

No. _____ (CAPITAL CASE)

IN THE
Supreme Court of the United States

ABEL REVILL OCHOA,

Petitioner

v.

LORIE DAVIS,

Respondent

**ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

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

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**UNOPPOSED APPLICATION FOR A 46-DAY EXTENSION OF TIME
TO FILE A PETITION FOR 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. A panel of the Fifth Circuit issued an opinion on October 18, 2018, affirming the final order of a district court denying relief under 28 U.S.C. § 2254 to Mr. Abel Revill Ochoa. (Ex. A.) *Ochoa v. Davis*, 2018 WL 5099615 (5th Cir. Oct. 18, 2018). Mr. Ochoa filed a timely petition for rehearing, which was denied on November 30, 2018. (Ex. B.) This Court has jurisdiction over petition for writ of certiorari under 28 U.S. § 1254(1).
2. At present, Mr. Ochoa has until February 28, 2019 to file a petition for writ of certiorari seeking review of the Fifth Circuit's decision. *See* U.S.S.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 will require additional time to prepare the petition. This request is being filed 20 days prior to the due date.
3. Under the Supreme Court Rules 13.5 and 30.3, this Court may extend the time for seeking certiorari for up to sixty additional days. Mr. Ochoa seeks an extension of forty-six days, up to and including Monday, April 15, 2019.

4. Counsel for Mr. Ochoa has consulted with counsel for Respondent at the Texas Office of Attorney General, Mr. Stephen Hoffman. Respondent is not opposed to this request for extension of time.
5. The extension is necessary because the issues to be presented in Mr. Ochoa's case are complex and significant. They include the proper interpretation and application of 28 U.S.C. § 3599 for a capital defendant who seeks representation services in federal court and Fifth Circuit's inconsistent application of this Court's decision in *Ayestas v. Davis*, 138 S. Ct. 1080 (March 21, 2018), particularly to cases pending on appeal when this Court issued its decision.
6. Counsel from the Capital Habeas Unit of the Office of the Federal Public Defender (CHU) currently serves as a lead counsel in the case. The CHU has an active caseload of sixteen cases. Since the Fifth Circuit's denial of Mr. Ochoa's appeal, the CHU has been co-counselling on a case with an active death warrant, which was stayed on January 15, 2019. *Ex parte Blaine Milam*, 2019 WL 190209 (Tex. Crim. App. Jan. 15, 2019). The CHU was also just appointed to co-counsel on another case with an execution date set on May 2, 2019. Order, *Johnson v. Davis*, 4:11-cv-02466, ECF No. 70 (S.D. Tex. Feb. 5, 2019). That case includes significant claims under Martinez, and the district court ordered the CHU to immediately undertake "a thorough, and independent, assessment" of these claims. *Id.*

7. In addition to death warrant litigation, the CHU has responsibilities for several other upcoming filings in capital cases, including filing a petition for writ of certiorari in this Court in a separate capital case on March 13, 2019, *see In re Juan Ramon Segundo*, 2018 WL 6595159 (5th Cir. Dec. 13, 2018), and filing an amended petition for writ of habeas corpus in a capital case in federal district court on May 1, 2019, *see Cruz-Garcia v. Davis*, No. 4:17-CV-03621 (S.D. Tex.). In yet another capital case, the federal district court has authorized discovery in advance of an evidentiary hearing and the CHU has been preparing detailed discovery motions as ordered by the court, as well as researching and consulting with expert witnesses whose disclosures and reports are ordered to be produced by May 17, 2019. Order, *Washington v. Davis*, No. 4:07-CV-00721, ECF No. 160 (S.D. Tex. Dec. 27, 2018). The CHU has undertaken much of the aforementioned work during a lapse in federal funding resulting in a partial government shutdown.
8. Paul Mansur serves as co-counsel in the case. Mr. Mansur maintains a private practice in Denver City, Texas, and has numerous commitments in other cases throughout February and into early March 2019. Among those, Mr. Mansur is scheduled to file an appeal to the Texas Eighth Court of Appeals in El Paso on February 11; conduct a pre-trial hearing in a criminal case in Odessa on February 14; conduct a pre-trial hearing in a separate criminal case in Boerne on February 19; file a motion for rehearing in the Texas Seventh Court of

Appeals in Amarillo on February 20; and conduct yet another pre-trial hearing in a criminal case on March 6, whose trial is currently set for early April 2019.

CONCLUSION

Mr. Ochoa respectfully requests that the Court grant his application for extension of time to file a petition for writ of certiorari, extending Mr. Ochoa's time to file a petition for writ of certiorari for forty-six (46) days, until April 15, 2019.

DATED: February 8, 2019

Respectfully submitted,

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by

/s/ Jeremy Schepers
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