

IN THE SUPREME COURT OF THE UNITED STATES

No. A-_____

JOSEPH JOHNSON, JR.,
APPLICANT

v.

UNITED STATES OF AMERICA

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

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, Joseph
Johnson, Jr., applies for a 30-day extension of time, to and
including December 19, 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 Third Circuit entered its judgment on August 21, 2024.
Unless extended, the time for filing a petition for a writ of
certiorari will expire on November 19, 2024. The jurisdiction
of this Court would be invoked under 28 U.S.C. 1254(1).

1. Congress enacted 28 U.S.C. 1495 to provide a remedy
to those wrongfully imprisoned under federal law and later
exonerated. Before seeking compensation under Section 1495,
an exoneree must first obtain a certificate of innocence pur-
suant to 28 U.S.C. 2513(a). To receive such a certificate,

an exoneree must show that he has been found not guilty under the law, that he did not commit any of the charged acts or that his acts did not constitute a crime, and "that he did not by misconduct or neglect bring about his own prosecution." Ibid.

The federal courts of appeals have developed conflicting interpretations of the third statutory requirement for receiving a certificate of innocence. In particular, the courts of appeals are in conflict as to whether the phrase "cause or bring about" imposes a burden on the applicant to demonstrate that his misconduct or neglect was not a but-for cause of his prosecution, or only that it was not a proximate cause. 28 U.S.C. 2513(a)(2). The opinion below in this case deepened that conflict.

2. Applicant is a federal exoneree who filed a petition to obtain a certificate of innocence under Section 2513. In response to applicant's petition, the government argued that applicant could not meet the third requirement of Section 2513 because he had failed to show that his conduct was not a but-for cause of his prosecution. The district court agreed and denied applicant's petition. See App., infra, 35a.

The court of appeals affirmed. App., infra, 1a-28a. As relevant here, the court of appeals held that, so long as an exoneree's misconduct or neglect is a but-for cause of his prosecution, he has caused or brought about his own prosecution. See id. at 15a. The court then concluded that applicant's charged conduct was a but-for cause of his prosecution,

precluding him from obtaining a certificate. See id. at 20a. That conclusion conflicts with decisions from two courts of appeals that interpret the third requirement in Section 2513(a) to bar relief only when a petitioner's misconduct misleads the government into believing that he committed the offense. See, e.g., Betts v. United States, 10 F.3d 1278 (7th Cir. 1993); United States v. Grubbs, 773 F.3d 726 (6th Cir. 2014).

3. The undersigned counsel respectfully requests a 30-day extension of time, to and including December 19, 2024, within which to file a petition for a writ of certiorari. This case presents important issues regarding the proper interpretation of Section 2513(a) that have significant ramifications for federal exonerees nationwide. Counsel also has had a number of competing obligations, including arguments in two cases and numerous briefing deadlines. See Facebook, Inc. v. Amalgamated Bank, No. 23-980 (U.S.) (merits reply brief filed on October 24; oral argument held on November 6); Certain Post-Bankruptcy Talc Claimants v. RML, LLC, No. 24-2843 (2d Cir.) (opposition to petition for review filed on November 7); In re Fuel Industry Climate Cases, JCCP No. 3510 (Cal. Ct. App.) (petition for writ of mandate filed November 7); National Association of Mutual Insurance Companies v. HUD, No. 23-5275 (D.C. Cir.) (supplemental brief of appellant due November 8; oral argument scheduled on November 20); County Commissioners of Boulder County v. Suncor Energy USA, Inc., No. 2024SA206 (Colo.) (reply in support of petition for

review due November 22). Additional time is therefore needed to prepare and print the petition in this case. Respondent will suffer no prejudice from the requested extension, because no further proceedings are pending in this action.

Respectfully submitted.

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November 7, 2024