

No. 18-756

OCTOBER TERM, 2018

IN THE SUPREME COURT OF THE UNITED STATES

William Gittere, Warden, et al., Petitioners,

v.

Jose Lorente Echavarria, Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

**RESPONDENT'S APPLICATION TO EXTEND TIME TO FILE BRIEF
IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI**

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OCTOBER TERM, 2018

IN THE SUPREME COURT OF THE UNITED STATES

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v.

Jose Lorente Echavarria, Respondent.

**Respondent's Application to Extend Time to File Brief in Opposition to
Petition for Writ of Certiorari**

To the Honorable Elena Kagan, as Circuit Justice for the United States Court of Appeals for the Ninth Circuit:

Respondent Jose Lorente Echavarria respectfully requests that the time to file a Brief in Opposition to Petitioners' Petition for Writ of Certiorari in this matter be extended for sixty days to and including March 15, 2019. The Ninth Circuit issued its opinion on July 25, 2018. This Court granted Petitioners' request for an extension of time, moving the deadline for the Petition for Writ of Certiorari from October 23, 2018 to December 7, 2018. Absent an extension of time, the Brief in Opposition would be due on January 14, 2019, per this Court's docket. Respondent is filing this application at least ten days before that date. *See* S. Ct. R. 13.5. This Court has jurisdiction under 28 U.S.C. § 1254(1).

REASONS FOR GRANTING THE EXTENSION

The time for filing a Brief in Opposition should be extended for sixty days for the following reasons:

1. Counsel of record for Respondent, Assistant Federal Public Defender

Randolph M. Fiedler, has been unable to complete the Brief in Opposition, despite diligent efforts to do so, because of his extensive caseload and numerous deadlines. Specifically, on December 17, 2018, counsel filed a Petition for Rehearing or Rehearing En Banc in *Williams v. Filson*, No. 13-99002 (9th Cir.). Additionally, on December 20, 2018, counsel filed an Amended Petition in *Johnson v. Gittere*, No. 2:18-cv-00740-JAD-NJK (D. Nev.). Because of these obligations, counsel could not devote sufficient time to Mr. Echavarria's Brief in Opposition.

2. Additionally, the sixty days requested here is required because of upcoming case related responsibilities. On January 18, 2019, counsel must file a Reply to Responsive Brief Addressing Issues on Remand in *Ybarra v. Baker*, No. 3:00-cv-0233-GMN-VPC; on February 4, 2019, a Reply to Closing Brief in *Rogers v. Gittere*, No. 3:02-cv-00342-GMN-VPC. In addition to these deadlines, counsel will be engaging in preparatory work for the following death penalty cases: an evidentiary hearing in *Adams v. Filson*, No. C069704 (8th Jud. Dist. Ct. Nev.); an evidentiary hearing in *Williams v. Filson*, No. 2:98-cv-00056-APG-VCF (D. Nev.); an amended petition in *Moore v. Gittere*, No. 2:13-cv-00655-JCM-CWH (D. Nev.); and argument in *Vanisi v. State*, No. CR98-0516 (2d Jud. Dist. Ct. Nev.).

3. As a result of these obligations, counsel cannot complete the Brief in Opposition before January 14, 2019; the sixty-day extension requested here will allow counsel to complete the Brief in Opposition no later than March 15, 2018.

4. This Court has repeatedly noted that death is different: “[t]he taking of life is irrevocable. It is in capital cases especially that the balance of conflicting interests must be weighed most heavily in favor of the procedural safeguards of the Bill of Rights.” *Reid v. Covert*, 354 U.S. 1, 45-46 (1957) (on rehearing) (Frankfurter, J., concurring). *See also Gregg v. Georgia*, 428 U.S. 153, 188 (1976) (“the penalty of death is different in kind from any other punishment imposed under our system of criminal justice.”). Capital litigants should be given every reasonable opportunity to be heard by the courts.

5. Counsel for Petitioner has expressed no opposition to the instant request for an extension of time. No meaningful prejudice would arise from the extension, as Petitioner does not oppose it, and this Court would decide the matter in the October 2018 Term regardless of whether an extension was granted.

DATED this 3rd day of January, 2019.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby declare that on 3rd day of January, 2019, I served Respondent's Application for Extension of Time to File Brief in Opposition to Petition for Writ of Certiorari on Petitioner William Gittere by depositing an envelope containing the Application in the United States mail, with first-class postage prepaid, addressed as follows:

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/s/ Randolph M. Fiedler
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