

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

DAVID WILSON,)	
)	
Petitioner,)	
)	
v.)	Case No. 1:19-CV-284-WKW-CSC
)	
JEFFERSON S. DUNN, Commissioner,)	DEATH PENALTY CASE
)	
Respondent.)	

**MOTION TO TEMPORARILY SUSPEND DEADLINES
DURING THE COVID-19 PANDEMIC**

Petitioner David Wilson, through undersigned counsel, respectfully requests that this Court temporarily suspend deadlines in this capital habeas corpus case until further notice in light of the COVID-19 pandemic and national emergency. In support of this request, Petitioner states the following:

1. This is a capital § 2254 habeas corpus case before this Court challenging Mr. David Wilson’s capital murder conviction and sentence of death from Houston County, Alabama.

2. Undersigned counsel was appointed to represent Mr. Wilson under the Criminal Justice Act, 18 U.S.C. § 3006A, less than two months ago, on January 29, 2020. (Doc. # 43)

3. Undersigned counsel has been and is continuing to diligently work on this case despite the COVID-19 pandemic outbreak. *See* Doc. 50 (February 25, 2020).

4. Since March 7, 2020, when the Governor of the State of New York, Andrew Cuomo, declared a state of emergency, and March 11, 2020, when the Director-General of the World Health Organization declared the COVID-19 epidemic to be a pandemic, it has become increasingly difficult for undersigned counsel to competently and adequately represent Mr. Wilson. *See* World Health Organization, “WHO announces COVID-19 outbreak a pandemic,” March 12, 2020, available at <http://www.euro.who.int/en/health-topics/health-emergencies/coronavirus-covid-19/news/news/2020/3/who-announces-covid-19-outbreak-a-pandemic>.

5. On March 12, 2020, the President of Columbia University extended the international travel restrictions for Columbia University affiliates to cover all domestic travel, thereby suspending all domestic travel by faculty at Columbia Law School, including undersigned counsel. As a result, undersigned counsel had to cancel plans to travel to investigate Mr. Wilson’s case, locate witnesses and experts, and meet with David Wilson and his family. Undersigned counsel can no longer meet in person with David Wilson to discuss the pleadings in his case, the proper reply to Respondent’s forthcoming response, and the need to amend the petition—

and is unable to meet in person with Mr. Wilson's family, potential witnesses, and mitigation experts, or to retrieve documents in Dothan, Alabama.

6. On March 13, 2020, President Donald Trump declared a national emergency in response to the spread of COVID-19, following which, on March 16, 2020, the Provost of Columbia University closed all Columbia University libraries, including the Columbia Law School library. As a result, from that date onwards, undersigned counsel has not had access to any non-electronic materials, such as, for instance, the leading two-volume habeas corpus treatise by Randy Hertz and James S. Liebman, *Federal Habeas Corpus Practice and Procedure* 1089-92 (7th ed. 2015). As of that date, undersigned counsel no longer has access to a law library.

7. On March 17, 2020, the Alabama Department of Corrections declared that "General legal visits conducted in-person by attorneys with inmates will be suspended for 30 days." See ADOC PUBLIC ANNOUNCEMENT: COVID-19, March 17, 2020, available at <http://www.doc.alabama.gov/covid19news>. As of that date, undersigned counsel could not meet in person with Mr. Wilson to review the issues surrounding the pleadings filed by Respondent even if Columbia University allowed him to travel to Alabama. The spread of the COVID-19 pandemic across the United States has compelled not only the Alabama Department of Corrections, but also other correctional systems across the country to limit physical access to incarcerated clients. For instance, the Federal Bureau of Prisons has suspended all

visits—including legal visits, except as allowed on an emergency case-by-case basis—until further notice. *See* Federal Bureau of Prisons, Federal Bureau of Prisons COVID-19 Action Plan, https://www.bop.gov/resources/news/20200313_covid-19.jsp (explaining that “legal visits will be suspended for 30 days” nationwide and that “case-by-case accommodation will be accomplished at the local level”). These kinds of restrictions impact undersigned counsel and Petitioner’s ability to prepare his amended petition and ancillary pleadings. Under normal circumstances, undersigned counsel would meet with Mr. Wilson for a face-to-face meeting of at least four hours to discuss all the issues that will need to be raised in the amended petition.

8. On March 20, 2020, New York State Governor Andrew Cuomo announced a statewide “stay-at-home shelter-in-place” executive order with a mandate that all non-emergency workers work from home effective March 23, 2020. Two days later, on Sunday, March 22, 2020, Columbia University closed all its buildings and facilities to faculty, students, and non-essential staff, meaning that faculty members are not allowed into the Columbia Law School building at all. Faculty members are prohibited from entering the law school and as a result cannot use their offices or work areas. *See* Memo from Emergency Response Team (“ERT”), Columbia Law School, March 22, 2020 (“Law School buildings will be closed to faculty, students, and non-essential staff—even with a CUID. Routine use

of offices and workstations will be prohibited”). As a result, undersigned counsel no longer has access to his office.

9. Undersigned counsel also no longer has access to his mailbox at Columbia Law School in Jerome Greene Hall. The Columbia University ERT stated in their March 22 memo that “Regular mail delivery and sorting services will be suspended until further notice. Those with mailboxes in Jerome Greene Hall will no longer be able to retrieve mail.” *See* Memo from ERT, Columbia Law School, March 22, 2020. As a result, undersigned counsel has not been able to retrieve the recently filed record submitted by Respondent on a 33-volume CD.

10. Moreover, undersigned counsel no longer has access to his files on Mr. Wilson’s case in his office, including his copies of the record and of all ongoing investigation. Undersigned counsel therefore, for example, cannot compare the state record filed (which he has not received) to his own copies of the record, which are in his office; he also does not have access to all his investigation files. Undersigned counsel does not have access to a law library. Undersigned counsel does not have access to any of his own case files in Mr. Wilson’s proceedings.

11. Undersigned counsel is now limited to working on a laptop from his home under an emergency stay-at-home state executive order from Governor Cuomo. Undersigned counsel has begun teaching students by Zoom videoconferencing and there have been significant difficulties with the transition to

Zoom which have required a lot of counsel's time and attention. Undersigned counsel also has important family obligations to maintain a healthy household for his spouse and son under the new restrictions in place in New York City. New York City, where undersigned counsel currently resides, has become a COVID-19 hot zone, with a rate of infection, according to White House officials, eight to ten times greater than other parts of the country. Currently, about 60 percent of the new COVID-19 cases in the country are arising in the New York City metropolitan area.

12. As of Monday, March 23, 2020, despite undersigned counsel's best efforts to adjust to the changing conditions surrounding the COVID-19 pandemic, his new working conditions have made it impossible for him to adequately and competently represent Mr. Wilson. The COVID-19 pandemic and related restrictions come at a particularly challenging time in this case because undersigned counsel is currently in the midst of investigation and identification of experts that normally require air travel and face-to-face communications with his client, witnesses, experts, and investigators. The crisis is posing implacable obstacles for undersigned counsel to represent Mr. Wilson competently. Undersigned counsel will continue to make every effort to work on this case virtually and from a distance, but it is going to take much longer to accomplish tasks and some of them will have to be delayed until undersigned counsel is able to travel domestically again.

13. Courts around the country have recognized that, since “the unprecedented and extraordinarily dangerous nature of the COVID-19 pandemic has become apparent,” exceptional measures are appropriate. *United States v. Stephens*, Case No. 1:15-cr-00095-ANJ, Doc. #2798, 2020 WL 1295155 (AJN) (S.D.N.Y. Mar. 19, 2020) (granting emergency release of defendant because Bureau of Prison limitations on legal visits impact ability to prepare defense with counsel); *Xochihua-Jaimes v. Barr*, Case No. 18-cv-71460 (9th Cir. Mar. 23, 2020) (“In light of the rapidly escalating public health crisis... the court *sua sponte* orders that Petitioner be immediately released from detention and that removal of Petitioner be stayed pending final disposition by this court”); *United States v. Barkman*, 2020 U.S. Dist. LEXIS 45628 (D. Nev. Mar. 17, 2020) (“With confirmed cases that indicate community spread, the time is now to take action to protect vulnerable populations and the community at large”).

14. Even the Supreme Court of the United States has entered exceptional measures in light of the COVID-19 pandemic. In response to the COVID-19 pandemic, the Supreme Court ordered on Thursday, March 19, 2020, that “the deadline to file any petition for a writ of certiorari due on or after the date of this order is extended to 150 days from the date of the lower court judgment, order denying discretionary review, or order denying a timely petition for rehearing,”

thereby temporarily modifying Rules 13.1 and 13.3. *See* Order List 598 U.S. (U.S., March 19, 2020).

15. In cases that are in discovery, parties are agreeing to, and judges are ordering, extended discovery. On March 13, 2020, in *Emily Sears v. Russell Road Food and Beverage, LLC*, Case No. 2:19-cv-01091-APG-NJK (D. Nev. Mar. 13, 2020), the court granted a stay of discovery because of “significant fears about traveling” for depositions. On March 17, 2020, in *In re Foreign Bank Exchange Benchmark Rates Antitrust Litigation*, Case No. 1:13-cv-7789 (S.D.N.Y., March 17, 2020), both parties jointly requested and received a nine-week discovery extension given the threat to public health posed by depositions and the need for domestic air travel in the course of discovery. And on March 16, 2020, in *United States of America v. King Bob Leonard and Tommy Ramirez*, Criminal No. 2019-12 (D.V.I. Mar. 16, 2020), the court found an extension of time “necessary to allow Ramirez the opportunity to properly prepare for trial in consultation with his counsel” in light of the ongoing pandemic.

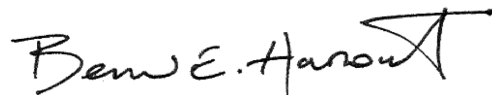
16. In addition, across the country, criminal trials and important legal proceedings are being suspended. On May 13, 2020, Chief Judge Timothy C. Evans of the Cook County Circuit Court in Chicago, Illinois, announced that starting on March 17, “For all adult criminal cases, all trials and many hearings scheduled for the 30 days are postponed to a future date.” *See* Circuit Court of Cook County, State

of Illinois, Press Release, March 13, 2020, available at <http://www.cookcountycourt.org/MEDIA/ViewPressRelease/tabid/338/ArticleId/2736/Chief-Judge-Evans-postpones-most-cases-for-30-days-due-to-coronavirus.aspx>. On March 13, 2020, the Massachusetts Supreme Judicial Court ordered that no new juries in either civil or criminal cases will be empaneled until at least April 21, 2020. *See* Supreme Judicial Court, Press Release, March 13, 2020, available at <https://www.mass.gov/news/supreme-judicial-court-issues-orders-to-protect-public-health-by-postponing-all-new-jury>. On March 27, Chief Justice Charles T. Canady of the Supreme Court of the State of Florida issued an administrative order extending the ongoing suspension of “all grand jury proceedings, jury selection proceedings, and criminal and civil jury trials” through April 17, 2020. *See* Supreme Court of Florida, Administrative Order, available at <https://www.floridasupremecourt.org/content/download/632431/7186205/AOSC20-17.pdf>. Courts around the country are *sua sponte* suspending legal proceedings.

FOR THE FOREGOING REASONS, undersigned counsel respectfully requests that this Court temporarily suspend deadlines in this death penalty habeas corpus case until the COVID-19 pandemic is resolved and matters return to normal.

Dated this 25th day of March 2020.

Respectfully submitted,

A handwritten signature in black ink that reads "Bernard E. Harcourt". The signature is written in a cursive style with a prominent, sweeping flourish at the end of the name.

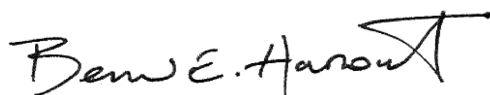
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CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2020, the foregoing has been electronically filed with the Clerk of the Court, thereby sending notice to:

Richard D. Anderson, Esq.
Alabama Assistant Attorney General
Office of the Attorney General
Attn: Capital Litigation Division
501 Washington Avenue
Montgomery, AL 36130

A handwritten signature in black ink that reads "Bernard E. Harcourt". The signature is written in a cursive style with a long horizontal stroke at the end.

Bernard E. Harcourt

Counsel for David Wilson