

No. 24A\_\_\_\_\_

---

IN THE  
SUPREME COURT OF THE UNITED STATES

---

THERESA BATSON,  
*Applicant,*

v.

FLORIDA DEPARTMENT OF CORRECTIONS,  
*Respondent.*

---

**APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH  
TO FILE PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT**

---

DAVID C. FREDERICK  
*Counsel of Record*  
KELLOGG, HANSEN, TODD,  
FIGEL & FREDERICK, P.L.L.C.  
1615 M Street, N.W., Suite 400  
Washington, D.C. 20036  
(202) 326-7900  
(dfrederick@kellogghansen.com)

*Counsel of Record for Applicant  
Theresa Batson*

March 26, 2025

## RELATED CASES

### Decisions Under Review:

*Cassidy v. Secretary, Florida Dep't of Corrs. & Batson v. Florida Dep't of Corrs.*, 119 F.4th 1336 (11th Cir. Oct. 28, 2024) (Nos. 21-14257 & 23-13367) (affirming district court in part, vacating in part, and remanding)

*Batson v. Florida Dep't of Corrs.*, 2023 WL 6142460 (S.D. Fla. Sept. 20, 2023) (No. 22-cv-14354-BLOOM/Reinhart) (order dismissing 28 U.S.C. § 2254 petition as untimely)

*Batson v. Florida Dep't of Corrs.*, No. 23-13367 (11th Cir. Jan. 10, 2025) (order denying rehearing)

### Prior, Related Decisions:

*Batson v. State*, 85 So. 3d 496 (Fla. Dist. Ct. App. Mar. 28, 2012) (No. 4D10-3380)

*Batson v. State*, 211 So. 3d 133 (Fla. Dist. Ct. App. Feb. 1, 2017) (No. 4D15-2728)

*Batson v. State*, 257 So. 3d 134 (Fla. Dist. Ct. App. Nov. 1, 2018) (No. 4D17-2906)

*Batson v. State*, 324 So. 3d 942 (Fla. Dist. Ct. App. Aug. 26, 2021) (No. 4D21-680)

**APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH  
TO FILE PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT**

---

To the Honorable Clarence Thomas, Associate Justice of the United States Supreme Court and Circuit Justice for the Eleventh Circuit:

Pursuant to 28 U.S.C. § 2101(c) and Rules 13.5, 22, and 30.3 of the Rules of this Court, applicant Theresa Batson respectfully requests a 32-day extension of time, up to and including May 12, 2025, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit (because the 30th day (May 10) falls on a Saturday, the extension seeks to have the petition due for filing on Monday, May 12).

The court of appeals entered its judgment and issued an opinion on October 28, 2024, and denied a petition for rehearing on January 10, 2025. The court of appeals' opinion (reported at 119 F.4th 1336) is attached hereto as Exhibit A, and the order denying rehearing is attached as Exhibit B. The order of the district court is not reported (but is available at 2023 WL 6142460) and is attached as Exhibit C. The petition would be due on April 10, 2025, and this application is made at least 10 days before that date. This Court's jurisdiction would be invoked under 28 U.S.C. § 1254(1).

1. This case presents an important question about whether a state court's entry of an amended judgment "nunc pro tunc" prevents that judgment from restarting the federal Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA")'s statute of limitations period for filing a habeas petition, 28 U.S.C.

§ 2244(d)(1)(A). In *Gonzalez v. Thaler*, 565 U.S. 134 (2012), this Court held that § 2244(d)(1)(A)'s limitations period required a “uniform” federal interpretation and rejected “usher[ing] in state-by-state definitions” of its terms. *Id.* at 152. Courts of appeals have echoed that sentiment, holding that “state law has no bearing on the finality inquiry under AEDPA.” *Scott v. Hubert*, 635 F.3d 659, 664-65 (5th Cir. 2011); *accord Crangle v. Kelly*, 838 F.3d 673, 680 (6th Cir. 2016) (per curiam) (“[a] state court’s decision to affix the label *nunc pro tunc* to an order does not control” AEDPA’s federal statute of limitations period).

Contrary to this Court’s instruction that the federal limitations period for habeas petitions should not turn on the idiosyncrasies of state law, the Eleventh Circuit held in this case that “*the determining factor*” for whether an amended judgment restarts AEDPA’s statute of limitations clock is how a state court chooses to label that judgment. *Cassidy v. Secretary, Florida Dep’t of Corr.*, 119 F.4th 1336, 1341 (11th Cir. 2024) (quoting *Osbourne v. Secretary, Florida Dep’t of Corr.*, 968 F.3d 1261, 1266 (11th Cir. 2020)) (emphasis in *Cassidy*). As a result, if a petitioner in Alabama, Florida, or Georgia secures an amended judgment that substantively alters her convictions or sentence but the state court labels that judgment *nunc pro tunc* to the original judgment, the federal limitations period does not reset. *Id.* But if a state court in Kentucky, Tennessee, Indiana, or Ohio enters an amended judgment using that same label, the limitations period runs anew. Congress did not intend that anomalous result.

**2.** The 32-day extension to file a certiorari petition is necessary because undersigned counsel needs the additional time to review the record and prepare

the petition and appendix in light of other, previously engaged matters, including: (1) ongoing discovery in the Northern District of Florida in *In re: Depo-Provera Products Liability Litigation*, No. 3:25-md-3140 (beginning Mar. 27, 2025); (2) a merits *amicus* brief in this Court in *Laboratory Corp. of America v. Davis*, No. 24-304 (due Apr. 7, 2025); (3) a brief in opposition in this Court in *Merck Sharp & Dohme Corp. v. Albrecht*, No. 24-977 (due Apr. 11, 2025); (4) an opening merits brief and joint appendix in the Federal Circuit in *Truinject Corp. v. Galderma*, No. 25-1268 (due Apr. 11, 2025); (5) a cert-stage reply brief in this Court in *Rutherford v. United States*, No. 24-820 (due Apr. 23, 2025); and (6) oral argument in the Fourth Circuit in *Bestwall LLC v. Official Committee of Asbestos Claimants*, No. 24-1493 (scheduled for May 8, 2025).

For all these reasons, there is good cause for a 32-day extension of time, up to and including May 12, 2025, within which to file a certiorari petition in this case to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

Respectfully submitted,



---

DAVID C. FREDERICK  
*Counsel of Record*  
KELLOGG, HANSEN, TODD,  
FIGEL & FREDERICK, P.L.L.C.  
1615 M Street, N.W., Suite 400  
Washington, D.C. 20036  
(202) 326-7900  
(dfrederick@kellogghansen.com)

*Counsel of Record for Applicant*  
*Theresa Batson*

March 26, 2025