

No. _____

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

KER'SEAN OLAJUWA RAMEY,
Petitioner,

v.

BOBBY LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF
CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,
Respondent.

**UNOPPOSED APPLICATION FOR AN EXTENSION
OF TIME IN WHICH TO FILE A PETITION FOR
WRIT OF CERTIORARI**

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****CAPITAL CASE****

**TO THE HONORABLE SAMUEL A. ALITO, JR., ASSOCIATE JUSTICE OF
THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE
FOR THE FIFTH CIRCUIT:**

Pursuant to Supreme Court Rules 13.5, 22, and 30, Petitioner Ker’Sean Olajuwa Ramey (“Ramey”) respectfully seeks a 60-day extension of time, until January 24, 2022, to file a petition for a writ of certiorari seeking review of the Fifth Circuit’s decision issued July 29, 2021 in *Ramey v. Lumpkin*, 7 F.4th 271 (5th Cir. 2021) (*See* Appendix A). Counsel for Respondent do not oppose the requested 60-day extension.

1. The deadline for Ramey to file his petition, unless extended, is November 23, 2021. U.S. Sup. Ct. R. 13.3. Ramey is filing this application for an extension of time more than “10 days before the date the petition is due.” U.S. Sup. Ct. R. 13.5.

2. The District Court had jurisdiction under 28 U.S.C. § 2241(a). The Fifth Circuit had appellate jurisdiction under 28 U.S.C. §§ 1291, 2241, 2253 and 2254. This Court has jurisdiction under 28 U.S.C. § 1254(1).

3. This case presents several important constitutional issues, including *inter alia*, whether Ramey’s trial was unconstitutionally

tainted because the State systematically excluded prospective jurors based on their race (the “*Batson* Claim”);¹ whether trial counsel rendered unconstitutionally ineffective assistance before trial and during the guilt phase of trial by failing to conduct an adequate investigation (the “*Strickland* Claim”);² and whether trial counsel rendered unconstitutionally ineffective assistance by, among other things, failing to conduct any mitigation investigation during the sentencing phase of trial (the “Mitigation Claim”).

4. On January 23, 2007—following a trial rife with constitutional error, including the systematic exclusion of Black veniremembers by the State and gross incompetence by defense counsel (“Trial Counsel”)—Ramey was sentenced to death for three homicides that allegedly occurred during an attempted robbery.

5. Trial Counsel represented Ramey on direct appeal. On February 11, 2009, the Texas Court of Criminal Appeals (“TCCA”), affirmed Ramey’s conviction and sentence. *Ramey v. State*, No. AP-75,678, 2009 WL 335276, at *3 (Tex. Crim. App. Feb. 11, 2009).

¹ Referring to *Batson v. Kentucky*, 476 U.S. 79 (1986).

² Referring to *Strickland v. Washington*, 466 U.S. 668 (1984).

6. Through separate, appointed counsel, Ramey filed a state Petition for Writ of Habeas Corpus. Ramey's appointed counsel at the state habeas level conducted no extra-record investigation of the State's case against Ramey and as a result, failed to adequately raise Ramey's *Strickland* Claim. On November 7, 2012, the TCCA denied Ramey's request for habeas relief. *Ex parte Ramey*, 382 S.W.3d 396, 398 (Tex. Crim. App. 2012).

7. Ramey filed an Amended Petition for Writ of Habeas Corpus in U.S. District Court on December 15, 2015. On July 11, 2018, the District Court denied relief and denied a Certificate of Appealability ("COA"), *Ramey v Davis*, 314 F. Supp. 3d 785, 831–32 (S.D. Tex. 2018) (See Appendix B), and on November 16, 2018, the District Court denied Ramey's motion to amend or alter judgment, *Ramey v. Davis*, No. 6:13-CV-43, Docket No. 65 (S.D. Tex. 2018). Ramey timely appealed.

8. The Fifth Circuit granted a COA on the *Batson* Claim and the *Strickland* Claim but denied a COA on the Mitigation Claim. *Ramey v. Davis*, 942 F.3d 241, 246 (5th Cir. 2019).

9. On July 29, 2021, the Fifth Circuit affirmed the District Court's denial of Ramey's habeas petition, *Ramey*, 7 F.4th at 276, and

on August 25, 2021, it denied Ramey's petition for rehearing, Denial of Petition for Rehearing, *Ramey v. Lumpkin*, No. 18-70034 (5th Cir. 2021) (See Appendix C).

10. Undersigned counsel respectfully seeks this extension of time because of the importance of the issues in this case and counsel's obligations in other matters.

11. This case presents important and recurring questions regarding the proper application of the *Batson* framework after a petitioner challenges a state court's *Batson* ruling as being an unreasonable determination of the facts in light of the evidence presented. 28 U.S.C. § 2254(d)(1)–(2). Specifically, this case presents the important question of whether, consistent with *Miller-El v. Dretke*, 545 U.S. 231, 240–41 (2005) (*Miller-El II*), a federal court must consider all the facts before the trial court and consider arguments from those facts, whether made at the time of trial or not.

12. Also at issue here is the fundamental unfairness of depriving petitioners a forum to vindicate their Sixth Amendment right to effective trial counsel where (a) ineffective state habeas counsel raised, but failed to adequately support, (b) a substantial ineffective assistance

claim (c) state habeas proceedings were the first opportunity the petitioner had to raise such a claim and (d) state law functionally or formally prevents petitioners from raising ineffective assistance claims prior to collateral appeal. In *Martinez v. Ryan*, 566 U.S. 1 (2012) and *Trevino v. Thaler*, 569 U.S. 413 (2013), this Court created an equitable exception allowing otherwise defaulted claims to be raised in federal habeas proceedings under nearly identical circumstances. This case presents the Court with a significant question: why should Ramey (and other similarly situated petitioners) be treated differently than *Martinez/Trevino* petitioners when the equitable considerations underlying *Martinez/Trevino* apply equally to both groups?

13. Additionally, the Mitigation Claim presents the Court with an opportunity to settle an important question of federal law: whether new evidence can fundamentally alter a claim presented in state court such that it becomes a new claim not adjudicated on the merits. *See, e.g., Vandross v. Stirling*, 986 F.3d 442, 451 (4th Cir. 2021); *Dickens v. Ryan*, 740 F.3d 1302, 1319 (9th Cir. 2014).

14. Given the substantial and important constitutional issues presented here, we anticipate that outside counsel and organizations

will file amicus briefs in support of Ramey’s forthcoming petition for certiorari review. An extension of time will also allow amici to coordinate and streamline the process to avoid duplicative arguments and to timely prepare briefs that will be most helpful to the Court.

15. Although counsel for Ramey have been working diligently on Ramey’s Petition for Writ of Certiorari, a matter which they have taken on pro bono, the obligations of counsel primarily responsible for the briefing will make preparing a complete and concise petition difficult absent an extension of time.

16. For instance, among other matters, counsel Ronald A. McIntire (“McIntire”), has a summary judgment reply due November 8, 2021 and a summary judgment hearing on November 12, 2021 in *Cesar Heglen Perez Chaparro v. Tri Marine Group et al*, King County Superior Court Case No. 20-2-17395-9 SEA.

17. Counsel, Catherine J. Del Prete (“Del Prete”), has substantial discovery obligations in *Zurich American Insurance Co., v. Tedros Lakew*, Case No. 4:20-cv-00763-FJG (W.D. Mo.) due November 15, 2021 and has dispositive motions due November 19, 2021 in *In re*

Residential Capital LLC, among other deadlines in her significant caseload.

18. Counsel, Alisha C. Burgin (“Burgin”), who argued in this case before the Fifth Circuit, has substantial discovery obligations in *ReactX v. Google LLC*, Los Angeles Superior Court Case No.

18STCV09674. Burgin also has a motion for summary judgment due January 27, 2022 in *ReactX v. Google LLC* and is preparing to argue at a summary judgment and demurrer hearing on November 8, 2021 in *2221 Park Place Partners v. 2221 Park Place Tenant LLC*, Los Angeles Superior Court Case No. 20TRCV00464. Additionally, Burgin has recently learned that she may have a potentially serious health issue that may require her to take medical leave. She will receive her diagnosis in early November.

19. An extension in this case will not prejudice Respondent.

20. Counsel for Respondent do not oppose the requested 60-day extension.

There is good cause for a 60-day extension. Accordingly, Ramey respectfully requests that the Court extend the time in which to file a petition for writ of certiorari for sixty (60) days, until January 24, 2022.

Dated: October 29, 2021

Respectfully submitted,

PERKINS COIE LLP

By:/s/ Alexis E. Danneman

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