

No. \_\_\_\_\_

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OCTOBER TERM, 2017

IN THE SUPREME COURT OF THE UNITED STATES

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RANDOLPH LYLE MOORE, Petitioner,

v.

WILLIAM GITTERE, Warden;  
ADAM LAXALT, Attorney General, State of Nevada,  
Respondents.

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**Petitioner's Application to Extend Time to File Petition for Writ of  
Certiorari**

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To the Honorable Anthony M. Kennedy, as Circuit Justice for the United States  
Court of Appeals for the Ninth Circuit:

Petitioner Randolph Lyle Moore respectfully requests that the time to file a  
Petition for Writ of Certiorari in this matter be extended for sixty (60) days, to and  
including September 24, 2018. The Nevada Supreme Court issued its opinion on  
February 9, 2018, attached as App. A.<sup>1</sup> The Nevada Supreme Court denied  
rehearing on April 27, 2018, attached as App. B. Petitioner's due date for filing a  
Petition for Writ of Certiorari is July 26, 2018. *See* Sup. Ct. R. 13.1, 13.3. Petitioner

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<sup>1</sup> This opinion was reissued as a published opinion on May 17, 2018, attached as App. C.

is filing this Application at least ten days before that date. *See* Sup. Ct. R. 13.15.

This Court has jurisdiction under 28 U.S.C. § 1257(a).

### **BACKGROUND**

Mr. Moore was convicted of first-degree murder and sentenced to death for a crime that occurred in late 1984. *See Moore v. State*, 104 Nev. 113, 754 P.2d 841 (1988) (adopting reasoning of *Flanagan v. State*, 104 Nev. 105, 754 P.2d 836 (1988)). His penalty phase was twice reversed. *See id.*; *see also Moore v. Nevada*, 503 U.S. 930 (1992) (per curiam). After his third penalty trial, the Nevada Supreme Court affirmed. *Moore v. State*, 112 Nev. 1409, 930 P.2d 691 (1996). In 2012, the Nevada Supreme Court affirmed the denial of his first state post-conviction petition. *Moore v. State*, No. 55091, 2012 WL 3139870 (Nev. Aug. 1, 2012).

The instant appeal comes to this Court from denial of Mr. Moore's second state petition for post-conviction relief.

### **REASONS FOR GRANTING THE EXTENSION**

The time for filing a Petition for Writ of Certiorari should be extended for sixty days for the following reasons:

1. Randolph M. Fiedler, counsel of record for Petitioner has been unable to complete the Petition for Writ of Certiorari, despite diligent efforts to do so, due to caseload and deadlines. Specifically, since the Nevada Supreme Court's denial of rehearing, Mr. Fiedler has been engaged extensive preparation in anticipation of hearings in *Rogers v. Filson*, No. 3:02-cv-0342-GMN-VPC (D. Nev.), *Adams v. Filson*, No. 85C069704 (8th Jud. Dist. Ct. Nev.), and *Vanisi v. Filson*, No. CR98P0516 (2d Jud. Dist. Ct. Nev.). All three are death penalty cases. This last

case, *Vanisi v. Filson*, in particular, has required travel and investigation to prepare witnesses for testimony and logistical preparations for international depositions. Additionally, Mr. Fiedler has had the following filings or court appearances: a reply to opposition to motion for discovery, argument on discovery, notice of witnesses, and a disqualification motion in *Vanisi v. Filson*. Additionally, Mr. Fiedler has been assigned as lead counsel in *Johnson v. Filson*, No. 2:18-cv-00740-JAD-NJK (D. Nev.), a case with an Anti-Terrorism and Effective Death Penalty Act statutory deadline within which Mr. Johnson must file an amended petition; preparing the filing of this amended petition requires much record review.

2. As a result of the aforementioned obligations, Mr. Fiedler has been unable to complete the Petition for Writ of Certiorari and will not be able to dedicate sufficient time to completing the Brief until after July 26, 2018, when the Petition is due. Granting the instant request for a sixty-day extension of time will allow Mr. Fiedler to complete the Petition for Writ of Certiorari no later than September 24, 2018.

3. Mr. Moore has been under sentence of death since 1985. This Court has consistently held that death is different: “[t]he taking of life is irrevocable. It is in capital cases especially that the balance of conflicting interests must be weighed most heavily in favor of the procedural safeguards of the Bill of Rights.” *Reid v. Covert*, 354 U.S. 1, 45-46 (1957) (on rehearing) (Frankfurter, J., concurring); *see also Gregg v. Georgia*, 428 U.S. 153, 188 (1976) (“the penalty of death is different in kind from any other punishment imposed under our system of criminal justice.”). Capital litigants should be given every reasonable opportunity to bring their claims of constitutional error before the courts.

4. The Petition for Writ of Certiorari that Mr. Moore intends to file raises substantial constitutional issues regarding the State’s compliance with *Brady v.*

*Maryland*, 373 U.S. 83, 87 (1963). Additionally, Mr. Moore intends to raise constitutional issues regarding whether his penalty phase counsel was ineffective under *Strickland v. Washington*, 466 U.S. 668 (1984). In both regards, the Nevada Supreme Court's now-published decision represents an outlier, that is binding precedent in the state of Nevada.

5. No meaningful prejudice would arise from the extension, because this Court would likely decide the matter in the October 2018 Term regardless of whether an extension is granted.

6. This application for extension of time is not sought for the purposes of delay or for any other improper purpose, but only to ensure that Mr. Moore receives competent representation in this matter.

DATED this 12th day of July, 2018.

Respectfully submitted,

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