

No. _____

IN THE
Supreme Court of the United States

CURTIS LYNN FAUBER,
Petitioner,

v.

RONALD DAVIS, WARDEN,
Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

**MOTION FOR EXTENSION OF TIME TO FILE
PETITION FOR WRIT OF CERTIORARI**

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To the Honorable Elena Kagan, Associate Justice of the United States and Circuit Justice for the Ninth Circuit:

Petitioner Curtis L. Fauber, a condemned inmate, respectfully requests a 30-day extension of time to file his Petition for a Writ of Certiorari in this matter to be extended to and including February 29, 2023. The Court of Appeals entered its opinion denying habeas relief on October 7, 2022. (See App. A.) On October 31, 2022, it entered an order denying Fauber's petition for panel rehearing and for rehearing en banc. (See App. B.) Without an extension of time, the certiorari petition would therefore be due on January 30, 2023. Mr. Fauber is filing this Application at least ten days before that date. (Supr. Ct. R. 13.5.) This Court would have jurisdiction over the judgment under 28 U.S.C. § 1254(1).

BACKGROUND

In this death-penalty case, the Ninth Circuit Court of Appeals affirmed the district court's denial of habeas relief. The issues raised on appeal include prosecutorial misconduct, ineffective assistance of counsel, and improper exclusion of mitigating evidence at the penalty-phase of Mr. Fauber's trial.

There is Good Cause for Counsel's Motion

The attached declaration of counsel provides the basis for granting this request for an extension of time. Counsel have begun work on the petition for writ of certiorari, but have been unable to complete their work on the petition because of obligations in other matters.

Respectfully submitted,

CUAUHTEMOC ORTEGA
Federal Public Defender

DATED: January 18, 2023

By: */s/ John S. Crouchley*

JOHN S. CROUCHLEY*
Deputy Federal Public Defender
Attorneys for Petitioner
**Counsel of Record*

DECLARATION OF JOHN S. CROUCHLEY

I, John S. Crouchley, declare:

1. I am an attorney licensed to practice law in the State of California. I am a Deputy Federal Public Defender with the Office of the Federal Public Defender for the Central District of California (“FPD”). I represent Curtis Lynn Fauber in his capital habeas corpus action. I make this declaration in support of Mr. Fauber’s request for a 30-day extension of time to file his petition for a writ of certiorari in this Court.

2. The Ninth Circuit Court of Appeals issued its opinion denying habeas relief on October 7, 2022, and it denied Mr. Fauber’s petition for rehearing on October 31, 2022. The certiorari petition is currently due January 30, 2023.

3. My co-counsel, Ajay Kusnoor, and I have begun our work on the petition for writ of certiorari. However, we require additional time to complete and file it.

4. I have not been able to complete work on Mr. Fauber’s petition for writ of certiorari due to my obligations in other matters. In addition to Mr. Fauber’s case, I am assigned to over a dozen active death penalty and non-capital habeas matters, including a capital proceeding in which pre-evidentiary hearing motions are due on January 24, 2023, a separate capital case in which an appellate brief is due on January 31, 2023, and another

capital case in which the opening brief on appeal is due February 17, 2023. I am also currently preparing expert witnesses and supervising investigation in death penalty matters pending in federal and state courts. These matters have occupied most of my working hours before, during, and after the recent holidays.

5. My co-counsel, Mr. Kusnoor, is assigned to thirteen capital and non-capital habeas matters, including a federal capital habeas proceeding under 28 U.S.C. § 2255, in which the initial motion must be filed on or before April 7, 2023. Drafting claims, supervising investigation, and consulting with expert witnesses has required the majority of his time in the previous weeks, and it will continue to do so until the motion is filed in April. In another of his capital cases, a petition for panel rehearing or rehearing en banc is due in the Ninth Circuit on or before February 10, 2022.

6. For the foregoing reasons, counsel for Mr. Fauber request additional time, an extension of 30 days, to file the petition for writ of certiorari.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on January 18, 2023, at Los Angeles, California.

/s/ John S. Crouchley
JOHN S. CROUCHLEY

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CERTIFICATE OF SERVICE

I, JOHN S. CROUCHLEY, a Deputy Federal Public Defender in the Office of the Federal Public Defender who was appointed as counsel for Petitioner under the Criminal Justice Act, 18 U.S.C. § 3006(A)(b), hereby certify that on January 18, 2023, a copy of **MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR WRIT OF CERTIORARI** was mailed postage prepaid to:

[SEE NEXT PAGE]

The names and addresses of those served are as follows:

Jonathan Krauss
Office of the Attorney General
300 S. Spring Street
Suite 1702
Los Angeles, CA 90013

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 18, 2023.

/s/ John S. Crouchley
JOHN S. CROUCHLEY*
Attorney for Petitioner
**Counsel of Record*