

**CAPTIAL CASE
NO EXECUTION DATE SCHEDULED**

No. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

JAMES HARRIS, JR.,

Applicant,

v.

TEXAS

Respondent.

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

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To the Honorable Samuel A. Alito, Associate Justice of the U.S. Supreme Court, and Circuit Justice for the U.S. Court of Appeals for the Fifth Circuit:

Pursuant to Supreme Court Rule 13.5 and 22, Applicant James Harris, Jr., a capital defendant seeking federal review of his death sentence, respectfully requests a 60-day extension of time, to and including Friday, June 9, 2023, within which to file a petition for a writ of certiorari in this case. Unless an extension is granted, the deadline for filing a petition for a writ of certiorari will be April 10, 2023.

In support of his application for extension, Mr. Harris states as follows:

1. The Court of Criminal Appeals of Texas rendered its decision denying Mr. Harris's application for a writ of habeas corpus on May 18, 2022 (Exhibit A), and denied Mr. Harris's timely suggestion to reconsider on January 10, 2023 (Exhibit B). This Court has jurisdiction under 28 U.S.C. § 1257(a).

2. This case presents important constitutional questions concerning the standard relevant to a habeas court's determination of intellectual disability, including the proper interpretation and application of *Moore v. Texas*, 581 U.S. 1 (2017). This case also seeks to address whether the Court of Criminal Appeals erred in its application of *Strickland v. Washington*, 466 U.S. 668 (1984), when it disregarded the habeas court's reasonable findings of ineffective assistance of counsel and instead conducted its own contrary and unsupported fact finding on appeal.

3. Mr. Harris is a capital petitioner in the custody of the Warden at the Allan B. Polunsky Unit State Prison in Livingston, Texas. On December 11, 2013, Mr. Harris pled guilty to capital murder and a state trial court sentenced him to

death. Ex. A at 2. The Court of Criminal Appeals of Texas affirmed Mr. Harris's conviction and sentence on March 9, 2016. *Id.*

4. Mr. Harris timely sought a writ of habeas corpus in state court on March 15, 2016. *Id.* Mr. Harris raised various challenges to his conviction and sentence, including that his intellectual disability should have exempted him from execution. *Id.* at 2–9. To the extent the record did not provide sufficient evidence of his disability, Mr. Harris also argued that his trial counsel was ineffective by failing to adequately investigate his intellectual disability. *Id.* at 3.

5. On February 22, 2021, following a two-week evidentiary hearing, the habeas court entered comprehensive findings of fact and conclusions of law in which it found that there was insufficient evidence in the record to establish that Mr. Harris was intellectually disabled. *Id.* at 2–3. That lack of evidence, the court found, was likely a result of trial counsel's ineffective assistance in failing to investigate Mr. Harris's intellectual disability. *Id.* Accordingly, the habeas court recommended that the Court of Criminal Appeals grant Mr. Harris's application for post-conviction relief and remand for supplementary proceedings. *Id.*

6. On May 18, 2022, the Court of Criminal Appeals rejected that recommendation. *Id.* Contrary to the habeas court's extensive findings, the Court of Criminal Appeals concluded that Mr. Harris's trial counsel was not ineffective. *Id.* at 3–6. It separately concluded—in a single sentence without any reasoning or citation to evidence—that Mr. Harris failed to demonstrate intellectual disability. *Id.* at 2–3.

7. The Court of Criminal Appeals' decision cannot be reconciled with this Court's precedent, or even that of its own. In concluding that Mr. Harris had not established any intellectual disability, the Court of Criminal Appeals ignored this Court's decisions in *Moore v. Texas*, 581 U.S. 1 (2017), and *Moore v. Texas*, 139 S. Ct. 666 (2019), by relying on an outdated diagnostic standard to keep Mr. Harris on death row. In doing so, it failed to consider a critical update to that standard that would have significantly altered its evaluation of Mr. Harris's intellectual disability, thus providing cover for other state courts in Texas to similarly ignore this Court's reasoned instruction in *Moore*. Were that not enough, the Court of Criminal Appeals also denied Mr. Harris's ineffective assistance of counsel claim by substituting its own flawed view of the record evidence for the considered factual findings of the habeas court. Neither holding should be permitted to stand.

8. Mr. Harris intends to file a timely petition for a writ of certiorari with this Court. Because he is indigent, Mr. Harris will rely upon the assistance of pro bono and court-appointed counsel to develop and present his petition.

9. Michael F. Williams, pro bono counsel of record to Mr. Harris in this case, is currently counsel of record to several other parties, including defendants or applicants in capital matters, pending before other courts. For example, Mr. Williams is counsel of record to Jarvis Masters in federal habeas corpus proceedings before the United States District Court for the Northern District of California. *See Masters v. Broomfield*, No. 4:20-cv-08206 (HSG) (N.D. Cal.). He is also lead litigation counsel in the pending bankruptcy matter *In re HONX, Inc.*, No. 22-90035 (MI) (Bankr. S.D.

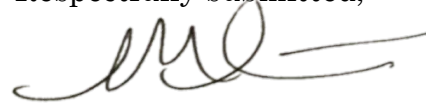
Tex.), and lead counsel to BASF Metals in the recently-decided appeal by the United States Court of Appeals for the Second Circuit in *In re Platinum & Palladium Antitrust Litigation*, Nos. 20-1458, 20-1575, 20-1611 (2d Cir.). Mr. Williams has numerous other significant professional responsibilities in other pending matters, including cases that may proceed to trial.

10. Mr. Harris is not aware of any party that would be prejudiced by the granting of a 60-day extension.

WHEREFORE, for the foregoing reasons, Applicant James Harris, Jr., respectfully requests that a 60-day extension of time to and including June 9, 2023, be granted for Mr. Harris to file a petition for a writ of certiorari.

March 10, 2023

Respectfully submitted,



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