No. 25A-___

In the Supreme Court of the United States

MARION ALEXANDER LINDSEY,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

TO THE HONORABLE JOHN G. ROBERTS, JR., CHIEF JUSTICE AND CIRCUIT JUSTICE FOR THE FOURTH CIRCUIT:

Pursuant to 28 U.S.C. § 2101(c) and Rule 13.5 of the Rules of this Court, applicant Marion Alexander Lindsey respectfully requests a 59-day extension of time, to and including April 3, 2026, within which to file a petition for a writ of certiorari to review the judgment of the Supreme Court of South Carolina in this case.

The Supreme Court of South Carolina affirmed the denial of post-conviction relief on November 5, 2025. Unless extended, the time to file a petition for a writ of certiorari will expire on February 3, 2026. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1257(a). A copy of the decision of the highest court of South Carolina is attached as Exhibit A.

1. This case concerns ineffective assistance of counsel during the sentencing phase of a capital case and a post-conviction trial court's hasty rubber-stamping of an opinion written by the State, typos included.

A jury convicted Marion Lindsey of capital murder in 2004. The State of South

Carolina sought the death penalty based on a single statutory aggravating factor—that Mr. Lindsey's "act of murder knowingly created a great risk of death to more than one person in a public place by means of a weapon or device which normally would be hazardous to the lives of more than one person." S.C. Code Ann. § 16-3-20(C)(a)(3) (2015). Against this, Mr. Lindsey has a substantial mass of mitigating evidence, including of his compromised mental state at the time of the shooting and of his extreme childhood poverty, abuse, and trauma. Defense counsel, however, started work on the penalty phase far later than any reasonable capital lawyer would, and, as a result, presented only a half-baked mitigation case. The jury recommended a sentence of death, which the trial court imposed.

Mr. Lindsey sought state post-conviction relief, in part on the ground that defense counsel's failure to present certain mitigating evidence constituted ineffective assistance of counsel in violation of his Sixth Amendment rights. The post-conviction relief court held an evidentiary hearing, which included testimony from ten mitigating witnesses who did not testify at trial and additional testimony from five witnesses who did. Significantly, Mr. Lindsey's brother testified for the first time that he spoke to Mr. Lindsey shortly before the shooting and Mr. Lindsey was "messed up" like he was "all out of his mind." Ex. A at 13. Mr. Lindsey's former attorney Rodman Tullis similarly testified for the first time that Mr. Lindsey had left him a voicemail about an hour before the murder, in which he sounded "emotional, distressed, and distraught." *Id.* at 13. The paramedic who responded to the murder scene testified, also for the first time, that Mr. Lindsey shot himself in the head and wanted the paramedics to let him die. Dr. Brawley, who performed an "extended clinical interview and battery of neuropsychological tests" on Mr. Lindsey, and Jan Vogelsang, who

"conducted a bio-psychosocial assessment on Lindsey and his family," likewise testified only in the post-conviction relief hearing. *Id.* at 15-16. Further, Mr. Lindsey's mother testified to additional details about his childhood, including that he was physically abused by her live-in boyfriend and sustained not-before-mentioned head injuries. And Dr. Melikian testified that she now had "six to seven times more records and information" than she did during her trial testimony, and this additional information "would have changed" her diagnosis of Mr. Lindsey. *Id.* at 17.

The state court denied post-conviction relief by signing a proposed order submitted by the State without even reading it. The Supreme Court of South Carolina remanded for the court to comply with due process. On remand, the post-conviction court again wholesale adopted the State's proposed order. This time, it corrected typographical errors Mr. Lindsey had identified, made minor formatting adjustments, and initialed each page. It changed no substance—only editing a single turn of phrase.

The Supreme Court of South Carolina granted Mr. Lindsey's petition for certiorari but ultimately affirmed. The court approved the trial court's wholesale adoption of the State's error-ridden proposed order. And a three-justice majority rejected Mr. Lindsey's claim of ineffective assistance during the sentencing phase on the ground that he was not prejudiced by any deficient performance. Ex. A at 25. The majority assessed, item-by-item, whether there was a reasonable probability of a different result and concluded there was not (*id.* at 26-29) but did not analyze the cumulative effect of all the omitted testimony, nor did it balance the mitigating evidence with the single aggravating factor.

As Justice Hill explained in dissent, in which Justice Beatty concurred, "[a]

closer look at the new mitigation evidence shows that it was much different in nature and degree than what the sentencing jury heard." Ex. A at 34. The dissent included a table, spanning 28 pages (*id.* at 44-72), "summarizing the enormous amount of mitigation evidence revealed at the PCR hearing and comparing it to the skeleton of facts heard by the jury at the sentencing trial" (*id.* at 36). As Justice Hill noted, the post-conviction relief testimony of Rod Tullis, Jan Vogelsang, and Dr. Brawley—who did not testify at all at trial—and Dr. Melikian—who testified at trial but provided additional testimony at the post-conviction relief hearing after having adequate time to review records—was particularly significant. *Ibid.* "Tullis had the best contemporaneous evidence about Lindsey's state of mind at the time of the murder"; "Vogelsang's testimony pulled together the threads of Lindsey's life to provide the jury a complete narrative"; Dr. Brawley "related that Lindsey's mental tracking, verbal fluency, naming ability, and verbal learning ability were all 'severely impaired'"; and, compared to her trial testimony, Dr. Melikian's testimony of how Mr. Lindsey's major depressive disorder "affected Lindsey's cognitive ability changed utterly." *Id.* at 36-38. As Justice Hill further explained, this Court's decision in *Thornell* v. *Jones*, 602 U.S. 154 (2024), "focus[ed] on weighing the mitigating evidence against the aggravating," and "it must be remembered that there was only one aggravator here." Ex. A at 42.

2. The Supreme Court of South Carolina's decision is wrong, and the forthcoming petition for certiorari will show that it warrants this Court's review. *First*, the post-conviction court's adoption of the State's proposed order raises serious Due Process Clause and Eighth Amendment concerns when undertaken in a capital case. This Court has long "criticized that practice" (*Jefferson* v. *Upton*, 560 U.S. 284, 293-294 (2010); *Anderson* v. *Bessemer City*, 470 U.S. 564, 572 (1985)). But it has not yet fully

addressed the extent to which the Constitution restricts judges' use of this much-maligned practice in capital cases (*see Jefferson*, 560 U.S. at 294).

Second, the court's ineffective-assistance holding at least conflicts with this Court's decisions in *Strickland* v. *Washington*, 466 U.S. 668 (1984), and *Thornell* v. *Jones*, 602 U.S. 154 (2024), by failing to "'consider *the totality of* the evidence before the judge or jury.'" *Thornell*, 602 U.S. at 164 (emphasis added) (quoting *Strickland*, 466 U.S. at 695). This Court has also repeatedly emphasized that this analysis requires "the balanc[ing] of aggravating and mitigating circumstances." *Strickland*, 466 U.S. at 695; *see also id.* at 700 ("Given the overwhelming aggravating factors, there is no reasonable probability that the omitted evidence would have changed the conclusion that the aggravating circumstances outweighed the mitigating circumstances."); *Thornell*, 602 U.S. at 170 ("The weakness of Jones's mitigating evidence contrasts sharply with the strength of the aggravating circumstances."). The majority opinion followed neither of these commands. Considering the totality of the omitted mitigating evidence against the single aggravating factor, there was certainly a reasonable probability that the outcome would have been other than death.

These issues are of critical importance. "[T]he imposition of death by public authority is so profoundly different from all other penalties," and thus "an individualized decision is essential in capital cases." *Lockett* v. *Ohio*, 438 U.S. 586, 605 (1978). Ensuring that counsel provide constitutionally effective assistance and trial judges exercise individualized and independent judgment is essential before imposing the formidable penalty of death.

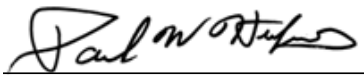
3. Good cause exists for an extension of time to prepare a petition for a writ of

certiorari in this capital case. Undersigned counsel was just recently retained to represent petitioner at the U.S. Supreme Court. He has, and has had, several other matters with proximate due dates, including: an opening brief in *Chamber of Commerce of the United States of America* v. *DHS*, No. 25-5473 (D.C. Cir.), filed on January 9, 2026; a reply brief in *Esposito* v. *Georgia*, No. 25-988 (11th Cir.), filed on January 12, 2026; reply briefs in support of motions to dismiss in *In re: Mid-air Collision in Washington, D.C., Jan. 29, 2025*, No. 1:25-03382 (D.D.C.), due on January 30, 2026; an opposition to a motion for attorney's fees in *Hoak* v. *NCR Corp.*, No. 24-12148 (11th Cir.), due on February 2, 2026; a reply brief in *Chamber of Commerce of the United States of America* v. *DHS*, No. 25-5473 (D.C. Cir.), due on February 6, 2026; and oral argument in *O'Dell* v. *Aya Healthcare Services, Inc.*, No. 25-1528 (9th Cir.), on February 13, 2026.

For the foregoing reasons, the application for a 59-day extension of time, to and including April 3, 2026, within which to file a petition for a writ of certiorari in this case should be granted.

January 21, 2026

Respectfully submitted.



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