

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

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IN THE  
**Supreme Court of the United States**

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JAMES CALVERT,  
*Petitioner,*

*v.*

TEXAS  
*Respondent.*

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**APPLICATION TO THE HON. SAMUEL ALITO  
FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE  
A PETITION FOR A WRIT OF CERTIORARI TO THE  
TEXAS COURT OF CRIMINAL APPEALS**

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Pursuant to Rule 13(5) of the Rules of this Court, Petitioner James Calvert moves for an extension of time of 60 days, to and including March 5, 2022, within which to file a petition for a writ of certiorari.

1. The judgment from which review is sought is *Ex Parte James Calvert*, Case No. WR-85,283-01 (Tex. Ct. Crim. App. Oct. 6, 2021) (attached as Exhibit 1). The judgment arises from the Court of Criminal Appeals' October 6, 2021 Order denying habeas relief as to all of Petitioner's claims. The date within which a petition for writ of certiorari would be due, if not extended, is January 4, 2022, calculated from the date of judgment pursuant to 28 U.S.C. § 2101(c). Petitioner is filing this Application at least ten days before that date. *See* S. Ct. R. 13.5. The jurisdiction of this Court is based on 28 U.S.C. § 1257.

2. This case presents substantial and recurrent federalism issues meriting this Court's attention and which would benefit from additional time for presentation to this Court. Specifically, it involves the minimum due process

standard required for the presentation of claims for relief in state habeas corpus proceedings prior to their review in federal court.

3. James Calvert was convicted of capital murder following a jury trial held in the 241<sup>st</sup> Judicial District Court for Smith County, Texas. Exhibit 1. In his post-conviction application to the 241<sup>st</sup> District Court for Smith County, Mr. Calvert advanced seven claims for relief from judgment of conviction, including *inter alia* that he received ineffective assistance of counsel during both the guilt and penalty phases of his trial. Exhibit 1. One such claim arose from trial counsel's failure to act following the court officer's electrocution of Mr. Calvert with a 50,000-volt electric shock to enforce courtroom decorum. Exhibit 1. On direct appeal, the Texas Court of Criminal Appeals agreed with Mr. Calvert that the incident violated due process but noted the lack of trial record evidence concerning whether the jury, just outside, heard Mr. Calvert's screams. *See Calvert v. Texas*, 2019 WL 5057268, \*59 (2019) [Exhibit 2]; *see also Calvert v. Texas*, 593 U.S. \_\_\_ (May 17, 2021) (Statement of Sotomayor, J. respecting the denial of certiorari) ("If there could ever be an excuse for such violence, enforcing courtroom decorum would not be it.") [Exhibit 3]. The post-conviction court agreed that material, unresolved issues of fact remained concerning this and other of Mr. Calvert's claims. Exhibit 1. However, Mr. Calvert would be given no opportunity to present evidence in support of his claim that trial counsel were ineffective in failing to show the jury had in fact heard his screams and thereby prejudicing his Constitutional right to a presumption of innocence.

4. Additional time is also necessary for undersigned counsel to work with the Petitioner who is incarcerated and not readily accessible. Petitioner can

only receive, review, and send hard-copy documents through the mail and after significant delay arising from prison security protocols. Further, all telephone contact must be scheduled in advance and is subject to limited availability, in part due to COVID 19-related visitation restrictions.

5. The request is further justified by counsel's press of business on numerous other matters that are currently pending. Among other matters, the undersigned counsel is responsible for no less than a dozen depositions, a mediation, and dispositive motion practice in multiple civil cases prior to the requested extension date. The requested extension of sixty days is brief and would cause no prejudice.

6. An extension of time will help to ensure that the petition clearly and thoroughly presents the vitally important and complicated issues raised in this matter in which Mr. Calvert's life, and others' lives, are at stake.

7. For the foregoing reasons, Applicant hereby requests that an extension of time be granted, up to and including March 5, 2022, within which to file a petition for a writ of certiorari.

Respectfully submitted,



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