

OCTOBER TERM, 2021

CASE NO. _____
IN THE SUPREME COURT OF THE UNITED STATES

JOHN LEZELL BALENTINE,

Petitioner,

v.

BOBBY LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE,
CORRECTIONAL INSTITUTIONS DIVISION,

Respondent.

UNOPPOSED MOTION FOR EXTENSION OF TIME
TO FILE PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITIONER, John Lezell Balentine, through undersigned counsel, respectfully moves for an extension of sixty (60) days to prepare and file his Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit. In support of this unopposed request, Petitioner respectfully submits:

1. The history of Petitioner's case is long and complex. Most recently, Petitioner's case was before this court in 2013, after he filed a Rule 60(b) motion in federal district court, arguing that *Martinez v. Ryan*, 566 U.S. 1 (2012), excused the procedural default of a previously barred ineffective assistance of counsel claim. This Court granted Mr. Balentine's certiorari petition, vacated the judgment of the Fifth Circuit, and remanded for further consideration in light of *Martinez*. *Balentine v. Thaler*, 569 U.S. 1014 (2013). The Fifth Circuit, in turn, remanded to the district court, which held a lengthy evidentiary hearing in 2016 and 2017. On September 29, 2017

the district court recommended Rule 60(b) relief be denied. *Balentine v. Davis*, No. 2:03-cv-39, 2017 WL 9470540 (N.D. Tex. Sept 29, 2017).

2. The Fifth Circuit granted Petitioner's motion for COA, but ultimately affirmed the district court's denial of relief on August 3, 2021. *Balentine v. Lumpkin*, No. 18-70035, 2021 WL 3376528 (5th Cir. Aug. 3, 2021) (*see* Exhibit A). Petitioner's Petition for Rehearing was denied on August 31, 2021 (*see* Exhibit B).

3. Petitioner, through undersigned counsel, wishes to file a Petition for Writ of Certiorari to seek this Court's review of the Fifth Circuit's judgment. Petitioner's certiorari petition is currently due on November 29, 2021. In accordance with this Court's rules, this request is made at least ten (10) days in advance of the current due date.

4. Petitioner's case presents complex legal issues and involves more than 15 years of proceedings in federal habeas corpus proceedings alone. Substantial time is required to review the record and consider the procedural posture of the issues as may be relevant to a petition for certiorari. Moreover, Petitioner requests additional time to file in light of counsel's heavy workload. Counsel is a member of a defender services office responsible for numerous capital cases that have competing deadlines in various federal and state courts in the upcoming weeks. In particular, counsel is drafting a reply in support of a petition for certiorari in *Luna v. Lumpkin*, No. 21-5460. and will be involved in multiple depositions to be taken during December and January in a capital habeas case being litigated in the Southern District of Ohio.

5. Under these circumstances, the undersigned respectfully requests that the Court grant this Motion and extend the time in which to file the Petition for Writ of Certiorari by sixty (60) days, until January 26, 2022.

7. Petitioner's counsel has conferred with counsel for the Respondent, Assistant Solicitor General Ari Cuenin, who has indicated that the Respondent has no opposition to this Motion.

WHEREFORE, Petitioner prays that the Court allow a sixty (60) day extension for the preparation and filing of this Petition for Writ of Certiorari.

Respectfully submitted,

/s/ Stuart Lev

Stuart Lev*

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Dated: November 19, 2021