

UNITED STATES *EX REL.* CERULLO *v.*
FOLLETTE, WARDEN

ON APPLICATION FOR EXTENSION OF TIME TO FILE PETITION
FOR CERTIORARI; MOTION FOR STAY; AND APPLICATION
FOR BAIL PENDING PETITION FOR CERTIORARI

Decided October 16, 1969

Time extension for filing petition for certiorari denied since sufficient time remains for that purpose. Stay of Court of Appeals mandate denied as that mandate has already issued. Application for bail pending action on petition for certiorari is denied since initial ruling on such an application should be made by Court of Appeals, to which request may be made under Fed. Rule App. Proc. 23 (b). See: 393 F. 2d 879 and 294 F. Supp. 1283.

Memorandum of MR. JUSTICE HARLAN, Circuit Justice.

Applicant requests an extension of time to file a petition for certiorari. Since, in the posture of this case, his time for filing will not expire until December 31, 1969, I perceive no necessity for an extension at this stage. No reason appears why the time remaining will not be sufficient for the preparation and filing of a petition for certiorari.

Applicant also requests a stay of the mandate of the Court of Appeals for the Second Circuit and continuance of bail pending determination of his petition for certiorari. Pursuant to the opinion of the Court of Appeals, the mandate has already issued. Treating the papers as an application for bail pending action on the petition, I note that there is no sign that applicant has made a request to the Court of Appeals, as he may under Fed. Rule App. Proc. 23 (b). In my view that court should have an opportunity to consider applicant's request before it is entertained by a Justice of this Court. Cf. U. S. Sup. Ct. Rule 27.