

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ELGENE PORTER,

Petitioner-Applicant

vs.

KEVIN GENOVESE, Warden

Respondent

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

To The Honorable Elena Kagan, Associate Justice, and Circuit Justice For The United States Court Of Appeals For The Sixth Circuit: In this case, Applicant Elgene Porter respectfully applies for a sixty (60) day extension of time, to and including January 25, 2018, within which to file a petition for writ of certiorari. In support of this application, Elgene Porter states:

1. On January 17, 2017, the United States Court of Appeals for the Sixth Circuit affirmed the judgment of the district court which denied Mr. Porter habeas relief on his claims of ineffective assistance of counsel. *See* Appendix 1.

2. Mr. Porter sought rehearing, and moved the court of appeals to hold the rehearing proceedings in abeyance pending the outcome of *Davila v. Davis*, U.S., No.

16-6219. At the time, this Court had just granted certiorari to decide whether the rule of *Martinez v. Ryan*, 566 U.S. 1 (2012) applies to claims of ineffective assistance of appellate counsel — an issue central to one of Mr. Porter’s two ineffectiveness claims which the Court of Appeals had addressed.

3. After this Court’s decision in *Davila v. Davis*, 582 U.S. ____ (2017), Mr. Porter sought leave to supplement his rehearing petition (which he had briefed and filed before *Davila* was decided) to address to his entitlement to relief post-*Davila*.

4. The court of appeals denied Mr. Porter’s motion to supplement as well as his petition for rehearing (Appendix 2) leaving him with no opportunity in the court of appeals to explain why *Davila* ought not preclude relief in his case.

5. Mr. Porter presently has until November 26, 2017, to file a petition for writ of certiorari. *See* U.S.S.Ct.R. 13.1.

6. Under Rule 13.5, this Court may extend the time for seeking certiorari for up to sixty (60) additional days. Your Honor should grant an extension.

7. While counsel have been able to start the process of researching and preparing a petition for writ of certiorari, counsel will require additional time to do so, given obligations in other cases. For instance, undersigned counsel has had to prepare a reply to the brief in opposition in the capital case of *Middlebrooks v. Mays*, U.S. No. 17-5592, filed November 13, 2017. Counsel also has had to devote significant time to preparing a court of appeals brief in another capital case, *Hines v. Mays*, 6th Cir. No. 15-5384, which is due November 17, 2017.

8. Mr. Porter's case presents important questions about the proper application of *Davila* where Mr. Porter has raised claims he received ineffective assistance of appellate counsel, but where he was denied permission to brief such issues below after this Court issued *Davila*.

9. In his petition for certiorari, Mr. Porter will address substantial issues, including whether application of the rule of *Davila* violates his due process rights and/or suspends the writ of habeas corpus under the circumstances. Counsel need additional time to research and brief this important issue.

10. Your Honor has granted similar applications for extensions of time in other cases where, as here, the petitioner has presented good cause. *See e.g.*, *Chalmers v. Tennessee*, No. 17-A-184 (Aug. 16, 2017); *Middlebrooks v. Mays*, No. 16-A-1198 (Aug. 3, 2017); *Sample v. Tennessee*, No. 17-A-27 (July 6, 2017); *White v. United States*, No. 16-A-1205 (June 7, 2017); *Bangera v. Ohio*, No. 17-A-209 (Aug. 22, 2017).

CONCLUSION

Your Honor should grant Elgene Porter a sixty (60) day extension of time, to and including January 25, 2018, within which to file a petition for writ of certiorari.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I certify that a copy of this application was served via first class mail upon counsel for Respondent, Assistant Attorney General Ms. Meredith Wood Bowen, P.O. Box 20207, Nashville, Tennessee 37243 this the 13th day of November, 2017.



Paul R. Bottei