

No. \_\_\_\_\_

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IN THE  
**Supreme Court of the United States**

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KENNETH KELLEY,

*Petitioner,*

v.

WILLIAM BOHRER, ACTING WARDEN;  
MARYLAND ATTORNEY GENERAL,

*Respondents.*

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**APPLICATION FOR EXTENSION OF TIME TO FILE A  
PETITION FOR WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT**

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TO THE HONORABLE JOHN G. ROBERTS, JR., Chief Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Fourth Circuit:

Pursuant to 28 U.S.C. § 2101(c) and Supreme Court Rules 13.5, 22, and 30, petitioner Kenneth Kelley (“Petitioner”), through counsel, respectfully requests a 60-day extension of time, up to and including August 30, 2024, in which to file a petition for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit to review *Kelley v. Bohrer*, No. 23-6179. Petitioner will seek to invoke the jurisdiction of this Court pursuant to 28 U.S.C. § 1254(1).

1. **This Application is Timely.** The United States Court of Appeals for the Fourth Circuit issued its decision in this matter on February 28, 2024, a copy of which is attached as Exhibit 1. It then issued an order denying a timely petition for rehearing *en banc* on April 2, 2024, a copy of which is attached as Exhibit 2. The time to file a petition for a writ of certiorari will otherwise expire on July 1, 2024. The application is timely because it has been filed more than 10 days before the date on which the petition is otherwise due.

2. **The Judgment Sought to be Reviewed.** The decision of the Fourth Circuit for which Petitioner will seek review reversed a decision of the District of Maryland granting habeas corpus relief to Petitioner pursuant to the Antiterrorism and Effective Death Penalty Act (“AEDPA”), 28 U.S.C. § 2254. The Fourth Circuit’s decision presents an important and recurring question of federal law regarding the proper deference owed to state postconviction court decisions under AEDPA and the

scope of this Court’s decision in *Wilson v. Sellers*, 138 S. Ct. 1188 (2018). *Wilson* held that in looking to the last reasoned decision from a state postconviction court and deciding whether that court’s decision “involved an unreasonable application of federal law” under AEDPA, a federal court must “train its attention on the *particular reasons*—both legal and factual—why state courts rejected a state prisoner’s federal claims” and give “appropriate deference to that decision.” 138 S. Ct. at 1191–92 (internal quotation marks omitted) (emphasis added).

The Fourth Circuit’s decision below deepened a circuit split on the proper deference owed to reasoned state postconviction court decisions under AEDPA. The Fourth Circuit decision did not just focus on the “particular reasons” provided by the state court in denying Petitioner’s request for postconviction relief; instead, it relied on other reasons not addressed by the state postconviction court. This approach puts the Fourth Circuit in line with the Eleventh Circuit’s *en banc* decision, which was filed with a strong dissent. *See, e.g., Pye v. Warden, Ga. Diagnostic Prison*, 50 F.4th 1025, 1037–38 (11th Cir. 2022) (*en banc*), *cert. denied*, 144 S. Ct. 344 (2023) (explaining that where “a state court rejects a petitioner’s claim in a written opinion accompanied by an explanation, the federal habeas court reviews only the state court’s ‘decision’ and is not limited to the particular justifications that the state court supplied”). *But see id.* at 1072 (Pryor, J., dissenting) (explaining that, according to this Court’s decision in *Wilson v. Sellers*, “as a federal court constrained by AEDPA, we must focus exclusively on the reasons actually given by the state habeas court and defer to those reasons, and those reasons alone, under AEDPA”).

The Fourth Circuit’s decision is, however, flatly at odds with the approach of at least one other Circuit. The Third Circuit, also sitting *en banc*, has held that federal courts performing AEDPA review cannot consider reasons *other than* those reasons the state court relied upon in a reasoned postconviction decision. *Dennis v. Secretary, Pa. Dep’t of Corr.*, 834 F.3d 263, 281–82 (3d Cir. 2016) (*en banc*) (“[F]ederal habeas review does not entail speculating as to what other theories could have supported the state court ruling when reasoning has been provided, or buttressing a state court’s scant analysis with arguments not fairly presented to it.”).

The Fourth Circuit’s decision raises an additional recurring and important question of federal law. According to this Court’s clearly established precedent, and viewing *all* the relevant circumstances in the record, a defendant must have “real notice of the true nature” of the charges against him, meaning the defendant must have been “informed of the crime’s elements.” *Henderson v. Morgan*, 426 U.S. 637, 645 (1976) (internal quotation marks omitted); *Bradshaw v. Stumpf*, 545 U.S. 175, 183 (2005) (same)); *see also Boykin v. Alabama*, 395 U.S. 238, 243–44 (1969) (explaining that the “record [must] disclose that the defendant voluntarily and *understandingly* entered his pleas of guilty” and courts must ensure the defendant “has a full *understanding* of what the plea connotes” (emphases added)). This includes real notice of the intent (*mens rea*) element of a crime. *Henderson*, 426 U.S. at 647. Here, the state court record contains direct testimony from plea counsel regarding his pre-plea conversations with Petitioner, wherein he explained what the State would have to prove to find Petitioner guilty but omitted any explanation or mention

of the *mens rea* elements. The Court will be asked to decide whether, under this Court's clearly established precedent, Petitioner's plea was unconstitutional due to lack of real notice of the true nature of the crimes to which he pled guilty.

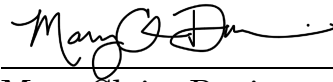
3. **Good Cause for an Extension Exists.** The undersigned respectfully that submits that good cause exists for this Court extend the deadline for filing the petition for writ of *certiorari* for two reasons. First, the undersigned is employed as a full-time teaching associate professor at the West Virginia University College of Law and additionally, maintains a docket of court-appointed cases through her participation on the Fourth Circuit Criminal Justice Act Panel. This matter involves complex issues of constitutional law, federalism, and interpretation of AEDPA. The undersigned's other professional obligations will prevent her from conducting the thorough research required and finalizing the petition in the time allotted.

Second, the undersigned requires additional time to explore the possibility of involving the West Virginia University College of Law Supreme Court Clinic in the preparation of the petition for writ of *certiorari*. Such efforts have been delayed due to the students' final exam period and summer break. A deadline of August 30, 2024, would enable the undersigned to explore this possibility more fully and potentially work with students during the first part of the Fall semester. Counsel for Respondents has also represented that he consents to the extension of time.

#### CONCLUSION

For these reasons, Petitioner respectfully requests that this Court extend the deadline to file the Petition for Writ of Certiorari by 60 days, or until August 30, 2024.

Respectfully Submitted,



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