

CAPITAL CASE

A-_____

**In The
SUPREME COURT OF THE UNITED STATES
October Term 2022**

**Cuhatemoc Hinricky Peraita,
*Applicant/Petitioner,***

v.

**John Q. Hamm, Commissioner of the
Alabama Department of Corrections,
*Respondent.***

**Application for an Extension of Time In Which
to File a Petition for a Writ of Certiorari to the
Alabama Court of Criminal Appeals**

**APPLICATION TO THE HONORABLE
CLARENCE THOMAS, AS CIRCUIT JUSTICE**

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August 14, 2023

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APPLICATION FOR EXTENSION OF TIME

Pursuant to this Court's Rule 13.5, Applicant Cuhuatemoc Hinricky Peraita hereby requests a 60-day extension of time within which to file a petition for a writ of certiorari, up to and including October 30, 2023.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The judgment for which review is sought *Cuhuatemoc Hinricky Peraita v. State of Alabama*, No. CR-17-1025 (Ala. Crim. App. Aug. 6, 2021) (attached as Exhibit 1). The Alabama Court of Criminal Appeals denied Applicant's motion for rehearing on February 4, 2022 (attached as Exhibit 2). The Alabama Supreme Court granted a writ of certiorari, *Ex parte Peraita*, No. 1210290 (Ala. Sept. 22, 2022) (attached as Exhibit 3), but then quashed its writ on June 2, 2023, *Ex parte Peraita*, No. 1210290 (Ala. June 2, 2023) (attached as Exhibit 4).

JURISDICTION

This Court will have jurisdiction over any timely filed petition for certiorari in this case pursuant to 28 U.S.C. § 1254(1). Under Rules 13.1, 13.3, and 30.1 of this Court, a petition for a writ of certiorari is due to be filed on or before August 31, 2023. In accordance with Rule 13.5, Mr. Peraita has filed this application more than 10 days in advance of that due date.

REASONS JUSTIFYING AN EXTENSION OF TIME

Applicant respectfully requests a 60-day extension of time within which to file a petition for a writ of certiorari seeking review of the decision of the Alabama Court of Criminal Appeals in this case, up to and including October 30, 2023.

1. An extension is warranted because of the importance of the issues presented in this capital case and because of the seriousness of the Alabama Court of Criminal Appeals' errors. The first issue relates to the clearly established rule that a jury's exposure to extraneous prejudicial information violates a defendant's Sixth Amendment rights under the U.S. Constitution. In this case, the jury foreperson told the other jurors extraneous, wrong, and prejudicial information: that Mr. Peraita "murdered three or four people" during a notorious local robbery in the 1990s. Although Mr. Peraita was involved in the robbery, it is undisputed that another person, not Mr. Peraita, shot the victims. And the trial court had expressly barred the details about the robbery from being presented at trial. The Alabama Court of Criminal Appeals incorrectly concluded that this prejudicial outside information (which the trial judge specifically excluded from presentation at trial) was not extraneous. It therefore held that the dissemination of this (again, wrong and prejudicial) information was not juror misconduct. That ruling is clearly wrong, and whether a defendant can be deprived of the constitutional right to an impartial jury when faced with the gravest of punishments is an issue that calls for Supreme Court review.

The second issue relates to the clearly established rule that important and fundamental constitutional rights cannot be validly waived by a criminal defendant unless the waiver is knowing and voluntary. Here, Mr. Peraita undisputedly suffered severe and unremitting physical, sexual, and emotional abuse during his childhood that, among other things, resulted in childhood onset post-traumatic stress disorder

and powerful psychological compulsions to avoid reminders of his painful history. The rehashing of that history, which would have been necessary during the presentation of his mitigation evidence, compelled Mr. Peraita to make the self-destructive choice to tell his counsel that he wanted no mitigation evidence presented at his trial. Contrary to the conclusion of the Alabama Court of Criminal Appeals, under these circumstances, a capital defendant's stated desire to present *zero* mitigation evidence cannot be considered either knowing or voluntary and, therefore, is not a valid waiver. The Alabama Court of Criminal Appeals' incorrect decision on this critical constitutional issue also calls for Supreme Court review.

2. Undersigned counsel respectfully submits that the extension of time requested here is also warranted because counsel of record and additional counsel in this case, who are representing Mr. Peraita on a *pro bono* basis, have multiple obligations that would make it difficult to complete a petition for a writ of certiorari by the current deadline. Those obligations for counsel of record include matters pending before the United States Court of Appeals for the Seventh Circuit, the District of Columbia Court of Appeals, and multiple proceedings before the U.S. Surface Transportation Board. Additionally, following the Alabama Supreme Court's judgment on June 2, 2023, counsel were preparing a petition for a writ of habeas corpus for Mr. Peraita, which was required to be filed within the timeframe set forth by the Antiterrorism and Effective Death Penalty Act of 1996.

CONCLUSION

For these reasons, Applicant respectfully requests an extension of 60 days, to and including October 30, 2023, within which to file a petition for a writ of certiorari in this case.

Respectfully submitted,

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