

No. 19A317 (CAPITAL CASE)

IN THE SUPREME COURT OF THE UNITED STATES

MICHAEL DEAN GONZALES

Petitioner,

v.

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

Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit**

**SECOND UNOPPOSED APPLICATION FOR AN EXTENSION OF TIME
TO FILE A PETITION FOR A WRIT OF CERTIORARI**

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**SECOND UNOPPOSED APPLICATION FOR AN EXTENSION OF TIME
TO FILE A PETITION FOR A WRIT OF CERTIORARI**

To the Honorable Samuel Alito, Associate Justice, and Circuit Justice for the United States Court of Appeals for the Fifth Circuit:

1. This is a capital habeas corpus proceeding. On May 17, 2019, a panel of the Fifth Circuit issued an opinion denying a certificate of appealability related to the final order of a district court denying relief to Mr. Gonzales. *Gonzales v. Davis*, 924 F.3d 236 (5th Cir. 2019) (per curiam) (Ex. A). Mr. Gonzales filed a timely petition for rehearing which was denied on July 2, 2019. (Ex. B).

This Court has jurisdiction over the petition for writ of certiorari under 28 U.S.C. § 1254(1).

2. Mr. Gonzales's petition was originally due on September 30, 2019. *See* Sup. Ct. R 13.1.
3. On September 16, 2019, Mr. Gonzales submitted an unopposed application to extend the time to file by fifty-eight (58) days, to November 27, 2019.
4. On September 18, Your Honor granted Mr. Gonzales's application, extending the time to file by thirty (30) days, to October 30, 2019.
5. Counsel from the Capital Habeas Unit of the Office of the Federal Public Defender for the Western District of Texas ("CHU") currently serves as counsel of record in this case with Richard Burr. Counsel has begun researching and drafting Mr. Gonzales's petition for writ of certiorari. However, since Mr. Gonzales's original application for an extension of time, counsel has had new competing case demands.

6. Mr. Gonzales now requests an additional twenty-eight (28) days to file his petition to November 27, 2019.
7. On September 30, 2019, counsel of record was notified that oral argument has been scheduled for November 5, 2019 on another client's capital habeas case. *See Speer v. Davis*, Nos. 13-70001 & 19-70001 (5th Cir.). Because previous counsel withdrew after the submission of briefs to the Fifth Circuit and new counsel was only appointed in August, counsel must spend significant time preparing for the oral argument.
8. Until October 4, CHU counsel worked extensively on litigation on behalf of condemned client Randy Halprin. *See Ex parte Halprin*, No. 77,175-05 (Tex. Crim. App. Oct. 4, 2019) (staying Oct. 10 execution date). Counsel prepared an initial brief in the Fifth Circuit with accompanying motion for stay of execution, *see Halprin v. Davis*, Nos. 19-70016 & 19-70017 (5th Cir. Sept. 18, 2019); a reply brief in support of a motion for authorization to file a successive petition in the Fifth Circuit, *In re Halprin*, Nos. 19-10960 & 19-10970 (5th Cir. Sept. 20, 2019); and a petition for writ of certiorari with an accompanying application for a stay in this Court, *see Halprin v. Davis*, No. 19-6156 (U.S. Oct. 3, 2019).
9. CHU counsel also must file numerous briefs and pleadings in other capital habeas cases: a response to a petition for rehearing en banc in *Lucio v. Davis*, No. 16-70027 (5th Cir.) (ordered on Sept. 20; due on Oct. 30); a reply to respondent's answer to the petition for writ of habeas corpus in *Cade v.*

Davis, No. 3:17-cv-3396 (N.D. Tex.) (due Nov. 9); and a reply to the respondent's answer to the petition for writ of habeas corpus and replies to motions for discovery and stay/abeyance in *Cummings v. Davis*, 6:18-cv-125 (W.D. Tex.) (due Oct. 14). Finally, since the last application, counsel of record has also spent significant time on travel, investigation, and legal research in order to comply with a district court's order to exhaust federal claims in subsequent state court proceedings by October 31. *See Robinson v. Davis*, No. 1:17-cv-11 (E.D. Tex.).

10. This request is being submitted twenty-one (21) days prior to the current due date.
11. Counsel for Respondent did not oppose Mr. Gonzales's original request for an extension, and does not oppose this request to extend the time to file by twenty-eight (28) days.
12. The extension is necessary because the issues to be presented in Mr. Gonzales's capital case are complex and significant. In its published opinion, the Fifth Circuit made significant interpretations of this Court's precedent on multiple questions related to the right to an adequate hearing on a defendant's competency to stand trial. *See Pate v. Robinson*, 383 U.S. 375, 385 (1966); *Drope v. Missouri*, 420 U.S. 162, 180 (1975). The court below also resolved an important procedural question about the adequacy of procedural bars involving a client's waiver of state post-conviction rights. *See James v. Kentucky*, 466 U.S. 341, 349 (1984).

CONCLUSION

For these reasons, Mr. Gonzales respectfully requests that the time to file a petition for a writ of certiorari be extended twenty-eight days, up to and including November 27, 2019.

Respectfully submitted,

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October 9, 2019