

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

Joseph C. Garcia,
Petitioner,

vs.

Lorie Davis, Director,
Texas Department of Criminal Justice, Correctional Institutions Division,
Respondent.

***** CAPITAL CASE *****

**APPLICATION TO EXTEND TIME TO FILE PETITION FOR WRIT OF
CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE
FIFTH CIRCUIT**

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District of Arizona

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Counsel for Petitioner Garcia

To the Honorable Samuel A. Alito, Jr., Associate Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Fifth Circuit:

Pursuant to Supreme Court Rules 13.5, 22, and 30.3, Petitioner Joseph C. Garcia respectfully requests a sixty-day extension of time, up to and including February 19, 2018, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.¹ If not extended, the time for filing a petition will expire on December 21, 2017. Consistent with Rule 13.5, this application is being filed at least ten days before that date.

The United States Court of Appeals for the Fifth Circuit filed on July 21, 2017, its unpublished opinion denying Mr. Garcia's amended application for a certificate of appealability (COA) from the district court's denial of his petition for writ of habeas corpus. A copy of this opinion is attached hereto in Appendix A. A timely filed petition for panel rehearing was denied in an order filed on September 22, 2017, and a copy of that order is attached in Appendix B. This Court has jurisdiction pursuant to 28 U.S.C. § 1254. Assistant Attorney General Jefferson David Clendenin, counsel for Respondent, has expressed that Respondent does not oppose the requested extension of time.

¹ Because February 19, 2018, is a legal public holiday, *see* 5 U.S.C. § 6103(a), under Rule 30.1 the petition for writ of certiorari would instead be due on the following day, February 20, 2018.

BACKGROUND

1. This is a capital case. Petitioner Joseph C. Garcia is one of six Texas defendants convicted of and sentenced to death for the December 2000 capital murder of Aubrey Hawkins. Mr. Garcia has been on Texas's death row since his trial in 2003.

2. The Court of Criminal Appeals of Texas affirmed Mr. Garcia's conviction and death sentence on direct appeal in 2005. After initial state-court post-conviction proceedings, the Court of Criminal Appeals denied relief in 2006.

3. In 2007, the federal district court permitted Mr. Garcia to return to state court to exhaust additional claims. The Court of Criminal Appeals dismissed Mr. Garcia's successive state-court post-conviction petition. The federal district court then held an evidentiary hearing on certain claims of ineffective assistance by Mr. Garcia's trial counsel, although that hearing excluded claims of ineffective assistance by Mr. Garcia's trial counsel during voir dire. The district court ultimately denied Mr. Garcia's petition for writ of habeas corpus, and denied a COA, in 2015.

4. Before the Fifth Circuit, Mr. Garcia sought a COA on multiple claims (1) of ineffective assistance of counsel, and (2) regarding the constitutionality of Texas's capital-sentencing statute. In addition, Mr. Garcia appealed the denial of an evidentiary hearing on his claims of ineffective assistance by trial counsel during voir dire. On July 21, 2017, the Fifth Circuit denied all of Mr. Garcia's requests for a COA. The Fifth Circuit also affirmed the district court's denial of an evidentiary

hearing on Mr. Garcia's claims of ineffective assistance during voir dire. On September 22, 2017, the Fifth Circuit denied his timely filed petition for panel rehearing.

REASONS FOR REQUESTED EXTENSION

1. The record in this case is voluminous, and the facts and legal questions at issue are complex. Mr. Garcia's record involves not only the state- and federal-court proceedings for the capital crime of which Mr. Garcia was convicted, but also the state-court proceedings of a prior conviction that was effectively re-litigated during the penalty phase of Mr. Garcia's capital trial. The facts of this high-profile capital case concern the actions of Mr. Garcia and six other individuals over the course of seven weeks, during which they escaped from a Texas prison, participated in a series of robberies—one of which ended with the death of a police officer, and hid in Colorado until their eventual discovery and arrest. And the claims at issue in federal court raise significant questions about the standards for effective assistance of counsel at both the guilt and penalty phases of capital proceedings, as well as about the constitutional soundness of Texas's capital-sentencing statute.

2. Counsel for Mr. Garcia are new to this case. While federal-habeas counsel often get appointed to a capital case at the outset of proceedings before the federal district court and then remain on the case until its resolution, the Federal Public Defender's office was not appointed to Mr. Garcia's case until it was before the Fifth Circuit. Further, current counsel Mridula Raman and Jessica Salyers began representing Mr. Garcia much more recently, in June 2017, after briefing on

the COA application before the Fifth Circuit was already complete. In addition, current counsel have not previously litigated cases in or from the Fifth Circuit. Therefore, counsel need additional time to review the relevant parts of Mr. Garcia's court record, to further familiarize themselves with the legal issues in this case, to research Fifth Circuit precedent and any circuit splits so as to identify which issues warrant inclusion in a petition to this Court, and to determine how best to present those issues. Counsel also need additional time to confer with Mr. Garcia about his petition for writ of certiorari.

3. Moreover, although counsel are working diligently on Mr. Garcia's case, they have obligations in other cases that constrain their ability to complete Mr. Garcia's petition for certiorari by the current deadline. Lead counsel Mridula Raman bears primary responsibility for Mr. Garcia's petition and is devoting significant time to this matter. In addition to her responsibilities in this case, Ms. Raman is lead counsel on one other capital-habeas case and co-counsel on two more such cases. Co-counsel Jessica Salyers is lead counsel on one capital-habeas case that currently involves significant record review and investigation, and she is co-counsel on three other capital-habeas cases, some of which have pending filing deadlines. Mr. Garcia submits that the fact that counsel are new to his case, along with their other case-related commitments, justifies the need for the requested extension of time. As noted previously, Respondent does not oppose this request.

CONCLUSION

Petitioner Joseph C. Garcia respectfully requests a sixty-day extension of time, up to and including February 19, 2018, within which to file his petition for writ of certiorari.

Respectfully submitted: November 15, 2017.

JON M. SANDS
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CERTIFICATE OF SERVICE

I, Karen S. Smith, a member of the Bar of this Court, certify that on November 15, 2017, I mailed to the Clerk of the Court the original and two copies of the above-captioned Application to Extend Time to File Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit. I further certify that I sent by first-class mail a copy of the Application to counsel for Respondent, Assistant Attorney General Jefferson David Clendenin, at P.O. Box 12548, Capitol Station, Austin, Texas 78711. I certify that all parties required to be served have been served.

Respectfully submitted:

November 15, 2017.

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