

No. _____ (CAPITAL CASE)

IN THE SUPREME COURT OF THE UNITED STATES

MICHAEL DEAN GONZALES

Petitioner,

v.

LORIE DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE,
CORRECTIONAL INSTITUTIONS DIVISION

Respondent.

**On Petition for a Writ of Certiorari to the United States Court of Appeals
for the Fifth Circuit**

**APPLICATION FOR AN EXTENSION OF TIME TO FILE A PETITION FOR
A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

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**UNOPPOSED APPLICATION FOR AN EXTENSION OF TIME TO FILE A
PETITION FOR A 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. On May 17, 2019, a panel of the Fifth Circuit issued an opinion denying a certificate of appealability related to the final order of a district court denying relief to Mr. Gonzales. *Gonzales v. Davis*, 924 F.3d 236 (5th Cir. 2019) (per curiam) (Ex. A). Mr. Gonzales filed a timely petition for rehearing which was denied on July 2, 2019. (Ex. B). This Court has jurisdiction over the petition for writ of certiorari under 28 U.S.C. § 1254(1).
2. At present, Mr. Gonzales has until September 30, 2019 to file a petition for a writ of certiorari seeking review of the Fifth Circuit's decision. *See* Sup. 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.
3. Under Rule 13.5 and Rule 30.3, Mr. Gonzales requests an extension of fifty-eight (58) days under the circumstances, up to and including Wednesday, November 27, 2019. Mr. Gonzales makes this request fourteen (14) days prior to the due date.
4. Counsel has contacted counsel for Respondent in this matter, and she is not opposed to the requested extension of time.

5. The extension is necessary because the issues to be presented in Mr. Gonzales's capital case are complex and significant. In its published opinion, the Fifth Circuit made significant interpretations of this Court's precedent on multiple questions related to the right to an adequate hearing on a defendant's competency to stand trial. *See Pate v. Robinson*, 383 U.S. 375, 385 (1966); *Drope v. Missouri*, 420 U.S. 162, 180 (1975). In addition, the court below resolved an important procedural question about the adequacy of procedural bars involving waiver of state post-conviction rights. *See James v. Kentucky*, 466 U.S. 341, 349 (1984).
6. Mr. Gonzales respectfully requests additional time to file his petition for writ of certiorari for three reasons. First, counsel from the Capital Habeas Unit of the Office of the Federal Public Defender for the Western District of Texas ("CHU") currently serves as counsel of record in this case with Richard Burr. Mr. Gonzales requests this extension because undersigned counsel of record was assigned to represent Mr. Gonzales at the end of July 2019 and did not represent Mr. Gonzales in the federal habeas proceedings below. The case has a lengthy record, including a trial, resentencing hearing, and evidentiary hearing in federal habeas. Counsel therefore requires additional time to review the record and prepare the petition.
7. Second, since the Fifth Circuit's denial of Mr. Gonzales's request for relief, CHU counsel have been actively involved in two clients' cases under warrants of execution, Steven Barbee and Randy Halprin, who have pending execution

dates on October 2 and October 10, respectively. The CHU filed Mr. Barbee's clemency petition on September 3, 2019. In Mr. Halprin's case, counsel have filed a petition for writ of certiorari (June 12) and reply in support of certiorari (August 28) from the initial federal habeas proceedings. *See Halprin v. Davis*, No. 18-9676 (U.S.). In Mr. Halprin's case, CHU counsel have also extensively litigated a new claim based on previously unavailable evidence of judicial bias in federal court. *See* Petition for Writ of Habeas Corpus, ECF No. 58, *Halprin v. Davis*, No. 3:13-cv-1535 (N.D. Tex. May 17, 2019); Motion for Stay, ECF No. 62 (May 22); Opposition to Motion to Dismiss, ECF No. 70 (July 3); Motion for Discovery, ECF No. 72 (July 17); Notice of Filing Additional Evidence, ECF No. 76 (Aug. 21); Order Transferring Potentially Second or Successive Petition, ECF No. 77 (Aug. 27); Notice of Appeal, ECF No. 78 (Sept. 10); Motion for Authorization to File a Second or Successive Petition, *In re Halprin*, No. 19-10960 (5th Cir. Sept. 6, 2019); Docket, *Halprin v. Davis*, No. 19-70016 (5th Cir. Sept. 10, 2019). CHU counsel have also assisted in preparing a successive petition and motion for stay of execution in state court, which were filed on July 16 and August 22, 2019, respectively. *See Ex parte Halprin*, No. WR-77,175-05 (Tex. Crim. App.).

8. In addition to this litigation under warrants of execution and preparation for Mr. Gonzales's petition, counsel of record has a number of competing obligations, including reviewing voluminous records and preparing litigation

in three active capital habeas cases to which he has been appointed since the end of July. *Speer v. Davis*, No. 19-70001 (5th Cir. Aug. 1, 2019) (lead counsel on appeal); *Fratta v. Davis*, No. 4:13-cv-3438 (S.D. Tex. Aug. 15, 2019) (appointed co-counsel); Order, ECF No. 69, *Robinson v. Davis*, No. 1:17-cv-11 (E.D. Tex. Aug. 6, 2019) (appointed lead counsel).

9. Third, Mr. Burr's poor health has impaired his ability to assist in the preparation of Mr. Gonzales's petition. Mr. Burr's work has been limited by his slow recovery from a surgery in June. Mr. Burr also has two other capital clients in the end stage of litigation: Tony Egbuna Ford, who has just had his request to file a subsequent state habeas application denied by the Texas Court of Criminal Appeals, *Ex parte Ford*, No. WR-49,011-03 (Tex. Crim. App.); and Billy Joe Wardlow, whose petition for writ of certiorari is pending before this Court, *Wardlow v. Davis*, No. 18-9273 (U.S.), and for whom a subsequent state habeas application is being prepared in the event certiorari is denied.

CONCLUSION

For these reasons, Mr. Gonzales respectfully requests that the time to file a petition for a writ of certiorari be extended fifty-eight days, up to and including November 27, 2019.

Respectfully submitted,

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