

NO. \_\_\_\_\_

In The

**SUPREME COURT OF THE UNITED STATES**

**October Term 2021**

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**Johnny Joe Avalos,**  
*Applicant/Petitioner,*

v.

**Texas,**  
*Respondent.*

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**Application 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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**APPLICATION TO THE HONORABLE JUSTICE  
SAMUEL ALITO AS CIRCUIT JUSTICE**

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February 22, 2022

## **APPLICATION FOR EXTENSION OF TIME**

Pursuant to Rules 13.5 and 30.2 of the Rules of this Court, Applicant Johnny Joe Avalos hereby requests a 60-day extension of time within which to file a petition for a writ of certiorari, up to and including Monday, May 14, 2022.

## **JUDGMENT FOR WHICH REVIEW IS SOUGHT**

The judgment for which review is sought are the consolidated appeals in *State of Texas v. Johnny Joe Avalos*, Nos. PD-0038-21 & PD-0039-21 (Tex. Crim. App. Dec. 15, 2021) (published), attached as Exhibit 1. The Texas Court of Criminal Appeals reversed a ruling by an *en banc*, intermediate, San Antonio Fourth Court of Appeals decision, that the Applicant's automatic and mandatory life without parole sentence on an intellectually disabled adult violated the Eighth Amendment's prohibition against cruel and unusual punishment. The legal questions to be presented in the applicant's petition appear to be of first impression in this Court.

## **JURISDICTION**

This Court will have jurisdiction over any timely filed petition for certiorari in this case pursuant to 28 U.S.C. § 1257(a). Under Rule 13.1 of the Rules of this Court, a petition for a writ of certiorari is due to be filed on or before March 14, 2022. In accordance with Rules 13.5 and 30.2, this application is being filed more than 10 days in advance of the filing date for the petition for a writ of certiorari.

## REASONS JUSTIFYING AN EXTENSION OF TIME

Counsel has been court appointed counsel for Mr. Avalos at the trial level and on appeal. Counsel is a solo-practitioner, with a full-time trial and appellate practice, who is currently managing a larger than usual, backlogged trial caseload, as a result of the covid-related, court closures in Texas. Jury selections will resume in Bexar County, Texas – where the bulk of counsel’s cases are filed – beginning March 14, 2022.<sup>1</sup> Also, the undersigned has two federal appellate matters pending before the Fifth Circuit Court of Appeals; *United States v. Pedraza*, Cause No 21-50221, the appeal of a conviction that resulted from a jury trial, opening brief due March 16, 2022, and *Whitley v. Lumpkin*, Cause No. 21-50176, the habeas appeal of a Texas life sentence for a murder conviction, opening brief due February 18, 2022.

A 60-day extension for the Applicant would allow the undersigned the necessary amount of time to effectively complete the Applicant’s petition as well as his other pending cases.

## CONCLUSION

For the foregoing reasons, Applicant respectfully requests that this Court grant an extension of 60 days, up to and including May 14, 2022, within which to file a petition for a writ of certiorari in this case.

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<sup>1</sup> See <https://www.bexar.org/DocumentCenter/View/32152/Notice-Regarding-Presiding-Feb-1st-2022-and-4th-Amended-Operating-Plan>



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