

NO. _____ (CAPITAL CASE)

**IN THE
SUPREME COURT OF THE UNITED STATES**

TEDDRICK BATISTE,
Petitioner,

v.

LORIE DAVIS, Director,
Texas Department of Criminal Justice (Institutional Division),
Respondent.

**On Petition for a Writ of Certiorari to
The United States Court of Appeals for the Fifth Circuit**

**APPLICATION FOR A 50-DAY EXTENSION OF TIME TO FILE A
PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT**

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**APPLICATION FOR A 50-DAY EXTENSION OF TIME TO FILE A
PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT**

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

1. This is a capital habeas corpus proceeding. On July 6, 2018, a panel of the Fifth Circuit issued an opinion affirming the final order of a district court denying relief to Mr. Batiste. *Batiste v. Davis*, No. 17-70025, 2018 WL 3339667 (5th Cir. July 6, 2018) (attached as Exhibit 1). Mr. Batiste filed timely petitions for rehearing, which were denied on August 24, 2018 (attached as Exhibit 2).

2. At present, Mr. Batiste has until November 22, 2018 to file a petition for a writ of certiorari seeking review of the Fifth Circuit's decision. *See* U.S.S.Ct.R. 13.1. This Court has jurisdiction under 28 U.S.C. § 1257.

3. Under Rule 13.5 and Rule 30.3, this Court may extend the time for seeking certiorari for up to sixty (60) additional days. Your Honor should grant an extension of fifty (50) days under the circumstances, up to and including January 11, 2019.

4. While counsel have been able to begin the process of researching and preparing a petition for writ of certiorari, counsel will require additional time to do so, given other obligations. This is the first time counsel have filed a petition for a writ of certiorari in this Court.

5. Counsel for the respondent does not oppose the requested extension of time.

6. The issues to be presented in Mr. Batiste's capital case are significant, including whether, in the course of denying an appeal, the Fifth Circuit misapplied the procedural bar contained in 28 U.S.C. § 2254(d) by failing to scrutinize the state court's decision for whether its reasoning was contrary to or involved an unreasonable application of federal law or was based on an unreasonable determination of the facts; and whether the Fifth Circuit should have concluded that the intervening decision in *Wilson v. Sellers*, 138 S. Ct. 1188 (2018), meant reasonable jurists could disagree about the district court's pre-*Wilson* application of 28 U.S.C. § 2254(d).

7. Counsel of record Kenneth McGuire has been preparing for and gave a detailed mitigation presentation to the U.S. Department of Justice Capital Case Unit requesting that the Department not seek a death sentence in *United States v. Ronald Brown*, Cause No. 4:17 CR 567-1, a Federal Death Penalty Act case pending in the Southern District of Texas. Mr. McGuire is also preparing a federal capital writ of habeas corpus petition in *Davis v. Davis*, Cause No. 4:16 CV 1867, an actual innocence case involving complex DNA issues pending in the Southern District of Texas, and a reply to a Motion for Summary Judgment in *Harper v. Davis*, Cause

No. 4:16 CV 762, a federal capital writ of habeas corpus petition pending in the Southern District of Texas.

8. Kate Pumarejo does not have a full-time law practice and is primarily occupied with the full-time care of her two young children, who are not of school age. She works on Mr. Batiste's case, and on one other capital case currently pending in the United States District Court Western District of Texas (*Renteria v. Davis*, Docket Number 3:15-CV-62) in her limited spare time.

CONCLUSION

For the foregoing reasons, Mr. Batiste prays that this Court grant an extension of time to file a Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit, extending Mr. Batiste's time to file a petition for writ of certiorari for fifty (50) days, until January 11, 2019.

Respectfully submitted,

/s/ Kate Pumarejo

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