

In The
Supreme Court of the United States

JIMMY DAVIS, JR.,

Petitioner,

vs.

COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS,

Respondent.

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

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TO THE HONORABLE CLARENCE THOMAS, Associate Justice of the Supreme Court of the United States for the United States Court of Appeals for the Eleventh Circuit:

The petitioner, Jimmy Davis, Jr. (“Davis”), through undersigned counsel and pursuant to Supreme Court Rules 13.5 and 30.2 and 28 U.S.C. § 2101(c), respectfully requests an extension of sixty days to file his petition for writ of certiorari. The decision Davis seeks to have reviewed is that of the United States Court of Appeals for the Eleventh Circuit issued on October 30, 2024 (Attachment A) and for which Davis’s petition for rehearing *en banc* was denied on February 19, 2026 (Attachment B). The time for Davis to file his petition for a writ of certiorari expires on May 20, 2026, greater than 10 days from the date of filing of this application. Davis’s counsel conferred with counsel for the respondent regarding this application, and counsel for the respondent indicated respondent does not oppose the requested 60-day extension of time sought herein. Davis invokes this Court’s jurisdiction pursuant to 28 U.S.C. § 1254(1).

Good cause exists to grant this application. Davis is a death-sentenced inmate in the custody of the respondent. On a Friday evening after a weeklong trial, an Alabama jury initially voted 7-5 to sentence Davis to death. The trial court ordered the jury to continue deliberating into the evening, and only then did the jury vote 11-1 to sentence Davis to death. The jury was so divided despite never learning that (1) Davis suffered severe sexual and physical abuse throughout his childhood, including that his mother beat him with belts, extension cords, and switches (primarily for

bedwetting), scarring his back, severing his ear, and warping his head; and (2) Davis's only aggravating prior conviction, for "Robbery III," was not a "very, very aggravating" circumstance as the prosecutor told the jury but was for Davis and several other boys taking pizzas and about \$50 from a pizza delivery driver without the use of violence or a weapon. *Davis v. Comm'r, Alabama Dep't of Corr.*, 120 F.4th 768, 825, n. 10, 11 (11th Cir. 2024) (Rosenbaum, J., dissenting).

The Alabama Court of Criminal Appeals initially identified procedural issues with Davis's ineffective assistance claim but noted the jury's 7-5 split and stated that "[c]ertainly, it is reasonable to conclude that the evidence of Davis's child abuse could very well have tipped the scales in the other direction." *Davis v. State*, 9 So. 3d 514, 524 (Ala. Crim. App. 2006), *rev'd sub nom. Ex parte Davis*, 9 So. 3d 537 (Ala. 2007), and *abrogated by Ex parte Clemons*, 55 So. 3d 348 (Ala. 2007). However, two years later in ruling on the merits, the same court reversed course and held that none of this evidence would have changed the outcome. *Davis v. State*, 9 So. 3d 539 (Ala. Ct. Crim. App. 2008). A divided panel of the United States Court of Appeals for the Eleventh Circuit affirmed the United States District Court for the Northern District of Alabama's denial of Davis's petition for a writ of habeas corpus, with two judges finding Davis did not prove prejudice from trial counsel's deficiencies in failing to present the foregoing evidence or any substantive mitigation evidence, but only one judge willing to affirm the District Court's ruling that the state court's determination that trial counsels' performance was not constitutionally deficient was not contrary to or an unreasonable application of clearly established federal law. The Eleventh

Circuit then denied rehearing *en banc* of the panel majority’s prejudice ruling, over several dissents.

Davis is compelled to request an extension of time in which to file his petition for a writ of certiorari in light of his pro bono counsel’s numerous conflicts in other matters in April and May 2026, including out of state travel, in-court appearances, and evidentiary hearings. Further, an extension of time is necessary to allow Davis’s counsel time to review the voluminous record and opinions issued in this case and to fully research, analyze, and brief the important issues this case presents, including, without limitation, whether and how to consider a jury’s hesitance to impose the death penalty in evaluating prejudice under *Strickland v. Washington*, 466 U.S. 668 (1984). This Court has not yet decided the important federal question of the impact of juror hesitance to impose death on *Strickland*’s prejudice prong, and the United States Circuit Courts do not uniformly consider juror hesitation in evaluating prejudice under *Strickland*. Compare, e.g., *White v. Plappert*, 131 F.4th 465 (6th Cir. 2025) (finding no prejudice despite jury’s initial division regarding the death penalty and noting appellant “cites to no clearly established Supreme Court precedent holding that a nine-hour deliberation period or an initial jury split proves prejudice”) with *Sanders v. Davis*, 23 F.4th 966 (9th Cir. 2022) (“The jury’s initial hesitance in reaching a verdict in the penalty phase also weighs towards a finding of prejudice.”). Here, the Eleventh Circuit went even further than the Sixth Circuit in *White*, as one of the dissents from denial of rehearing *en banc* encapsulated it: “the panel majority opinion is an extreme outlier; making us the first state or federal court to suggest—

in the 40 years since *Strickland*—that a court may ignore the jury’s behavior in assessing prejudice.” *Davis v. Comm’r, Ala. Dep’t of Corr.*, 167 F.4th 1144, 1154 (11th Cir. 2026) (Abudu, J., dissenting).

Given the foregoing, and in light of Davis’s pro bono counsel’s conflicted schedules, good cause exists for a modest extension of time for Davis to file his petition for writ of certiorari. Accordingly, Davis respectfully requests this Court extend the deadline to file the petition for writ of certiorari by 60 days, through and including July 20, 2026.

Dated this 21st day of April, 2026.

Respectfully submitted,

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