from the denial of documents,” App.5, the Sixth Circuit’s ruling will have catastrophic effects on all manner of informational and public-disclosure claims—from sealing, to FOIA, to courtroom closure, to gag orders. At best, the decision will require citizens to disclose to a judge—one whose rulings they may be investigating for impropriety—their motivation to seek records held by their government to satisfy the panel’s heightened injury standard. At worst, the ruling will stymie such claims entirely, because without speculating, litigants cannot plausibly know how they were injured by being denied access to information that

they have a right to receive but cannot see. App.12 (“How can a member of the public, unfamiliar with the contents of a sealed judicial record, establish how the failure to disclose that record harms him?”) (Gibbons, J., dissenting).

Reasons for Granting an Extension of Time

The time within which to file a Petition for a Writ of Certiorari should be extended for 60 days for the following reasons:

1. Petitioners’ Counsel of Record, John J. Bursch, was not counsel below and has been retained to file the Petition. Mr. Bursch needs time to familiarize himself with the lower court documents and proceedings to prepare a Petition that will be most helpful to the Court. In addition, he has had and will continue to have numerous litigation deadlines before and after June 7, 2023, when the Petition is due, including but not limited to the following:

- An en banc reply brief filed in the United States Court of Appeals for the Second Circuit on May 4, 2023 (*Soule v. Connecticut Association of Schools*, No. 21-1365);
- A brief in opposition to a cross-petition for certiorari filed in this Court on May 12, 2023 (*Hall v. Meisner*, No. 22-996);
- Assisting a colleague with preparation for an argument in the United States Court of Appeals for the Fifth Circuit on May 17, 2023 (*Alliance for Hippocratic Medicine v. Food & Drug Administration*, No. 23-10362);
- A reply/cross-appellees’ brief filed in the United States Court of Appeals for the Tenth Circuit on May 26, 2023 (*Chiles v. Salazar*, No. 22-1445);
- A reply brief in support of a petition for certiorari filed in this Court on May 26, 2023 (*College of the Ozarks v. Biden*, No. 22-816);
- A merits amicus brief in the United States Court of Appeals for the Eleventh Circuit on May 30, 2023 (*Littlejohn v. School Board of Leon County, Florida*, No. 23-10385-HH);

- An amicus merits brief in the United States Court of Appeals for the Tenth Circuit on May 30, 2023 (*Speech First, Inc. v. Shrum*, No. 23-6054);
- A reply brief in support of a petition for discretionary review in the Colorado Supreme Court on June 1, 2023 (*Scardina v. Masterpiece Cakeshop*, No. 2021CA1142);
- A summary judgment response brief before a three-judge redistricting panel on June 6, 2023 (*Agee v. Benson*, No. 1:22-cv-00272);
- An en banc argument in the United States Court of Appeals for the Second Circuit on June 6, 2023 (*Soule v. Connecticut Association of Schools*, No. 21-1365);
- A summary judgment reply brief before a three-judge redistricting panel on June 20, 2023 (*Agee v. Benson*, No. 1:22-cv-00272);
- An oral argument before a three-judge redistricting panel on July 13, 2023 (*Agee v. Benson*, No. 1:22-cv-00272);
- A reply brief in support of a petition for certiorari in this Court on July 15, 2023 (*Tingley v. Ferguson*, No. 22-942); and
- An appellees' brief in the United States Court of Appeals for the Ninth Circuit on July 20, 2023 (*Hunter v. U.S. Department of Education*, No. 23-35174).

2. This case presents issues of great importance to the public, which requires ready access to judicial records to ensure an accountable judiciary.

3. As noted in Judge Gibbons' dissent, the Sixth Circuit's decision conflicts with this Court's rulings in *Public Citizen v. United States Department of Justice*, 491 U.S. 440 (1989), and *Federal Election Commission v. Akins*, 524 U.S. 11 (1998).

4. As further noted in Judge Gibbons' dissent, the Sixth Circuit's decision conflicts directly with *Doe v. Pub. Citizen*, 749 F.3d 246, 262–65 (4th Cir. 2014), and *Brown v. Advantage Eng'g, Inc.*, 960 F.2d 1013, 1016 (11th Cir. 1992), and implicitly

with *Pub. Citizen v. Liggett Grp., Inc.*, 858 F.2d 775, 787 (1st Cir. 1988), and *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 777 (3d Cir. 1994).

5. As a result of these conflicts, a significant prospect exists that this Court will grant certiorari and reverse the Sixth Circuit.

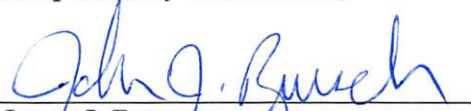
6. Counsel requires the additional requested time to fully research the issues and prepare an appropriate petition for the Court's consideration.

7. No meaningful prejudice would arise from granting the extension. The mandate has already issued, and it is not stayed.

Conclusion

For the foregoing reasons, Petitioners hereby request that an extension of time to and including August 7, 2023, be granted within which Petitioners may file a petition for a writ of certiorari.

Respectfully submitted,


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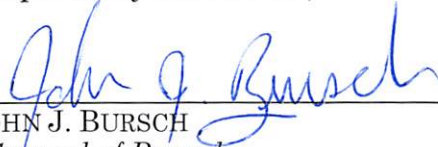
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CERTIFICATE OF SERVICE

A copy of this application was served by email and U.S. mail to the counsel listed below in accordance with Supreme Court rule 22.2 and 29.3:

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