

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

CHARLES D. RABY, *Defendant-Petitioner*

v.

LORIE DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE,
CORRECTIONAL INSTITUTIONS DIVISION, *Plaintiff-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 opinion of the Fifth Circuit Court of Appeals denying Mr. Raby's certificate of appealability ("COA") is at *Raby v. Davis*, 18-70018 (5th Cir. 10/31/2018) 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 COA on October 31, 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 thirty (30) days of the time to file a petition for certiorari from the current date of January 29, 2019, to February, 28 2019. **Undersigned counsel has conferred this request with Jay Clendenin, counsel for the State of Texas, and he has advised that the request for extension is not opposed.**

Petitioner requests this extension in light of undersigned counsels' collective workload during the period from the Fifth Circuit's ruling to the current deadline, as well as for the next several weeks, including the following: Counsel Robertson has a leading role in *Project Boat Holdings, LLC v. Bass Pro Group, LLC*, C.A. No. 12606

in the Delaware Chancery Court, which was tried in June 2018, followed by multiple rounds of post-trial briefing, with closing arguments scheduled for February 1, 2019. Counsel Robertson is also representing a foreign client in a pending AAA arbitration proceeding (Case No. 01-17-0004-8507), and is preparing claims to be filed in January 2019 on behalf of another foreign client in a major dispute. Counsel Frazier took the lead on the December 21, 2019 filing on behalf of Mr. Raby, described below, but must continue to balance her *pro bono* activities with her private cases. These include *U.S. ex rel. Reddell v. DynCorp International LLC*, 1:14-cv-00086 (E.D. Texas) a major *qui tam* government contracting case currently in litigation in which she takes a leading role, her involvement in several civil cases in state and federal court alleging personal injury by former physician Larry Nassar, and numerous False Claims Act cases obligated to be filed (each requiring a 50-100 page petition) or being pursued under seal. Counsel Mohr has a leading role in a Stockholm Chamber of Commerce arbitration against the Italian Republic that included a merits hearing in November-December 2018, with a 50-page post-hearing brief due on January 25, 2019. Additionally, Counsel Mohr is preparing a lengthy reply memorial (exceeding 200 pages) in an ICSID arbitration against the Kingdom of Spain that is due on February 22, 2019.

Furthermore, on December 21, 2019 petitioner's Counsel in this case filed in the Fifth Circuit under 28 U.S.C. § 2254 a motion for order authorizing filing and consideration of a second federal petition for writ of habeas corpus along with the underlying petition, briefing that collectively amounted to over 240 pages not

including exhibits (docketed as Case No. 18-20826). It was necessary to complete work on that motion under deadline before turning to this appeal.

Undersigned counsel was appointed to represent the petitioner, Mr. Raby, in his proceedings under 28 U.S.C. § 2254 on March 20, 2001. Counsels' representation of Mr. Raby in respect to this proceeding, and every other proceeding for Mr. Raby since the date of appointment, has not been funded and is being undertaken on a *pro bono* basis. Counsel for petitioner work full time primarily on civil matters.

Under these circumstances, thirty days is a sufficient period of extension for counsel to complete the required work. For this reason, the additional time is sought.

CONCLUSION

Petitioner respectfully requests that this Court grant an extension of thirty (30) days for the filing of his petition for certiorari.

Respectfully submitted,

/s/ Sarah M. Frazier

SARAH M. FRAZIER, *Counsel of Record*
Attorney for Petitioner

Dated: January 11, 2019