

THIS IS A CAPITAL CASE

No. _____

In the Supreme Court of the United States

ZACHARIAH MARCYNIUK,
Petitioner

v.

DEXTER PAYNE, Director,
Arkansas Department of Correction,
Respondent

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

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

To the Honorable Brett M. Kavanaugh, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Eighth Circuit:

Under Rule 13.5, Petitioner Zachariah Marcyniuk respectfully requests an extension of sixty days, up to and including March 4, 2023, in which to file a petition for a writ of certiorari.

Petitioner will seek review of an opinion of the United States Court of Appeals for the Eighth Circuit in *Marcyniuk v. Payne*, Case No. 19-1943, 39 F.4th 988 (July 8, 2022), attached as Appendix A. The Eighth Circuit denied a timely-filed petition for rehearing on October 4, 2022. *See* Appendix B. The time to file a petition

for writ of certiorari in this Court currently expires on January 3, 2023. This application has been filed more than ten days before that date. The Court has jurisdiction under 28 U.S.C. § 1254(1).

The extension of time is necessary to adequately prepare an argument on significant constitutional issues raised by the Eighth Circuit's decision in this capital habeas corpus case. This case involves complex questions of cause and prejudice to excuse the default of claims stemming from off-the-record jury selection conducted without knowledge or presence of the defendant, the public, or defendant's subsequent appellate and post-conviction attorneys.

Counsel's duties in other death-penalty matters will prevent her from completing the petition in the time Rule 13.1 allows. Since the denial of the en banc petition, undersigned counsel has been working on an active field investigation of an intellectual-disability claim in a capital case still in the pre-petition stage, as well as preparing briefing on the impact of the Supreme Court's decision in *Shinn v. Ramirez*, 142 S. Ct. 1718 (2022), in several other capital cases. Counsel's time has been limited because she has been taking intermittent parental leave two days a week. Additionally, one of just four other attorneys in the capital habeas unit is resigning from the office tomorrow and will be unable to assist in drafting the petition. Undersigned counsel expects to inherit more capital cases from the departing attorney, adding further demands to her already limited time.

An extension will not prejudice Respondent. The undersigned counsel contacted Nicholas J. Bronni, Solicitor General of Arkansas and counsel for the Respondent, who stated he does not object to the additional time.

WHEREFORE, Petitioner Zachariah Marcyniuk respectfully requests that the Court allow him until March 4, 2023, to file his petition for a writ of certiorari.

December 15, 2022

Respectfully submitted,

Nadia Wood* (Sup. Ct. Bar # 291584)

/s/ Nadia Wood

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