

No. _____

In the Supreme Court of the United States

Roderick Napoleon Harris,

Applicant,

v.

Eric Guerrero, Director, Texas Department of Criminal Justice,
Correctional Institutions Division,

Respondent.

On Application for Extension
of Time to File a Petition for Writ of Certiorari

**APPLICATION TO EXTEND THE TIME TO FILE
A PETITION FOR A WRIT OF CERTIORARI**

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June 3, 2026

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

APPLICATION FOR AN EXTENSION OF TIME

Pursuant to Rule 13.5 of the Rules of this Court, Applicant Roderick Napoleon Harris (“Applicant” or “Mr. Harris”) respectfully requests that the time to file a petition for a writ of certiorari in this case be extended for sixty days, to and including August 28, 2026. The Fifth Circuit issued its decision on March 31, 2026. Appendix (“App.”) 1a–4a. Without an extension of time, the petition would be due on June 29, 2026. Applicant files this application more than ten days before that date. S. Ct. R. 13.5. This Court will have jurisdiction pursuant to 28 U.S.C. § 1254(1).

BACKGROUND

In 2012, a Dallas County jury found Mr. Harris guilty of capital murder and he was sentenced to death. ROA.463-66;¹ ROA.473. In 2014, the Texas Court of Criminal Appeals (CCA) on direct appeal affirmed Mr. Harris’s conviction and death sentence. ROA.473-74. Mr. Harris filed a habeas corpus application in state court on June 11, 2014, asserting numerous ineffective assistance claims. ROA.474. The state habeas court held an evidentiary hearing, hearing testimony from multiple members of Mr. Harris’s family, members of his defense team (including his trial counsel, mitigation specialist, and court-appointed mental health expert), and many additional

¹ ROA citations are to the record on appeal in the Fifth Circuit.

experts. ROA.474-75. On March 31, 2020, the habeas trial court issued an order denying Mr. Harris's habeas application. ROA.475. On October 20, 2020, he filed objections to the trial court's order in the CCA. *Id.* The CCA denied Mr. Harris's state habeas application. *Ex parte Harris*, No. WR-80,923-01, 2020 WL 8079824 (Tex. Crim. App. Dec. 16, 2020).

Mr. Harris filed a habeas corpus petition in the district court on December 14, 2021, asserting claims that his trial counsel rendered ineffective assistance by, among other things, (1) failing to investigate his background adequately and present available mitigating evidence showing he suffered from (a) Fetal Alcohol Spectrum Disorder ("FASD") and (b) childhood exposure to toxic lead, and (2) opening the door to testimony from a government witness that Mr. Harris wore a stun belt during trial. ROA.475. The district court denied the petition and a certificate of appealability. *See* ROA.476, *et seq.* The Fifth Circuit affirmed. *Harris v. Guerrero*, No. 24-70009 (5th Cir. Mar. 31, 2026) (App. 1a-4a).

REASONS FOR GRANTING AN EXTENSION OF TIME

The time to file a petition for a writ of certiorari should be extended for sixty days for the following reasons:

1. This is a complex capital case in which Mr. Harris has been sentenced to death. The petition will present multiple claims requiring careful analysis of an extensive trial and state habeas record as well as the governing legal principles. Because Mr. Harris's life is at stake, counsel require additional time to prepare an adequate petition for certiorari

2. No prejudice would arise from the requested extension. If the petition were granted, the Court would hear oral argument in this case in the October 2026 Term regardless of whether an extension is allowed.

3. There is a reasonable prospect the Court will grant the petition. Before his capital murder trial, Mr. Harris's trial counsel learned that his then-17-year-old mother regularly drank while pregnant with him and that he has brain damage from lead poisoning, but they did not investigate further. Trial counsel also failed to investigate Mr. Harris's childhood and discover that he had been severely neglected and abused. As a result, the jury heard none of these critical mitigating circumstances. Counsel then elicited testimony revealing to the jury that Mr. Harris was wearing a stun belt—an unconstitutional disclosure that violated well-settled law.

The district court and Fifth Circuit misapplied clearly established Supreme Court precedent in excusing trial counsel's neglect based on deference to trial counsel's strategic judgment. ROA.463-535. Trial counsel's decisions are not "strategic" if counsel never even investigated what evidence was potentially available in the first place. *Wiggins v. Smith*, 539 U.S. 510, 522-23 (2003). In short, a decision not to present evidence cannot be "strategic" when counsel never investigated what evidence existed.

In the State habeas proceeding, Mr. Harris presented a compelling mitigation case that the jury never heard: He suffers from FASD, has severe brain damage from lead exposure and FASD, and was severely abused as a child. Had the jury known this information, and had it not heard the highly prejudicial stun-belt testimony,

there is a reasonable probability it would not have sentenced Mr. Harris to death. In holding that trial counsel's deficiencies did not prejudice him, the district court misapplied *Thornell v. Jones*, 602 U.S. 154 (2024). *Jones* held that in assessing mitigating evidence, a habeas court must apply the governing state-law framework for weighing aggravating factors against mitigating factors. But in applying *Jones*, which involved an Arizona defendant, the district court failed to appreciate the relevant differences between Arizona and Texas law. In contrast to Arizona, Texas's capital sentencing law does not directly weigh statutory aggravating and mitigating factors. Moreover, under Texas's scheme, only the jury can decide whether the new mitigating factors developed by habeas counsel would weigh against a death penalty.

Finally, the district court also erred in finding that counsel was not deficient when they introduced evidence that Mr. Harris wore a stun belt at trial. Countless cases hold that shackling a defendant in the jury's presence violates due process.

The Fifth Circuit erred in affirming the denial of a certificate of appealability. This Court should grant certiorari and reverse.

CONCLUSION

For these reasons, the time to file a petition for a writ of certiorari should be extended sixty days to and including August 28, 2026.

Respectfully submitted,

/s/ Gwendolyn C. Payton

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Dated: June 3, 2026

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APPENDIX A — OPINION OF THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT, FILED
MARCH 31, 20261a

United States Court of Appeals
for the Fifth Circuit

No. 24-70009

United States Court of Appeals
Fifth Circuit

FILED

March 31, 2026

Lyle W. Cayce
Clerk

RODERICK NAPOLEON HARRIS,

Petitioner—Appellant,

versus

ERIC GUERRERO, *Director, Texas Department of Criminal Justice,*
Correctional Institutions Division,

Respondent—Appellee.

Application for Certificate of Appealability from the
United States District Court for the Northern District of Texas
USDC No. 3:20-CV-3702

Before GRAVES, WILLETT, and HO, *Circuit Judges.*

PER CURIAM:*

Roderick Napoleon Harris murdered two people during an armed robbery in 2009. He was convicted of murder and sentenced to death. After a series of appeals, Harris filed the instant habeas petition in the Northern District of Texas arguing that his trial attorneys were constitutionally ineffective for failing to properly investigate mitigating evidence and eliciting

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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testimony that he wore a stun belt during jury selection. The district court denied habeas relief. Harris now seeks a certificate of appealability.

To obtain a COA, Harris “must demonstrate a substantial showing of the denial of a constitutional right.” *Nelson v. Davis*, 952 F.3d 651, 658 (5th Cir. 2020) (citation modified); 28 U.S.C. § 2253(c)(2). Because the district court denied his claims on the merits, Harris can only be granted a COA if “jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Id.* (citation modified). Our precedents make clear that “[t]he COA standard is less burdensome in capital cases, as ‘in a death penalty case any doubts as to whether a COA should issue must be resolved in the petitioner’s favor.’” *Id.* (quoting *Clark v. Thaler*, 673 F.3d 410, 425 (5th Cir. 2012)).

An ineffective assistance of counsel claim has two parts. First, counsel must have been deficient. “This requires showing that counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Second, the deficiency must have prejudiced the defendant. “This requires showing that counsel’s errors were so serious as to deprive the defendant of a fair trial.” *Id.* “[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Id.* at 690.

But his claims are still subject to the relitigation bar. The Antiterrorism and Effective Death Penalty Act (“AEDPA”), 28 U.S.C. § 2254, “requires a district court to defer to a state habeas court’s determination of the merits of a prisoner’s claims unless the state decision was contrary to, or involved an unreasonable application of, clearly established Federal law or was based on an unreasonable determination of the

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facts in light of the evidence presented in the State court proceeding.” *Hughes v. Vannoy*, 7 F.4th 380, 386–87 (5th Cir. 2021) (citation modified). “When reviewing a state habeas court’s decision under AEDPA’s deferential standard of review, we review ‘only the ultimate legal determination by the state court—not every link in its reasoning.’” *Charles v. Stephens*, 736 F.3d 380, 387 (5th Cir. 2013) (quoting *Trottie v. Stephens*, 720 F.3d 231, 241 (5th Cir. 2013)). Accordingly, federal courts may only grant habeas relief if “no fairminded jurist could” come to the same conclusion as the state habeas court. *Hughes*, 7 F.4th at 387.

So, “[w]hen the claim at issue is one for ineffective assistance of counsel, . . . AEDPA review is doubly deferential.” *Woods v. Etherton*, 578 U.S. 113, 117 (2016) (citation modified). Harris cannot overcome that deferential standard of review.

First, he argues that trial counsel insufficiently investigated mitigating evidence, especially regarding possible brain damage due to fetal alcohol and childhood lead exposure. Counsel must make a reasonable investigation into potential mitigating evidence. *Wiggins v. Smith*, 539 U.S. 510, 524 (2003). Thus, “[i]n investigating potential mitigating evidence, counsel must either (1) undertake a reasonable investigation or (2) make an informed strategic decision that investigation is unnecessary.” *Charles*, 736 F.3d at 389.

Harris has not met his burden. His trial team did consult with a neuropsychologist who told them that she found “very little, if anything, in the way of cognitive impairment,” and that her testimony would be unhelpful as it may allow a prosecution expert to provide conflicting testimony. She was also concerned that Harris showed signs of malingering and exaggeration during his examinations. So, a reasonable jurist could conclude, at least, that counsel made a reasonable decision not to investigate the issue further. *See id.*

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Second, Harris argues that trial counsel was ineffective for eliciting testimony that he wore a stun belt during jury selection and for failing to object to that testimony. But even if this was constitutionally deficient, a reasonable jurist could conclude that it did not prejudice the defense. After all, Harris robbed a house, held a family at gunpoint, and killed two people. *Harris v. State*, No. AP-76,810, 2014 WL 2155395, at *1-2 (Tex. Crim. App. May 21, 2014). The jury also heard evidence that Harris committed other aggravated robberies and a separate capital murder. *Id.* at *2. Given the weight of this evidence, the state habeas court's decision was not an unreasonable application of federal law.

So, Harris' motion for a certificate of appealability is DENIED.