

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

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2018

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TRAVIS TREVINO RUNNELS, Petitioner

v.

LORIE DAVIS, Director  
Texas Department of Criminal Justice, Correctional Institutions Division,  
Respondent

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**MOTION FOR EXTENSION OF TIME TO FILE  
PETITION FOR WRIT OF CERTIORARI PURSUANT TO  
RULE 13(5)**

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To the Honorable Samuel A. Alito, Jr., Associate Justice and Circuit Justice  
to the Fifth Circuit:

1. Petitioner, Travis Trevino Runnels, an indigent death-sentenced inmate  
imprisoned on death row at the Polunsky Unit in Livingston, Texas, respectfully  
seeks a sixty (60) day extension of time within which to file his petition for writ of  
certiorari in this Court pursuant to Rule 13(5), Rules of the Supreme Court. The  
jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). This application is  
submitted more than ten (10) days prior to the scheduled filing date for the Petition.  
The pertinent dates are as follows:

**a. August 14, 2018:** Issuance of unpublished opinion of United States Court of Appeals for the Fifth Circuit, *Runnels v. Davis*, No. 17-70031 (5th Cir. 2014), denying Petitioner's application for certificate of appealability (COA) from the district court's denial of Petitioner's motion for relief from judgment under Federal Rule of Civil Procedure 60(b). Petitioner seeks review of this judgment. A copy of the opinion is attached hereto as Exhibit A.

**b. August 28, 2018:** Petitioner filed a timely petition for panel rehearing pursuant to Rule 40 of the Federal Rules of Appellate Procedure.

**c. September 18, 2018:** The Circuit Court issued an order denying panel rehearing. A copy of the order is attached hereto as Exhibit B.

**d. December 7, 2018:** Deadline for seeking extension of time within which to file a petition for writ of certiorari in the Supreme Court of the United States.

**e. December 17, 2018:** Expiration of time for filing a petition for writ of certiorari in the Supreme Court of the United States, unless extended.

2. This is a complex capital case in which Petitioner Travis Runnels was convicted of first-degree murder and sentenced to death in Texas. *See Runnels v. State*, No. AP-75,318, 2007 WL 2655682, (Tex. Crim. App. Sept. 12, 2007). Petitioner's efforts to obtain post-conviction relief have thus far been unsuccessful. *See Runnels v. Davis*, 664 F. App'x 371 (5th Cir. 2016) (per curiam) (denying COA from denial of habeas relief). Petitioner subsequently sought relief from judgment under Rule of Civil Procedure 60(b), but was likewise denied.

3. Undersigned counsel Mr. Pickett has a number of ongoing obligations and responsibilities through December 17, 2018 that will make it difficult to adequately prepare a certiorari petition under the current deadline. As a staff attorney at the Center for Death Penalty Litigation in Durham, North Carolina, Mr. Pickett currently represents several death row inmates with active litigation in both state and federal courts. For instance, Mr. Pickett was recently appointed to represent the defendant in *State v. Mario McNeill*, Cumberland Cnty., NC, No. 09 CRS 66040, in state post-conviction proceedings. Mr. McNeill's case is especially complex and involved a high profile trial, and Mr. Pickett anticipates a significant time commitment involved in reading a 6,500 page trial transcript, reviewing several boxes of discovery, completing investigative work, supervising experts, filing pre-petition motions (including discovery motions), and conducting legal research. Mr. Pickett also represents North Carolina death row inmate Russell William Tucker, Forsyth Cnty., NC, No. 94 CRS 40465, in active post-conviction litigation in both state and federal court. He anticipates that an evidentiary hearing in one or both venues will be likely in the next three months. Mr. Pickett also represents seven other death row inmates at various stages of their appeals in North Carolina. Consequently, Mr. Pickett will be unable to focus sufficient attention to the certiorari petition in the instant case and requests an extension.

4. Undersigned counsel Ms. Gilger-VanderZanden currently maintains a full case load of civil parental rights termination cases. Ms. Gilger-VanderZanden has an upcoming jury trial slated for October 8, 2018, in *In the Interest of D.L.*, D-1-FM-

17-006458, Travis County District Court; and bench trials in the following matters: *In the Interest of A.T.* et al, D-1-FM-17-006966, Travis County District Court (October 15, 2018); *In the Interest of A.C.*, D-1-FM-16-000755, Travis County District Court (October 29, 2018); *In the Interest of A.C.*, D-1-FM-17-007632, Travis County District Court (November 19, 2018); *In the Interest of J.J.*, D-1-17-007193 (December 17, 2019); and *In the Interest of D.S.*, D-1-FM-17-006897 (January 22, 2019). Consequently Ms. Gilger-VanderZanden will be unable to dedicate sufficient time to the certiorari petition in the instant case and requests an extension.

5. Counsel for Petitioner intend to ask this Court to grant review and reverse the decision of the Fifth Circuit panel denying Petitioner's application for COA from denial of his motion for relief from judgment pursuant to Rule of Civil Procedure 60(b). Petitioner's petition for certiorari will likely present an unresolved question: whether a habeas petitioner is entitled to COA from denial of equitable relief under Rule 60(b) when that petitioner's habeas counsel filed such delinquent briefing that it led the Fifth Circuit to remove said counsel from its Criminal Justice Act appointment roster. This case thus raises a serious, complex question involving the interplay of federal habeas law and the equitable principles governing Rule 60(b) relief. Because this petition addresses a new area of law that is still developing, significant time is needed to research and prepare.

For the foregoing reasons, the Petitioner, who is indigent and incarcerated on death row in Livingston, Texas, respectfully prays that this Court grant an

extension of sixty (60) days to and including February 15, 2019, within which to file his petition for writ of certiorari.

Respectfully submitted, this the 25<sup>th</sup> of October, 2018.



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## **CERTIFICATE OF SERVICE**

I hereby certify that on this day, October 25, 2018, one copy of the foregoing Motion for Extension of Time to File Petition for Writ of Certiorari Pursuant to Rule 13(5) was mailed by U.S. mail, first class, postage prepaid to:

Jefferson David Clendenin  
Assistant Attorney General  
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Mark J. Pickett