

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

Arturo Daniel Aranda,
Applicant,

v.

Bobby Lumpkin, Director, Texas Department of Criminal Justice,
Correctional Institutions Division,
Respondent.

On Application for an Extension of Time to File Petition for a Writ of
Certiorari to the United States Court of Appeals for the Fifth Circuit

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Counsel for Applicant

To the Honorable Samuel A. Alito, Jr., as Circuit Justice for the United States Court of Appeals for the Fifth Circuit:

In accordance with 28 U.S.C. § 2101(c) and this Court's Rule 13.5, Applicant respectfully requests that the time to file his petition for a writ of certiorari be extended for 59 days, up to and including Friday, April 7, 2023. In support of this request, he offers the following:

1. The jurisdiction of this Court is based on 28 U.S.C. 1254(1).
2. Mr. Aranda seeks review of the decision of the Court of Appeals dated November 9, 2022 (*see* Appendix A) affirming denial of his petition for a writ of habeas corpus by the United States District Court for the Southern District of Texas.
3. Mr. Aranda's petition for writ of certiorari is currently due on February 7, 2023. This application is being filed more than 10 days before that date.
4. Mr. Aranda was convicted of capital murder and sentenced to death in Victoria County, Texas on May 17, 1979. The Texas Court of Criminal Appeals ("TCCA") affirmed his conviction and death sentence on September 23, 1987. Mr. Aranda filed a state habeas corpus petition. through state post-conviction proceedings. Together, the state trial court and TCCA spent no more than five days on his application. There was no discovery and there was no hearing.
5. On April 20, 1989, following exhaustion of state post-conviction remedies, Mr. Aranda filed in the United States District Court for the Southern

District of Texas a habeas corpus petition, as well as motions for an evidentiary hearing and for discovery. His petition and motions were denied on October 15, 1991. Mr. Aranda filed a Rule 59(e) motion to alter or amend the judgment. Respondent filed an opposition and Mr. Aranda replied, following which the district court took no substantive action until September 2018, when the parties were invited to submit supplemental briefs. The district court denied Mr. Aranda's Rule 59(e) motion and all other requests for relief on May 4, 2020.

6. Mr. Aranda filed a timely notice of appeal and application for certificate of appealability ("COA") with the Court of Appeals for the Fifth Circuit which, on November 30, 2021 certified for appeal claims under *Miranda v. Arizona*, 384 U.S. 436 (1966), and *Wiggins v. Smith*, 539 U.S. 510 (2003). On November 9, 2022, the court affirmed the district court's denial of habeas relief and an evidentiary hearing.

7. A petition for writ of certiorari is essential in this case because Mr. Aranda is under a death sentence and his post-conviction case presents substantial, important, and recurring questions of constitutional law.

8. First, with respect to Mr. Aranda's claim under *Miranda v. Arizona*, 384 U.S. 436 (1966), the trial court unconstitutionally admitted a confession based on an invalid waiver. In analyzing the lawfulness of that waiver, the federal district court committed an egregious error by conflating the requirement that the waiver be voluntary with the requirement that it be knowing and intelligent. As a result, the

district court failed to conduct any analysis of the knowing-and-intelligent waiver requirement. A knowing-and-intelligent waiver requires that the defendant understand the nature of the right waived and the consequences of the waiver. Under the circumstances in which the District Attorney extracted the waiver here, the waiver was not made knowingly and intelligently. The error was harmful because the confession was pivotal to the state's case.

9. Second, under *Wiggins v. Smith*, 539 U.S. 510 (2003) and *Strickland v. Washington*, 466 U.S. 668 (1984), a deficient sentencing-phase investigation deprived Mr. Aranda of his Sixth Amendment right to effective assistance of trial because counsel—by his own admission—did not investigate background, life history, or mental health. That comprehensive investigatory failure violated the norms of defense representation that prevailed at the time of Mr. Aranda's trial, and it had a reasonably probable effect on the sentencing-phase outcome. In its closing, the State emphasized the utter dearth of evidence as a reason to give Mr. Aranda a death sentence. The jury rendered their verdict accordingly.

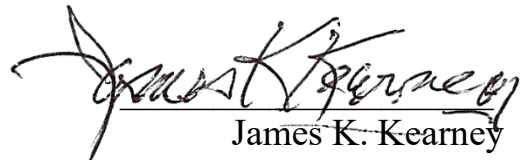
10. Undersigned counsel respectfully seeks this extension of time because of the importance of the issues in this case and counsel's obligations in other client matters. Counsel has undertaken representation of Mr. Aranda on a voluntary, *pro bono* basis, in addition to maintaining a busy, full-time practice representing clients in federal government investigations and enforcement proceedings. Counsel

currently represents clients in proceedings before the United States Departments of Defense, State, and Commerce, and before the Treasury Department's Office of Foreign Assets Control. These representations have had multiple deadlines requiring significant commitments of time during the period following issuance of the court of appeals order. In addition, counsel's ability to manage these commitments has been impacted by contracting Covid in December 2022. Applicant has not previously sought an extension of time from this Court. An extension of time will not prejudice Respondent. There is no pending execution date.

11. Accordingly, Applicant requests that the time to file his petition for a writ of certiorari be extended 59 days, up to and including Friday, April 7, 2023.

January 24, 2023

Respectfully submitted,



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