

No. \_\_\_\_\_ (CAPITAL CASE)

**IN THE SUPREME COURT OF THE UNITED STATES**

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MILTON GOBERT

*Petitioner,*

v.

BOBBY LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE,  
CORRECTIONAL INSTITUTIONS DIVISION

*Respondent.*

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**On Petition for a Writ of Certiorari to the United States Court of Appeals  
for the Fifth Circuit**

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

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**UNOPPOSED APPLICATION FOR AN EXTENSION OF TIME TO FILE A  
PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE FIFTH CIRCUIT**

To the Honorable Samuel Alito, Associate Justice, and Circuit Justice for the  
United States Court of Appeals for the Fifth Circuit:

1. This is a capital habeas corpus proceeding. On July 31, 2023, a panel of the Fifth Circuit issued an opinion affirming the final order of a district court denying relief to Mr. Gobert. *Gobert v. Lumpkin*, No. 22-70002, 2023 WL 4864781 (5th Cir. July 31, 2023). This Court has jurisdiction over the petition for writ of certiorari under 28 U.S.C. § 1254(1).
2. Mr. Gobert has until October 30, 2023, to file a petition for a writ of certiorari seeking review of the Fifth Circuit's decision. *See* Sup. Ct. R 13.1. Counsel has begun the process of researching and preparing a petition for writ of certiorari. Given their obligations in other capital cases, however, counsel requires additional time.
3. Under Rule 13.5 and Rule 30.3, Mr. Gobert requests an extension of 49 days, up to and including December 18, 2023. Mr. Gobert makes this request 22 days prior to the due date.
4. Counsel has contacted counsel for Respondent in this matter, and he is not opposed to the requested extension of time.
5. The extension is necessary because the issues to be presented in Mr. Gobert's capital case are complex and significant. For example, the court of appeals concluded that it did not have jurisdiction to grant relief on Mr. Gobert's

claim that the trial court had erroneously denied his request for new counsel because Gobert had not presented issues worthy of a certificate of appealability. This rule is contrary to this Court’s precedent and may operate in some instances to wholly bar a petitioner from appeals under 18 U.S.C. § 3599.

6. In addition, the court of appeals held that a defendant may waive his right to investigation of his case by adequate counsel merely by providing that counsel with the names of possible witnesses—even if the defendant was not advised of the consequences of the “waiver.” Given the almost universal practice of defense counsel to ask their clients for witness names, this holding could have wide deleterious effects on the quality of Sixth Amendment defense representation.
7. Mr. Gobert respectfully requests additional time to research these and other possible issues and file his petition for writ of certiorari.
8. First, counsel from the Capital Habeas Unit of the Office of the Federal Public Defender for the Western District of Texas (“CHU”) serves as counsel of record in this case. Undersigned counsel currently represents a client under a warrant of execution, William Speer, who has a pending execution date on October 26, 2023. Counsel has been actively directing investigation and development of evidence in support of claims for relief and clemency proceedings and must prepare litigation as soon as practicable. Counsel cannot rely on other attorneys in the CHU for support—the office represents

a second client, David Renteria, who is facing an execution date of November 16, 2023.

9. Second, in addition to this litigation under warrant of execution and preparation for Mr. Gobert's petition, counsel has a number of competing obligations in other capital habeas proceedings, including:

- *Brown v. Lumpkin*, No. 23-70004 (5th Cir.) (motion for certificate of appealability due October 30, 2023);
- *Texas v. Gonzales*, No. D-23,730 (358th Dist. Tex.) (evidentiary hearing on remand from Court of Criminal Appeals January 22, 2024);
- Extensive file review and preparation for end-stage litigation and clemency request for new client. *Allen v. Lumpkin*, No. 4-11-CV-01676 (S.D. Tex.).

10. Finally, counsel has just recovered from a two-week bout of COVID-19, which has significantly limited her ability to work on her cases.

### CONCLUSION

For these reasons, Mr. Gobert respectfully requests that the time to file a

petition for a writ of certiorari be extended 49 days, up to and including December 18, 2023.

Respectfully submitted,

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October 6, 2023