

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

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

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JULIUS DARIUS JONES, Petitioner,

vs.

STATE OF OKLAHOMA, Respondent.

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**\*\*\* CAPITAL CASE \*\*\***

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**APPLICATION TO EXTEND TIME  
TO FILE PETITION FOR WRIT OF CERTIORARI**

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To the Honorable Sonia Sotomayor, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Tenth Circuit:

Pursuant to Supreme Court Rules 13.5, 30.2 and 30.3, Petitioner Julius Darius Jones requests a 30-day extension of time in which to file his Petition for Writ of Certiorari. The current due date is December 27, 2018, and this Application is being filed thirteen days in advance of this date. The requested extension would make the Petition due on January 26, 2019.

Mr. Jones seeks review of the Order issued on September 28, 2018 by the Oklahoma Court of Criminal Appeals (“OCCA”) in *Jones v. State of Oklahoma*, No. PCD-2017-1313 (Okla. Crim. App. Sept. 28, 2018). (Appx. 1.) There, the OCCA dismissed Mr. Jones’ claim that newly-discovered evidence establishes that racial prejudice influenced the decision of at least one juror to convict Mr. Jones and sentence him to death in violation of his rights under the Sixth, Eighth and Fourteenth Amendments to the United States Constitution. (Appx. 1 at 8.) Oklahoma law prohibited Mr. Jones from petitioning the OCCA for rehearing following its dismissal of his newly-discovered federal constitutional claim. Rule 5.5, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2017) (explaining that once the OCCA has rendered its decision on a postconviction appeal, “the petitioner’s state remedies will be deemed exhausted” and “[a] petition for rehearing is not allowed and these issues may not be raised in any subsequent proceeding in a court

of this State”).

### **REASONS FOR THE REQUESTED EXTENSION OF TIME**

The State of Oklahoma seeks to execute Mr. Jones notwithstanding troubling new evidence that racial prejudice infected the fairness and accuracy of his capital trial and sentencing proceeding. On November 2, 2017, counsel for Mr. Jones learned from a juror who sat in judgment of Mr. Jones, and who sentenced him to death for the 1999 shooting death of Paul Howell in Edmond, Oklahoma, that at least one other juror who also sat in judgment of Mr. Jones harbored racial prejudice that influenced his verdict. According to this juror:

During the trial I was the juror who went to the judge with the comment from another juror about how it was a waste of time and ‘they should just take the nigger out and shoot him behind the jail’ although that juror was never removed and nothing further came from it[.]

(Appx. 2.)

On the basis of this newly-discovered evidence that his state and federal rights were transgressed, Mr. Jones timely filed a successor postconviction application in the OCCA. (Appx. 3.) Mr. Jones also requested discovery and an evidentiary hearing through which he sought to further develop the factual basis of his newly-discovered claim. (Appxs. 4–5.) The OCCA dismissed Mr. Jones’ application on state procedural grounds and denied his requests for evidentiary development. (Appx. 1 at 8.)

Mr. Jones seeks this Court’s review of the OCCA’s denial of his successor postconviction application and of the important federal constitutional questions that

it presents. In addition to the question of whether Mr. Jones' federal constitutional rights were violated when a juror who harbored racial animus towards him convicted and condemned him to death, the OCCA's dismissal of Mr. Jones' successor postconviction application also raises important questions about the constitutionality of Oklahoma's capital postconviction statute in light of the Constitution's Eighth and Fourteenth Amendment guarantees.

To date, undersigned counsel has been unable to afford Mr. Jones' Petition for Writ of Certiorari the considerable attention that it requires. Since the OCCA dismissed Mr. Jones' successor postconviction application on September 28, 2018, counsel for Mr. Jones have had considerable obligations and commitments. Dale Baich has been drafting an opening brief in *Hooper v. Ryan*, No. 08-99024 (9th Cir.), which is due on December 21, 2018. In addition, Mr. Baich has been involved in the administrative process related to Arizona's Application for Opt-In under 28 U.S.C. §2654(a), Docket No. OLP-166 (U.S. Dept. of Justice). As supervisor of the Capital Habeas Unit, Mr. Baich has administrative responsibilities. Amanda Bass, meanwhile, filed a Supplemental Reply Brief on October 3, 2018 in the Ninth Circuit Court of Appeals in a capital federal habeas case for which Oral Argument occurred on November 14, 2018. While Ms. Bass did not argue the case before the Court of Appeals, she was intimately involved in her co-counsel's extensive preparation for, and travel to, the argument. On November 28, 2018, Ms. Bass and co-counsel filed in

the Ninth Circuit Court of Appeals an Amended Opening Brief in another capital federal habeas case for which there was a voluminous record, including a federal district court evidentiary hearing, and multiple remands from this Court and the Court of Appeals for the Ninth Circuit on the application of *Cullen v. Pinholster*, 563 U.S. 170 (2011), *Harrington v. Richter*, 562 U.S. 86 (2011), *Martinez v. Ryan*, 566 U.S. 1 (2012), and *Dickens v. Ryan*, 740 F.3d 1302 (9th Cir. 2014), to their client's claims. In addition to the foregoing obligations, Mr. Baich and Ms. Bass represented a capital client, Joseph C. Garcia, whose execution by the State of Texas was carried out on December 4, 2018. Mr. Garcia's execution was preceded by extensive litigation in both state and federal fora, as well as travel to and from Texas.

As a result of the foregoing, neither Mr. Baich nor Ms. Bass have been able to devote the time that adequately preparing Mr. Jones' Petition for Writ of Certiorari requires.

### **CONCLUSION**

For the foregoing reasons, Mr. Jones respectfully requests an extension of time to file his Petition for Writ of Certiorari for 30 days, up to and including January 26, 2019.

Respectfully submitted this 14th day of December, 2018.

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