

DOCKET No. \_\_\_\_\_

IN THE SUPREME COURT OF THE UNITED STATES

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**DAVID MILLER, JR.,**

**Petitioner,**

**VS.**

**SECRETARY, FLORIDA DEPARTMENT OF CORRECTION, ET AL.,**

**Respondent.**

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**APPLICATION FOR SIXTY (60) DAY EXTENSION OF TIME TO FILE  
PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE ELEVENTH CIRCUIT ADDRESSED TO  
JUSTICE CLARENCE THOMAS**

PETITIONER, David Miller, Jr., respectfully requests an extension of time of sixty (60) days to file his Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit, pursuant to Supreme Court Rule 13. In support of his request, Petitioner states as follows:

1. Mr. Miller is an indigent death-sentenced inmate in the custody of the State of Florida. Mr. Miller was convicted and sentenced in the Circuit Court of the Fourth Judicial Circuit in and for Duval County, Florida.

2. Undersigned counsel was appointed to represent Mr. Miller as substitute conflict-free counsel by the United States District Court for the Middle

District of Florida on April 16, 2021.

3. This case involves an appeal from the decision of the United States Court of Appeals for the Eleventh Circuit denying Mr. Miller a certificate of appealability with regards to the dismissal of his initial petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Mr. Miller's case involves complex issues including the propriety of an appellate court denying a certificate of appealability on alternative grounds than those relied upon by the district court, where the district court limited the petitioner's ability to develop the factual record regarding the alternate grounds, and the intersection of the principles of equitable tolling with the petitioner's severe mental illness.

4. Mr. Miller will file a Petition for Writ of Certiorari in this Court.

5. On May 10, 2022, the United States Court of Appeals for the Eleventh Circuit denied Mr. Miller's application for certificate of appealability regarding the dismissal of his initial petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. *See* Attachment A. On August 9, 2022, the United States Court of Appeals for the Eleventh Circuit denied Mr. Miller's timely motion for reconsideration. *See* Attachment B.

6. The time to seek certiorari following the denial of rehearing under this Court's Rule 13 expires on November 7, 2022. Mr. Miller is requesting a sixty-day extension up to and including January 6, 2023, to file his writ for petition of

certiorari.

7. This Court has jurisdiction based upon 28 U.S.C. § 1254.

8. Since the United States Circuit Court for the Eleventh Circuit denied rehearing, both of Mr. Miller's attorneys have experienced symptomatic COVID-19 infections that have prevented counsel from effectively working on Mr. Miller's petition for writ of certiorari.

9. Counsel is employed by the Capital Habeas Unit of the Office of the Federal Defender for the Middle District of Florida and carry full caseloads of exclusively capital cases. Counsel has multiple upcoming deadlines in their cases including but not limited to an up to 100-page memorandum of law in support of writ for petition of habeas corpus due September 21, 2022 (*Wall v. Sec'y, Dept. of Corr.*, 8:19-cv-02496 (M.D. Fla.)), an up to 40-page response to motion to dismiss in a 42 U.S.C. § 1983 methods of execution challenge due October 10, 2022 (*Wall v. Davis, et al.*, 8:22-cv-00664 (M.D. Fla.)), and an initial brief containing up to 13,000 words (*Brown v. Sec'y, Florida Dept. of Corr., et al.*, Case No. 22-11941 (11th Cir.)). Mr. Miller respectfully requests an extension of 60 days to file a Petition for Writ of Certiorari.

WHEREFORE, Petitioner, through his counsel, respectfully requests an extension of time of sixty (60) days to file the Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Eleventh Circuit in this case.

Respectfully submitted this 20<sup>th</sup> day of September 2022,

A. FITZGERALD HALL, ESQ.,  
FEDERAL DEFENDER

MARIE F. DONNELLY, ESQ.,  
CHIEF, CAPITAL HABEAS UNIT

/s Gregory W. Brown

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