

No. 25A-_____

IN THE
SUPREME COURT OF THE UNITED STATES

DAVID SANDERS

Applicant/Petitioner

v.

LAURA PLAPPERT, WARDEN

Respondent

**Application to the Honorable Justice Brett M. Kavanaugh,
as circuit justice, for an extension of time
to file a Petition for a Writ of Certiorari
to the United States Court of Appeals for the Sixth Circuit**

To the Honorable Justice Brett M. Kavanaugh, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Sixth Circuit.

Under Supreme Court Rules 13.5 and 30.3, Petitioner David Sanders requests that this Court grant him a sixty (60) day extension of time from August 12, 2026, through October 11, 2026, in which to file a Petition for Certiorari to the United States Court of Appeals for the Sixth Circuit. Counsel for Respondent Plappert, upon inquiry from undersigned counsel, does not oppose this request for an extension of time and authorized undersigned counsel to inform this Court.

Sanders' capital federal habeas appeal culminated in a bitterly divided 2-1 decision from the United States Court of Appeals that spans 78 pages equally split

into a 39-page majority opinion and a 39-page dissenting opinion. The dissenting opinion disagreed with the majority on just about everything, explaining how the majority is wrong under the Court's governing law and how the majority's interpretation and application of the law to Sanders' case conflicts with, and cannot be reconciled with, the Court's controlling precedent.

This includes Sanders' case being what appears to be the first case where all the reasons why 28 U.S.C. §2254(d)(1) is unconstitutional were presented and addressed in detail by both the majority and the dissenting opinions after the matter had been extensively briefed, the United States Department of Justice intervened to both brief and argue the matter, and the Sixth Circuit extended oral argument by fifteen minutes per side so the matter could specifically be addressed in addition to the underlying habeas claims for relief. That resulted in what appears to be the most thorough and comprehensive ruling, at least in modern times, regarding whether §2254(d)(1) is unconstitutional, providing the Court for review a reasoned opinion addressing all aspects of the matter.

The Sixth Circuit's resolution of the matter came at a time when extensive litigation challenging §2254(d)(1)'s constitutionality has been ongoing throughout the federal courts at a level we have not seen before, at least in part because of the implications of *Loper Bright Enterprises, Inc. v. Raimondo*, 603 U.S. 369 (2024). That will continue in large numbers unless the Court first resolves the matter. And federal habeas petitions are a significant portion of the lower court dockets. One therefore could not reasonably dispute how prevalent the matter is throughout the federal courts or how rare it is for a single case to address all of the many reasons why

§2254(d)(1) may be unconstitutional. Sanders' Petition for a Writ of Certiorari will provide the Court with the rare opportunity to resolve the matter in all regards and thus end one way or the other the massive amount of litigation on the matter. In that regard at the Petition stage, it does not matter if *Loper Bright* ultimately impacts whether §2254(d)(1) is unconstitutional or even if the Court upholds §2254(d)(1)'s constitutionality. What matters at that stage is the Court taking the case to resolve the significantly important matter.

Additionally, the Petition will address what appears to be the panel's clear misunderstanding of the Court's governing precedent. The majority held that the Court's cases decided after the relevant state court decision must be disregarded under §2254(d)(1) even though numerous decisions from the Court make clear that such cases still apply when those cases merely apply existing clearly established law. As the dissent noted, that is clearly inconsistent with the Court's precedent and thus makes the panel's decision irreconcilable with the Court's precedent of, for example, *Wiggins v. Smith*, 539 U.S. 510 (2003).

Moreover, the panel majority denied relief on an ineffective assistance of counsel claim because the defense expert testified to the conclusion defense counsel desired even though the Court has held that whether another expert would have been believable if not for counsel's deficient performance concerning the expert is what matters, not simply whether the expert testified to the conclusion the defense desired. *Hinton v. Alabama*, 571 U.S. 263, 275-76 (2014); *see also McWilliams v. Dunn*, 582 U.S. 138 (2017).

Those are just some of the matters Sanders' case presents, all of which impacted the outcome and all of which are substantial issues at least as to how often the issue arises and the conflict between the panel majority's decision and the Court's AEDPA precedent.

To adequately develop and present the certiorari worthy issue for which this Court has jurisdiction under 28 U.S.C. §1254(1), an extension of time is necessary.

In addition to medical issues that currently includes having shingles, Counsel of Record David M. Barron, who has represented Sanders for nearly two decades, filed ten pleadings in death penalty cases in the month of May alone. He also filed two pleadings in federal court in June, with additional pleadings due in July 2026, oral argument before the Kentucky Supreme Court in two consolidated capital cases on August 13, 2026 (the day after Sanders' Petition for a Writ of Certiorari would be due if an extension of time is not granted), another Petition for a Writ of Certiorari due on August 16, 2026, and another Petition for a Writ of Certiorari due in a capital case on September 27, 2026 if a pending application for an extension of time is granted. To give the Petition here the adequate attention it deserves and that the Court expects, a sixty-day extension of time is necessary.

Sanders therefore requests an extension of time from August 12, 2026, through, and including, October 11, 2026, to adequately develop and prepare a Petition for a Writ of Certiorari on Sanders' behalf.

Respectfully submitted,

/s/ David M. Barron

David M. Barron
Counsel of Record
Staff Attorney III
Ky. Department of Public Advocacy
Capital Post-Conviction Unit
5 Mill Creek Park, Section 101
Frankfort, KY 40601
(502)-782-3601 (direct line)
(502) 564-3948 (office)
david.barron@ky.gov

July 6, 2026