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IN THE
SUPREME COURT OF THE UNITED STATES

CHAD ALAN LEE,

Petitioner,

v.

RYAN THORNELL, ET AL.,

Respondents.

APPLICATION FOR EXTENSION OF TIME TO FILE PETITION FOR
WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

To the Honorable Elena Kagan, Associate Justice of the Supreme Court of the United States and
Circuit Justice for the Ninth Circuit:

Pursuant to Supreme Court Rules 13.5, 22, and 30, Petitioner Chad Alan Lee (“Lee”), an Arizona death row prisoner, prays for a 56-day extension of time to file his petition for writ of certiorari in this Court to and including February 24, 2025. Pursuant to the Court’s jurisdiction under 28 U.S.C. § 1254(1), Lee will petition for certiorari to have the Court review the order and amended opinion of the United States Court of Appeals for the Ninth Circuit of September 30, 2024, which denied Lee’s Petition for Rehearing and Petition for Rehearing En Banc that challenged the court’s affirmance of the denial of the writ of habeas corpus.

Lee attaches the panel’s order and amended opinion as an Appendix.

Lee was convicted in the Superior Court of Maricopa County, Arizona, of three first-degree murders and sentenced to death. (App. at 2.) Relief was denied on direct appeal (App.

at 8), and in state post-conviction relief (“PCR”) proceedings (App. at 9-11).

In federal habeas proceedings, Lee alleged for the first time a claim of ineffective assistance of trial counsel (“IATC”) for failure to investigate and present to the capital sentencing judge evidence that Lee “might have had neurological damage as a result of prenatal exposure to alcohol.” (App. at 12.) In February 2005, the district court ruled the claim procedurally defaulted. (App. at 12.) After briefs were filed in the Ninth Circuit, this Court decided *Martinez v. Ryan*, 566 U.S. 1 (2012), and the Ninth Circuit stayed the appeal and remanded for consideration of whether the ineffective assistance of PCR counsel constituted cause to excuse the procedural default of the IATC/mitigation claim. (App. at 12.) Lee attached to his *Martinez* remand briefing in the district court mitigating evidence that Lee suffered from Fetal Alcohol Syndrome and Fetal Alcohol Effect at the time of the offenses—resulting from his *in utero* exposure to alcohol. (App. at 13.)

The District Court again ruled the claim defaulted. (App. at 13.) The parties filed supplemental briefs in the Ninth Circuit but before the court considered the appeal, this Court decided *Shinn v. Ramirez*, 596 U.S. 366 (2022), which held that 28 U.S.C. § 2254(e)(2) barred the federal courts from considering evidence not previously presented in state court—either to establish the IAC of PCR counsel or the underlying IATC claim. *Id.* at 382, 386. Lee successfully moved the Ninth Circuit to submit briefing on alternative theories to excuse the procedural default of the IATC claim apart from the avenue that nearly completely foreclosed consideration of cause and prejudice under *Martinez*. (App. at 14.) The circuit panel noted that Lee posited “novel” theories for excusing the procedural default of his IATC claim apart from that now fairly foreclosed by *Shinn* and allowing the federal courts to consider his new evidence. (App. at 17.)

The extension requested is justified due to the need for undersigned counsel to update

in the forthcoming petition for writ of certiorari the case law in support of the alternative theories of cause and prejudice submitted in Lee’s Ninth Circuit briefing after *Shinn*. Those theories include: 1) whether new evidence may be admitted in federal court in support of PCR counsel abandonment under *Maples v. Thomas*, 565 U.S. 266, 287 (2012), which theory was necessitated by this Court’s holding in *Shinn* that new evidence may not be admitted in federal court under 28 U.S.C. § 2254(e)(2) in support of cause under *Martinez*, 566 U.S. 1, (*see App.* at 17); and 2) whether new evidence may be admitted where the state supreme court’s procedure for the appointment of PCR counsel permitted such woefully deficient counsel that such counsel’s lack of diligence cannot be attributed to Lee under § 2254(e)(2) because that appointment deprived Lee of “meaningful process” in the state PCR proceeding (*App.* at 20).

Undersigned counsel’s preparation of the petition has also been delayed by his efforts on behalf of other capital clients whose cases undersigned counsel has been assigned as counsel in the Capital Habeas Unit of the Office of the Federal Public Defender for the District of Arizona. Counsel serves as sole counsel in six federal capital habeas corpus cases and as co-counsel in several others. Counsel is preparing a petition for writ of certiorari in another Arizona capital habeas corpus appeal, *Darrel Lee v. Thornell*, 108 F.4th 1148 (9th Cir. 2024), where the Ninth Circuit affirmed the district court’s denial of relief on Lee’s petition pursuant to 28 U.S.C. § 2254 and recently denied rehearing. *See Order, Lee v. Thornell*, No. 10-99022 (9th Cir. Nov. 20, 2024).

Undersigned counsel has no dilatory purpose in extending the due date to file the petition for writ of certiorari. The time is necessary to adequately represent Lee before the Court.

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Wherefore, Lee respectfully requests that an order be entered extending his time to petition for certiorari to and including February 24, 2025.

Respectfully submitted,



December 19, 2024.

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