

No. _____

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 2018

JAMES RANDALL ROGERS,
Petitioner,

v.

BENJAMIN FORD, Warden,
Georgia Diagnostic Prison,
Respondent.

APPLICATION FOR AN EXTENSION OF TIME
TO FILE PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF GEORGIA

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TO THE HONORABLE CLARENCE THOMAS, Associate Justice
of the Supreme Court of the United States, and Circuit Justice for the
United States Court of Appeals for the Eleventh Circuit:

Petitioner JAMES RANDALL ROGERS, a Georgia death-sentenced prisoner acting by and through undersigned counsel and pursuant to 28 U.S.C. § 2101(c) and Supreme Court Rules 13.5 and 30.2, respectfully requests an extension of time of sixty (60) days to file his Petition for a Writ of *Certiorari* in this Court. Mr. Rogers seeks

review of the decision of the Georgia Supreme Court entered on August 27, 2018, *see* Attachment A.

Mr. Rogers invokes the jurisdiction of this Court pursuant to 28 U.S.C. § 1257(a). His time to file a Petition for Writ of *Certiorari* in this Court elapses on November 26, 2018. Mr. Rogers makes this request more than ten (10) days before the date his petition would be due without an extension of time. This is his first request for an extension of time. In support of his request, Mr. Rogers shows the following as good cause:

Serious constitutional violations occurred during Mr. Rogers's 1985 capital trial. Stephen Lanier, the former Floyd County District Attorney, struck all five prospective African American jurors from Mr. Rogers's venire on the basis of their race. This Court, in *Foster v. Chatman*, 136 S. Ct. 1737 (2016), previously found that Mr. Lanier unconstitutionally struck all the prospective African Americans jurors at Timothy Foster's 1987 capital trial. Following oral argument in *Foster*, a sitting federal judge who previously worked with Mr. Lanier came forward and offered sworn testimony that Mr. Lanier had imposed a policy of systematically excluding African Americans from serving as

jurors in his capital cases—including Mr. Rogers’s capital trial. The state courts, presented with Mr. Rogers’s newly-discovered evidence, failed to redress this significant constitutional violation. The state courts’ failure to do so cannot be squared with this Court’s precedent.

A Petition for Writ of *Certiorari* is essential here. Counsel therefore request an extension of time to seek review in this Court so that counsel can properly and adequately present the substantial constitutional issues that give rise to Mr. Rogers’s Petition and effectively represent Mr. Rogers. Counsel also need additional time to consult with experienced Supreme Court practitioners in the preparation of the Petition.

Counsel William A. Morrison requests this extension of time because of his pressing professional and personal obligations. Mr. Morrison has been out of the office for an extended period caring for a member of his immediate family who was seriously injured in an accident. Mr. Morrison is also in the initial, time-sensitive phase of two (2) potential federal death penalty cases, *United States v. Gordan Evans*, 1:16-CR-427-AT-JKL-2, and *United States v. Jamel Hughes*, 4:17-CR-39-HLM-WEJ-3. The requested extension will allow Mr.

Morrison to continue to participate in representing Mr. Rogers before this Court.

Undersigned counsel Gerald King, a staff attorney with the Federal Defender Program, requests this extension of time because of his pressing obligations in other capital habeas corpus cases. In the time since Mr. Rogers's application for a certificate of probable cause to appeal was denied, Mr. King has filed briefs in two capital cases in the United States Court of Appeals for the Eleventh Circuit: an initial brief in the matter of *Pace v. Warden*, No. 16-10868, and a reply brief in the matter of *Presnell v. Warden*, No. 17-14322. Mr. King will have a reply brief due in *Pace* on November 27, 2018, one day after Mr. Rogers's petition is due. Mr. King is also preparing the initial federal habeas petition for Leonard Maurice Drane, a death-sentenced prisoner; that petition must be filed in the United States District Court for the Northern District of Georgia by December 21, 2018. Mr. King is also preparing a response to a pre-answer motion to dismiss in the matter of *Martin v. Dozier, et al.*, a Section 1983 proceeding challenging Georgia's method of execution.

Furthermore, the current time for the filing of the Petition for Writ of *Certiorari* to this Court expires on the Monday following the Thanksgiving holiday. In addition to the brief personal leave that undersigned counsel have scheduled in the days surrounding the current deadline, the legal support staff essential for finalizing and filing the Petition will not be available.

Given these deadlines, counsel respectfully request additional time so that they can prepare an effective petition on Mr. Rogers's behalf.

WHEREFORE, Mr. Rogers respectfully requests that this Court grant him a sixty (60) day extension of time within which to file his Petition for Writ of *Certiorari*, until and including January 25, 2019.

Respectfully submitted, this 7th day of November, 2018.

s/ Gerald W. King, Jr. _____
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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the forgoing on counsel for the Respondent Warden Ford by placing a copy of same in the United States Mail, First Class Postage pre-paid and addressed as follows:

Sabrina Graham, Esq.
Senior Assistant Attorney General
40 Capitol Square
Atlanta, Georgia 30334

Dated this, the 7th day of November, 2018.

/s/ Gerald W. King, Jr. _____
Gerald W. King, Jr.
Georgia Bar No. 140981