

No. _____

**In The
Supreme Court of the United States**

CORRINE THOMAS, *et al.*

Applicants,

v.

COUNTY OF HUMBOLDT, CA, *et al.*

Respondents.

**On Application for an Extension of Time to File Petition for a Writ of
Certiorari to the United States Court of Appeals for the Ninth Circuit**

JARED MCCLAIN

Counsel of Record

INSTITUTE FOR JUSTICE

901 N. Glebe Rd., Suite 900

Arlington, VA 22203

(703) 682-9320

jmclain@ij.org

Counsel for Applicants

To the Honorable Elena Kagan, as Circuit Justice for the United States Court of Appeals for the Ninth Circuit:

In accordance with this Court's Rules 13.5, 22, 30.2, and 30.3, Applicants Corrine Thomas, Doug Thomas, Rhonda Olson, Blu Graham, and Cyro Glad respectfully request that this Court extend the time to file their petition for a writ of certiorari by **45 days**, up to and including **Thursday, May 15, 2025**.

On December 30, 2024, the United States Court of Appeals for the Ninth Circuit entered an opinion and judgment affirming, in part, the district court's order dismissing the Applicants' claim that Humboldt County's code-enforcement hearings violate the Seventh Amendment because this Court has not yet incorporated the Seventh Amendment against the states. See Attachments A & B.

The United States Supreme Court now has jurisdiction to review a petition for a writ of certiorari under 28 U.S.C. § 1254(1) and Supreme Court Rule 10. Absent an extension, the Petition for a Writ of Certiorari would be due on March 31, 2023. Applicants file this motion more than 10 days before the petition is due. See Rule 13.5.

Background

This case presents the important question of whether a right guaranteed by the Bill of Rights applies to the states. Specifically, Applicants will ask this Court to determine whether the Fourteenth Amendment incorporated against the states the Seventh Amendment's guarantee of a jury trial in suits at common law.

Respondent Humboldt County imposes millions of dollars of fines on property owners for land-use violations that the County thinks might be related to unpermitted commercial cannabis ventures. Applicants received notices of violations that imposed daily fines ranging from \$10,000 per day to \$83,000 per day, rising to totals as high as \$7.47 million in fines in one case. Applicants each requested a hearing to challenge the charges against them—including to show that they were not growing cannabis without a permit—but their cases, once scheduled, will proceed before private attorneys who serve as the

County's hearing examiners. There is no opportunity to demand a trial by jury on the facts that subject Applicants to millions of dollars in fines, even though one would have been guaranteed at common law. See *Tull v. United States*, 481 U.S. 412, 417–18 (1987) (holding that the Seventh Amendment applies to an action to collect penalties for environmental nuisances).

On December 30, the Ninth Circuit ruled that Applicants stated four constitutional claims against Humboldt's code-enforcement program—violations of (1) procedural due process; (2) substantive due process; (3) excessive fines; and (4) unconstitutional conditions. The Ninth Circuit remanded those four claims to the district court to proceed to discovery. The court ruled, however, that Applicants could not state a claim under the Seventh Amendment because long-standing circuit precedent recognizes that this Court's decision in *Minneapolis & St. Louis R. Co. v. Bombolis*, 241 U.S. 211 (1916), determined that the Seventh Amendment does not apply to the states. See *Jackson Water Works, Inc. v. Pub. Utils. Comm'n*, 793 F.2d 1090, 1096 (9th Cir. 1986) (citing *Bombolis*).

The right to a jury trial in actions at law “is fundamental to our scheme of ordered liberty” and “deeply rooted in this Nation's history and tradition.” See *Timbs v. Indiana*, 586 U.S. 146, 159 (2019) (cleaned up). This Court has never applied its selective-incorporation framework to the Seventh Amendment, though, because *Bombolis* “pre-date[d] the era of selective incorporation.” *McDonald v. City of Chicago*, 561 U.S. 742, 784 n.30 (2010). This case would allow this Court to finally consider whether the Seventh Amendment is enforced against the states through the Fourteenth Amendment. It is a serious candidate for review.

Reasons Why an Extension of Time Is Warranted

The time to file a Petition for a Writ of Certiorari should be extended for 45 days for the following reasons:

1. Applicants' counsel of record has an unusually heavy litigation schedule over the next three months, including a merits case before this Court that was just scheduled for argument yesterday.

2. Since the Ninth Circuit issued its opinion in Applicants' case, their lead counsel, Mr. McClain, has been and will continue to be working toward the following deadlines:

- a. Briefing on a motion for reconsideration and leave to amend based on newly discovered evidence in *Herbel v. City of Marion*, No. 24-cv-2224 (D. Kan.), is set to conclude on Monday, February 3.
- b. Briefing on motions for emergency injunctive relief and to expedite an appeal in *Horwitz v. U.S. Dist. Court for M.D. Tenn.*, No. 24-5036 (6th Cir.), is due on Friday, February 7.
- c. Briefing in the appeal in *Katergaris v. New York*, No. 24-cv-1889 (2d Cir.), is due on Tuesday, February 11.
- d. Briefing on a motion to dismiss in *Box v. Broward County*, No. 24-cv-61734 (S.D. Fla.), is currently scheduled for March 12.
- e. Briefing on two motions to dismiss in *Digmon v. Billy*, No. 24-cv-00425 (S.D. Ala.), is currently due on February 6, but counsel is requesting an extension through March 13.

3. Yesterday, on January 27, this Court granted *certiorari* in *Martin v. United States*, No. 24-362, a case on which Mr. McClain is also serving as counsel. Petitioners' merits brief in *Martin* is due on March 7, and their reply brief is due on April 22. Oral argument in *Martin* is set to be the week of April 28.

4. A 45-day extension until May 15 would give Applicants' counsel the time necessary to finalize the petition in this case after oral argument in *Martin*.

5. An extension will not prejudice Respondents because the remainder of Applicants' case will progress through discovery while Applicants petition for *certiorari* on the sole issue of the incorporation of the Seventh Amendment.

CONCLUSION

For the foregoing reasons, Applicants respectfully request that this Court extend the time to file a Petition for a Writ of Certiorari in this matter be extended 45 days, up to and including May 15, 2025.

January 28, 2025.

Respectfully submitted,



JARED MCCLAIN

Counsel of Record

atta901 N. Glebe Rd., Suite 900

Arlington, VA 22203

(703) 682-9320

jmcclain@ij.org

Counsel for Applicants