

No. _____

CAPITAL CASE

IN THE
SUPREME COURT OF THE UNITED STATES

XAVIER BROWN, *Applicant*,

v.

STATE OF MISSISSIPPI, *Respondent*

APPLICATION FOR AN EXTENSION OF TIME IN WHICH TO FILE A
PETITION FOR A WRIT OF CERTIORARI

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July 10, 2026

To the Honorable Samuel A. Alito, Jr., Associate Justice of the United States and Circuit Justice for the Fifth Circuit:

1. In accordance with this Court's Rules 13.5, 22, 30.2, and 30.3, Applicant Xavier Brown respectfully requests that the time to file his petition for a writ of certiorari be extended for 60 days, up to and including Monday, November 2, 2026. The Mississippi Supreme Court issued its order on January 29, 2026 (Exhibit A) and denied rehearing on June 4, 2026 (Exhibit B). Absent an extension of time, the petition would be due on September 2, 2026. The jurisdiction of this Court is based on 28 U.S.C. 1257. This request is unopposed.

2. This case presents two important questions of federal constitutional law in the context of capital conviction: (1) whether the Mississippi Supreme Court's application of the Confrontation Clause concerning how forensic scientific testimony must be treated contravenes this Court's precedent and the Sixth and Fourteenth Amendments; and 2) whether Mississippi's state procedural bars are adequate and independent of federal law.

3. During Brown's trial, three witnesses—Mark Berry, Danny Rigel, and Steven Hayne—each testified to forensic scientific opinions in a manner that violated the Confrontation Clause. Consequently, two broad categories of forensic scientific testimony would have been the subject of successful Confrontation Clause objections at the trial: (i) testimony about the cause of death of the main suspect, Anthony Sims; and (ii) testimony about scientific testing conducted on firearms or firearm projectiles. In each instance, there is no evidence that any of these witnesses participated in, conducted, or even observed the testing of the items that provided results to which they later testified about. Nor is there any evidence that the analysts who performed the actual testing were unavailable or that Brown had a prior opportunity to cross-examine those analysts.

4. Brown was convicted in 2002 of the capital murder of Felicia Newell after the jury returned a verdict of guilty. He was sentenced to death by lethal injection. The Mississippi Supreme Court affirmed Brown’s conviction and sentence on direct appeal.

5. On collateral review, the Mississippi Supreme Court found that Brown’s Confrontation Clause claims were not only waived, but that *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009), *Bullcoming v. New Mexico*, 564 U.S. 647 (2011), and *Smith* “are pronouncements of the continued adherence to *Crawford*.” *Brown v. State*, No. 2017-DR-01373-SCT, 2026 WL 312903, at *3 (Miss. Jan. 29, 2026). The problem with this is that Mississippi has applied the Confrontation Clause incorrectly all along, including under *Crawford* as well as under *Melendez-Diaz*, *Bullcoming*, and now *Smith*.

6. The Mississippi Supreme Court’s continued misapplication of this Court’s settled precedent in addition to its recent clarifications regarding the introduction of forensic scientific evidence is gravely problematic. Just last year, the court found no Confrontation Clause violation after a forensic scientist with no involvement in the testing process—and under the guise of a technical reviewer—relayed the results of the tests performed by a separate analyst to the jury. *See Busby v. State*, 422 So. 3d 974 (Miss. 2025). Indeed, this Court has recently acknowledged the Mississippi Supreme Court’s problematic application of *Smith* and the precedents contained therein. *See Busby v. Mississippi*, No. 25-6885, 2026 WL 1780189, at *1 (U.S. June 22, 2026) (vacating the judgment of the Mississippi Supreme Court and remanding for further consideration).

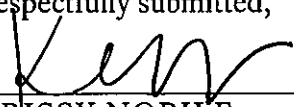
7. Brown’s petition will thus satisfy the Court’s criteria for certiorari because it will present important questions of federal constitutional law in the context of capital conviction.

8. Counsel respectfully requests additional time to file the petition for certiorari because counsel have numerous other substantial competing commitments in their other capital cases including:

- Pending motion by the State of Mississippi to set an execution date and pending successive state post-conviction petition in *Willie Jerome Manning v. State of Mississippi*, 95-DP-00066-SCT and 2023-DR-01076-SCT.
- Pending motion by the State of Mississippi to set an execution date, and a pending successive state post-conviction petition in *Robert Simon, Jr. v. State of Mississippi*, 91-DP-00353-SCT and 2016-DR-00092-SCT.
- Pending successive state post-conviction petition and briefing in *Devin Allen Bennett v. State of Mississippi*, 2025-DR-01074-SCT.
- Pending motion to dismiss by the State of Mississippi and pending successive state post-conviction petition in *Lisa Jo Chamberlin v. State of Mississippi*, 2025-DR-01034-SCT.
- Preparation of a successive state post-conviction petition following a *Rhines* stay in *Marlon Latodd Howell v. State of Mississippi*, 2023-DR-00455-SCT.
- Ongoing briefing and pending motions in an initial state post-conviction petition in *Willie Cory Godbolt v. State of Mississippi*, 2020-DP-00829-SCT.
- Preparation for an evidentiary hearing in *Tony Terrell Clark v. State of Mississippi*, 2022-DR-00829-SCT.
- Investigation and preparation of an initial state post-conviction petition in *Martez Abram v. State of Mississippi*, 2023-DP-00614-SCT.
- Extensive travel, investigation, and preparation of successive state post-conviction petitions and related motions in other active capital cases.

For these reasons, Xavier Brown respectfully requests that the time to file his petition for a writ of certiorari be extended for 60 days, up to and including Monday, November 2, 2026.

Respectfully submitted,



KRISSY NOBILE
Counsel of Record
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July 10, 2026

CERTIFICATE OF SERVICE

I certify that I have served copies of this *Motion* via U.S. mail, postage pre-paid, to all parties of record using the below address:

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This, the 10th day of July, 2026.



COUNSEL FOR APPLICANT