

App. No.

IN THE SUPREME COURT OF THE UNITED STATES

KURT MICHAELS,

Petitioner,

v.

RON DAVIS, Acting Warden of San Quentin State Prison;
ATTORNEY GENERAL FOR THE STATE OF CALIFORNIA,

Respondents.

CAPITAL CASE
APPLICATION FOR 60-DAY EXTENSION TO FILE
PETITION FOR WRIT OF CERTIORARI
(PETITION DUE MAY 2, 2023)

BENJAMIN L. COLEMAN
Counsel of Record
Benjamin L. Coleman Law PC
1350 Columbia Street, Suite 600
San Diego, California 92101
Telephone: (619) 865-5106
blc@blcolemanlaw.com

MICHAEL BELTER
168 West Alisal Street
Salinas, California 93901
Telephone: (831) 755-5801
michaelbelter@yahoo.com
Counsel for Petitioner

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

Kurt Michaels, a California death-row inmate, respectfully applies, under Supreme Court Rule 13.5, for a 60-day extension to file his petition for writ of *certiorari* to the United States Court of Appeals for the Ninth Circuit. In support of his application, Mr. Michaels states as follows.

1. Mr. Michaels will be filing a petition for writ of *certiorari* from the Ninth Circuit's affirmance of the denial of his petition for a writ of habeas corpus challenging his convictions and death sentence. The Ninth Circuit filed its judgment and opinion, with Judge Berzon dissenting, on October 18, 2022. *See Michaels v. Davis*, 51 F.4th 904 (9th Cir. 2022); Appendix A. The Ninth Circuit denied Mr. Michaels' petition for rehearing and rehearing *en banc*, with Judge Berzon voting to grant the petition, on February 1, 2023. *See* Appendix B. This Court's jurisdiction is invoked under 28 U.S.C. §§ 1254(1) and 2241. The district court had jurisdiction under 28 U.S.C. §§ 2241 and 2254, and the court of appeals had jurisdiction under 28 U.S.C. §§ 1291 and 2253.

2. Mr. Michaels' petition for writ of *certiorari* is due to be filed in this Court by May 2, 2023. Consistent with Rule 13.5, this application for additional time is being filed at least 10 days before that date.

3. This is a capital case in which preparing the petition for a writ of

certiorari demands particularly extensive work. The opening brief in the Ninth Circuit spanned 161 pages and included 14 issues on which the district court had granted a certificate of appealability. The Ninth Circuit's judgment contains three separate opinions, with a dissent, spanning 145 pages in length. The issues presented were legally and factually complex, and all three members of the Ninth Circuit panel agreed that Mr. Michaels' attorneys engaged in ineffective assistance of counsel by violating the attorney-client privilege and that his confession was unconstitutionally admitted into evidence. For these reasons, counsel require an unusual amount of time and effort to determine exactly which issues to present to this Court and how to present them, and to draft and produce the petition.

4. Moreover, although counsel of record, along with his co-counsel, has given and will continue to give Mr. Michaels' case priority, he has a heavy professional workload of other commitments that he cannot set aside or delegate to others. These include: on April 10, 2023, filing a reply brief in *United States v. Abaji*, 9th Cir. No. 22-50074; time-sensitive bail pending appeal proceedings before an April 14, 2023 surrender date in *United States v. Davis*, 9th Cir. No. 23-10015; on April 21, 2023, filing a reply brief in *United States v. Milheiser*, 9th Cir. No. 21-50162; on May 5, 2023, filing a reply brief in *United States v. Solakyan*, 9th Cir. No. 22-50023; on May 12, 2023, filing an opening brief in *United States v. Ghanem*, 9th Cir. No. 22-50266; on May 16, 2023, filing an opening brief in the

California Court of Appeal, Second Appellate District, in a murder case, *State v. Baranovsky*, No. B322502; on May 17, 2023, filing an opening brief in *United States v. Walthall*, 9th Cir. No. 22-50204; on May 24, 2023, filing an opening brief in *United States v. Brown*, 9th Cir. No. 22-50158; on May 24, 2023, filing a petition for a writ of *certiorari* from the published opinion in *United States v. Wells*, 55 F.4th 784 (9th Cir. 2022). This list does not include obligations before district courts and does not include other appellate briefs due later in June and July 2023.

Accordingly, Mr. Michaels respectfully asks that the Court grant this application and extend for 60 days the time allowed to file his petition for writ of *certiorari* to the United States Court of Appeals for the Ninth Circuit.

Respectfully submitted,

Dated: April 3, 2023

BENJAMIN L. COLEMAN
Counsel of Record

MICHAEL BELTER
Counsel for Petitioner