

IN THE
SUPREME COURT OF THE UNITED STATES

HAROLD W. CLARKE,
Applicant,

v.

BERMAN JUSTUS, JR.,
Respondent.

**APPLICATION FOR EXTENSION OF TIME WITHIN WHICH TO
FILE A PETITION FOR A WRIT OF CERTIORARI**

To the Honorable John G. Roberts, Jr., Chief Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Fourth Circuit:

Pursuant to Supreme Court Rule 13.5, Harold W. Clarke respectfully requests a 30-day extension, up to and including December 13, 2023, within which to file a petition for a writ of certiorari in this case. Applicant will seek review of the judgment in *Justus v. Clarke*, 20-6351 (4th Cir. Aug. 15, 2023). See App. A. Absent an extension of time, Mr. Clarke's petition for certiorari would be due on November 13, 2023. This application is filed more than 10 days before the petition is due. See Sup. Ct. R. 13.5. The Court's jurisdiction will be invoked under 28 U.S.C. § 1254.

1. The ruling from the U.S. Court of Appeals for the Fourth Circuit implicates an important issue of federal law which divides federal courts of appeals: the evidence required for an inmate to claim, under Rule 60(b), that his alleged

mental health condition prevented his filing a timely habeas petition and therefore allowed him to file an untimely challenge to his conviction. Because numerous habeas petitioners have one or more mental health conditions, and numerous habeas petitioners fail to comply with the statute of limitations set forth in the Anti-Terrorism and Effective Death Penalty Act and seek tolling to excuse that noncompliance, the question presented will arise in many cases and have a significant impact on habeas litigation and the finality of state criminal convictions.

2. Good cause for an extension exists because Mr. Clarke's counsel have other significant obligations between now and the current deadline to file the petition for certiorari, including: an amicus brief due in this Court on October 5, 2023 in *Missouri Dep't of Corr. v. Finney*, No. 23-203; a motion to dismiss hearing on October 6, 2023 in the U.S. District Court for the Eastern District of Virginia in *Nolef Turns v. Youngkin*, No. 3:23-cv-232; an opening brief and joint appendix due on October 11, 2023 in the U.S. Court of Appeals for the Fourth Circuit in *Metropolitan Washington Airports Authority v. Pan*, No. 23-1783; a response brief due on October 16, 2023 in the Court of Appeals of Virginia sitting *en banc* in *Orndoff v. Commonwealth*, No. 0973-21-4; an amicus brief due on October 17, 2023 in the U.S. Court of Appeals for the Fourth Circuit in *Mahmoud v. McKnight*, No. 23-1890; oral argument before the U.S. Court of Appeals for the Fourth Circuit in two cases: on October 24, 2023 in *Bhattacharya v. Murray*, No. 22-1999, and on October 27, 2023 in *Reid v. James Madison University*, No. 22-1441; and a response brief due on November 9, 2023 in the U.S. Court of Appeals for the Fourth Circuit in *Benton v. Layton et al.*, No. 23-1680.

3. Lastly, good cause for an extension exists because Justus does not object to an extension of time to file the petition.

5. For the foregoing reasons, Mr. Clarke respectfully requests that the time for filing a petition for a writ of certiorari in this case be extended by 30 days, to and including December 13, 2023.

Respectfully submitted.

/s/ Andrew N. Ferguson

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