

**CAPITAL CASE**

**No.**

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IN THE  
Supreme Court of the United States

WILLIAM GLENN ROGERS,  
*Petitioner,*

*v.*

TONY MAYS, WARDEN,  
*Respondent.*

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

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*To the Honorable Brett M. Kavanaugh, Associate Justice, and Circuit Justice  
for the United States Court of Appeals for the Sixth Circuit:*

In this capital case, pursuant to Supreme Court Rule 13.5, Petitioner William Glenn Rogers respectfully applies for a sixty-day extension of time, to and including November 6, 2023, to file his petition for writ of certiorari.<sup>1</sup> In support of this Application, Mr. Rogers submits:

1. This is a capital habeas corpus proceeding in which Mr. Rogers has sought relief from his sentence of death pursuant to *Strickland v. Washington*, 466

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<sup>1</sup> The judgment for which Mr. Rogers intends to seek certiorari was issued June 5, 2023, making the 90-day deadline for his petition for certiorari Sunday, September 3, 2023. Pursuant to Supreme Court Rule 30.1, Mr. Rogers's current filing deadline is Tuesday, September 5, 2023, "the next day that is not a Saturday, Sunday [or] federal legal holiday." Because sixty days from the current deadline falls on Saturday, November 4, 2023, Rule 30.1 applies once again making the extended deadline the following Monday.

U.S. 668 (1984). The record reflects that Mr. Rogers’s case has been plagued by ineffective assistance of counsel. The state courts uniformly concluded that trial counsel rendered deficient performance in failing to investigate the state’s forensic evidence of rape and in failing to adequately examine the state’s experts regarding said evidence.<sup>2</sup> This weak forensic proof formed the lynchpin of the State’s case for rape, and crucially, for the sentence of death, but due to trial counsel’s inaction, it effectively went unchallenged. Nonetheless, Mr. Rogers’s claim for ineffective assistance was nonetheless denied because the state court crafted and applied a prejudice standard much more demanding than that of *Strickland* itself—one that required Mr. Rogers to “eliminate or completely discredit” the prosecution’s scientific proof, rather than simply show a “reasonable probability” that the outcome would have differed absent counsel’s error.

2. Mr. Rogers submits that the state court’s creation and imposition of a harsher standard than *Strickland* is contrary to or an unreasonable application of clearly established federal law, which satisfies 28 U.S.C. § 2254(d)(1), and that he has met his burden of demonstrating prejudice under the actual *Strickland* standard on *de novo* review.

3. On August 3, 2022, a panel of the Sixth Circuit Court of Appeals unanimously agreed that (1) the state court correctly determined that Mr. Rogers’ trial counsel was constitutionally defective, (2) the state court unreasonably applied

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<sup>2</sup> The district court and the panel of the Sixth Circuit that originally decided Mr. Rogers’ appeal also concluded that counsel was clearly deficient. In fact, Respondent did not even attempt to argue at any stage of the federal habeas proceedings that Mr. Rogers’s trial counsel was not deficient. Despite this implicit concession by Respondent, the en banc opinion questions the deficiency determination reached by every other court to have considered the issue.

*Strickland* by requiring that Mr. Rogers “eliminate or completely discredit” the state’s trial proof in order to satisfy the prejudice prong, and (3) *de novo* review of the claim was accordingly appropriate. *Rogers v. Mays*, 43 F.4th 530 (6th Cir. 2022) (Op. attached as App. A). After a limited *de novo* review, a divided panel granted Mr. Rogers’ petition for relief as to this claim of ineffective assistance of counsel, finding penalty phase prejudice as a result of counsel’s unquestioned deficiency. *Id.*

4. Respondent sought, and was granted, rehearing en banc. On June 5, 2023, the en banc court issued its opinion, denying Mr. Rogers’ claim. *Rogers v. Mays*, 69 F.4th 381 (6th Cir. 2023) (Op. attached as App. B). Three judges dissented. *Id.* at 385, 399–410.

5. The current deadline for filing a petition for writ of certiorari is September 5, 2023.

6. The issue that will be presented to the Court via petition for certiorari is factually and legally complex. The briefing in this case before Sixth Circuit Court of Appeals eclipsed 650 pages; approximately 80 pages of legal argument focused solely on this issue. The issue that Mr. Rogers intends to present to this Court further involves hundreds of pages of testimony and factual support from the state court record. To effectively—and more importantly, *concisely*—present this issue to the Supreme Court within the limitation of Rule 33.2 is a challenging endeavor that requires additional time.

7. Additionally, undersigned counsel is the Chief of the Capital Habeas Unit (“CHU”) for the Federal Public Defender for the Middle District of Tennessee. Counsel supervises a staff of twenty. The CHU represents 25 men on Tennessee’s death row, as well a man on Texas death row, and two men on federal death row.

Counsel's obligations as both supervisor and counsel in these cases prevents her from being able to file a fulsome petition by September 5, 2023.

8. Counsel for Mr. Rogers has consulted with opposing counsel, J. Matthew Rice, who has stated that he has no opposition to a sixty-day extension in this matter.

For the foregoing reasons, this Court should grant this application for a sixty-day extension of time in which to file his petition for a writ of certiorari.

Dated: August 10, 2023.

Respectfully submitted,

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*/s/ Kelley J. Henry*  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of this Application has been served on J. Matthew Rice, at the Office of the Tennessee Attorney General, 425 Fifth Avenue North, Nashville, Tennessee 37243 on this 10 day of August, 2023.

*/s/ Kelley J. Henry*  
Kelley J. Henry  
Counsel for William Glenn Rogers