

No. _____

In the
Supreme Court of the United States

MICHAEL NEWBERRY,

Petitioner,

v.

STATE OF TEXAS,
Respondent.

**APPLICATION FOR EXTENSION OF TIME TO FILE A
PETITION FOR A WRIT OF CERTIORARI TO
THE TEXAS COURT OF CRIMINAL APPEALS**

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

Pursuant to Rule 13.5 of the Rules of this Court, petitioner Michael Newberry respectfully requests an extension of thirty (30) days, to and including January 15, 2026, within which to file a petition for writ of certiorari to review the judgment of the Texas Court of Criminal Appeals in this case. Rule 13.5 requires an application for extension of time to be filed with the Clerk “at least 10 days before the petition is due, except in extraordinary

circumstances.” Petitioner is filing this Application less than ten (10) days before the date the petition is due for the extraordinary circumstances and good cause stated herein. In support of his request, Petitioner offers the following:

1. Petitioner seeks a review of the Texas Court of Criminal Appeals’ written order dated September 17, 2025, denying the district court’s recommendation of relief from his capital murder conviction, for which he was sentenced to life imprisonment. *See* Exhibit A. Unless extended, the time to file a petition for a writ of certiorari will expire on December 16, 2025. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1257.

2. Extraordinary circumstances warrant granting a 30-day extension of the time to file the petition. Petitioner’s lead counsel, Mr. Lassiter, brings this matter via his solo criminal defense firm that primarily practices in Texas state trial courts. Mr. Lassiter relies upon another solo practitioner, co-counsel Ms. Emanuel, to assist in appellate matters. Ms. Emanuel has had the responsibility for drafting the pleadings in this case, including the petition for writ of certiorari. On November 14, 2025, she suffered a sudden medical

emergency of a sensitive, personal nature that left her unable to work and communicate with colleagues for several weeks, during which the 10-day deadline to extend expired. She therefore failed to prepare this motion in a timely fashion for counsel of record, Mr. Lassiter, to file. Though co-counsel has returned to work, she will not be able to finish drafting the petition and produce the required booklets in order to file the petition in time.

3. A petition for writ of certiorari is essential in this case because it presents substantial, important, and recurring questions of federal constitutional law and because the State of Texas agrees that Petitioner is entitled to a new trial as a result of its *Brady* violation. As the petition will demonstrate, the decision of the Texas Court of Criminal Appeals lacked an adequate and independent state-law ground. *See Glossip v. Oklahoma*, 604 U.S. ____ (2025).

4. Petitioner was convicted of capital murder in a jury trial in Cooke County, Texas during the summer of 1997. The State declined to seek the death penalty, and he received an automatic life sentence. His conviction was affirmed on direct appeal by the intermediate appellate court. *Michael Newberry v. State*, No. 02-97-

00486-CR (Tex. App.—Fort Worth May 7, 1998) (unpublished).

Applications for state post-conviction relief filed in 2005 and 2008 were denied, No. WR-62,159-01 (Tex. Crim. App. Aug. 31, 2005), and dismissed, No. WR-62,159-02 (Tex. Crim. App. Aug. 13, 2008), both without written orders.

5. In late 2024, Petitioner again sought state habeas relief, based in large part on previously undisclosed evidence discovered in the Cooke County District Attorney's files, including over a dozen witness statements of both exculpatory and impeachment value. After conducting its own review, the State of Texas admitted its suppression of favorable and material information entitled Petitioner to a new trial, and joined in Petitioner's application and request for relief.

6. After holding evidentiary hearings, the state district court, which served as the original habeas fact-finder, issued Findings of Fact and Conclusions of Law recommending that Petitioner be granted relief in the form of a new trial under *Brady v. Maryland*, 373 U.S. 83 (1963) and its progeny. See Exhibit B. The case was then submitted to the Texas Court of Criminal Appeals

(CCA), as required by Article 11.07 of the Texas Code of Criminal Procedure.

7. On September 17, 2025, the CCA rejected the habeas court's recommendation of relief and denied the application wholesale. *See Exhibit A.* The short, *per curiam* written order offers no explanation for the court's denial, does not cite the relevant constitutional standards, and fails to acknowledge the State's concession.

8. The petition will raise significant concerns about the Court of Criminal Appeals' failure to adhere to the U.S. Constitution with regards to Mr. Newberry's due process rights. *See Brady*, 373 U.S. 83; *Kyles v. Whitley*, 514 U.S. 419 (1995); *Wearry v. Cain*, 577 U.S. 385 (2016). Its posture presents a similar scenario to those which invited this Court's remand in *Andrus v. Texas*, 590 U.S. ____ (2020) (*per curiam*) and *Escobar v. Texas*, 143 S.Ct. 557 (2023) (mem.). The case also presents the important and recurring question of whether due process is violated when a state superior court implicitly rejects a lower court's favorable, dispositive fact-findings in a criminal case. *States v. Raddatz*, 447 U.S. 667 (1980).

9. In accordance with Supreme Court Rule 13.5, this Application is submitted less than ten (10) days prior to the present due date. Extraordinary circumstances exist to grant the requested thirty (30) day extension. Further, the requested extension is made in good faith and not for the purposes of delay. It is respectfully submitted that counsel's duty to present all authorized claims of constitutional error with care is of equal import. Thus, it is important that counsel be granted additional time to prepare this petition.

10. An extension of time will not prejudice Respondent. Counsel for Respondent, Cooke County District Attorney John Warren, has no objection to an extension of time, and agrees that relief is warranted.

For these reasons, Petitioner respectfully requests an extension of time to file his certiorari petition, up to and including January 16, 2026.

December 12, 2025

Respectfully submitted,

/s/ Mark Lassiter

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