

CASE NO. 19-6479/19A-484 (CAPITAL CASE)

IN THE SUPREME COURT OF THE UNITED STATES

In re CHARLES RUSSELL RHINES, *Petitioner*

REPLY IN SUPPORT OF PETITION FOR A WRIT OF HABEAS CORPUS

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Dated: November 2, 2019

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Stripped of its bluster and rhetoric, the State's Brief in Opposition (BIO) argues that Mr. Rhines's evidence of juror bias is not to be believed because other evidence, described in a hearsay affidavit from a state investigator, disputes it. In an ordinary case, such factual disputes can be resolved through an evidentiary hearing. This case, at bottom, is no different. In the context of this request for the Court to exercise its original habeas jurisdiction, the precise legal questions before the Court are relatively straightforward. Is the prospect that anti-gay bias affected even a single juror's decision to vote for death extraordinary enough, and are the factual disputes significant enough, to warrant this Court's intervention and a remand to the district court even at this late stage of the proceedings?

This Court should answer the questions affirmatively. The BIO does not dispute the notion that a sentence of death based on what it describes as a juror's "homophobic" bias would be constitutionally intolerable. Instead, the BIO disputes the sufficiency and timing of Mr. Rhines's evidence. This Court need not definitively determine these disputes. Rather, these disputes should be resolved at an evidentiary hearing.

Although the BIO repeatedly asserts that Mr. Rhines has been dilatory, he has made repeated efforts to obtain judicial review of his claims. As the BIO concedes, Mr. Rhines made attempts in both the state and federal courts to have these disputes reviewed and resolved and has twice presented these issues to this Court. *See* Petition at 4–8 (describing efforts to raise juror bias prior to this Court's decision in *Pena-Rodriguez v. Colorado*, 137 S. Ct. 855 (2017)). After *Pena*

Rodriguez, Mr. Rhines again raised bias claims, seeking an evidentiary hearing to resolve disputes about the accuracy and reliability of the juror affidavits he had proffered. Petition at 8–11 (describing the factual disputes and Mr. Rhines’s efforts to secure judicial review). But, to date, largely because of the procedural context in which those claims were presented, no court has been willing—or perceived that it had power—to do so. This request for original habeas relief allows this Court to now determine whether a hearing should be held before Mr. Rhines is to be executed perhaps in part because of his sexual orientation, unencumbered by the prior procedural obstacles.

The State’s contention that Mr. Rhines was dilatory in filing an original writ shows its misunderstanding of the requirements for this extraordinary form of relief. The writ is not available unless “adequate relief cannot be obtained in any other form or from any other court.” *Felker v. Turpin*, 518 U.S. 651, 665 (1996). Thus, as long as Mr. Rhines has been seeking adequate relief from his death sentence in other forums—and, as this Court knows, he has been seeking and continues to seek such relief—his request for an extraordinary writ is not dilatory.

The myriad other procedural objections raised in the BIO require fuller briefing and argument and need not be decided at this time. *See In Re Davis*, 557 U.S. 952, 952 (2009) (Stevens, J., concurring). As Justice Stevens pointed out, whether the limitations of ordinary habeas litigation apply or should apply to this Court’s original jurisdiction is a question that has not yet been decided by this Court and may be deserving of development in the District Court. *Id.* In this case, similarly, the implications of 28 U.S.C. §§ 2244 and 2254 in the context of an

original writ require development below. The only question before this Court is whether Mr. Rhines's factual allegations are significant enough, and the prospect of executing a man because of his sexual orientation is extraordinary enough, to deserve consideration and a hearing in the District Court.

CONCLUSION

For these reasons and those in Mr. Rhines's petition, this Court should grant a writ of certiorari to resolve the questions presented.

Respectfully submitted,



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