

## A. RICHARD ELLIS

### Also admitted in:

**Colorado**

**Florida**

**Hawaii**

**Missouri**

**Nebraska**

**Nevada**

**Texas**

**District of Columbia**

**Attorney at Law**

**75 Magee Ave.**

**Mill Valley, CA 94941**

**Tel.: (415) 389-6771**

**FAX: (415) 389-0251**

**a.r.ellis@att.net**

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Scott Harris, Clerk  
Supreme Court of the United States  
One First Street, N.E.  
Washington, D.C. 20543

Re: *Barbee v. Davis* (No. 15-70022) (5<sup>th</sup> Cir.)

Dear Mr. Harris:

I represent petitioner Stephen Barbee in this capital case in which the Fifth Circuit Court of Appeals denied relief on March 21, 2018. Hence, a petition for writ of certiorari is due by June 19, 2018. I write to request an extension of time for filing the petition. I have conferred via e-mail with counsel for Respondent on May 25, 2018, who has indicated that he does not oppose this request.

The reasons for this request are the press of briefing deadlines in the period from the Fifth Circuit's ruling to the current deadline, including the following:

In the capital case of *Acker v. Davis*, No. 16-70017 (5<sup>th</sup> Cir.) (No. 17-7045, S. Ct.), I am preparing a state successive petition after the this Court denied certiorari on April 16, 2018; Mr. Acker has an execution date of September 27, 2018. In *Mamou v. Davis*, No. 17-70001 (5th Cir.), on March 26, 2018, a supplemental brief was filed on April 6, 2018, on the applicability of *Ayestas v. Davis* (U.S. March 21, 2018) to the case. In *Lucio v. Davis*, No. 16-70027 (5th Cir.), I was appointed by the Fifth Circuit in January of 2018, a lengthy supplemental application for a certificate of appealability and a motion to stay proceedings and remand to the federal district court were filed on May 10, 2018 and a reply to the State's opposition is due by May 29, 2018. In *Haynes v. Davis*, No. 15-70038 (5<sup>th</sup> Cir.), the Fifth Circuit denied the appeal on May 8, 2018 and a petition for rehearing is due by June 5, 2018. In *Coble v. Davis*, No. 15-700037 (5th Cir.), a petition for rehearing was filed on April 16, 2018 and it was denied on May 15, 2018; hence a petition for certiorari is due in this Court by August 13, 2018. In *King v. Davis*, No. 16-70018 (5th Cir.), a petition for panel rehearing was denied on March 23, 2018 and a petition for certiorari is due in this Court by June 21, 2018. In the direct appeal of *People v. Perez*, No. S104144 (Ca. Sup. Ct.), a petition for rehearing on March 15, 2018; an order modifying the opinion and denying the petition

for rehearing was issued on May 16, 2018; a petition for certiorari is due in this Court by August 14, 2018. In the habeas matter of *In re Perez* (S241863, Ca. Sup. Ct.) I am drafting a lengthy reply to Respondent's Answer which is currently due by June 5, 2018. In the capital habeas matter of *Cornwell v. Warden*, No. 2:06-cv-00705 (E.D. Ca.), after lying dormant for several years, the federal district court magistrate issued a 232-page opinion on 2254(d) issues on February 15, 2018, and lengthy objections of about 200 pages are currently due by June 15, 2018. *Ex parte Tomas Gallo*, Cause No. WR-77,940-03 (Harris County, Texas) was remanded to state court on an *Atkins* issue and an evidentiary hearing is likely in the wake of *Moore v. Texas* on the use of Texas' now-rejected criteria for intellectual disabilities.

An additional reason for the request is that this Court handed down a recent decision in *McCoy v. Louisiana* (No. 16-8255) on May 14, 2018, holding that a defendant has a constitutional right under the Sixth Amendment to insist that counsel refrain from admitting his guilt during the guilt-phase of a capital murder trial, which is the sole issue upon which a COA was granted by the Fifth Circuit in this case.

Petitioner respectfully requests an extension of thirty (30) days to file his petition for writ of certiorari, creating a new deadline of July 19 for submission of the brief.

Counsel for Respondent is being provided with notice of this request by e-mail and by copy of this letter. Should you require any additional information, please contact me at (415) 389-6771 or at the above e-mail address.

Thank you very much for your assistance.

Sincerely yours,

*A. Richard Ellis*

A. Richard Ellis  
Counsel for Petitioner

cc: Mr. George d'Hemecourt, Esq., george.d'hemecourt@oag.texas.gov

Mr. Danny Bickell, dbickell@supremecourt.gov