

App No. _____

In the
Supreme Court of the United States

TERRANCE CAREW

Applicant,

v.

ROBERT MORTON

Respondent.

On Application for an Extension of Time to File Petition for a Writ of
Certiorari to the United States Court of Appeals for the Second Circuit

PATRICIA PAZNER
TAMMY E. LINN
DAVID FITZMAURICE
Counsel of Record

APPELLATE ADVOCATES
111 John Street
9th Floor
New York, NY 10038
(212) 693-0085
dfitzmaurice@appad.org

Counsel for Applicant

October 31, 2025

TO THE HONORABLE SONIA SOTOMAYOR, AS CIRCUIT JUSTICE FOR THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT:

In accordance with this Court's Rules 13.5, 22, 30.2, and 30.3, counsel for Terrance Carew respectfully requests that the time to file his petition for a writ of certiorari be extended for 60 days, up to and including Monday, January 12, 2026. The Court of Appeals issued its opinion on August 13, 2025 (Exhibit A). Absent an extension of time, the petition would be due on November 12, 2025.¹ The jurisdiction of this Court is based on 28 U.S.C. § 1254(1). This request is unopposed.

Background

This case presents an important question regarding whether a defense attorney who prevails upon a motion pursuant to *Batson v. Kentucky*, 476 U.S. 79 (1986), alleging the government has engaged in racial discrimination in its exercise of peremptory strikes against prospective jurors has an obligation to demand some remedy for the discrimination.

In this case, Applicant Terrance Carew, a Black man, was charged with attempted first-degree murder of two police officers, attempted second-degree murder and attempted first-degree robbery of a civilian, and related offenses.

After the prosecutor used three of five peremptory challenges to exclude Black men from the jury, defense counsel objected pursuant to *Batson*. Upon finding a *Batson* violation, the trial court ordered, per defense counsel's request, that two of the Black men be seated as alternate jurors, but the court clerk indicated that she

¹ November 11, 2025, is 90 days from the date of the judgment, but that date is a federal holiday and the Court is closed.

had dismissed those men from the courtroom when the first round of jury selection concluded. Counsel made no objection to continuing jury selection without imposing any remedy for the *Batson* violation. Before trial, a juror was replaced with an alternate juror, who would have been one of the Black men improperly excluded from the jury had the clerk not dismissed them. Mr. Carew was subsequently convicted of attempted second-degree murder, attempted first-degree robbery, and second-degree criminal possession of a weapon, and sentenced to three concurrent terms of 14 years in state prison, where he remains incarcerated.

On direct appeal, Mr. Carew argued through new counsel that the trial court erred in failing to impose a remedy to cure the prosecutor's discrimination and that trial counsel was ineffective, under federal and state constitutional law, for failing to object to the lack of remedy, thereby allowing Mr. Carew to be tried by a jury tainted by racial discrimination. The Appellate Division of the Supreme Court of New York refused to rule on the *Batson* remedy issue because counsel had not objected. The Appellate Division also found that counsel provided "meaningful representation" based on "the record in its totality" and that Mr. Carew "failed to demonstrate the absence of strategic or other legitimate explanations for counsel's alleged shortcomings." The New York Court of Appeals denied Mr. Carew's application for leave to appeal on the same claims.

Mr. Carew then filed a federal habeas petition pursuant to 28 U.S.C. § 2254 in the United States District Court for the Eastern District of New York. There, he argued that (1) the State violated his constitutional rights under the Sixth and

Fourteenth Amendments by permitting racial discrimination in jury selection, and (2) counsel's failure to demand a remedy after successfully persuading the court that such discrimination had occurred amounted to illegal acquiescence in that discrimination, which denied Mr. Carew the effective assistance of counsel and constituted cause and prejudice to permit federal review of the *Batson* claim. The District Court did not reach the merits of the *Batson* claim because it was procedurally defaulted due to counsel's failure to object to the lack of a remedy. It concluded that counsel's failure to object did not constitute ineffective assistance of counsel, so as to provide cause and prejudice to overcome the procedural default, because it was permissible to forego a new jury as a matter of strategy. The District Court granted a certificate of appealability, however, since Mr. Carew had made a substantial showing of the denial of a constitutional right given the state courts' rulings that the prosecutor had violated *Batson*.

In the judgment at issue here, the Court of Appeals for the Second Circuit affirmed the denial of the habeas petition, agreeing that Mr. Carew "ha[d] not demonstrated that his trial counsel did not act strategically in forgoing a *Batson* remedy" (Ex. A at 4). It also "decline[d] to require defense counsel to seek a *Batson* remedy even when doing so might be disadvantageous to the defendant" (*id.* at 4-5).

The Second Circuit's decision sets a dangerous precedent that was unnecessary on the facts of this case and is inconsistent with *Batson* and its progeny. Even accepting the premise that an attorney who prevailed on a *Batson* challenge may choose to proceed to trial with that jury rather than demanding a new one if alternate

Batson remedies would undermine their client's interests, that hypothetical scenario did not exist here. The Second Circuit acknowledged that courts have recognized various remedies for *Batson* violations, including those identified by Mr. Carew: "either selecting a new jury entirely by moving for a mistrial, 'requiring the prosecutor to forfeit remaining peremptory challenges, awarding additional challenges to [the defense], or even trying to locate the released jurors'" (Ex. A at 24) (quoting Mr. Carew's Fed. R. App. P. 28(j) Letter, at 1). The Second Circuit's explanation that counsel could have reasonably foregone the suggested alternatives to restarting jury selection here, in order to protect Mr. Carew's interests, failed to address the remedy that would have given counsel exactly what he sought by raising the *Batson* challenge in the first place. Had counsel requested that the court disallow two of the prosecutor's other peremptory challenges as a sanction, this would have resulted in seating the third Black man included in counsel's *Batson* challenge, who was from the same round of jury selection and had not been sent home. Moreover, it is unclear why simply calling the excused jurors to explain there had been a mistake and request their return soon after they had left would cause them to be "hostile or resentful toward the defense" (Ex. A at 25). Surely any court personnel who contacted them would not say they had to return due to a motion by the defense. In short, the Second Circuit's framing of the issue in this case as whether a defense attorney is ineffective for not pursuing a *Batson* remedy that would be "disadvantageous" to the defendant was curious and inapt.

The Second Circuit went on to emphasize that, although defense counsel must

refrain from personally engaging in racial discrimination against prospective jurors pursuant to *Georgia v. McCollum*, 505 U.S. 42 (1992), counsel has no affirmative obligation to protect their client’s equal protection rights under *Batson*. Instead, it continued, this must give way to counsel’s obligations under the Sixth Amendment, and there must be a presumption of reasonable strategy for not demanding a *Batson* remedy under the deferential standard of *Strickland v. United States*, 466 U.S. 668 (1984)—apparently even where, as here, there was an available remedy that would clearly have benefitted rather than harmed the defendant (Ex. A at 30-40). The Second Circuit’s suggestion that counsel is not ineffective for failing to demand a *Batson* remedy without also committing additional error, and its broad language that counsel’s obligations under the Sixth Amendment take precedence over this Court’s mandate to be vigilant against racial discrimination in jury selection, is inconsistent with the few decisions by other circuit courts that have addressed ineffective assistance of counsel in the *Batson* context. See *Eagle v. Linahan*, 279 F.3d 926, 943 (11th Cir. 2001) (finding counsel ineffective for failing to raise an obvious *Batson* challenge); *Drain v. Woods*, 595 F. App’x 558, 580-81 (6th Cir. 2014) (unpublished opinion) (granting a writ of habeas corpus on the ground of ineffective assistance of counsel because “[a]fter the trial court announced its finding that a *Batson* violation had occurred, any reasonable attorney would have objected to the trial court’s decision to proceed without either recalling those who were dismissed or beginning *voir dire* again with an entirely new venire”).

Batson claims are commonplace, the question of whether defense counsel was

ineffective in the *Batson* context will certainly recur, and the Second Circuit's detailed published opinion is likely to have significant precedential value across the country given that this Court has not required any specific remedy for a *Batson* violation nor addressed ineffective assistance of counsel in the *Batson* context, and there is scant appellate authority on the topic among the circuits.

Reasons For Granting an Extension of Time

The judgment by the Second Circuit, as noted, was entered August 13, 2025. Tammy Linn represented Mr. Carew in the Second Circuit and is responsible for drafting Mr. Carew's petition for a writ of certiorari. She was on vacation from mid-August to early September, and has since been continuously engaged with the press of other matters. Among other obligations, she has: been responsible for leading the training of a class of newly hired attorneys since September 15th; drafted and filed a reply in support of a motion to vacate a client's sentence in a New York trial court, which was due October 3 (*People v. Andre Harris*, Queens Cnty. Ind. No. 1076/15); drafted and filed a brief in the New York Court of Appeals that was due October 7 (*People v. Brazeal*, APL 2025-00111); drafted and filed a motion to reargue the Appellate Division's dismissal of a client's appeal from a judgment convicting him of murder and imposing a sentence of 25 years to life, which was due October 14 (*People v. Lawrence Harris*, App. Div. No. 2016-11459); supervised a motion to reargue the Appellate Division's dismissal of a client's appeal from a judgment convicting him of kidnapping and assault and imposing an aggregate sentence of 25 years to life, which was also due October 14, and supervised the application to the New York Court of

Appeals for leave to appeal the Appellate Division's order in that case, which was due October 21 (*People v. Anthony Matthews*, App. Div. No. 2016-02392; *People v. Matthews*, CLA-2025-00922); and supervised a reply brief in the Appellate Division that was due October 26 (*People v. Brown*, App. Div. No. 2023-08957).

Ms. Linn has a long-planned family trip scheduled from November 1 through November 8 and will continue training the new attorneys upon her return. She is also responsible for supervising a reply brief in a complicated, multi-issue case that is currently due November 14 (*People v. Lustig*, App. Div. No. 2023-00464); drafting and filing an application to the New York Court of Appeals for leave to appeal the Appellate Division's decision in *People v. Lawrence Harris*, App. Div. No. 2016-11459, by November 19; and drafting and filing another brief in the Appellate Division by December 31 (*People v. Ortega Molina*, App. Div. No. 2022-01419). Given these deadlines, upcoming holidays, family obligations, and her routine supervisory obligations that will undoubtedly arise, the full 60-day extension is respectfully requested to afford sufficient time for the preparation and printing of an effective petition in this matter.

Conclusion

Applicant requests that the time to file a writ of certiorari in the above-captioned matter be extended 60 days to and including January 12, 2026.

Dated this 31st day of October, 2025.

Respectfully submitted.

PATRICIA PAZNER
TAMMY E. LINN
DAVID FITZMAURICE
Counsel of Record

APPELLATE ADVOCATES
111 John Street
9th Floor
New York, NY 10038
(212) 693-0085
dfitzmaurice@appad.org

Counsel for Applicant


By: David Fitzmaurice