

No. _____

IN THE
Supreme Court of the United States

MARK ANTHONY GONZALEZ.,
Applicant,

— v. —

STATE OF TEXAS,
Respondent.

**APPLICATION TO THE HON. SAMUEL A. ALITO, JR.
FOR AN EXTENSION OF TIME TO FILE A PETITION FOR WRIT OF CERTIORARI TO THE
COURT OF CRIMINAL APPEALS OF TEXAS**

Pursuant to Rule 13.5 of the Rules of this Court, Applicant Mark Gonzalez respectfully requests an extension of 30 days, to and including December 18, 2026, within which to file a petition for a writ of certiorari to review the judgment of the Court of Criminal Appeals of Texas. Unless an extension is granted, the deadline for filing the petition for certiorari will be November 18, 2026.

In support of this request, Applicant states as follows:

1. The Court of Criminal Appeals of Texas entered its opinion denying habeas relief on August 20, 2026. A copy of the majority and concurring opinions are attached as an appendix. This Court has jurisdiction under 28 U.S.C. § 1257(a).

2. Absent an extension, the petition for a writ of certiorari is due on November 18, 2026. This is Applicant's first request for an extension of time. This application is being filed at least 10 days before the current due date.

3. Petitioner Mark Gonzalez was convicted of capital murder in October 2015, and the trial court set punishment at death pursuant to the jury's answers to special issues submitted under Texas law. His conviction and sentence were affirmed on direct appeal. *See Gonzalez v. State*, 616 S.W.3d 585, 587 (Tex. Crim. App. 2020) (published in part).

4. Mr. Gonzalez then pursued state collateral proceedings, represented by Texas's Office of Capital and Forensic Writs (OCFW). Mr. Gonzalez filed his state habeas application on April 3, 2019, and the habeas court ultimately convened an evidentiary hearing in August through September of 2022. Facts developed during the hearing established that "troubling" juror misconduct occurred during the jury's punishment phase deliberations. App. at 21. The jury deliberated until 1 a.m., after which they were sequestered overnight at a nearby hotel in shared rooms. At that point, there was a lone holdout juror for a life sentence. The holdout juror was placed in a room with an alternate juror who was already angry with the holdout juror for her life vote. As soon as they were alone in the room, the alternate juror accosted the holdout juror. The alternate juror became angrier as they spoke, accused the holdout juror of being on the defendant's side, and threatened her into voting for a death sentence. The holdout juror was scared, remained awake nearly all night (while the alternate juror eventually went to sleep in the bed beside her), and, in the morning, changed her vote to a death sentence. The incident itself is not in dispute: Both the holdout juror and the alternate juror testified about their fight in the hotel room, and factual findings about the alternate juror's improper conduct were accepted by both

the trial court and the Court of Criminal Appeals. The effect of the incident is also not in dispute: The holdout juror testified she changed her vote because of this improper pressure, and both the trial court and the Court of Criminal Appeals found the same. App. at 111.

5. But despite factual findings that establish the merits of Mr. Gonzalez’s claim, the Court of Criminal Appeals concluded that this claim was “procedurally barred.” The court did not explain or identify any “procedural bar”—and no default argument was ever raised by the state or entertained by the trial court below.

6. The petition is thus expected to present the following question: Whether it is adequate for a state court to deny adjudication of a claim based on an unnamed “procedural bar” despite finding an alternate juror—during an overnight sequestration—improperly pressured the sole holdout juror into changing her vote to death?

7. Good cause exists for the requested extension. Mr. Gonzalez was represented in state post-conviction proceedings by the OCFW, a Texas public defender agency. The assigned lead attorney for Mr. Gonzalez for the last eight years recently left the OCFW for a position at the University of Texas School of Law. The second-chair attorney during recent post-conviction proceedings, Heather Richard, is lead counsel for an initial post-conviction application in another capital case that must be filed on November 16, 2026—two days before the present deadline. In addition, Ms. Richard is counsel on several other death penalty cases with imminent briefing deadlines. The state court counsel of record, Benjamin Wolff, has overseen

the state court litigation of Mr. Gonzalez's case during the entire time it has pended in Texas courts but has not personally litigated the complex issues in Mr. Gonzalez's case. Moreover, the press of responsibilities associated with running a state agency, while also overseeing the office's litigation, means that Mr. Wolff cannot assume primary responsibility for the anticipated petition for writ of certiorari.

7. For these reasons, Yetter Coleman LLP was recently engaged. Counsel needs to review both a voluminous trial record and a voluminous habeas record. The trial, from jury selection to verdict, lasted more than two months. The evidentiary hearing during state habeas proceedings lasted more than two weeks. It will take considerable time for counsel to become familiar with this substantial record in order to prepare a concise petition to the Court. Counsel of record also had and has significant oral argument and briefing obligations leading up to the current deadline, including

- Preparing an appellee's brief filed September 30, 2026, in *Institutional Shareholder Services, Inc. and Glass, Lewis & Co., LLC v. Todd Rokita*, Nos. 26-2512, 26-2511, in the U.S. Court of Appeals for the Seventh Circuit.
- Preparing a reply on motion for preliminary injunction filed October 5, 2026, and participating in a hearing on that motion on October 8, 2026, in *Glass, Lewis & Co., LLC v. Gentner Drummond*, No. 5:26-cv-02382, in the U.S. District Court for the Western District of Oklahoma.

- Preparing for and participating in oral argument October 7, 2026, in *DC Transco, LLC v. Rainbow Energy Marketing Corp.*, No. 25-50906, in the U.S. Court of Appeals for the Fifth Circuit.
- Preparing a motion for en banc reconsideration due October 26, 2026, in *John P. Kotts and Bou-Matic LLC v. M.A. Mills, P.C.*, No. 14-25-00195-CV, in the Fourteenth Court of Appeals, Houston, Texas, after one extension.
- Preparing a reply in support of petition for review due November 2, 2026, in *Elaine T. Marshall v. Preston Marshall*, No. 26-0609, in the Supreme Court of Texas, after one extension.
- Preparing an appellants' brief due November 18, 2026, in *Elaine T. Marshall v. Preston Marshall*, No. 14-26-00819-CV, in the Fourteenth Court of Appeals, Houston, Texas after one extension.

8. Counsel for Respondent has been contacted and does not oppose the requested extension.

WHEREFORE, Applicant respectfully requests that the time to file the petition for a writ of certiorari be extended by 30 days, to and including December 18, 2026.

October 21, 2026

Respectfully submitted,



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