

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

LEE TURNER,

Petitioner,

v.

STATE OF LOUISIANA,

Respondent,

ON PETITION FOR WRIT OF CERTIORIARI TO
THE LOUISIANA SUPREME COURT

APPLICATION TO HON. SAMUEL A. ALITO FOR EXTENSION OF TIME
TO FILE A PETITION FOR WRIT OF CERTIORIARI
TO THE LOUISIANA SUPREME COURT

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**APPLICATION TO HON. SAMUEL S. ALITO FOR EXTENSION OF TIME
TO FILE A PETITION FOR WRIT OF CERTIORARI
TO THE LOUISIANA SUPREME COURT**

Pursuant to United States Supreme Court Rules 13.5, 22, and 30, Petitioner Lee Turner respectfully requests a 45-day extension of time to file a petition for a writ of certiorari to the Louisiana Supreme Court to review that court's decision in the direct appeal in *State v. Lee Turner*, 2016-1841 (La. 12/05/18), 263 So.3d 337. (Attached as Exhibit A). The Louisiana Supreme Court reversed Mr. Turner's death sentence, but upheld his conviction. Rehearing was denied by the Louisiana Supreme Court on January 30, 2019, *State v. Turner*, 2019 La. LEXIS 326 (La. Jan. 30, 2019). (Attached as Exhibit B.) This means that the time to file a petition for writ of certiorari will expire without extension on April 30, 2019. This application is timely because it has been filed more than ten days prior to the date on which the time for filing the petition is to expire. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1257(a). As set forth below, the Petitioner submits that good cause exists for granting this extension.

This case presents the substantial and important question of whether the courts are adequately addressing claims of race discrimination in the selection of juries. Specifically, the Louisiana Supreme Court in this case denied Mr. Turner's significant *Batson* claims relying upon a recent line of precedent from the Fifth Circuit that effectively dispenses with comparative juror analysis as a meaningful tool for uncovering discrimination in the use of peremptory challenges. *See Turner*, 263 So.2d at 379 (citing *Hebert v. Rogers*, 890 F.3d 213 (5th Cir. 2018). *See*

Chamberlin v. Fisher, 885 F.3d 832, 837 (5th Cir. 2018). The Louisiana Supreme Court, like the Fifth Circuit in *Hebert* and *Chamberlin*, held that comparative juror analysis could be defeated by characteristics that distinguished an accepted white juror from a struck black juror but which were not proffered by the prosecutor. In *Chamberlin*, the majority's reasoning was met by a vigorous dissent, see *Chamberlin*, 885 F.3d at 846 (Costa jointed by Stewart, C.J., and Davis, Dennis and Prado, circuit judges dissenting). This Court will be asked to assess whether the Fifth Circuit and the Louisiana Supreme Court in these cases have failed to adhere to the principles set out by this Court. See *id.* ("What is more troubling is that we have been down this road before [in *Miller-El II*] . . . As will be explored further, this approach used to avoid the clear import of a direct comparison of the reasons stated at trial is the same rejected analysis of our *Miller-El II* opinion and the Supreme Court dissent. It is one thing to make a mistake; it is quite another not to learn from it.").

Mr. Turner's case also involves the substantial and important question of the Louisiana Supreme Court's continuing failure to apply the proper standard for assessing proof of a prima facie case of discrimination under *Johnson v. California*, 545 U.S. 162 (2005) and *Batson v. Kentucky*, 476 U.S. 79 (1986). In contrast to all other jurisdictions, the Louisiana Supreme has consistently held that a mere pattern of strikes is insufficient proof of a prima facie case. In Mr. Turner's case, not only did the Louisiana Supreme Court continue to apply this erroneous interpretation of *Johnson v. California* in Mr. Turner's case, see *Turner*, 263 So.2d

at 386 (“bare statistics alone are insufficient to show a *prima facie* case of discrimination”), but it refused to consider all of the strikes making up the pattern. *Id.* This also raises concerns similar to those under consideration in *Flowers v. Mississippi*, No.17-9572, which was argued before the Court this term and is pending the Court’s decision.

Counsel Tillman¹ is lead counsel for Mr. Turner, but she has had commitments in several other cases that have substantially limited her availability to prepare Mr. Turner’s Petition by the current April 30, 2019 deadline and require her to request 45 additional days. Ms. Tillman is counsel of record in *Hoffman v. Vannoy*, 22nd Judicial District Court, Division H, #265637, a capital case in which substantial successor petition was filed in state court on February 22, 2019, and which consumed much of Ms. Tillman’s time in February. Ms. Tillman is counsel of record in *Code v. Vannoy*, No. 5:11-CV-01804, a large capital federal habeas case pending in the Western District of Louisiana. The record in Mr. Code’s case is voluminous, with a state court record of 99 volumes, and a federal record comprising over 40,000 pages, and spanning 30 years of litigation. As new counsel in the case, Ms. Tillman is tasked with investigating and presenting claims for habeas relief pursuant to *Martinez v. Ryan*, 566 U.S. 1 (2012), and a stay in effect for that purposes expires May 10, 2019.

¹ Counsel Tillman’s application to this Court for admission was sent to this Court by priority mail April 16, 2019, and is pending. Undersigned counsel of record, Cecelia Kappel, is the Executive Director of the Capital Appeals Project which represents Mr. Turner.

For the last several weeks, Ms. Tillman has been consulting on a capital trial that began on March, 25, 2019, *State v. Cannon*, 1st Judicial District Court, Section “4” Docket No. 334303. Trial proceedings were stayed by the Louisiana Supreme Court at the end of the last week, but work will continue once proceedings resume. She also has ongoing duties in other capital post-conviction cases in which she is counsel of record.

In order to prepare this important case for the Court’s consideration, undersigned counsel respectfully requests that Mr. Turner be given an additional 45 days in which to file his petition for writ of certiorari in this Court, placing the deadline for the petition at June 14, 2019.

Respectfully submitted,

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