

No. \_\_\_\_\_

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

KEITH D. NELSON,  
Petitioner,

vs.

UNITED STATES OF AMERICA,  
Respondent.

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\*\*\*CAPITAL CASE\*\*\*

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT  
OF APPEALS FOR THE EIGHTH CIRCUIT

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

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The Honorable Neil M. Gorsuch, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Eighth Circuit:

Pursuant to Supreme Court Rule 13.5, 30.2, and 30.3, Petitioner Keith Nelson requests an extension of time of 59 days in which to file his Petition for Writ of Certiorari. The current due date is June 10, 2019. This Application is being filed more than ten days prior to the due date. The requested extension would make the Petition due on August 8, 2019. Petitioner seeks review of the Opinion filed November 28, 2018, in *Nelson v. United States*, United States Court of Appeals for the Eighth Circuit, Case No. 15-3160 [Dkt. 4730179] (Exh. 1). The Court's opinion upheld Nelson's death sentence. Petitioner filed his Petition for Rehearing on February 13, 2019 [Dkt. 4756226]. The court denied the Petition for Rehearing by an Order entered on March 11, 2019 [Dkt. 4765189] (Exh. 2). The Court has jurisdiction pursuant to 28 U.S.C. § 1254 and Supreme Court Rule 10. Assistant United States Attorney Jeffrey Valenti, who is assigned to represent Respondent in this matter, does not oppose the requested extension.

### **Reasons for the Requested Extension of Time**

This case involves an important and reoccurring issue regarding the proper standard for ineffective assistance of sentencing counsel in federal capital trial cases, as well as the proper standard for a Certificate of Appealability. To date, undersigned counsel has been unable to complete Mr. Nelson's petition for writ of certiorari. Counsel of record, Paula Harms, represents eleven clients under a sentence of death.

Since the petition for rehearing was denied on February 13, 2019, Ms. Harms has had the following other obligations and commitments. On February 22, 2019, the Arizona Supreme Court denied a Motion for Reconsideration in another capital case on February 22, 2019. *State v. Hedlund*, No. CR-93-0377-AP. The Petition for Writ of Certiorari is due in that case on July 18, 2019. Counsel has been consulting and researching the appropriate certiorari issues in that case, as well as in Nelson. In early March, counsel was made aware that she would be appointed to a new capital habeas case out of state that involved a petitioner who had been allowed to waive post-conviction proceedings in state court and for whom approximately ten months of the one year habeas statute of limitation had run. Because of the complex and lengthy nature of the record and short time line, this case has demanded counsel's immediate attention, including the necessity of out of state travel on May 14-15, 2019. Counsel entered her appearance in that case on April 29, 2019. *Kleypas v. Snyder*, No. 5:18-cv-03113-SAC (D. Kan.). In another state capital post-conviction case, the Utah Supreme Court issued an opinion on March 21, 2019, reversing the lower court's grant of summary judgment, and remanding the case to the trial court for a hearing on *Brady* and *Napue* claims. *Carter v. State*, No. 20170641. Because the case involves foreign witnesses and the use of an outside investigator and translator, counsel has had to devote substantial time to planning for the hearing. A status conference is scheduled for June 19, 2019, which will require out of state travel on the part of counsel and a conference with the state prior to June 19. In addition, counsel recently

discovered a conflict with the assigned judge which necessitated the preparation and filing of a motion for disqualification on April 10, 2019. Counsel was also assigned a new capital case in late February in which an execution was scheduled for May 29, 2019. Although a reprieve was granted and a new execution date set for November 13, 2019, the case has still required considerable attention, expert consultation, and record review on the part of counsel. *Jackson v. Houk*, No. 08-3677 (6th Cir.) In addition, counsel will be attending a conference out of state regarding Supreme Court practice on June 13-16 and a local continuing legal education course on June 20-21.

Counsel David A. Ruhnke is an active member of the Criminal Justice Act panels of the Southern and Eastern Districts of New York. As such, he is required to make frequent court appearances and litigate on behalf of numerous clients in pending federal criminal cases. His duties include meeting with incarcerated clients at the federal detention facilities in Manhattan and Brooklyn.

Mr. Ruhnke, appointed as “learned counsel” pursuant to 18 U.S.C. § 3005, presently represents Alexi Saenz in a multi-defendant federal death-eligible prosecution pending in the Eastern District of New York. *United States v. Contreras*, 16-cr-00403(S5)(JFB). This is a case centering on the activities of the group known as MS13 where the current President of the United States has expressed the opinion that Mr. Ruhnke’s client should receive the death penalty. The status of the case is that a submission has been made to the United States Attorney for the Eastern District of New York setting forth reasons why the death penalty should not be

pursued. Counsel in that case expect an invitation within the next 30 to 60 days to participate with appropriate officials at the Department of Justice on the issue of whether the death penalty should be authorized. Preparation for that meeting is ongoing.

In a federal capital case arising out of the District of Puerto Rico, Mr. Ruhnke, also pursuant to 18 U.S.C. § 3005, represents Alexis Candelario-Santana, a defendant whose first capital trial ended in a non-unanimous life verdict in 2013. *United States v. Candelario-Santana*, 09-cr-00427(FAB). On direct appeal of the underlying convictions, those convictions were reversed and remanded for a new trial. *United States v. Candelario*, 834 F.3d 8 (1 Cir. 2016). On remand the United States announced its intentions to seek the death penalty a second time. A motion brought pursuant to the Double Jeopardy Clause of the Fifth Amendment was denied at the district court level and the matter is now pending appeal in the United States Court of Appeals for the First Circuit. *United States v. Candelario-Santana*, No. 19-1191. Briefing has yet to be completed in that case. An opening brief was filed by Mr. Ruhnke on April 22, 2019. The government's brief in opposition is due, as extended, on June 7, 2019. Because the case is a potential capital trial, trial-preparation and updates are ongoing, including visits with the client who is housed at a federal facility in Miami, Florida.

In addition to being a lawyer in private practice, Mr. Ruhnke also serves as a member of the Federal Death Penalty Resource Counsel Project, under contract with

the Administrative Office of the United States Courts to provide support services to defender offices and attorneys in private practice handling federal capital cases. Finally, Mr. Ruhnke also teaches, on a *pro bono* basis, at nationwide capital defense programs.

### CONCLUSION

For the forgoing reasons, Mr. Nelson respectfully requests an extension of time to file his Petition for Writ of Certiorari for 59 days, up and to including August 8, 2019.

Respectfully submitted: May 31, 2019.

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