

No. 18-5184

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IN THE SUPREME COURT OF THE UNITED STATES

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AHMAD SAYED HASHIMI, PETITIONER

v.

UNITED STATES OF AMERICA

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ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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MEMORANDUM FOR THE UNITED STATES

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NOEL J. FRANCISCO  
Solicitor General  
Counsel of Record  
Department of Justice  
Washington, D.C. 20530-0001  
SupremeCtBriefs@usdoj.gov  
(202) 514-2217

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Petitioner contends (Pet. 4-7) that his Sixth Amendment right to counsel was violated when, during closing arguments at his criminal trial, his attorney admitted his guilt on two of four counts. According to petitioner, defense counsel made that concession without consulting petitioner and over petitioner's objections. See Pet. 2-6. When petitioner raised that claim below, the court of appeals reasoned that counsel's concession "may have been a strategic decision" and concluded that petitioner

"should raise this claim, if at all," in a motion under 28 U.S.C. 2255. Pet. App. 8.<sup>1</sup>

After the court of appeals issued its decision and denied a petition for rehearing en banc, this Court held in McCoy v. Louisiana, 138 S. Ct. 1500 (2018), that a defendant has a Sixth Amendment right to insist that counsel refrain from admitting guilt. Id. at 1505. The Court stated that, "[i]f a client declines to participate in his defense, then an attorney may permissibly guide the defense pursuant to the strategy she believes to be in the defendant's best interest." Id. at 1509. In contrast, if counsel is "[p]resented with express statements of the client's will to maintain innocence, \* \* \* counsel may not steer the ship the other way." Ibid.

The record in petitioner's case does not reveal whether petitioner did, in fact, insist that his trial attorney refrain from admitting guilt. See Gov't C.A. Br. 34. In rejecting petitioner's claim on direct appeal, however, the court of appeals discussed only whether trial counsel's concession of guilt was a strategic decision. Accordingly, the appropriate course in light of McCoy is to grant the petition for a writ of certiorari, vacate the court of appeals' judgment, and remand the case for further

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<sup>1</sup> The appendix to the petition for a writ of certiorari is not consecutively paginated. This memorandum refers to the pages as if they were consecutively paginated.

consideration of petitioner's challenge to his attorney's concession of guilt during closing argument.<sup>2</sup>

Respectfully submitted.

NOEL J. FRANCISCO  
Solicitor General

SEPTEMBER 2018

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<sup>2</sup> The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.