



## Egg men get extra time to file for review with Supreme Court

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Justice Samuel Alito has extended the filing deadline for a petition for a writ of certiorari in the appeal of jail sentences for one-time egg producers Austin (Jack) DeCoster and his son Peter DeCoster.

Alito set Jan. 10, 2017, as the new deadline for the DeCoster's attorney, Peter D. Keisler, to file the writ with the U.S. Supreme Court. Before the extension, the deadline was Dec 29, 2016.

The criminal case against Quality Egg LLC and the DeCosters stemmed from the 2010 Salmonella outbreak that was connected to two Iowa egg farms they owned at that time. The outbreak led the DeCosters to recall more than one-half billion shell eggs, the largest recall of table eggs in U.S. history.

The DeCosters each have been sentenced to serve three months. The **Centers for Disease Control and Prevention** estimated thousands of people across the country were sickened in the outbreak.

Keisler is a former acting U.S. Attorney General who is now an appellate attorney with Sidley Austin LLP in Washington D.C. If the Supreme Court grants certiorari, Keisler will go up against the U.S. Solicitor General.

A writ of certiorari orders a lower court to deliver its record in a case so that the higher court may review it. In this case, if accepted, the Supreme Court would take up the DeCoster appeal, removing it from the 8th U.S. Circuit Court of Appeals.

While the Supreme Court accepts few petitions for certiorari, the DeCoster appeal raises a question that has received differing answers from lower courts. In the 8th Circuit, the DeCoster

appeal was denied by a three-judge panel in a 2-to-1 vote that upheld the jail sentences as imposed by a district court judge.

After that, judges in the 8th Circuit denied a motion for rehearing, but granted a stay of the circuit's decisions to permit the request for the Supreme Court review to go forward.

If the Supreme Court hears the case, it will be deciding whether a "responsible corporate official" can be incarcerated upon conviction of a so-called strict liability misdemeanor.

Under a plea agreement the DeCosters and their company reached with the Justice Department, Quality Egg pleaded guilty to three offenses, including a felony, and agreed to pay \$6.8 million in fines. Each of the DeCosters agreed to plead guilty to one strict liability misdemeanor and pay a \$100,000 fine.

A U.S. District Court judge in Sioux City, IA, imposed a three-month jail sentence on each of the DeCosters in addition to the fines. They've both remained free while pursuing their appeals.

Their writ will arrive at the Supreme Court just days before President-elect Donald Trump will take office on Jan. 20, 2017. Shortly thereafter the new president is expected to nominate a new associate justice to the high court to fill the vacancy created Feb. 13 when Justice Anton Scalia died.

President Obama nominated Merrick B. Garland to fill the vacancy months ago, but the Republican-controlled Senate has not acted on the nomination, leaving Garland on the bench at the U.S. Court of Appeals for the District of Columbia Circuit.

Several top free enterprise organizations, including the U.S. Chamber of Commerce, National Association of Manufacturers, and Cato Institute have filed briefs in the case, siding with the DeCosters on their contention that corporate executives should not be jailed if criminal intent is not proved.