

No. \_\_\_\_\_

\*\*\* CAPITAL CASE \*\*\*

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**In the Supreme Court of the United States**

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KARL DOUGLAS ROBERTS,

*Petitioner*

v.

DEXTER PAYNE, Director,  
Arkansas Division of Correction,

*Respondent*

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APPLICATION TO EXTEND TIME TO FILE A PETITION FOR A WRIT OF  
CERTIORARI FROM JANUARY 13, 2025, TO MARCH 14, 2025

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To the Honorable Brett M. Kavanaugh, Associate Justice of the Supreme Court of  
the United States and Circuit Justice for the Eighth Circuit:

Under 28 U.S.C. § 2101(c) and Supreme Court Rules 13.5, 22, and 30.3,  
petitioner Karl Roberts respectfully requests that the time to file a petition for a  
writ of certiorari be extended up to and including March 14, 2025.

Roberts will seek review of the opinion of the United States Court of Appeals  
for the Eighth Circuit in *Roberts v. Payne*, 113 F.4th 801 (8th Cir. 2024). *See*  
Appendix. A. The Eighth Circuit denied a timely petition for rehearing on October  
15, 2024. *See* Appendix. B. This Court will have jurisdiction under 28 U.S.C. §

1254(1). The time to seek certiorari currently expires on January 13, 2025. An extension of time is necessary to adequately prepare an argument on significant constitutional and statutory issues presented in this capital habeas corpus case.

The Eighth Circuit below rejected Roberts’s claim that he is ineligible for the death penalty under *Atkins v. Virginia*, 536 U.S. 304 (2002). It did so by applying AEDPA deference, 28 U.S.C. § 2254(d)(1), to a 1999 state-law ruling that found Roberts “subject to the death penalty” under Ark. Code Ann. § 5-4-618, the state statute prohibiting death sentences for persons with “mental retardation.” App. A at 9–10. The 1999 ruling did not consider any federal constitutional argument and occurred before this Court decided *Atkins*. The Eighth Circuit acknowledged the ruling as “statutory” and as having “occurred prior to the *Atkins* decision,” yet still held that it “constituted an adjudication of the *Atkins* claim ‘on the merits’ for purposes of AEDPA review.” App. A. at 10. The Eighth Circuit did not suggest any alternate grounds for denying the claim.

This case is complex procedurally and factually. It includes seven published decisions of the Arkansas Supreme Court, a stay of federal proceedings in attempt to exhaust, and a 2017 evidentiary hearing on the *Atkins* claim that resulted in no consideration of the new record due to the state courts’ conclusion that the 1999 ruling may not be relitigated. The case is also complex legally. It implicates distinct lines of this Court’s precedent that inform whether § 2254(d) review is ever permissible for pure state-law decisions, especially those rendered before a relevant federal right existed. *See, e.g., Greene v. Fisher*, 565 U.S. 34, 38 (2011) (where §

2254(d) applies, “federal courts [must] measure state-court decisions against this Court’s precedents as of the time the state court renders its decision”); *Gonzalez v. Crosby*, 545 U.S. 524, 530 (2005) (construing the term “claim”—as used across AEDPA statutes including § 2254(d)—to mean “an asserted federal basis for relief”); *Baldwin v. Reese*, 541 U.S. 27, 29 (2004) (describing the need to “alert [the state] court to the federal nature of the claim.”).

The undersigned attorneys have only recently taken on Roberts’s case. Attorney Fenwick had no role in the case until Roberts’s long-time attorney resigned from the Federal Defender’s Office in December 2023. Former counsel kept the case for oral argument under a CJA appointment due to his unique understanding of the issues. Attorney Satanovsky was added to the case in September 2024 following the Eighth Circuit’s decision. Roberts was represented in the Eighth Circuit below (and in the district court and state-court *Atkins* proceedings) by other lawyers who also no longer work at the Federal Defender’s Office. Since that time, the undersigned have inherited multiple capital cases from the departing attorneys adding further demands and deadlines to their schedules. Despite diligent efforts, counsel’s duties in other death-penalty matters will prevent a timely completion of an adequate certiorari petition within the time allowed by Rule 13.1.

No prior application for extension has been made in this case. Due to the complex history of the case, the volume of record evidence, and the doctrinal nuances presented by the Eighth Circuit’s novel use of AEDPA deference to a state-

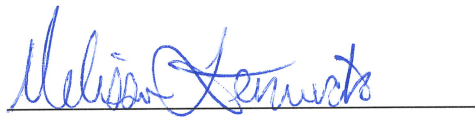
law ruling rendered before any federal right existed, Roberts respectfully requests a 60-day extension of time to prepare a proper and effective certiorari petition.

Wherefore, Petitioner Karl Roberts respectfully requests that the Court extend the time to file a petition for a writ of certiorari up to and including Friday, March 14, 2025.

Dated: December 23, 2024

Respectfully submitted,

LISA G. PETERS  
FEDERAL PUBLIC DEFENDER



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