

NO. \_\_\_\_\_

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

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**DONNIE RAY PEARSON,  
Petitioner – Appellant**

**V.**

**ERIC GUERRERO,  
Respondent – Appellee**

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**PETITIONER’S UNOPPOSED APPLICATION FOR AN EXTENSION  
OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI**

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

I.

Pursuant to Supreme Court Rule 13.5, petitioner Donnie Ray Pearson respectfully requests a 30-day extension of time, until May 28, 2026, to file a petition for a writ of certiorari.

This is an appeal from the district court’s denial of federal habeas corpus relief from petitioner’s state court conviction under 28 U.S.C. § 2254. The Fifth Circuit affirmed the denial of habeas relief on January 28, 2026. Petitioner did not move for rehearing. A copy of the opinion is attached. This Court has jurisdiction under 28 U.S.C. § 1254(1).

Without an extension, a petition for a writ of certiorari would be due on April 28, 2026. *See* U.S.S.Ct.R. 13.1. This application is filed more than 10 days before that date. Petitioner has not previously applied for an extension.

An extension is necessary because counsel has firm appellate briefing deadlines in several cases, and he must relocate his law office on April 10, 2026. Specifically, on March 24, 2026, counsel filed a reply to a brief in opposition in *Scott Breimeister v. United States*, no. 25-407, a petition for a writ of certiorari seeking to bar a retrial in a federal healthcare fraud conspiracy case based on a double jeopardy violation. He must file an opening merits brief in *Aaron Bernard Poole v. State of Texas*, no. 13-25-00560-CR, an appeal to the Thirteenth Court of Appeals of Texas from drug and firearm convictions (due April 2, 2026); a responsive merits brief in *State of Texas v. Patrick Burton*, no. 14-25-00566-CR, a State's appeal to the Fourteenth Court of Appeals of Texas from an order granting a new trial in a sexual assault case (due April 20, 2026); and an opening merits brief in *Kozhaya Sokhon v. State of Texas*, no. 09-25-00416-CR, an appeal to the Ninth Court of Appeals of Texas from a conviction for indecent assault by a healthcare provider (due April 20, 2026). Finally, counsel is in the process of packing his law office of 11 years to move to a new office on April 10, 2026. It will take approximately one week to unpack and have his new office operational. In short, counsel needs more time to prepare the petition.

## II.

During voir dire in a trial for a sex offense against a child, the trial court said that a note from a potential juror stated, “I think I can be fair but I was molested as a child. I didn’t want to speak up in front of everyone.” Defense counsel did not ask to question her, challenge her for cause, or use a peremptory strike on her. She served on the jury. When the court clerk called the jurors’ names, an unidentified female juror said, “Why did they pick me? . . . Objection. Can I object myself?”

Petitioner alleged on state habeas that trial counsel was ineffective in failing to challenge for cause or use a peremptory strike on the juror who was molested as a child and served on the jury. Counsel did not remember the trial court mentioning the note but admitted that he would have challenged or struck her had he heard the court announce that she was molested as a child. Counsel did not assert any strategic reason for leaving her on the jury.

The state habeas court found that counsel would have challenged or struck the juror had he heard the trial court state that she had been molested. But it concluded that he was not ineffective because petitioner failed to prove that the juror was biased or challengeable for cause.

On federal habeas, the district court deferred to the state court decision and denied relief. But it acknowledged that the Fifth Circuit had not settled the issue of whether the presence of an *impliedly* biased juror on a jury causes prejudice to a

defendant. It concluded that the record did not establish that she was *actually* biased, and it refused to consider if she was *impliedly* biased.

The Fifth Circuit issued a certificate of appealability on the issue. Because counsel failed to question the juror when she reported a history of abuse, the record does not establish whether she was *actually* biased or only *impliedly* biased. Petitioner contends that he suffered prejudice when counsel failed to challenge or strike an impliedly biased juror who was a victim of the same crime. The Fifth Circuit affirmed the denial of habeas relief in an unpublished opinion.

### III.

The Fifth Circuit held that this case did not present the kind of situation in which courts have implied bias to jurors. That decision conflicts with Justice O'Connor's concurring opinion in *Smith v. Phillips*, 455 U.S. 209 (1982) (O'Connor, J., concurring). And federal circuits are divided on whether to recognize and apply the doctrine of implied juror bias, especially where a juror was the victim of a similar crime.

### **CONCLUSION**

Counsel's concentrated briefing schedule in other cases and impending relocation of his law office warrant a 30-day extension of time to file the petition for a writ of certiorari so he can provide effective assistance to petitioner.

Petitioner respectfully requests that the Court grant this application and enter

an order extending the time to file the petition for a writ of certiorari until May 28, 2026.

Dated: April 1, 2026

Respectfully submitted,

*/s/ Josh Schaffer*

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**CERTIFICATE OF SERVICE**

I served a copy of this document on counsel of record for the Respondent by electronic filing on April 1, 2026.

*/s/ Josh Schaffer*

Josh Schaffer

**CERTIFICATE OF CONFERENCE**

I conferred with Jennifer Wren, counsel for the Respondent on appeal, on March 31 and April 1, 2026. She told me that the Respondent does not oppose the requested relief.

*/s/ Josh Schaffer*

Josh Schaffer