

No. ____

In the Supreme Court of the United States

VICTOR SALDANO

Petitioner,

v.

STATE OF TEXAS

Respondent.

UNOPPOSED APPLICATION TO EXTEND TIME TO FILE A PETITION FOR A
WRIT OF CERTIORARI FROM July 15, 2025 TO August 14, 2025

To the Honorable Samuel A. Alito, Jr.:

Pursuant to 28 U.S.C. § 2101(c) and Supreme Court Rules 13.5, 22, and 30.3, petitioner Victor Saldano respectfully requests that the time to file a petition for a writ of certiorari be extended 30 days from July 15, 2025, to and including August 14, 2025. On April 16, 2025 the Court of Criminal Appeals of Texas issued a per curiam order dismissing petitioner's application for a writ of habeas corpus. Order, *Ex parte Saldano*, WR-41,313-05 (Tex. Crim. App. Apr. 16, 2025) (attached as Addendum (Add.) A, to this motion). Absent an extension, the petition would be due on July 15, 2025. This application is being filed at least 10 days before that date. *See* Sup. Ct. R. 13.5. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1257 to review this case.

Background

1. Petitioner Victor Saldano was convicted of capital murder in July 1996, and the trial court set punishment at death pursuant to the jury's answers to special issues submitted under Texas law. His conviction and sentence were affirmed by the Texas Court of Criminal Appeals (TCCA) on direct appeal. *Saldaño v. State*, No. AP-72,556 (Tex. Crim. App. Sept. 15, 1999) (not designated for publication). On petition for a writ of certiorari from Mr. Saldano's 1999 death sentence, this Court granted Mr. Saldano's petition, vacated his 1999 death sentence, and remanded his case to the TCCA in light of the then-Attorney General's confession of error (namely, the State's expert's testimony that Mr. Saldano's race was a factor in its future dangerousness argument). *See Saldano v. Texas*, 530 U.S. 1212 (2000). Subsequently, the TCCA again affirmed Mr. Saldano's conviction and death sentence. *Saldano v. State*, 70 S.W.3d 873 (Tex. Crim. App. 2002). His initial application for habeas corpus in state court was subsequently denied. In 2003, Mr. Saldaño was granted penalty phase relief in federal court on a similar claim that again challenged the unconstitutional ethnic/race discrimination of an expert called by the State to support its case for future dangerousness. *See Saldaño v. Cockrell*, 267 F. Supp. 2d 635, 640-2 (E.D. Tex. 2003). Mr. Saldano was retried and in 2004, Mr. Saldano was resentenced to death, following a trial where his lawyers did not present mental health or intellectual disability evidence. Mr. Saldaño's second death sentence was

affirmed on direct appeal. *Saldaño v. State*, 232 S.W.3d 77 (Tex. Crim. App. 2007). Mr. Saldano challenged the constitutionality of his sentence on state post-conviction and federal habeas corpus proceedings, to no avail. *See generally Ex parte Saldano*, WR-41,313-04 (Tex. Crim. App. Oct. 29, 2008) (unpublished); *Saldaño v. Davis, Director TDCJ-CID*, No. 16-70025 (5th Cir. Feb. 19, 2019).

2. In April 2021, as the State sought an execution date, the convicting court appointed the Office of Capital and Forensic Writs (OCFW), and undersigned counsel, to represent Mr. Saldano.¹ On January 31, 2022, the OCFW filed a motion arguing Mr. Saldaño was incompetent to be executed pursuant to *Ford v. Wainwright*, 477 U.S. 399 (1986), which was supported by voluminous evidence describing Mr. Saldano's psychiatric condition and neuropsychological testing, including an IQ score of 73 on the Wechsler Adult Intelligence Scale-Fourth Edition (WAIS-4), Spanish Version.
3. Following the *Ford* motion supported, in part, by an IQ score in the range of intellectual disability, the parties agreed to a pause in the proceedings to investigate Mr. Saldano's intellectual disability. This effort included a voluntary evaluation of Mr. Saldano by a neuropsychologist retained by the State. The State's neuropsychologist obtained an IQ score consistent with the testing of Mr. Saldano's expert and a diagnosis of intellectual disability.

¹ The Office of Capital and Forensic Writs is Texas state agency that serves as the capital post-conviction public defense office for the State of Texas. Created by the Texas Legislature in 2010, OCFW did not exist at the time of Mr. Saldano's prior state post-conviction petition and began representing Mr. Saldano for the first time in 2021.

4. On June 26, 2024, Mr. Saldano filed a successive post-conviction petition raising an intellectual disability claim under *Atkins v. Virginia*, 536 U.S. 304 (2002). Mr. Saldano's petition was supported by the opinions of four separate experts, including the State's expert, who each opined that Mr. Saldano met the criteria for intellectual disability, and 13 declarations from family, friends, and other individuals who described his developmental challenges.
5. Importantly, the State of Texas also filed a brief in support of Mr. Saldano's petition, asking the Court of Criminal Appeals to remand his petition for an evidentiary hearing and a merits determination. Brief in Support of Remand, *Ex parte Saldano*, WR-41,313-05 (Tex. Crim. App. June 26, 2024).
6. On April 16, 2025, the Court of Criminal Appeals dismissed Mr. Saldano's habeas petition. Order, *Ex parte Saldano*, WR-41,313-05 (Tex. Crim. App. Apr. 16, 2025).
7. On June 11, 2025, Mr. Saldano filed an Unopposed Suggestion for Reconsideration of Dismissal of Subsequent Application, which remains pending. Add. B.

Reasons for Granting an Extension of Time

The time to file a petition for a writ of certiorari should be extended for 30 days for at least three reasons:

1. Mr. Saldano's Unopposed Suggestion that the Court of Criminal Appeals reconsider its dismissal of Mr. Saldano's unopposed *Atkins* petition remains pending. The Suggestion argues that the Court of Criminal Appeals should reconsider its prior

disposition because it ignored the new precedent of *Moore v. Texas*, 581 U.S. 1 (2017), Add. B4-15. and because there is no factual dispute regarding whether Mr. Saldano qualifies for an intellectual disability diagnosis and exemption from the death penalty under Eighth Amendment jurisprudence, Add. B15-21. Were the Court of Criminal Appeals grant reconsideration pursuant to the unopposed suggestion for reconsideration, this would obviate a petition for writ of certiorari.²

2. The press of other matters makes the existing deadline on July 15, 2025, difficult to meet. Petitioner is represented by counsel from the Office of Capital and Forensic Writs, the Texas state agency that serves as the post-conviction public defender for the state. OCFW represents approximately 70% percent of initial capital post-conviction petitioners in Texas courts, and over the last month, counsel representing Mr. Saldano were heavily involved in the representation of other clients in an evidentiary hearing and an initial capital petition. The additional time requested will assist counsel in preparing a concise and well-researched petition that will be of maximum benefit to this Court.

² Texas does not permit parties to file motions for reconsideration in a matter such as this. However, there is a practice by which parties can file a “Suggestion for Reconsideration” after the Court of Criminal Appeals decides a matter, and the court sometimes rules on such suggestions pursuant to its sua sponte power to reconsider cases that it has already decided. Given that there is no formal procedure for reconsideration, Mr. Saldano files the protective motion for extension of time based on the April 16, 2025 date of decision, which would make the due date of the petition for a writ of certiorari without an extension July 15, 2025. Pursuant to Supreme Court Rule 13, “if the lower court appropriately entertains an untimely petition for rehearing or sua sponte considers rehearing, the time to file the petition for a writ of certiorari for all parties (whether or not they requested rehearing or joined in the petition for rehearing) runs from the date of the denial of rehearing.” But especially given that this is a capital case, we believed it prudent to file a protective motion for extension, notwithstanding the possibility that the deadline sought to be extended will be nullified by pending reconsideration by the lower court.

3. The Court is likely to grant the petition. The petition will raise significant concerns about the Texas Court of Criminal Appeals' failure to adhere to the U.S. Constitution with regards to Mr. Saldano's right to be free from Cruel and Unusual Punishment, *see Atkins*, 536 U.S. at 304, and that court's imposition of procedural barriers to relief that are intertwined with the Eighth Amendment question and are wholly inadequate. Mr. Saldano's petition raising an intellectual disability claim was supported with by the declarations made under penalty of perjury of four separate experts in the field, including the State's expert. There is no factual dispute in the record that Mr. Saldano meets the criteria for intellectual disability: all experts agree. And the State of Texas further agrees that Mr. Saldano is entitled to a merits determination of the issue.

4. Whether or not the extension is granted, the petition will be considered during next Term—and, if the petition were granted, it would be argued in the next Term. The extension is thus unlikely to substantially delay the resolution of this case or prejudice any party. Indeed, the State has consented to the relief sought herein.

Conclusion

For the foregoing reasons, the time to file a petition for a writ of certiorari in this matter should be extended for 30 days to and including August 14, 2025.

Respectfully submitted,



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