

IN THE SUPREME COURT OF THE UNITED STATES

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No. A-\_\_\_\_\_

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JAMES JOHNSON, APPLICANT

v.

UNITED STATES OF AMERICA

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APPLICATION 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 THIRD CIRCUIT

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To the Honorable Samuel A. Alito, Jr., Circuit Justice for the United States Court of Appeals for the Third Circuit:

Pursuant to Rules 13.5 and 30.2 of this Court, James Johnson respectfully applies for a 60-day extension of time, to and including September 9, 2024, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in this case. The judgment of the court of appeals was entered on February 14, 2024. App., *infra*, 18a. On April 11, 2024, the court of appeals denied a petition for rehearing en banc. *Id.* at 20a-21a. Unless extended, the time for filing a petition for a writ of certiorari will expire on July 10, 2024. The jurisdiction of this Court would be invoked under 28 U.S.C. 1254(1).

1. Applicant James Johnson was convicted by a jury of violating 21 U.S.C. § 841(a)(1) and (b)(1)(C) and 18 U.S.C. § 924(c). App., *infra*, 3a. During *voir dire*, the trial court struck Prospective Juror No. 2 for cause because it inferred from her

correct understanding that “everyone” has implicit biases and that these biases may impact unconsciously “how we assess or remember what we see and hear, and how we make[]decisions,” that she would “imput[e] those biases to others” and “in effect be imposing an additional burden” on the government. On appeal, the defense urged that a juror who is sensitized to her own unconscious bias and promises to consciously guard against allowing it to influence her judgment neither (1) demonstrates partiality nor (2) holds the government to a higher burden. Indeed, the for-cause exclusion of such jurors lowers the government’s burden by removing jurors who would meaningfully test themselves and witnesses for bias—a fundamental jury responsibility. According to the defense, the wrongful exclusion of qualified jurors distorts the composition of the jury, undermines public confidence in the jury system by creating the appearance of the prosecution, with the assistance of the court, attempting to “stack the deck” against the defendant,” see *Gray v. Mississippi*, 481 U.S. 648, 665 (1987), and implicates the constitutional rights of prospective jurors to serve.

2. The court of appeals affirmed. The court determined that prospective jurors—in a trial of a Black man for gun and drug crimes—who express an awareness that race can unconsciously affect perception and decision-making and who promise to consciously guard against its influence are themselves biased and will hold the government to a higher burden. App. 13a-14a.

3. Mr. Johnson filed a petition for panel rehearing and rehearing en banc, which the court denied. App. 22a.

4. Counsel for Mr. Johnson respectfully requests a 60-day extension of time, to and including September 9, 2024, within which to file a petition for writ of certiorari. The undersigned counsel is currently preparing an opening brief in the Third Circuit in *United States v. Monte Barry*, No. 19-3903 (due July 2, 2024) and has opening and reply briefs due in multiple cases including *United States v. Darryl Craig*, No. 24-1440, *United States v. David Payo*, No. 19-1631, *United States v. Germaine Kelly*, No. 19-2604, and *United States v. Sam Zema*, No. 23-3126. Counsel is also engaged in contested motions and potential appellate briefing in the case of *United States v. Michael Gamble*, Nos. 23-2105, 23-2199. The undersigned is also responsible for managing this office's appellate unit and for training recent hires. Finally, the undersigned has been unable to consult with Mr. Johnson because of his transport within the Bureau of Prisons and difficulties scheduling unmonitored attorney / client phone calls. Additional time is therefore needed to consult with Mr. Johnson and to prepare the petition in this case.

Respectfully submitted.



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