

**CAPITAL CASE**

No. 19-A-\_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

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**DAVID KEEN,**  
Petitioner-Applicant

vs.

**STATE OF TENNESSEE,**  
Respondent

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

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To The Honorable Sonia Sotomayor, Associate Justice, and Circuit Justice  
For The United States Court Of Appeals For The Sixth Circuit: Pursuant to  
U.S.S.Ct.R. 13.5, in this capital case, Applicant David Keen respectfully applies for  
a sixty (60) day extension of time, to and including January 17, 2020, within which  
to file a petition for writ of certiorari. In support of this application, David Keen  
states:

1. This is a capital proceeding. On August 20, 2019, in a one-sentence  
order, the Tennessee Supreme Court denied Mr. Keen's application to appeal. *Keen*

*v. State*, No. E2018—01059\_SC-R11-PD (Tenn. August 20, 2019) (Ex. 1). On February 21, 2019, the Tennessee Court of Criminal Appeals issued a five-page opinion affirming the lower court’s denial of Mr. Keen’s *Atkins* claim, which he had raised through a motion to reopen his post-conviction proceedings. *Keen v. State*, No. E2018-01059-CCA-R28-PD (Tenn. Crim. App. Feb. 21, 2019) (Ex. 2).

2. David Keen presently has until November 18, 2019 to file a petition for writ of certiorari. *See* U.S.S.Ct.R. 13.1.

3. Under Rule 13.5, this Court may extend the time for seeking certiorari for up to sixty (60) additional days. Your Honor should do so under the circumstances.

4. Since the Tennessee Supreme Court’s dismissal of Mr. Keen’s petition, the state Attorney General has moved for the setting of nine execution dates. Of those nine proposed executions, three of the condemned are represented by undersigned counsel for Mr. Keen while Mr. Keen’s senior counsel, Kelley Henry, represents all seven. In light of the concentration of cases and work that falls to the Office of the Federal Public Defender in responding to the Attorney General’s motion to set execution dates, the Tennessee Supreme Court has granted undersigned counsel until December 30, 2019 to respond. Until December 30, counsel must devote virtually the entirety of their time to the preparation of a response contesting the setting of these seven execution dates.

5. Given counsel's current and ongoing responsibilities, counsel will require additional time to prepare and present to this Court Mr. Keen's petition for writ of certiorari.

6. The issues to be presented in Mr. Keen's petition are significant. A petition for writ of certiorari would include viable constitutional challenges to his death sentence establishing that the opinion of the Tennessee courts is in conflict with *Moore v. Texas*, 137 S. Ct. 1039 (2017), and *Montgomery v. Louisiana*, 577 U.S. \_\_\_, 138 S. Ct. 718 (2016), as the Tennessee courts have failed to provide Mr. Keen with a forum for the vindication of his *Atkins* claim.

7. Opposing counsel, Assistant Attorney General Zackery Hinkle, has authorized undersigned counsel to state that he has no objection to this application.

8. In this capital case, therefore, Your Honor should grant David Keen a sixty (60) day extension of time to file a petition for writ of certiorari. *See e.g.*, *Dupree v. Laster*, U.S.No. 10A444 (Nov. 1, 2010) (Kagan, J.) (granting sixty-day extension of time to file petition for writ of certiorari); *Wynne v. Renico*, U.S.No. 10A372 (Oct. 14, 2010) (same); *Marshall v. Huber*, U.S.No. 10A335 (Oct. 1, 2010) (same); *Smith v. Bell*, U.S. No. 10A493 (Nov. 16, 2010) (same).

#### CONCLUSION

The application for extension of time to file a petition for certiorari should be granted, up to and including Tuesday, January 17, 2020.

Respectfully Submitted,

/s/ Amy D. Harwell

Amy D. Harwell

Assistant Chief, Capital Habeas Unit

Office of the Federal Public Defender

Middle District of Tennessee

810 Broadway, Suite 200

Nashville, Tennessee 37203

(615) 736-5047

CERTIFICATE OF SERVICE

I certify that a copy of this application was served upon counsel for Respondent, Zachary Hinkle, 425 Fifth Avenue North, Nashville, Tennessee 37243 this the 8th day of November, 2019.

/s/ Amy D. Harwell

Amy Harwell

Counsel for David Keen