

No. A. _____

In the Supreme Court of the United States

BARBARA MERCER,

Applicant,

v.

ANTHONY STEWART,

Respondent.

APPLICATION FOR EXTENSION OF TIME WITHIN WHICH TO
FILE A PETITION FOR A WRIT OF CERTIORARI TO U.S.
COURT OF APPEALS FOR THE SIXTH CIRCUIT

Pursuant to 28 U.S.C. § 2101(c) and Rule 13.5 of the Rules of this Court, applicant Barbara Mercer respectfully requests a 60-day extension of time, to and including August 28, 2026, within which to file a petition for a writ of certiorari in this case.

The Sixth Circuit Court of Appeals issued an unpublished order reversing in part and affirming in part the district court's decision regarding habeas relief for Barbara Mercer. *Mercer v. Stewart*, Nos. 24-1707/1751 (6th Cir., April 2, 2026). A copy of the unpublished opinion is attached. Unless extended, the time to file a petition for a writ of certiorari will expire on July 1, 2026. This application is being filed within ten days before that date. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1).

1. This case arises from two homicides that occurred in 2011, for which Barbara Mercer was tried alongside her codefendant, Richard Janish. After exhausting her state remedies, Mercer sought federal habeas relief under 28 U.S.C. § 2254.

2. Following extensive proceedings, the district court issued a 111-page opinion and order granting habeas relief to Mercer on a jury-instruction claim—specifically, the state trial court's failure to instruct

the jury on defense of others. (4/25/22 Op. & Order, R. 36, Page ID #2185.) After further briefing and argument, the court issued its final order granting relief on one of Mercer's two homicide convictions. (8/7/24 Order, R. 56, Page ID #2402, 2414.) The court also granted a certificate of appealability on the remedy. (Id., Page ID #2415.)

3. Both parties timely appealed. (8/23/24 Resp. Notice, R. 58; 9/5/24 Pet. Notice, R. 60.) The cross-appeals were docketed as Nos. 24-1707 and 24-1751.

4. The Sixth Circuit affirmed in part and reversed in part. Applying its decision in *Keahey v. Marquis*, 978 F.3d 474 (6th Cir. 2020), the court held that the state court's failure to give a defense-of-others instruction did not contravene clearly established federal law as determined by this Court, and it accordingly reversed the district court's grant of relief on that claim. The petition for a writ of certiorari is expected to present the question whether a state court's refusal to instruct the jury on a defense supported by the evidence can support relief under § 2254.

REASONS FOR GRANTING THE EXTENSION

5. Good cause exists for the requested extension. The petition will present a substantial and recurring question of federal law on which the courts of appeals are divided. The decision below rests on *Keahey v. Marquis*, 978 F.3d 474 (6th Cir. 2020), in which the Sixth Circuit held that this Court has never clearly established a federal right to a requested self-defense or defense-of-others instruction, so that a state court's refusal to give such an instruction cannot warrant habeas relief under AEDPA. The Ninth Circuit has taken a contrary view, holding that the denial of such an instruction can deprive a defendant of the constitutional right to present a complete defense and thus support relief. See *Lockridge v. Scribner*, 190 F. App'x 550 (9th Cir. 2006); see also *Davis v. Strack*, 270 F.3d 111 (2d Cir. 2001). Framing this conflict and situating Mercer's case within it will require careful research and briefing.

6. One of the attorneys who represented Mercer through the proceedings below has retired, and undersigned counsel has since brought an additional co-counsel onto the case. Counsel for Mercer requires additional time to review the lengthy record—including the

district court's 111-page opinion, the separate remedial order, and the Sixth Circuit's opinion—in order to prepare a petition that does justice to the issues presented.

7. Counsel are public defenders with substantial obligations to other clients. Undersigned counsel and co-counsel carry active district and appellate court caseloads in the United States Court of Appeals for the Sixth Circuit and elsewhere, with several briefing deadlines and court appearances falling before the current certiorari deadline. The requested extension will permit counsel to meet those obligations while preparing a careful and accurate petition in this case.

8. The procedural posture of this case is unusually complex. The district court granted habeas relief in part and denied it in part; both parties then appealed; and the Sixth Circuit affirmed in part and reversed in part. Distilling that mixed record and posture into a focused certiorari petition—one that accurately presents the partial grant of relief, the cross-appeals, and the scope of the Sixth Circuit's disposition—will take additional time.

9. This application is not made for purposes of delay, but to ensure that the important questions raised by this case are presented to the Court in a thorough and accurate petition.

CONCLUSION

For the foregoing reasons, the application for a 60-day extension of time, to and including Friday, August 28, 2026, within which to file a petition for a writ of certiorari should be granted.

Respectfully submitted,

/s/ Casey Swanson
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June 25, 2026