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In The
SUPREME COURT OF THE UNITED STATES
October Term 2022

Keith Edmund Gavin,
Applicant/Petitioner,

v.

Commissioner, Alabama Department of Corrections,
Respondent.

Application for an Extension of Time Within Which to File
a Petition for a Writ of Certiorari to the
United States Court of Appeals for the Eleventh Circuit

APPLICATION TO THE HONORABLE
CLARENCE THOMAS AS CIRCUIT JUSTICE

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December 13, 2022

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**Counsel of Record*

APPLICATION FOR EXTENSION OF TIME

Pursuant to this Court's Rules 13.5 and 30.2, Applicant Keith Edmund Gavin hereby requests a 58-day extension of time within which to file a petition for a writ of certiorari to and including February 23, 2023. The Respondent does not oppose this request.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The judgment for which review is sought is *Gavin v. Comm'r, Alabama Dep't of Corr.*, 40 F.4th 1247 (11th Cir. 2022), a copy of which is attached as Exhibit A.

JURISDICTION

The United States Court of Appeals for the Eleventh Circuit issued an order denying Mr. Gavin's petition for rehearing en banc on September 26, 2022, a copy of which is attached as Exhibit B. After Mr. Gavin's petition for rehearing en banc was denied, the Eleventh Circuit issued an order stating that the panel opinion would be entered as the judgment of that court. *See* Exhibit C. This Court's jurisdiction will rest on 28 U.S.C. § 1254(1). Under Rules 13.1, 13.3, and 30.1 of this Court, a petition for a writ of certiorari is due to be filed on or before December 27, 2022. In accordance with Rule 13.5, this application has been filed more than 10 days in advance of that due date.

REASONS JUSTIFYING AN EXTENSION OF TIME

Applicant respectfully requests a 58-day extension of time within which to file a petition for a writ of certiorari seeking review of the decision of the United States

Court of Appeals for the Eleventh Circuit in this case, to and including February 23, 2023.¹

1. An extension is warranted because this is a capital case and because of the importance of the issues presented. This case involves the proper application of the Anti-Terrorism and Effective Death Penalty Act (AEDPA), 28 U.S.C. § 2254(d), and presents an opportunity to correct an Eleventh Circuit decision in conflict with this Court's precedent.

2. Then-Chief Judge Karen O. Bowdre of the United States District Court for the Northern District of Alabama granted habeas relief to Mr. Gavin on his penalty-phase ineffective assistance of counsel claim in a comprehensive 178-page opinion. On appeal, the Eleventh Circuit reversed, applying AEDPA deference to a rationale that the Respondent did not urge in the district court or on appeal and that, more importantly, the state courts themselves did not adopt, in clear violation of this Court's decision in *Wilson v. Sellers*, 138 S. Ct. 1188 (2018). Applicant is in the process of preparing a petition for certiorari explaining why the Eleventh Circuit's decision warrants this Court's review.

3. Undersigned counsel respectfully requests additional time because counsel has substantial and pressing work responsibilities before the current deadline that have made, and will continue to make, it difficult to prepare and submit

¹ As noted above, the current deadline is December 27, 2022, because 90 days from the date of the decision denying Mr. Gavin's petition for rehearing en banc is December 25, 2022, which is both a Sunday and a holiday, and the next day, December 26, 2022, is also a holiday. *See* Sup. Ct. R. 30.1. Sixty days from December 27, 2022 is Saturday, February 25, 2023, which means the new deadline, if a 60-day extension were granted, would be February 27, 2023. *See id.* However, in an abundance of caution to avoid any issue with potentially exceeding the time permitted by 28 U.S.C. § 2101(c), Mr. Gavin requests a 58-day extension to and including February 23, 2023.

an adequate petition for a writ of certiorari by the date Mr. Gavin's petition is currently due, including the following:

- a. Lead counsel for plaintiff AltaThera Pharmaceuticals, LLC in *AltaThera Pharmaceuticals, LLC v. Hyloris Pharmaceuticals SA*, No. 22-cv-4620 (N.D. Ill.), in which AltaThera's consolidated response to a pair of motions to dismiss was filed on October 25, 2022.
- b. Lead counsel for appellant ABS Global, Inc. in *ABS Global, Inc. v. Inguran, LLC*, No. 22-2098 (Fed. Cir.), in which ABS's principal brief was filed on November 2, 2022.
- c. Lead counsel for appellee SynQor, Inc. in *Vicor Corp. v. SynQor, Inc.*, No. 22-1593 (Fed. Cir.), in which SynQor's principal brief was filed on November 18, 2022.
- d. Lead counsel for appellant SynQor, Inc. in *SynQor, Inc. v. Vicor Corp.*, No. 21-2211 (Fed. Cir.), in which counsel presented oral argument in the Federal Circuit on December 5, 2022.
- e. Lead counsel for appellant ABS Global, Inc. in *ABS Global, Inc. v. Cytonome/ST, LLC*, No. 22-1761 (Fed. Cir.), in which ABS's reply brief is due January 3, 2023.
- f. Lead appellate counsel in several other Federal Circuit appeals, one or more of which is likely to be set for argument during that court's February 2023 argument session, beginning on February 6, 2023.

4. The difficulties presented by counsel's workload are only compounded by the fact that the time for preparing the petition for a writ of certiorari includes several major holidays.

5. Counsel for Mr. Gavin has conferred with counsel for Respondent, who confirmed that Respondent does not oppose the requested extension.

CONCLUSION

For the foregoing reasons, Applicant respectfully requests an extension of 58 days within which to file a petition for a writ of certiorari in this case, to and including February 23, 2023.

Respectfully submitted,

By: /s/ Steven J. Horowitz

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December 13, 2022

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CERTIFICATE OF SERVICE

I certify that, on this 13th day of December 2022, I caused a copy of the foregoing Application for Extension of Time to be served on the following by first-class mail, postage pre-paid, and by email to:

Beth Jackson Hughes
Office of the Attorney General
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By: /s/ Steven J. Horowitz

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