

**CAPITAL CASE
NO EXECUTION DATE SCHEDULED**

No. 18- ____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2018

CHRISTOPHER ANDRÉ VIALVA,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals for the Fifth Circuit
Case No. 18-70007

**PETITIONER'S REQUEST FOR EXTENSION OF TIME
TO FILE PETITION FOR WRIT OF CERTIORARI**

TO THE HONORABLE SAMUEL A. ALITO, CIRCUIT JUSTICE FOR THE
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT:

Pursuant to this Court's Rule 13.5, Petitioner Christopher Vialva, a capital defendant seeking federal review of his death sentence, respectfully requests a 60-day extension of time, to and including Monday, April 22, 2019, computed in accordance with this Court's Rules 30.1 and 30.2, within which to file a petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit. The Court of Appeals entered its judgment and denied a certificate of appealability on September 14, 2018, *United States v. Vialva*, 904 F.3d 356 (5th Cir. 2018) (attached

as Exhibit A), and a timely petition for rehearing *en banc* was denied on November 19, 2018, *United States v. Vialva*, 5th Circuit Case No. 18-70007, Doc. No. 514729350 (attached as Exhibit B).¹ Unless extended, the time within which to file a petition for writ of certiorari will expire on February 19, 2019. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1).

1. This case presents important constitutional questions concerning the application of *Gonzalez v. Crosby*, 545 U.S. 524 (2005), to Federal Rule of Civil Procedure 60(b) where Petitioner, a death-sentenced federal prisoner, has identified serious procedural concerns, including those stemming from the fitness of the judge who presided over Petitioner’s trial and post-conviction proceedings. This case also seeks to address whether the Fifth Circuit, which has never identified any debatable issue in a death-sentenced prisoner’s post-conviction appeal, erred in denying a certificate of appealability concerning the denial of Petitioner’s Rule 60(b) motion.

2. Petitioner Christopher Vialva is a capital prisoner at the Federal Bureau of Prison’s Federal Correctional Complex in Terre Haute, Indiana. Mr. Vialva was found guilty under federal law of capital murder and sentenced to death following a jury trial in the United States District Court for the Western District of Texas. ROA.854-856.² The convictions and sentence were confirmed on direct appeal.

¹ Petitioner’s codefendant in his capital case, Brandon Bernard, has filed a petition for writ of certiorari with this Court. *Bernard v. United States*, Petition for Writ of Certiorari, U.S. Sup. Ct. (No. 18-6992) (filed Dec. 7, 2018).

² References to “ROA” are to the appellate record from the United States Court of Appeals for the Fifth Circuit.

United States v. Bernard, 299 F.3d 467, 498 (5th Cir. 2002), *cert. denied*, 539 U.S. 928 (June 16, 2003).

3. On June 14, 2004, Mr. Vialva filed a post-conviction motion under Federal Rule of Civil Procedure 60(b)(6) for relief from judgment, alleging his conviction and sentence had been procured in violation of the Fifth and Sixth Amendments, and seeking to reopen his habeas proceedings pursuant to 28 U.S.C. § 2255 (“2255 Motion”). ROA.959-1172; ROA.1173-1566; ROA.1567-1965; ROA.1966-2076.

4. The 2255 Motion raises substantial procedural concerns, including, *inter alia*, that Mr. Vialva had received ineffective assistance of counsel and that his counsel had been appointed by Judge Walter Smith, the judge presiding over his capital murder proceedings, in violation of federal law.

5. On September 12, 2012, after waiting for over seven years, and without allowing discovery or an evidentiary hearing, Judge Smith summarily denied Mr. Vialva’s post-conviction motion and denied a certificate of appealability. ROA.2620-2682. On August 11, 2014, the Fifth Circuit refused Mr. Vialva permission to appeal, *United States v. Bernard*, 762 F.3d 467 (5th Cir. 2014), and this Court denied review, *Vialva v. United States*, 136 S. Ct. 1155 (2016) (Mem).

6. After this Court denied certiorari, Mr. Vialva learned that the aforementioned Judge Smith had been investigated and sanctioned for conduct that

raised serious questions over his fitness to preside over Mr. Vialva's proceedings.³ As the factual circumstances of Judge Smith's conduct were not made public until after Mr. Vialva was denied permission to appeal, he could not have raised such conduct in 2004 when he filed his 2255 Motion or during the proceedings thereafter.

7. On October 13, 2017, Mr. Vialva filed a Rule 60(b) Motion requesting that his post-conviction proceedings be reopened as he had been deprived due process by an impaired judge. United States District Judge Yeakel interpreted the motion to be a successive 2255 motion and dismissed for want of jurisdiction, while also refusing Petitioner a certificate of appealability. ROA.3510-3515. Subsequently, the Fifth Circuit denied a certificate of appealability. *Vialva*, 904 F.3d at 363.

8. Mr. Vialva intends to file a timely petition for certiorari with this Court. Because he is indigent, Mr. Vialva will rely upon the assistance of *pro bono* and court-appointed counsel to develop and present his petition. Mr. Vialva has required court-appointed counsel at every stage of his capital case.

9. Michael F. Williams, *pro bono* counsel of record to Mr. Vialva in this case, is also currently counsel of record to several other parties, including defendants or applicants in capital matters, pending before other courts. Mr. Williams is presently representing Applicant James Harris, Jr. as lead counsel in a post-conviction evidentiary hearing pending before the 149th District Court in Brazoria

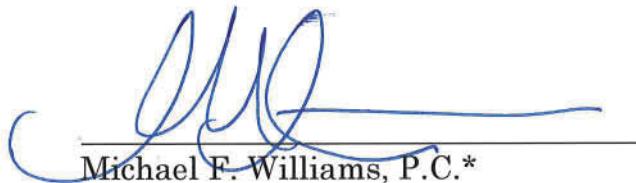
³ In September 2014, a Special Committee was appointed by the Judicial Council of the Fifth Circuit to investigate sexual assault and drinking-related allegations against Judge Smith. The investigation also identified behavior by the judge that undermined the integrity of his assigned federal judiciary proceedings. An additional investigation into Judge Smith's behavior was abruptly foreclosed when, in 2017, Judge Smith retired and the Judicial Council concluded it no longer had jurisdiction over the case. ROA.2214-15.

County, Texas. *See Ex Parte James Harris, Jr.*, Cause No. 67063-A. He also has significant professional responsibilities in other pending matters, including cases that may proceed to trial.

10. Mr. Vialva is not aware of any party that would be prejudiced by the granting of a 60-day extension.

For the foregoing reasons, Petitioner Christopher Vialva respectfully requests that his time to file a petition for writ of certiorari be extended by 60 days, to and including Monday, April 22, 2019.

Respectfully Submitted,

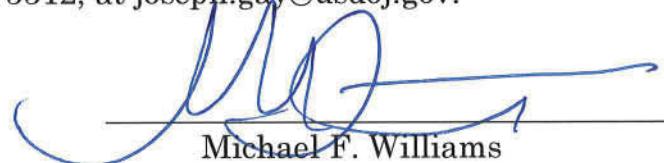


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**Counsel of Record*

CERTIFICATE OF SERVICE

I hereby certify that on February 4, 2019, the foregoing Petitioner's Request for Extension of Time to File Petition for Writ of Certiorari was caused to be delivered via first-class mail to counsel for the United States, Joseph H. Gay Jr., Assistant U.S. Attorney, U.S. Attorney's Office, Western District of Texas, 601 N.W. Loop 410, Suite 600, San Antonio, Texas, 78216-5512, at joseph.gay@usdoj.gov.



Michael F. Williams