

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

ROBERT BRUMFIELD III,

vs.

UNITED STATES OF AMERICA,

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

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

1. Pursuant to Supreme Court Rule 13.5, petitioner Robert Brumfield III respectfully requests a 60-day extension of time, until July 19, 2024, within which to file a petition for a writ of certiorari. The United States Court of Appeals for the Fifth Circuit issued its opinion on December 22, 2023 and denied a timely filed petition for rehearing on February 20, 2024. A copy of the opinion and of the order denying rehearing are attached. This Court has jurisdiction under 28 U.S.C. § 1254(1).

2. Absent an extension, a petition for a writ of certiorari would be due on May 20, 2024. *See* U.S.S.Ct.R. 13.1. This application is being filed more than 10 days in advance of that date, and no prior application has been made in this case. The requested extension is necessary because the issues to be presented in Petitioner's case are complex and significant and due to counsel's competing work obligations.

3. In this case, Petitioner was acquitted of several substantive counts pertaining to his alleged participation in an armored truck robbery and murder. He was, however, convicted of having a role in the conspiracy. Despite Petitioner's acquittals, the district court dramatically enhanced Petitioner's offense level based upon the judge's finding that the cross-reference to the murder guideline should apply.

4. Subsequent to Petitioner’s trial, the defense discovered that the prosecution had failed to disclose significant impeachment evidence pertaining to a witness integral to the prosecution’s allegation that Mr. Brumfield participated in the conspiracy. Petitioner and his co-defendant filed motions for new trial in the trial court, arguing that the prosecution’s suppression of evidence violated *Brady v. Maryland*, 373 U.S. 83 (1963). When the district court denied the motions, Petitioner and his co-defendant both appealed to the Fifth Circuit. The Fifth Circuit affirmed the district court’s judgement with respect to Petitioner, while reversing it with respect to his co-defendant and remanding for an evidentiary hearing.

5. The Fifth Circuit’s prejudice analysis regarding Petitioner’s *Brady* claim relied upon evidence that the jury rejected when it acquitted Petitioner of the substantive counts he was facing. Moreover, the Court’s prejudice analysis did not recognize and grapple with the significant impeachment evidence that undermined the government’s other trial evidence. The failure to acknowledge this evidence and its impact on the prejudice analysis conflicts with the United States Supreme Court’s decisions in *Wong v. Belmontes*, 558 U.S. 15 (2009) (*per curiam*), *Wearry v. Cain*, 577 U.S. 385 (2016) and *Kyles v. Whitley*, 514 U.S. 419 (1995).

6. Additionally, because the district court used acquitted conduct in its sentencing determination, Petitioner’s case concerns whether the Fifth and Sixth Amendments prohibit a federal court from basing a criminal defendant’s sentence on conduct—which, in itself constitutes an entirely freestanding offense—underlying a charge for which the defendant was acquitted by a jury.

7. Undersigned counsel has been appointed to represent Petitioner under the Criminal Justice Act, 18 U.S.C. § 3006A(b) and (c). Counsel’s competing work obligations limit his ability to devote adequate time to Petitioner’s petition for writ of certiorari between today and May 20, 2024. Mr. Novod is researching and drafting an appellate brief in the Fifth Circuit Court of Appeals due on June 3, 2024 and a 28 U.S.C. § 2254 habeas petition in the Eastern District of Louisiana with a statutory deadline under 28 U.S.C. § 2244(d)(1)(A) of June 12, 2024, is investigating and drafting an upcoming state court capital

post-conviction petition, and is preparing for an upcoming state court capital post-conviction evidentiary hearing. Mr. Novod also has obligations as a contract attorney in several capital federal habeas matters.

8. Wherefore, Petitioner respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari to Friday, July 19, 2024.

Dated: April 29, 2024

/s/ D. Aaron Novod
D. AARON NOVOD, La. Bar No. 31275
Law Office of D. Aaron Novod
P.O. Box 740985
New Orleans, LA 70174
Telephone: 504-913-3746
aaron.novod.esq@gmail.com

**COUNSEL FOR PETITIONER
ROBERT BRUMFIELD III**