

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

RAY MACARTHUR FREENEY, *Petitioner*

v.

LORIE DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE,
CORRECTIONAL INSTITUTIONS DIVISION, *Respondent*,

ON WRIT OF CERTIORARI TO THE
COURT OF APPEALS FOR THE FIFTH CIRCUIT

UNOPPOSED MOTION TO EXTEND TIME TO FILE
PETITION FOR A WRIT OF CERTIORARI

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CAPITAL CASE

OPINIONS BELOW

The substituted opinion of the Fifth Circuit Court of Appeals denying Mr. Freeney's application for certificate of appealability is at *Freeney v. Davis*, 737 F. App'x 198 (5th Cir. 2018) and is reprinted in the Appendix at App. A.

JURISDICTION

Petitioner invokes this Court's jurisdiction to grant the Petition for a Writ of Certiorari to the Fifth Circuit Court of Appeal on the basis of 28 U.S.C. § 1254. The Court of Appeal denied Petitioner's application for certificate of appealability on August 13, 2018. This motion is filed greater than ten days before the petition is due.

UNOPPOSED REQUEST FOR EXTENSION OF TIME TO FILE PETITION FOR CERTIORARI

Petitioner respectfully requests an extension of sixty (60) days of the time to file a petition for certiorari from the current date of November 11, 2018, to January 10, 2019. Undersigned counsel has conferred this request with AAG Matthew Ottoway, counsel for Respondent, and he has advised that the request for extension is not opposed.

Petitioner requests this extension in light of undersigned counsel's workload during the period from the Fifth Circuit's ruling to the current deadline, including the following: Counsel is appointed in the pre-trial capital case of *U.S.A v Age. et al.*, 16-32 (E.D.La.) and has been required to file extensive briefing on five separate

discovery motions in reply to the Government's opposition to discovery. Counsel is appointed in the pre-trial capital case of *State v. McCoy*, B-163572 (26th JDC) and, following reversal by this Court, has prepared and filed eighteen pre-trial motions. Counsel represents petitioner in the capital case of *Garcia v. United States*, 16-70007 (5th Cir.) in which the Fifth Circuit denied relief on July 25, 2018, triggering a due date for the petition of certiorari of October 23, 2018. Counsel is appointed in the formerly capital case of *State v. Maxie*, 13-072522 (11th JDC), in which extensive post-hearing briefing on a constitutional challenge to Louisiana's system of majority verdicts under the Equal Protection Clause was filed. Counsel is serving as *pro bono* counsel in two cases on review which have required additional work: *Boyer v. Vannoy*, 17-7930 (S. Ct.) (filing reply in support of certiorari and supplemental briefing) and *Langley v. Prince*, 16-30486 (5th Cir.) (filing opposition to state's application for en banc rehearing). In addition, undersigned counsel serves as Director of a non-profit law office and has managerial and administrative responsibilities as well as the regular day-to-day tasks of the remainder of his caseload.

The petition for certiorari in *Garcia (supra)* was originally due on October 23, 2018. Undersigned counsel recently sought an unopposed extension of time for filing the petition in that proceeding, which this Court granted on October 17, 2018. *Garcia v. United States*, 18A402. At the time of the application in Mr. Garcia's case, counsel believed that the extension of that deadline would adequately serve to ease the crush of deadlines and did not anticipate filing an application to extend time in the present case.

However, on October 12, 2018 the state of Louisiana's request for *en banc* review in *Langley* (*supra*) was granted. *Langley v. Prince*, 2018 U.S. App. LEXIS 28950 (5th Cir. Oct. 12, 2018). Undersigned counsel is now responsible for preparing and filing Mr. Langley's supplemental brief on November 13, ahead of oral argument in the week of January 21, 2018.

As a result of this unexpected development, in combination with undersigned counsel's existing workload, counsel respectfully submits this request for an extension of time in which to file Mr. Freeney's petition for certiorari.

CONCLUSION

Petitioner respectfully requests that this Court grant an extension of sixty (60) days for the filing of his petition for certiorari.

Respectfully submitted,

/s/ Richard Bourke
RICHARD BOURKE, *Counsel of Record*
Attorney for Petitioner

Dated: October 26, 2018