

No. _____
(Capital Case)

In The
Supreme Court of the United States

TERRY PITCHFORD, Applicant/Petitioner/Appellee,

v.

BURL CAIN, Commissioner, Mississippi Department of Corrections; LYNN
FITCH, Attorney General for the State of Mississippi, Respondents.

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

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To the Honorable Samuel Alito, Justice of the Supreme Court of the United States and Circuit Justice for the Fifth Circuit Court of Appeals:

APPLICATION FOR AN EXTENSION OF TIME

Pursuant to Rule 13.5 of the Rules of the Court, Applicant Terry Pitchford respectfully requests a 60-day extension of time to file his petition for a writ of certiorari, up to and including Friday, June 27, 2025.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The order and judgment for which review is sought was issued by the United States Court of Appeals for the Fifth Circuit on January 28, 2025, in *Pitchford v. Cain et al.*, No. 23-70009. Exhibit A (Doc. 108). This is the order summarily denying Applicant's Petition for Rehearing (Doc. 96). The original opinion reversing the Northern District of Mississippi's grant of Applicant's 28 U.S.C. § 2254 petition for writ of habeas corpus (pursuant to his motion for partial summary judgment) was issued on January 2, 2025. Doc. 87. Upon Applicant's Motion to Clarify (Doc. 91), the Fifth Circuit withdrew that opinion and substituted a corrected opinion on January 17, 2025. Exhibit B (Doc. 101).

JURISDICTION

This Court will have jurisdiction over any timely filed petition for certiorari pursuant to 28 U.S.C. § 1254(1). Under Rules 13.1, 13.3, and 30.1 of the Rules of this Court, a petition for writ of certiorari is due to be filed on or before April 28,

2025. In accordance with Rule 13.5, this application is being filed ten days in advance of the filing date for the petition for a writ of certiorari.

REASONS JUSTIFYING AN EXTENSION OF TIME

An extension of time is necessary due to the gravity and complexity of the issues in this case in addition to undersigned counsel's pressing obligations in other capital representation.

This case emanates from a 2006 trial including the same district attorney and trial judge in *Flowers v. Mississippi*, 588 U.S. 284 (2019), that raises critical questions of federal law, including the application of this Court's controlling habeas corpus precedent under the Equal Protection Clause in the *Batson v. Kentucky*, 476 U.S. 79 (1986), line of cases.

Mr. Gilbert is currently preparing for a trial beginning in May. *A PH Food, Inc. v. PMI Services, LLC*, No. 61CI1:20-cv-00097 (Rankin Cnty., Miss. Cir. Ct.). He is also preparing for a complex federal criminal trial that begins in August, involving nearly 10 million pages of discovery. *United States v. Dibiase*, No. 3:3-cr-00035 (S.D. Miss.).

Mr. Perkovich is lead counsel in another Mississippi capital post-conviction case, *Carr v. State*, 2023-DR-0503, in which a stay of Mississippi Supreme Court proceedings is due to lapse by April 25, 2025, whereupon either state successive

proceedings or federal habeas corpus proceedings in the Northern District of Mississippi will resume, entailing further constitutional pleadings in either event.

In addition, Messrs. Perkovich and Welling filed their reply brief in support of their petition for writ of certiorari in this Court in *Stanko v. Stirling*, No. 24-6420 (U.S.), on April 14, 2025. This petition has been scheduled for the May 2, 2025, conference. Perkovich and Welling also represent the sole litigant in a lethal injection challenge in Texas, with an interlocutory appeal pending in the Supreme Court of Texas on a petition for review. *Collier et al. v. Canales*, No. 24-0968 (Tex.) (reply brief filed Apr. 11, 2025).

Perkovich and Welling also represent two separate capital petitioners in initial post-conviction cases in Arizona. The first, *State v. Joseph*, CR2005-014235-001, concerns extensive briefing on the necessity, pursuant to Arizona precedent, for the petitioner's competency in his post-conviction proceeding, and imminent discovery litigation. *State v. Joseph*, CR2005-014235-001. The second initial post-conviction proceeding in question was assigned earlier this month to Welling and Perkovich by the Maricopa County Office of Public Defense Services, with a court qualification and appointment hearing set for May 7, 2025. *State v. Montoya*, CR2017006253-001. Further, Mr. Welling and Mr. Perkovich are appointed in capital state successor post-conviction litigation in Arizona, in *State v. McCray*, CR2001-015915. They filed the amended petition on July 3, 2024, and

the State's response is currently due on May 19, 2025, contemplating Petitioner's reply by June 3, 2025.

Additionally, Mr. Welling is appointed on three other capital successor post-conviction cases in Arizona. In *State v. Patterson*, CR2006-114651-001, an amended petition is currently due on Monday, April 21, 2025. In *State v. Chappell*, CR2004-037319-001, petitioner's Motion for Rehearing, filed on October 24, 2024, is pending in the post-conviction court. In *State v. VanWinkle*, CR2008-128068-001, the amended petition is currently due on June 9, 2025.

CONCLUSION

For the foregoing reasons, Applicant respectfully requests this Court grant an extension of 60 days, up to and including June 27, 2025, within which to file a petition for writ of certiorari in this case.

Respectfully submitted,

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