

IN THE
SUPREME COURT OF THE UNITED STATES

No.

EDMUND BOYLE,

Applicant,

v.

UNITED STATES OF AMERICA,

Respondent.

**APPLICATION TO THE HON. RUTH BADER GINSBURG FOR AN EXTENSION OF
TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT**

To the Hon. Ruth Bader Ginsburg, Associate Justice of the United States
Supreme Court and Circuit Justice for the Second Circuit:

Petitioner Edmund Boyle respectfully requests by his undersigned counsel,
pursuant to Rule 13(5) of the Rules of this Court, for an extension of time of 60
days, to and including June 28, 2018, for the filing of a petition for a writ of
certiorari to review the decision of the United States Court of Appeals for the
Second Circuit denying both Petitioner's request for a certificate of appealability
(COA) under 28 U.S.C. § 2253(c) and for reconsideration of such judgement. *See*
Exhibit 1, ECF Nos. 162, 167 in *Boyle v. United States*, No. 14-135 (2d Cir). The
jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

1. The date within which a petition for writ of certiorari would be due,
if not extended, is April 29, 2018. This motion is filed more than 10 days in
advance of that deadline.

2. The reason for this request is to provide counsel with adequate time and opportunity to prepare a petition for a writ of certiorari and to consult with Petitioner regarding the filing of such petition. Undersigned counsel is a solo practitioner, and has commitments in several matters currently pending in the federal district courts, court of appeals, and in this Court. Petitioner is also currently serving his term of imprisonment at a federal correctional facility in New Jersey, which is located several hours away from counsel's office. As a result of these circumstances, counsel has not had sufficient opportunity to consult with Petitioner in regard to perfecting the prospective petition.

3. Petitioner's input and aid in perfecting the petition for a writ of certiorari is important. The case presents a lengthy procedural history, and both the United States District Court for the Eastern District of New York and Second Circuit entered multiple orders relevant to Petitioner's request for habeas relief pursuant to 28 U.S.C. § 2255.

4. Petitioner's case also presents significant issues of constitutional importance. The courts below summarily dismissed Petitioner's habeas action without considering uncontroverted evidence supporting Petitioner's claim that the Government (1) suppressed *Brady* evidence regarding the benefits provided to the prosecution's key witness—virtually the only cooperating witness credited by the jury as to the charged burglaries—in exchange for his cooperation, and (2) suborned perjury during Petitioner's criminal trial regarding such subject.

5. In denying Petitioner's request for a COA, the court below also placed too heavy a burden on Petitioner by conducting a merit-based review of

the underlying claims. Under § 2253(c), the court below was required only to review whether Petitioner established a valid claim (i.e., *Brady* and/or *Napue* violation) showing the denial of a constitutional right—which Petitioner clearly satisfied.

6. Petitioner and his counsel require the additional requested time to perfect a petition addressing these important legal issues and to prepare arguments worthy of this Honorable Court's consideration. An extension of time will not delay service of Petitioner's sentence or otherwise prejudice respondent.

For the foregoing reasons, Petitioner prays that an extension of time to and including June 28, 2018, be granted within which Petitioner may file a petition for a writ of certiorari.

Dated: White Plains, New York
April 10, 2018

Respectfully Submitted,



Anthony DiPietro, Esq.
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Counsel for Edmund Boyle

CERTIFICATE OF SERVICE

I, Anthony DiPietro, Esq., being over eighteen and not a party to the action, affirm that on April 10, 2018, I served a copy, via United States Postal Service, of the Petitioner's motion for an extension of time to file a petition for a writ of certiorari, to:

Noel J. Francisco
Solicitor General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Dated: White Plains, New York
April 10, 2018

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "A. DiPietro".

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EXHIBIT 1

E.D.N.Y.-Bklyn
10-cv-2639
Johnson, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 8th day of January, two thousand eighteen.

Present: Reena Raggi,
Debra Ann Livingston,
Raymond J. Lohier, Jr.,
Circuit Judges.

Edmund Boyle,
Petitioner-Appellant,

v.

14-135

United States of America,
Respondent-Appellee.

Appellant, through counsel, moves for a remand or, alternatively, for a certificate of appealability. Upon due consideration, it is hereby ORDERED that the motion is DENIED and the appeal is DISMISSED because Appellant has not "made a substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c); *see also Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003), and has failed to show that "(1) jurists of reason would find it debatable whether the district court abused its discretion in denying the Rule [59(e)] motion, and (2) jurists of reason would find it debatable whether the underlying habeas petition, in light of the grounds alleged to support the [Rule 59(e)] motion, states a valid claim of the denial of a constitutional right." *Kellogg v. Strack*, 269 F.3d 100, 104 (2d Cir. 2001).

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court


Catherine O'Hagan Wolfe



**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 29th day of January, two thousand and eighteen,

Present: Reena Raggi,
Debra Ann Livingston,
Raymond J. Lohier, Jr.,
Circuit Judges.

Edmund Boyle,

Petitioner - Appellant,

v.

United States of America,

Respondent - Appellee.

ORDER

Docket No. 14-135

Appellant filed a motion for reconsideration and the panel that determined the motion has considered the request.

IT IS HEREBY ORDERED, that the motion is denied.

For The Court:

Catherine O'Hagan Wolfe,
Clerk of Court

Catherine O'Hagan Wolfe

The seal of the United States Court of Appeals for the Second Circuit is circular. It features the words "UNITED STATES" at the top and "SECOND CIRCUIT" at the bottom, separated by two stars on each side. The seal is positioned over the signature of Catherine O'Hagan Wolfe.