

CAPITAL CASE

No. 19-__

IN THE SUPREME COURT OF THE UNITED STATES

LISA MONTGOMERY

Petitioner-Applicant

vs.

UNITED STATES OF AMERICA

Respondent

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

To the Honorable Neal Gorsuch, Associate Justice and Circuit Justice for the United States Court of Appeals for the Eighth Circuit: In this federal capital case, Applicant Lisa Montgomery, respectfully requests a sixty (60) day extension of time, to and including September 9, 2019, within which to file her Petition for Writ of Certiorari. In support of her application, Mrs. Montgomery states the following:

1. Lisa Montgomery is a federal death row inmate. She was convicted and sentenced to death in the United States District Court for the Western District of Missouri.

2. Mrs. Montgomery timely filed a Motion for Collateral Relief pursuant to 28 U.S.C. § 2255 in the convicting court. That court granted an evidentiary hearing on 20 claims in the motion. The hearing lasted for ten days and involved 38 witnesses. The transcript of the 2255 hearing is 2381 pages.

3. Mrs. Montgomery seeks to file a petition for writ of certiorari challenging the legality and constitutionality of her conviction and sentence of death and the denial of an appeal in her case. This proceeding involves an exceptionally voluminous record. Mrs. Montgomery's application for certificate of appealability was 962 pages and the Government's response was 383 pages. The United States Court of Appeals decision affirming the denial of a certificate of appealability is unexplained. Appendix A.

4. Mrs. Montgomery must now synthesize and condense her arguments to present them to this Court. Mrs. Montgomery anticipates that her petition will, at least, present to this Court important statutory and constitutional issues regarding the right of a capital defendant to maintain her established relationship with her court appointed lawyer where the court appointed lawyer was removed as counsel with no notice or process and against the wishes of that lawyer and the capital defendant.

5. The United State Court of Appeals entered its decision denying rehearing en banc on April 10, 2019. Appendix B. Absent an extension of time, the

petition for writ of certiorari is due July 9, 2019. Sup. Ct. R. 30. A sixty-day extension of time would make the petition due Monday, September 9, 2019.¹

6. Counsel require additional time to prepare the petition in this capital case because their professional obligations in other court-appointed cases have prevented them from preparing the petition in this matter. Counsel Henry and Harwell were required to file an initial petition for collateral relief in a different federal capital case where the statute of limitation ran on May 14, 2019. At the same time, Ms. Henry and Harwell represented Tennessee death row inmate, Don Johnson, who was executed on May 16, 2019. Ms. Henry and Harwell have numerous deadlines in capital habeas cases brought under 28 U.S.C. § 2254. Counsel Nouri is a sole practitioner and CJA appointed counsel for Mrs. Montgomery. Ms. Nouri had a trial on May 6-7, 2019, and definite trials on August 19, 2019 scheduled for 8 days and September 3, 2019 specially set for 8-10 weeks. In addition to numerous sentencings and pleas scheduled this summer all other trial matters have been resolved or continued to work on the petition for writ of certiorari with co-counsel.

7. Counsel for the Government has authorized undersigned counsel to represent that the Government does not oppose this motion.

8. This motion is brought for the reasons stated herein and not for the purpose of delay.

¹ Sixty days from July 9, 2019 is Saturday, September 7, 2019. Supreme Court Rule 30 states that where a deadline falls on a Saturday, Sunday or federal legal holiday the deadline falls to the next business day. In this case, September 10, 2019.

WHEREFORE, in the interest of justice and fairness, Mrs. Montgomery requests this Court to grant her request for extension of time to and including September 10, 2019.

Respectfully submitted,

LISA G. NOURI
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(816) 471-1000

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BY: /s/ Kelley J. Henry
**Counsel of Record*

CERTIFICATE OF SERVICE

I hereby certify that on June 14, 2019, the above-captioned document was served electronically upon counsel for the Government Jeff Valenti, Assistant United States Attorney representing the government in this matter as well as by United States Mail, postage pre-paid, to Mr. Valenti, Charles Evans Whittaker Courthouse, 400 East 9th Street, Room 5510, Kansas City, Missouri 64106.

/s/ Kelley J. Henry

APPENDIX A

United States Court of Appeals
For The Eighth Circuit
Thomas F. Eagleton U.S. Courthouse
111 South 10th Street, Room 24.329
St. Louis, Missouri 63102

Michael E. Gans
Clerk of Court

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January 25, 2019

Ms. Amy D. Harwell
FEDERAL PUBLIC DEFENDER'S OFFICE
Suite 200
810 Broadway
Nashville, TN 37203

RE: 17-1716 Lisa Montgomery v. United States

Dear Counsel:

Enclosed is a copy of the dispositive order entered today in the referenced case.

Please review [Federal Rules of Appellate Procedure](#) and the [Eighth Circuit Rules](#) on post-submission procedure to ensure that any contemplated filing is timely and in compliance with the rules. Note particularly that petitions for rehearing must be received by the clerk's office within the time set by FRAP 40 in cases where the United States or an officer or agency thereof is a party (within 45 days of entry of judgment). Counsel-filed petitions must be filed electronically in CM/ECF. Paper copies are not required. Pro se petitions for rehearing are not afforded a grace period for mailing and are subject to being denied if not timely received.

Michael E. Gans
Clerk of Court

CMD

Enclosure(s)

cc: Mr. Bruce E. Clark
Ms. Kelley J. Henry
Mr. David M. Ketchmark
Mr. Philip M. Koppe
Ms. Lisa M. Montgomery
Ms. Lisa G. Nouri
Mr. Jeffrey E. Valenti
Ms. Paige Wymore-Wynn

District Court/Agency Case Number(s): 4:12-cv-08001-GAF

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 17-1716

Lisa M. Montgomery

Movant - Appellant

v.

United States of America

Respondent - Appellee

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:12-cv-08001-GAF)

JUDGMENT

Before SHEPHERD, KELLY and ERICKSON, Circuit Judges.

This appeal comes before the court on appellant's application for a certificate of appealability. The court has carefully reviewed the original file of the district court, and the application for a certificate of appealability is denied. The appeal is dismissed.

Appellant's motion to expand the record is denied as moot.

January 25, 2019

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

APPENDIX B

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 17-1716

Lisa M. Montgomery

Appellant

v.

United States of America

Appellee

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:12-cv-08001-GAF)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

April 10, 2019

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans