

No. 24A142
IN THE
Supreme Court of the United States

TERRY ROYAL, WARDEN, *et al.*,

Petitioners,

v.

WILLIAM WITTER,

Respondent.

**SECOND APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH
TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEAL FOR THE NINTH CIRCUIT**

To the Honorable Elena Kagan, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Ninth Circuit:

Pursuant to this Court's Rule 13.5, the Petitioners, Warden Terry Royal and Attorney General for the State of Nevada Aaron Ford, respectfully request a 30-day extension of time, to and including October 10, 2024, within which to file a petition for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit.

The Ninth Circuit issued a memorandum decision on February 27, 2024, and denied a petition for rehearing on May 13, 2024. This Court granted a prior extension of the time to file a petition for writ of certiorari. Unless extended, the time within which to file a petition for a writ of certiorari will expire on September 10, 2023. This application has been filed at least 10 days before this date. The jurisdiction of this Court is invoked under 29 U.S.C. § 1254(1). As previously noted, this case raises important questions of federal law involving application of the bar against second or successive federal petitions under 28 U.S.C. § 2244(b). The Nevada Supreme Court

rejected Witter's theory that the correction of an error in his judgment involving only the removal of an improper, undefined award of restitution reopened Witter's opportunity to challenge his convictions and sentences for first-degree murder with the use of a deadly weapon, attempted sexual assault with the use of a deadly weapon, and burglary. But the Ninth Circuit, relying on its own precedent extending this Court's decision in *Magwood v. Patterson*, 566 U.S. 320 (2010) indicated that the change to the judgment resulted in entry of a new judgment for purposes of federal habeas review, thereby allowing Witter to pursue a second in time federal habeas petition without satisfying 28 U.S.C. § 2244(b).

1. At least one judge of the Ninth Circuit has recognized that the Ninth Circuit's precedent applying *Magwood* conflicts with the principles that underly the Antiterrorism and Effective Death Penalty Act of 1996. *See, e.g., Scott v. Asuncion*, 737 Fed. App'x. 348, 349-50 (Christen, J. concurring); *see also Sivak v. Christensen*, No. 19-35713, 2022 WL 118638 at **2-3 (9th Cir. 2022) (Christen, J. concurring in the judgement). And she has expressly identified the need for this Court's intervention. *Scott*, 737 Fed. App'x at 350 ("Until the Supreme Court clarifies what constitutes a 'new judgment' under *Magwood*, any new state-court judgment, as defined by state law, will allow a petitioner to circumvent AEDPA's bar on second or successive habeas petitions."). Moreover, this issue is the subject of a long-standing split of authority. *See, e.g., Lesko v. Sec'y Pennsylvania Dep't of Corr.*, 34 F.4th 211, 223-25 (3d 2022).

2. Counsel of record in this case has remained extremely busy since seeking the prior extension of time. In addition to addressing often pressing day-to-day business for the State, counsel has been working diligently to expedite the Nevada Supreme Court's consideration of the appeal in *Nevada v. DeGraffenreid*, No. 89064 (Nev.), which counsel mentioned in the prior application for an extension of time. *Degraffenreid* is a high-priority matter involving a state criminal prosecution addressing the fake Electoral College scheme perpetrated in Nevada in December 2020. Although the Nevada Supreme Court has yet to resolve a motion for expedited consideration of the appeal that the State filed, counsel has still been consumed with working on preparation of briefing and the record for the appeal in that case on an expedited basis due to potential implications regarding the statute of limitations for one of the charges.

In light of the foregoing, Petitioners are seeking a 30-day extension. Counsel for Respondent, Assistant Federal Defender Stacy M. Newman, indicated Respondent does not oppose Petitioners' request for additional time to file the petition for writ of certiorari. So an additional extension of 30 days will not result in any unfair prejudice to Respondent.

* * *

Accordingly, Petitioners respectfully request the entry of an order extending their time to file a petition for writ of certiorari by 30 days, to and including October 10, 2024.

/s/Jeffrey M. Conner
AARON D. FORD
Attorney General
Jeffrey M. Conner
Chief Deputy Solicitor General
Counsel of Record
Office of the Nevada Attorney General
100 North Carson Street
Carson City, Nevada 89701
Telephone: (775) 684-1136
jconner@ag.nv.gov