

***** CAPITAL CASE *****

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JESSIE HOFFMAN, JR, *Petitioner*,

v.

TIMOTHY HOOPER, WARDEN, *Respondent*.

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

PETITION FOR A WRIT OF CERTIORARI

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January 6, 2022

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v.

Timothy Hooper, Warden, Respondent

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

1. Pursuant to 28 U.S.C. § 2101(d) and United States Supreme Court Rules 13.5, 22, and 30.3, Petitioner Jessie Hoffman respectfully requests a 45-day extension of time to file a petition for a writ of certiorari to review the Louisiana Supreme Court's decision in *State v. Hoffman*, 2020-00137 (La. 10/19/21), 326 So.3d 232, (attached as Exhibit A), extending the deadline to March 4, 2022.

2. Unless extended, the time to file a petition for writ of certiorari will expire on January 18, 2022.¹

¹Because the time to file ends on a legal holiday, January 17, 2022, the writ is due on January 18, 2022. *See* United States Supreme Court Rule 26.

3. This application is timely, being filed more than ten days prior to the date on which the time for filing the petition is to expire. Rule 13.5. Petitioner has not previously sought an extension of time from this Court. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1257(a). As set forth below, the Petitioner submits that good cause exists for granting this extension.

4. This case presents the substantial and important question of whether the Louisiana Supreme Court adequately addressed Petitioner's *Pena-Rodriguez* evidence that a juror relied on racial bias and stereotypes when convicting and sentencing him to death. In this case, the Louisiana Supreme Court refused to consider evidence of jury racial bias contained in a juror's sworn statement—that clearly indicates that jurors relied on prejudicial racial stereotypes about Black men being involved in drugs, gangs and crime—despite acknowledging that the evidence suggested jurors “may have held beliefs based on racial stereotypes.” *State v. Hoffman*, 2020-00137, p. 7 (La. 10/19/21); 326 So.3d 232, 238.

5. In *Pena-Rodriguez v. Colorado*, 137 S. Ct. 855 (2016) this Court held that the Sixth Amendment requires a court to consider juror evidence of racial bias whenever “a juror makes a clear statement that indicates he or she relied on racial stereotypes or animus to convict a criminal defendant.” *Id.* at 869. This requires a defendant to show that: “one or more jurors made statements exhibiting overt racial bias that cast serious doubt on the fairness and impartiality of the jury's deliberations and resulting verdict.” “[T]he statement must tend to show that racial animus was a significant motivating factor in the juror's vote to convict.” *Id.* In *Buck v. Davis*, 137

S Ct. 759 (2017), this Court recognized that even the brief injection of the “powerful racial stereotype” that Black men are dangerous, into penalty phase deliberations of a capital trial where the future dangerousness of the defendant is a key issue capable of “undermining the public's confidence in the judicial process.” *Buck*, 137 S.Ct. at 778.

6. This is the capital case of an 18-year-old Black teen, accused of the rape and murder of a White woman, who was tried, convicted and sentenced to death by an all-White jury. The lower courts were presented with a sworn juror statement declaring that during deliberations jurors discussed that the defendant used his race and background to “get off” “like OJ Simpson,” and speculated that he was “in a gang”, “involved in drugs” and had a criminal record. The evidence at trial was clear and uncontracted—Jessie Hoffman had no prior record of violence or criminal record of any kind. And, the defense did not rely on Petitioner’s race or background in his defense. The Louisiana Supreme Court found that the statement suggested that jurors “held beliefs that may have rested on racial stereotypes” but failed to find that Mr. Hoffman had met his burden under *Pena-Rodriguez* to warrant consideration of his evidence.

7. Where this Court has repeatedly repudiated racism and its many forms in the law and has addressed how even small levels of racial stereotypes—such as those about Black men’ dangerousness—is intolerable, the Louisiana Supreme Court has failed to recognize the same.

8. Petitioner intends to file a petition for certiorari asking this Court to review the decision of the Louisiana Supreme Court.

9. Counsel Tillman is lead counsel for Mr. Hoffman but she has had commitments in several other cases that limits her ability to prepare Mr. Hoffman's Petition by the current January 18, 2022 deadline, and requires her to request 45 additional days. Ms. Tillman serves as lead counsel on three additional capital cases with ongoing obligations at various stages of post-trial, post-conviction and federal habeas litigation, *Code v. Vannoy*, No. 5:11-CV-01894 (W.D. La.), *State v. Joekel*, No. 2012-CR-313 (40th J.D.C., St. John the Baptist Parish, Louisiana), *State v. Wright*, No. 63,758 (26th J.D.C., Webster Parish, Louisiana), as well as additional obligations in non-capital cases. She has a supplemental post-conviction petition due on January 24, 2022 in *Hampton v. Vannoy*, No. 01-15994 (21st J.D.C., Livingston Parish, Louisiana). She also has supervisory obligations as senior counsel at the Capital Appeals Project. Second chair counsel, Ms. Ottinger, has been steadily meeting deadlines in other cases, including two capital cases, *United States v. Anthony Jordan*, No. 15-cr-404 (E.D. Mo.) and *Broadway v. Vannoy*, 17-cv-1753 (M.D. La.). She also has several non-capital cases. Ms. Ottinger is a solo practitioner and is only able to provide *pro bono* assistance to this case.

10. For these reasons, and in order to prepare this important case for the Court's consideration, undersigned counsel respectfully requests that Mr. Hoffman be given an additional 45 days in which to file his petition for writ of certiorari in this Court, placing the deadline for the petition at March 4, 2022.

11. Undersigned counsel has contacted counsel for the State of Louisiana who has noted no objection to this request.

Respectfully submitted,

/s/ Caroline Tillman

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