

No. \_\_\_\_\_

**IN THE SUPREME COURT OF THE UNITED STATES**

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RICHARD KEITH DJERF,  
Petitioner,

vs.

DAVID SHINN,  
Director of the Arizona Department of Corrections, et al.,  
Respondents.

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**\*\*CAPITAL CASE\*\***

**APPLICATION FOR EXTENSION OF TIME TO FILE  
PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH  
CIRCUIT**

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*Counsel for Petitioner Djerf*

To the Honorable Elena Kagan, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Ninth Circuit:

Pursuant to this Court's Rules 13.5, 22, and 30, Petitioner Richard Kenneth Djerf respectfully requests a fifty-nine-day extension of time, up to and including February 28, 2020, within which to file a petition for writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case. If not extended, the time for filing a petition will expire on December 31, 2019. Consistent with Rules 13.5 and 30.2, this application is being filed at least ten days before that date.

The United States Court of Appeals for the Ninth Circuit filed an opinion, a copy of which is attached hereto as Appendix A, denying Mr. Djerf's capital habeas appeal on July 24, 2019. A timely filed petition for panel rehearing and suggestion for rehearing en banc was denied in an order issued on October 2, 2019, a copy of which is attached hereto as Appendix B. This Court has jurisdiction pursuant to 28 U.S.C. § 1254 and Supreme Court Rule 10. Counsel for Respondent, Assistant Attorney General Ginger Jarvis, has indicated to undersigned counsel that she does not oppose the extension of time requested.

### **Background**

This is a capital case. After waiving representation by court-appointed counsel, due to counsel's failure properly to investigate and prepare his case for trial, Mr. Djerf pleaded guilty to four counts of first degree murder without an agreement to sentence, and was sentenced to death in the Maricopa County Superior Court in 1996. Because

Mr. Djerf's trial was conducted prior to this Court's ruling in *Ring v. Arizona*, 536 U.S. 584 (2002), the trial judge who presided over Mr. Djerf's case was responsible for finding the aggravating factors that would make him eligible for the death penalty and the existence of mitigating circumstances. The trial judge found four aggravating circumstances and no mitigating circumstances and sentenced him to death. *State v. Djerf*, 959 P.2d 1274, 1281 (Ariz. 1998). Applying controlling Arizona law at the time, the Arizona Supreme Court, on its independent review of Mr. Djerf's case, affirmed the trial court's sentences. *Id.* at 1289-90.

### **Reasons for the Requested Extension of Time**

1. This case presents complex issues concerning the interplay between the requirements of AEDPA deference and the burden of proof placed upon a habeas corpus petitioner alleging a constitutional violation by a state court. The important issues raised by this case require considerable research and analysis on the part of counsel.

2. To date, undersigned counsel have been unable to afford Mr. Djerf's petition for writ of certiorari the considerable attention it requires. Lead counsel for Mr. Djerf, Therese Michelle Day, is currently appointed to eight capital habeas cases. Since Mr. Djerf's petition for rehearing was denied, Ms. Day filed: a motion to stay the mandate in another capital habeas case in the Tenth Circuit Court of Appeals on October 11, 2019; a notice of appeal and extensive supporting documentation for a separate capital habeas case in the Tenth Circuit Court of Appeals on November 6, 2019 and November 19, 2019, respectively; and a joint report for a new federal capital

habeas case in the District of Arizona on November 8, 2019. Additionally, Ms. Day's new capital habeas case has required extensive time in order to obtain the record from several different prior defense counsel and team members and to meet with her new client who is seriously mentally ill. Ms. Day also has a motion for certificates of appealability due in the Tenth Circuit Court of Appeals on January 30, 2020, in a separate federal capital habeas case.

Co-counsel for Mr. Djerf, Edward Flores, has several upcoming deadlines, including: an opposition to a motion to reconsider the grant of an evidentiary hearing in a capital habeas case in Nevada state court, which is due on January 13, 2020; an oral argument in the same case, which is scheduled for February 6, 2020; a state habeas reply brief for a separate federal habeas petitioner in Nevada, which is due on January 15, 2020; an oral argument in the same case on January 21, 2020; and a federal habeas reply brief in another case, which is due on January 29, 2020. Mr. Flores is also assisting with clemency proceedings in a separate capital case in Oklahoma.

Ms. Day and Mr. Flores will work diligently to file the petition for writ of certiorari on or before February 28, 2020.

Wherefore, Mr. Djerf respectfully requests that an order be entered extending the time in which to file his petition for writ of certiorari up to and including February 28, 2020.

Respectfully submitted this 17th day of December, 2019.

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