

**In the Supreme Court of the United States**

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VICTOR SALDAÑO

*Petitioner,*

v.

STATE OF TEXAS

*Respondent.*

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**UNOPPOSED APPLICATION TO EXTEND TIME TO FILE A PETITION FOR A  
WRIT OF CERTIORARI FROM August 14, 2025 TO September 13, 2025**

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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 Saldaño respectfully requests that the time to file a petition for a writ of certiorari be extended 30 days from August 14, 2025, to and including September 13, 2025. This is Mr. Saldaño's second application for an extension of time. 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 Saldaño 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. Saldaño's 1999 death sentence, this Court granted Mr. Saldaño'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. Saldaño's race was a factor in its future dangerousness argument). *See Saldaño v. Texas*, 530 U.S. 1212 (2000). Subsequently, the TCCA again affirmed Mr. Saldaño's conviction and death sentence. *Saldaño 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. Saldaño was retried and in 2004, Mr. Saldano was resentedenced 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. Saldaño challenged the constitutionality of his sentence on state post-conviction and federal habeas corpus proceedings, to no avail. *See generally Ex parte Saldaño*, 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. Saldaño.<sup>1</sup> 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. Saldaño'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. Saldaño's intellectual disability. This effort included a voluntary evaluation of Mr. Saldaño by a neuropsychologist retained by the State. The State's neuropsychologist obtained an IQ score consistent with the testing of Mr. Saldaño's expert and a diagnosis of intellectual disability.
4. On June 26, 2024, Mr. Saldaño filed a successive post-conviction petition raising an intellectual disability claim under *Atkins v. Virginia*, 536 U.S. 304 (2002). Mr. Saldaño's petition was supported by the opinions of four separate experts, including the State's expert, who each opined that Mr. Saldaño met

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<sup>1</sup> The Office of Capital and Forensic Writs is a 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. Saldaño for the first time in 2021.

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. Saldaño'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 Saldaño*, WR-41,313-05 (Tex. Crim. App. June 26, 2024).
6. On April 16, 2025, the Court of Criminal Appeals dismissed Mr. Saldaño's habeas petition. Order, *Ex parte Saldaño*, WR-41,313-05 (Tex. Crim. App. Apr. 16, 2025).
7. On June 11, 2025, Mr. Saldaño filed an Unopposed Suggestion for Reconsideration of Dismissal of Subsequent Application. Add. B.
8. On July 2, 2025, the Court of Criminal Appeals denied Mr. Saldaño's Unopposed Suggestion for Reconsideration of Dismissal of Subsequent Application without a written order. Notice, *Ex parte Saldaño*, WR-41,313-05 (Tex. Crim. App. July 2, 2025).

### **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 the following reasons:

1. Mr. Saldaño's Unopposed Suggestion that the Court of Criminal Appeals reconsider its dismissal of Mr. Saldaño's unopposed *Atkins* petition was recently and unexpectedly denied. The impact of this denial has affected the strategy and work necessary for the preparation of Mr. Saldaño's petition for a writ of certiorari.

2. Petitioner is represented by counsel from the Office of Capital and Forensic Writs, the state agency that serves as the post-conviction public defender for the state of Texas. The OCFW represents approximately 70 percent of initial capital post-conviction petitioners in Texas courts, in addition to a smaller number of other non-capital clients and capital clients in varying other post-conviction postures, like Mr. Saldaño. Undersigned counsel has had a number of other pressing deadlines and client matters that make the current deadline of August 14, 2025 difficult to meet. Undersigned counsel has prepared and filed an application for habeas corpus relief in another client's case on July 28, 2025, and has had other pressing client and administrative matters. Additionally, one of Mr. Saldaño's undersigned counsel has had to prioritize other necessary case work and obligations as she prepares for her maternity leave to begin. The additional time requested will assist counsel in preparing a concise and well-researched petition that will be of maximum benefit to this 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. Saldaño's right to be free from Cruel and Unusual Punishment, *see Atkins*, 536 U.S. at 304, and that the court's imposition of procedural barriers to relief that are intertwined with the Eighth Amendment question and are wholly inadequate. Mr. Saldaño's petition raising an intellectual disability claim was supported by the declarations made under penalty of perjury and the reports of four separate experts in the field, including the State's expert. There is no factual dispute

in the record that Mr. Saldaño meets the criteria for intellectual disability: all experts agree. And the State of Texas further agrees that Mr. Saldaño 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.

5. Counsel for the State has no objection to this extension request and agrees 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 September 13, 2025.

Respectfully submitted,

/s/ Benjamin Wolff

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