

No. _____

IN THE
Supreme Court of the United States

TILON LASHON CARTER,

Petitioner,

v.

STATE OF TEXAS,

Respondent.

**** CAPITAL CASE ****

On Petition for Writ of Certiorari
to the Texas Court of Criminal Appeals

**APPLICATION FOR 45-DAY EXTENSION
TO FILE PETITION FOR WRIT OF CERTIORARI**

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

Tilon Lashon Carter, an indigent Texas death-row inmate, respectfully applies, pursuant to Supreme Court Rule 13.5, for a 45-day extension of time, to and including December 12, 2025, to file his petition for writ of certiorari to the Texas Court of Criminal Appeals.

In support of his application, Mr. Carter states as follows:

1. Mr. Carter intends to file a petition for writ of certiorari challenging the Texas Court of Criminal Appeals' judgment denying his application for postconviction relief, which was entered on July 30, 2025. *Ex parte Tilon Lashon Carter*, -- S.W.3d --, 2025 WL 2161258 (Tex. Crim. App. July 30, 2025). See Appendix A.

2. Absent an extension of time, Mr. Carter's petition for writ of certiorari is due to be filed in this Court by October 28, 2025. In compliance with Rule 13.5, this application for additional time is being filed at least 10 days before that date.

I. Proceedings Below

3. The post-conviction proceedings in the state courts below presented substantial challenges to the integrity of Mr. Carter's capital conviction and death sentence.

4. The indictment in this case required the State to prove that Mr. Carter "intentionally caused the death" of the decedent, James Tomlin, "by restraining him and causing him to lie face down and by smothering him." At trial, there was no dispute that Mr. Carter had bound and robbed Mr. Tomlin; the only disputed issue was whether Mr. Carter had intentionally caused his death by smothering him or whether, as Mr. Carter has consistently maintained, Mr. Tomlin's death was a tragic but unintended consequence of the home invasion. To obtain a conviction of capital murder and render Mr. Carter eligible for the death penalty, the State's case for intent heavily relied on the testimony of Tarrant County Medical Examiner Dr. Nizam Peerwani that the cause of death was "smothering with positional asphyxia." The State concluded Dr. Peerwani's testimony by confirming that "we're talking about an intentional act of smothering either way?" Dr. Peerwani responded, "That's right." 41 RR 216. Notwithstanding evidence at the crime scene

indicating that the 89-year-old decedent may have died as a result of efforts to free himself from his restraints (possibly resulting in a heart attack), the State used Dr. Peerwani to persuade the jury that Mr. Tomlin's death was caused by an *intentional* act of smothering—a necessary element of the charged offense of capital murder in this case. Their reliance on Dr. Peerwani's testimony was highlighted in closing argument, where prosecutors reminded jurors that Dr. Peerwani's testimony established that this was “classical, classical for a case of intentional smothering,” 42 RR 41, a “highly, highly intentional act,” *id.* at 73, and that the evidence of smothering “shows [Mr. Carter] intended to kill [Mr. Tomlin].” *Id.* at 45-46. The State told the jury that “the bottom line from Dr. Peerwani, the bottom line is that [Mr. Carter] intentionally tried to smother [Mr. Tomlin], and he died of smothering.” *Id.* at 77.

5. On May 8, 2017, Mr. Carter filed a subsequent application for habeas corpus alleging that the State presented false and misleading testimony from Tarrant County Medical Examiner Dr. Nizam Peerwani as to the decedent's cause of death. The application was supported by the preliminary opinions of three experts in forensic pathology who all agreed

that there was no reliable evidence that Mr. Tomlin's death was caused by an intentional act.

6. On May 12, 2017, the Texas Court of Criminal Appeals ("TCCA") granted a stay of execution to consider his habeas application. Four and a half months later, on September 27, 2017, the TCCA authorized further proceedings on two of the three claims pled in the application: (1) that the State denied Mr. Carter due process when it presented false or misleading testimony by Dr. Peerwani as to the decedent's cause of death; and (2) new scientific evidence, unavailable at the time of trial, contradicts scientific evidence the State relied upon at trial.

7. Through the evidentiary proceedings conducted in December 2019 and September 2020,¹ Mr. Carter presented a raft of highly persuasive evidence—including the testimony of Dr. Peerwani himself, as well as that of experts in the fields of forensic pathology, biomechanical engineering, and microscopic fiber analysis—demonstrating that Dr. Peerwani's trial testimony as to the decedent's cause of death was false in numerous material respects. Significantly, Dr. Peerwani himself

¹ Evidentiary proceedings in this case were delayed due to the COVID-19 pandemic.

admitted in sworn testimony that, in contrast to his trial testimony that patterned indentations on the inside of Mr. Tomlin’s upper lip were “classical” evidence of smothering, it was possible that those marks were “just a red herring” and that an act of smothering “could have never happened” at all.

8. On March 15, 2021, the judge presiding over the evidentiary proceedings entered findings of fact, concluded that Dr. Peerwani’s trial testimony was false, inaccurate, or misleading in numerous material respects, and recommended that the Texas Court of Criminal Appeals grant habeas corpus relief.

9. Upon return to the TCCA, that court directed the parties to submit post-hearing briefing, which was completed within the court’s 30-day deadline.

10. Nearly four years later, on July 30, 2025, the TCCA, by a 5–4 vote, issued an opinion rejecting the trial court’s findings of fact and conclusions of law, and denied habeas relief. Four judges of the TCCA dissented; three signed a 70-page dissenting opinion concluding that the “[t]he habeas court’s findings are supported by the record,” that Mr. Carter was entitled to relief on his false testimony claim, and that “Dr.

Peerwani’s conclusion that smothering occurred—the State’s primary evidence of intent—is false.” Appendix B at 103–05.

II. Basis for Request for Extension of Time

11. Undersigned counsel have multiple competing professional obligations in other capital cases that make it exceedingly difficult for counsel to file the petition for certiorari by the current deadline.

12. First, a substantial portion of the first sixty days of the ninety-day timeframe in which to seek certiorari in this case pursuant to Rule 13.1 were devoted to undersigned counsel’s work on several other capital cases. On September 5, 2025, undersigned counsel filed a capital appellant’s opening brief on direct review in *Facundo Chavez v. State of Texas*, No. AP–77,117 (Tex. Crim. App.). That brief was 185 pages long and presented 16 substantial points of error. Three weeks later, on September 26, 2025, undersigned counsel filed in this Court a petition for writ of certiorari in *Gary David Green v. Texas*, No. 25–5750, seeking review of the Texas Court of Criminal Appeals’ judgment on direct appeal. In addition, undersigned counsel assisted appellate counsel in preparing for oral argument in *Taylor Rene Parker v. Texas*, No. AP–77,110 (Tex.

Crim. App.), which was argued in the Texas Court of Criminal Appeals on September 17, 2025.

13. Second, undersigned counsel has competing obligations in several other cases in the next month which lead counsel to request an extension of 45 days to file the petition for certiorari in this case. Undersigned counsel represent the appellant in a direct appeal which is scheduled for oral argument in the Eighth Court of Appeals in El Paso, Texas, on November 12, 2025. *Ronald Anthony Burgos-Aviles v. State of Texas*, 08-23-00240-CR. Preparation for oral argument in *Burgos-Aviles* will require significant time in the next month. In addition, undersigned counsel anticipate that the State may file its brief in opposition to the pending petition for certiorari in *Green v. Texas* by its current deadline of October 29, 2025, which would require undersigned counsel to file a reply by mid-November.

14. Finally, undersigned counsel are clinical professors associated with the University of Texas School of Law, where fall term classes began on August 25. Undersigned counsel are responsible for teaching classroom courses four days a week; outside the classroom, they also supervise law students enrolled in the Capital Punishment Clinic,

through which undersigned counsel represent capital defendants directly and assist other lawyers in doing so.

15. Due to the demands of these competing obligations and deadlines, Mr. Carter respectfully requests a 45-day extension to file his petition for writ of certiorari.

Accordingly, for these reasons, Mr. Carter respectfully requests that the Court grant this application and extend the time to file a petition for certiorari for 45 days, to and including December 12, 2025.

Respectfully submitted,



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