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11 Attorneys for Petitioner

12 UNITED STATES DISTRICT COURT

13 DISTRICT OF NEVADA

14 JAMES RAY WALKER,

15 Petitioner,

16 v.

17 WILLIAM GITTERE, et al.,

18 Respondents.
19

Case No. 2:15-cv-01240-RFB-EJY

**UNOPPOSED MOTION FOR
EXTENSION OF TIME TO FILE
SECOND AMENDED PETITION
FOR WRIT OF HABEAS CORPUS
(POST-CONVICTION)**

(SECOND REQUEST)

DEATH PENALTY CASE

21 James Ray Walker, through counsel, hereby requests an extension of time of
22 sixty (60) days, up to and including Friday December 3, 2021, within which to file
23 his Second Amended Petition for Writ of Habeas Corpus. This is Mr. Walker's

1 second request for an extension of time. The State does not oppose the motion. This
2 request is made and based on the following declaration of counsel and the entire file
3 herein.

4 DATED this 4th day of October, 2021.

5 Respectfully submitted
6 RENE L. VALLADARES
7 Federal Public Defender

8 /s/ Martin L. Novillo
9 MARTIN L. NOVILLO
10 Assistant Federal Public Defender
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DECLARATION OF MARTIN L. NOVILLO

I, Martin L. Novillo, declare as follows:

1. I am an attorney at law, admitted to practice before this Court, and employed as an Assistant Federal Public Defender. I represent petitioner James Ray Walker in this capital habeas case, having entered my appearance in this action on April 21, 2021. ECF No. 93.

2. Mr. Walker filed his proper person Petition for a Writ of Habeas Corpus on June 30, 2015. ECF No. 1. Mr. Walker amended his petition following the appointment of the Federal Public Defender for the District of Nevada (FPD). ECF Nos. 40, 77. On March 30, 2016, this Court entered an order staying this action while Petitioner exhausted in state court his unexhausted claims for habeas corpus relief. ECF No. 69.¹ The state proceedings concluded and, on May 6, 2021, this Court entered an Order vacating the stay previously entered and to re-opening Mr. Walker's federal habeas action. ECF No. 98. The Court further provided Mr. Walker would have 60 days, or until Monday July 5, 2021, to file a second amended petition for writ of habeas corpus. On July 6, 2021, counsel for Mr. Walker sought a ninety day (90) day extension to file Mr. Walker's second amended petition. ECF No. 99. The Court granted Mr. Walker's request on July 8, 2021. ECF No. 100.

¹ The Court denied the Respondents' motion for reconsideration of its order on November 18, 2016. ECF No. 74. The Court temporarily lifted the stay on May 16, 2017 to allow Mr. Walker to supplement his petition for writ of habeas corpus with a new claim. ECF No. 81. The Court noted the stay remained in effect in all other respects. ECF No. 81.

1 3. A second extension of time to file Mr. Walker’s second amended
2 petition is merited on account of several filing deadlines and commitments
3 undersigned counsel has had to meet since his first request for additional time.
4 Specifically, undersigned counsel had to prepare and finalize claims for a 598-page
5 amended habeas petition filed on August 30, 2021 in the capital habeas matter of
6 *Biela v. State*, 2019 Nev. Unpub. LEXIS 475 (D. Nev. 2019). Further, counsel had to
7 draft and file an appellate brief with the Ninth Circuit in the non-capital habeas
8 matter of *Sempier v. Baker, et al.*, 20-17249 (9th Cir.). Counsel also had to file a
9 petition for habeas relief in the non-capital habeas matter of *Bautista v. Garrett, et*
10 *al.*, 20-cv-00403-LRH (D. Nev.). Finally, counsel had to prepare various pre-trial
11 motions in the out-of-district federal capital trial case *United States v. Schlesinger*,
12 18-cr-02719-RCC-BGM (D. Ariz.). Co-counsel for Mr. Walker, Kenneth Lee, has
13 faced similar time constraints. Specifically, Mr. Lee has drafted a Ninth Circuit
14 Reply Brief in *Sherman v. Gittere*, 16-9900 (9th Cir) and prepared a 149-page
15 Opposition to Motion to Dismiss in *McConnell v. Gittere*, 3:10-cv-0021-GMN-WGC,
16 which counsel had to get a short extension to finish. Further, Lee has been assisting
17 in time-consuming lethal injection litigation matters in a capital habeas case where
18 the State has actively sought to execute his client during the present year.

19 4. An extension of time is also merited on account of counsel’s recent
20 inability to communicate or visit with Mr. Walker. For several months now, counsel
21 has had difficulty scheduling visits with Mr. Walker due to unresponsiveness on the
22 part of High Desert State Prison (HDSP) officials charged with processing such
23 requests. Starting approximately one month ago, HDSP ceased responding to

1 counsel's requests. On September 25, 2021, after several weeks of unsuccessfully
2 attempting to contact prison officials, counsel received confirmation he could visit
3 Mr. Walker. Communicating and visiting with Mr. Walker is critical to addressing
4 matters pertinent to his amended petition. Absent any unforeseen difficulties with
5 HDSP, counsel intends to visit Mr. Walker in the coming weeks.

6 5. The present request for an extension is unopposed. On September 30,
7 2021 counsel for Petitioner contacted Deputy Attorney Jessica Perlick via email
8 concerning this request for an extension of time. Ms. Perlick has no objection to the
9 request. Petitioner understands that opposing counsel's non-opposition does not
10 waive any claims, defenses, statute of limitations, or other substantive arguments
11 the Respondents may choose to raise at a later date. Petitioner further understands
12 Respondents are not making any factual concession regarding the basis for the
extension request, as provided above, by not objecting.

13 6. This requested extension will permit counsel time to meet with Mr.
14 Walker and adequately prepare his amended petition. It is not made for purposes of
15 delay, but rather in the interests of justice.

16 I declare under penalty of perjury that the foregoing is true and correct, and
17 that this declaration was executed on October 4, 2021, in Las Vegas, Nevada.

18 IT IS SO ORDERED:

19 

20 _____
21 RICHARD F. BOULWARE, II
22 United States District Judge

23 /s/ Martin L. Novillo
MARTIN L. NOVILLO
Assistant Federal Public Defender

DATED this 5th day of October, 2021.

1 **CERTIFICATE OF SERVICE**

2 In accordance with LR IC 4-1 of the Local Rules of Practice, the undersigned
3 hereby certifies that on the 4th of October, 2021, a true and correct copy of the
4 foregoing Unopposed Motion for Extension of Time to File Second Amended
5 Petition (Second Request) was served by the United States District Court, CM/ECF
6 electronic filing system to:

7 Jessica Perlick
8 Deputy Solicitor General
9 jperlick@ag.nv.gov

10 /s/ Sara Jelinek
11 An Employee of the
12 Federal Public Defender
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