

No. 24-A-251

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IN THE SUPREME COURT OF THE UNITED STATES

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DARRYL CARTER, THERESA HAWTHORNE, AND DIANE JOHNSON,  
*Applicants,*

v.

JAMES E. STEWART, SR., IN HIS OFFICIAL CAPACITY,  
*Respondent.*

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

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October 4, 2024

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

Pursuant to 28 U.S.C. § 2101(c) and Supreme Court Rules 13.5 and 22, applicants Darryl Carter, Theresa Hawthorne, and Diane Johnson (“Applicants”) respectfully request a further extension of time, for 14 days, to and including November 1, 2024, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit. The Fifth Circuit denied Applicants’ petition for rehearing en banc on June 20, 2024; the panel opinion was withdrawn and reissued the same date. By previous Order, the time to file a petition for a writ of certiorari was extended to and including October 18, 2024. *Darryl Carter, et al. v. James E. Stewart, Sr.*, Application No. 24A251 (Sept. 10, 2024).

1. Applicants Carter, Hawthorne, and Johnson, Black citizens of Caddo Parish, Louisiana, were each excluded from jury service in criminal trials as a result of the exercise of peremptory challenges by employees of the District Attorney (Respondent Stewart is the current District Attorney, sued in his official capacity). Applicants joined a lawsuit brought under 42 U.S.C. §1983, alleging that Respondent's policy of racial discrimination in the exercise of peremptory challenges was the moving force behind their exclusion. Applicants submitted statistical analysis from the public records of 395 Caddo Parish criminal trials from January 2003 through June 17, 2015, showing that prospective Black jurors had 4.97 times greater odds of being struck by Defendant's assistants than did non-Black jurors. They also provided evidence from one of Respondent's former assistant prosecutors, from a criminal defense attorney, and from a public letter written by the Respondent Stewart after this suit was filed.

2. The District Court granted summary judgment to Defendant. On appeal, the Fifth Circuit held that Plaintiffs did not establish the predicate Fourteenth Amendment violation, crediting the trial prosecutors' reasons for the strikes (given during their depositions) despite evidence contradicting those reasons, and disregarding the expert report.

3. Although this Court has noted that "[w]e have held that individual jurors subjected to racial exclusion have the legal right to bring suit on their own behalf," *Powers v. Ohio*, 499 U.S. 400, 414 (1991) (citing *Carter v. Jury Comm'n of Greene County*, 396 U.S. 320, 329-30 (1970)), the instant case is one of a very few

attempts by excluded jurors to do so. The threshold for withstanding summary judgment erected by the opinions of the District Court and Court of Appeals, unique in their resolution of conflicting evidence at that stage, neuters this Court's pronouncements in *Powers* and *Carter* about the rights of prospective jurors.

4. This case thus presents an important question of federal law: What is the standard governing civil rights lawsuits brought by prospective jurors seeking redress for their racially-motivated exclusion from jury service?

5. Good cause exists for a further extension of time to prepare a petition for a writ of certiorari in this case due to the press of business on numerous other matters. Applicant's previous request cited these matters, which are listed in paragraph 6 below; however, in the time since the previous Application, the Attorney General of Mississippi has filed a Motion to Set Execution Date in *State of Mississippi v. Richard Gerald Jordan*, No. 1998-DP-00901-SCT (Miss., Oct. 1, 2024). Counsel for Applicants represent Mr. Jordan in a civil rights action seeking injunctive relief related to Mississippi's execution protocol. *Jordan, et al. v. Cain, et al.*, No. 15-cv-295-HTW-LGI in the United States District Court for the Southern District of Mississippi. Thus, undersigned counsel must prepare for proceedings in the § 1983 case related to Mississippi's requested execution date.

6. For the convenience of the Court, the matters listed in the previous Application were:

- *Jones, et al. v. Hutson, et al.*, No. 12-859-LMA-MBN (E.D. La.): June 24-27, and July 22-26, 2024, Court-appointed monitor inspection of the Orleans Justice Center (jail subject to consent judgment).

- *Wearry v. Perrilloux, et al.*, No. 18-594 (M.D. La.): June 27, 2024 discovery deadline (twelve depositions taken); August 15-16, 2024, opposition to motion for summary judgment filed and motion for stay of proceedings to allow substitution of counsel.
- *Murray, et al. v. LeBlanc, et al.*, No. 21-592 (M.D. La.): July 3 and July 8, 2024: motion for summary judgment filed; August 12, 2024, opposition to motion for summary judgment filed; August 21, 2024, reply in support of summary judgment filed.
- *State of Louisiana v. Travis Boys*, No. 525-362-I (Orleans Parish Criminal District Court): July 29, 2024, Supplemental Application for Post-Conviction Relief (life without parole case).
- *State of Louisiana v. Nathaniel Lambert*, No. No. 525-362-D (Orleans Parish Criminal District Court): July 30, 2024, Supplemental Application for Post-Conviction Relief (life without parole case).
- *Garcia v. Cain, et al.*, No. 24-52 (S.D. Miss.): September 6, 2024: habeas corpus petition deadline (death penalty case).
- *Cobbins v. Graham, et al.*, No. 21-155 (M.D. La): September 13, 2024 discovery deadline (fourteen depositions taken to date); September 30, 2024, summary judgment deadline.
- *Archer v. City of New Orleans*, No. 21-852 c/w 21-1079 (E.D. La.): August 28, 2024, witness and exhibit list filed; September 10, 2024, opposition to motion for summary judgment due.

7. An further extension of time is also justified because it would permit undersigned counsel to provide the quality of comprehensive analysis that would aid this Court in determining whether to grant certiorari.

8. As set forth above, this is Applicants' second motion for an extension of time from this Court.

9. For the foregoing reasons, the application for a 14-day extension of time, to and including November 1, 2024, within which to file a petition for a writ of certiorari in this case should be granted.

Respectfully Submitted,

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