

No. _____ (CAPITAL CASE)

IN THE SUPREME COURT OF THE UNITED STATES

WILLIAM SPEER

Petitioner,

v.

BOBBY LUMPKIN, 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**

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

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**UNOPPOSED APPLICATION FOR AN EXTENSION OF TIME TO FILE A
PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT**

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 February 25, 2021, a panel of the Fifth Circuit issued an opinion affirming the final order of a district court denying relief to Mr. Speer. On petition for panel rehearing, the panel granted rehearing, withdrew its prior opinion, and substituted a new opinion on August 9, 2021, again affirming the district court's judgment. *Speer v. Lumpkin*, 860 F. App'x 66 (5th Cir. 2021) (per curiam) (Ex. A). Mr. Speer filed a timely petition for rehearing en banc, which was denied on September 9, 2021. Ex. B. This Court has jurisdiction over the petition for writ of certiorari under 28 U.S.C. § 1254(1).
2. Mr. Speer has until December 8, 2021, to file a petition for a writ of certiorari seeking review of the Fifth Circuit's decision. *See* Sup. Ct. R 13.1. Counsel has begun the process of researching and preparing a petition for writ of certiorari. Given their obligations in other capital cases, however, counsel requires additional time.
3. Under Rule 13.5 and Rule 30.3, Mr. Speer requests an extension of fifty-eight (58) days under the circumstances, up to and including Friday, February 4, 2022. Mr. Speer makes this request 28 days prior to the due date.

4. Counsel has contacted counsel for Respondent in this matter, and he is not opposed to the requested extension of time.
5. The extension is necessary because the issues to be presented in Mr. Speer's capital case are complex and significant. The Fifth Circuit affirmed the denial of a claim of ineffective assistance of counsel for failing to conduct a meaningful investigation of mitigating circumstances. Applying *de novo* review, the Fifth Circuit found that Speer's federal habeas petition had presented "much more" mitigating evidence than the jury had heard. 860 F. App'x at 70. But the court held that counsel's failure to investigate and present this evidence did not prejudice Mr. Speer. *Id.*; see *Wiggins v. Smith*, 539 U.S. 510, 537 (2003). The Fifth Circuit discounted Speer's mitigation case under *per se* rules that members of this Court have identified as contrary to precedent. *E.g.*, *Trevino v. Davis*, 138 S. Ct. 1793, 1798 (2018) (Sotomayor, J., with whom Ginsburg, J., joins, dissenting from denial of certiorari) (arguing Fifth Circuit's double-edged evidence analysis is inconsistent with *Wiggins* and other cases).
6. A second question is presented by the Fifth Circuit's opinion. The court held that the district court had not abused its discretion in denying reasonably necessary investigative services under 18 U.S.C. § 3599(f). *Speer*, 860 F. App'x at 71-72. The court did not analyze that question under the the case-specific factors that this Court "requires courts to consider," *Ayestas v. Davis*, 138 S. Ct. 1080, 1094 (2018), because the court concluded that *Ayestas* does

not require a “claim-by-claim analysis” where a district court had granted a prior request for services. 860 F. App’x at 72.

7. Mr. Speer respectfully requests additional time to file his petition for writ of certiorari. First, counsel from the Capital Habeas Unit of the Office of the Federal Public Defender for the Western District of Texas (“CHU”) serves as counsel of record in this case. Undersigned counsel represents a client under a warrant of execution, Michael Gonzales, who has a pending execution date on March 8, 2022. Counsel has been actively directing investigation and development of evidence in support of claims for relief and clemency proceedings and must prepare litigation as soon as practicable.
8. Second, in addition to this litigation under warrant of execution and preparation for Mr. Speer’s petition, counsel has a number of competing obligations in other capital habeas proceedings, including:
 - *Fratta v. Lumpkin*, No. 21-70001 (5th Cir.) (reply brief in support of certificate of appealability filed Oct. 13, 2021);
 - *Robinson v. Lumpkin*, No. 1:17-cv-11 (E.D. Tex.) (reply in support of habeas petition due Jan. 14, 2022; reply in support of discovery motion due Dec. 20, 2021);
 - *Broxton v. Lumpkin*, No. 11-cv-315 (S.D. Tex.) (consultation with state court counsel; advisory regarding state court litigation due Nov. 20, 2021);

- *Panetti v. Lumpkin*, No. 1:04-CV-42 (W.D. Tex.) (preparing for evidentiary hearing pursuant to *Ford v. Wainwright*, 477 U.S. 399 (1986), anticipated Spring 2022);
- *Brown v. Lumpkin*, No. 3:19-CV-2301 (N.D. Tex.) (continued investigation in anticipation of amended habeas petition);
- Extensive file review and preparation for end-stage litigation and clemency request for new client. *Allen v. Lumpkin*, No. 4-11-CV-01676 (S.D. Tex.)
- Assisting other CHU counsel in preparation for an upcoming oral argument, *Green v. Lumpkin*, 20-70021 (5th Cir.) (Jan. 18, 2022 argument).

CONCLUSION

For these reasons, Mr. Speer respectfully requests that the time to file a

petition for a writ of certiorari be extended fifty-eight days, up to and including February 4, 2022.

Respectfully submitted,

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November 10, 2021