

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

**CHARLES M. HEDLUND,
Petitioner,**

vs.

**STATE OF ARIZONA,
Respondent.**

*****CAPITAL CASE*****

**ON PETITION FOR WRIT OF CERTIORARI TO THE ARIZONA
SUPREME COURT**

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

**JON M. SANDS
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The Honorable Elena Kagan, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Ninth Circuit:

Pursuant to Supreme Court Rule 13.5, 30.2, and 30.3, Petitioner Charles Hedlund requests an extension of time of 56 days in which to file his Petition for Writ of Certiorari. The current due date is May 23, 2019. This Application is being filed more than ten days prior to the due date. The requested extension would make the Petition due on July 18, 2019. Petitioner seeks review of the Opinion filed December 10, 2018 in *State v. Hedlund*, Arizona Supreme Court, Case No. CR-93-0377-AP [Dkt. 50] (Exh. 1). The Court's opinion upheld Hedlund's death sentence. Petitioner filed his Motion for Reconsideration on January 23, 2019 [Dkt. 53]. The court denied the Motion for Reconsideration by an Order entered on February 22, 2019 [Dkt. 56] (Exh. 2). The Court has jurisdiction pursuant to 28 U.S.C. § 1254 and Supreme Court Rule 10. Assistant Attorney General Lacey Gard, who is assigned to represent Respondents in this matter, does not oppose the requested extension.

Reasons for the Requested Extension of Time

This case involves an important and reoccurring issue regarding the proper state remedy for causal nexus error once the federal court has already found that the error had a substantial and injurious effect upon the death sentence. This question will continue to arise in cases out of the Ninth Circuit Court of Appeals where relief was granted pursuant to *McKinney v. Ryan*, 813 F.3d 798 (9th Cir. 2015), and the State is allowed to pursue the remedy of a "redo" of independent review, instead of

resentencing.

To date, undersigned counsel has been unable to complete Mr. Hedlund's petition for writ of certiorari. Counsel of record, Paula Harms, represents eleven clients under a sentence of death. Since the petition for rehearing was denied on February 22, 2019, Ms. Harms has had the following other obligations and commitments. On March 11, 2019, a petition for rehearing/rehearing *en banc* was denied in another federal capital habeas case that was filed in the Eighth Circuit Court of Appeals. The Petition for Writ of Certiorari is due in that case on June 10, 2019. Counsel has been consulting and researching the appropriate certiorari issues in that case, as well as in Hedlund. In early March, counsel was made aware that she would be appointed to a new capital habeas case out of state that involved a petitioner who had been allowed to waive post-conviction proceedings in state court and for whom approximately ten months of the one year habeas statute of limitation had run. Because of the complex and lengthy nature of the record and short time line, this case has demanded counsel's immediate attention, including the necessity of out of state travel that is scheduled for May 14-15, 2019. Counsel entered her appearance in that case on April 29, 2019. In another state capital post-conviction case, the Utah Supreme Court issued an opinion on March 21, 2019, reversing the lower court's granting of summary judgment, and remanding the case to the trial court for a hearing on *Brady* and *Napue* claims. Because the case involves foreign witnesses and the use of an outside investigator and translator, counsel has had to

devote substantial time to planning for the hearing. A status conference is scheduled for June 19, 2019, which will require out of state travel on the part of counsel and a conference with the state prior to June 19. In addition, counsel recently discovered a conflict with the assigned judge which necessitated the preparation and filing of a motion for disqualification on April 10, 2019. Counsel was also assigned a new capital case in late February in which an execution was scheduled for May 29, 2019. Although a reprieve was granted and a new execution date set for November 13, 2019, the case has still required considerable attention, expert consultation, and record review on the part of counsel. In addition, counsel will be attending a conference out of state regarding Supreme Court practice on June 13-16.

Co-counsel, Sara Chimene-Weiss was newly assigned to a capital habeas case in February that was denied relief in district court and an Opening Brief is due in the Ninth Circuit Court of Appeals on August 5, 2019. Because Ms. Weiss is new to the case and the record is voluminous, substantial time has been devoted to reviewing the record in that case. Ms. Weiss is also counsel in another capital habeas case in which the Reply brief is due in the Ninth Circuit Court of Appeals on May 9, 2019. Ms. Weiss is also counsel in another capital habeas case in which a Reply brief is due in the district court on July 12, 2019.

CONCLUSION

For the forgoing reasons, Mr. Hedlund respectfully requests an extension of time to file his Petition for Writ of Certiorari for 56 days, up and to including July

18, 2019.

Respectfully submitted: May 8, 2019.

JON M. SANDS
Federal Public Defender

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