No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

BRIAN EDWARD DAVIS,
Petitioner

v.

ERIC GUERRERO, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,
Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MOTION FOR LEAVE TO FILE OUT OF TIME

Pursuant to Rule 29, Petitioner Brian Edward Davis asks for leave to file the accompanying Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit out of time. Petitioner was represented by counsel appointed under the Criminal Justice Act in the United States District Court and on appeal to the United States Court of Appeals for the Fifth Circuit. Counsel for Petitioner filed the Petition for Certiorari electronically within the time allowed for filing, but is inadvertently filing paper copies by mail out of time, and respectfully moves for leave to file the paper copies of the Petition for Writ of Certiorari and accompanying pleadings out of time due to this oversight.

Respectfully submitted,

/s/ Ken McGuire

KENNETH W. MCGUIRE
MCGUIRE LAW FIRM
Texas Bar No. 00798361
P.O. Box 79535
Houston, Texas 77279
TEL: 713-223-1558
FAX: 713-335-3340
Email: kennethmcguire@att.net

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

COPY

December 18, 2025

Kenneth W. McGuire
P.O. Box 79535
Houston, TX 77279

RE: Davis v. Guerrero, Dir, TDCJ w/Motion to File Out-Of-Time
USAP5 24-70006

Dear Mr. McGuire:

The above-entitled petition for a writ of certiorari with a motion to file the petition out-of-time was postmarked December 12, 2025 and received December 17, 2025. The papers are returned for the following reason(s):

The petition is out-of-time. The date of the lower court judgment or order denying a timely petition for rehearing was August 20, 2025. Therefore, the petition was due on or before November 18, 2025. Rules 13.1, 29.2 and 30.1. When the time to file a petition for a writ of certiorari in a civil case (habeas action included) has expired, the Court no longer has the power to review the petition.

The time for filing a petition for a writ of certiorari is not controlled by the date of the issuance of the mandate. Rule 13.3.

The petition exceeds the limit of 40 pages allowed. Rule 33.2(b).

As the original electronic submission has been rejected, kindly electronically file the corrected documents as soon as possible to ensure expeditious docketing.

Sincerely,
Scott S. Harris, Clerk
By: COPY
Sara Simmons
(202) 479-3023

Enclosures