

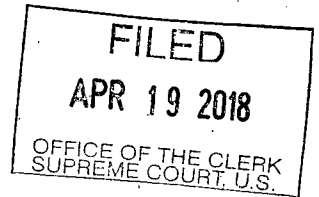
**18 - 8958**

No. \_\_\_\_\_

**ORIGINAL**

\_\_\_\_\_  
IN THE

SUPREME COURT OF THE UNITED STATES



\_\_\_\_\_  
**SHEILA DAVALLOO** — PETITIONER  
(Your Name)

vs.

\_\_\_\_\_  
**AMY LA MANNA** — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

**NO STATE OR FEDERAL COURT HAS RULED ON THE MERITS.**

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

\_\_\_\_\_  
**SHEILA DAVALLOO #0460449**

(Your Name)

**BEDFORD HILLS CORRECTIONAL FACILITY  
247 HARRIS ROAD**

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
**BEDFORD HILLS, NY 10507**

(City, State, Zip Code)

\_\_\_\_\_  
**N/A**

(Phone Number)

## QUESTION(S) PRESENTED

1) DOES THE UNCOMMON CIRCUMSTANCES OF THIS CASE RISE TO THE LEVEL OF AN "EXTRAORDINARY CIRCUMSTANCE" WARRANTING EQUITABLE TOLLING OF THE AEDPA STATUTE OF LIMITATION ?

2) IS THE STATE'S REFUSAL TO ADJUDICATE ON THE MERITS , PETITIONERS PROPERLY PRESENTED FEDERAL CLAIMS , A "STATE-CREATED IMPEDIMENT" ( § 2244 (d)(1)(B)) ?

## LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

## TABLE OF AUTHORITIES CITED

### CASES

### PAGE NUMBER

- 1) MASSIAH V. U.S.
- 2) JACKSON V. DENNO

### STATUTES AND RULES

- 1) AEDPA STATUTE OF LIMITATION
- 2) § 2244(d)(1)(B)

### OTHER

## TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	
STATEMENT OF THE CASE .....	
REASONS FOR GRANTING THE WRIT .....	
CONCLUSION.....	

## INDEX TO APPENDICES

APPENDIX A — OPINION OF STATE TRIAL COURT

APPENDIX B — STATE APPELLATE DIVISION

APPENDIX C — HIGHEST STATE COURT

APPENDIX D — FEDERAL DISTRICT COURT — SOUTHERN DISTRICT

APPENDIX E — COURT OF APPEALS FOR THE SECOND CIRCUIT

APPENDIX F

IN THE  
SUPREME COURT OF THE UNITED STATES  
  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

## JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was NOV. 28, 2018.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: JANUARY 23, 2019, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was \*.  
A copy of that decision appears at Appendix N/A.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

\* THE HIGHEST STATE COURT DISMISSED THE APPLICATION FOR LEAVE TO APPEAL  
ON NOVEMBER 24, 2016.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

THIS PETITION INVOLVES TWO FEDERAL CONSTITUTIONAL CLAIMS: MASSIAH VIOLATION AND COERCED CONFESSION, WHICH WERE NEVER ADJUDICATED ON THE MERITS. THE UNDERLYING SURREPTITIOUS RECORDINGS (NEVER DISCLOSED BY THE STATE) WERE OBTAINED ILLEGALLY, IN VIOLATION OF THE 5TH AND 6TH AMENDMENT RIGHT TO COUNSEL, BY AN AGENT OF THE POLICE - THE DEFENDANTS' PARAMOUR - AND ADDUCED AT TRIAL. THEY CONTAIN A COERCED CONFESSION, IN VIOLATION OF THE 14TH AMENDMENT RIGHT TO DUE PROCESS AND THE 5TH AMENDMENT RIGHT AGAINST SELF-INCRIMINATION. THEY WERE OBTAINED WHILE THE DEFENDANT WAS HOSPITALIZED IN A LOCKED PSYCHIATRIC WARD, UNDER OBSERVATION AND TREATMENT. THE STATE COURTS SUMMARILY DENIED THE DEFENDANTS' CLAIMS WITHOUT A MASSIAH OR JACKSON V. DENNO HEARING. THE UNUSUAL CIRCUMSTANCE OF THE PETITIONER'S CASE INCLUDES VARIOUS GAPS IN ACCESS TO HER LEGAL PAPERS AND LOSS OF PROPERTY (INCLUDING TRIAL TRANSCRIPTS) BY THE DEPARTMENT OF CORRECTIONS, IN ADDITION TO THE DELAYED DISCOVERY OF THE UNDISCLOSED SURREPTITIOUS RECORDINGS AND GAPS IN ACCESS TO THOSE TRANSCRIPTS. WITHOUT SOME FORM OF EQUITABLE CONSIDERATION, THE CLAIMS WILL NEVER BE REVIEWED ON THE MERITS.

## STATEMENT OF THE CASE

THE DEFENDANT WAS CONVICTED IN 2004 , FOLLOWING A BENCH TRIAL IN WESTCHESTER COUNTY , N.Y. , OF ATTEMPT MURDER AND SENTENCED TO A DETERMINATE TERM OF 25 YEARS IMPRISONMENT . THE APPELLATE DIVISION AFFIRMED AND THE DIRECT APPEAL WAS FINAL IN AUGUST 2007 .

TWO MONTHS LATER , A WARRANT WAS ISSUED FOR THE PETITIONER'S ARREST IN CONNECTICUT . EXTRADITION PROCEEDINGS ENSUED ( FINALIZED IN NOVEMBER 2008 ) . ON DECEMBER 30 , 2008 , THE PETITIONER WAS EXTRADITED TO CONNECTICUT PURSUANT TO AN INTERSTATE AGREEMENT ON DETAINERS . IN APRIL 2012 , THE PETITIONER WAS SENTENCED TO 50 YEARS , CONSECUTIVE TO HER NEW YORK SENTENCE . DUE TO HER EXTRADITION AND TRANSFER TO CONNECTICUT THE PETITIONER WAS UNABLE TO FURTHER PURSUE THE CLAIMS RAISED ON DIRECT APPEAL OR FIRST COLLATERAL PROCEEDING ; THOSE CLAIMS ARE TIME-BARRED . THE CLAIMS IN THE UNDERLYING HABEAS PETITION WERE RAISED FOR THE FIRST TIME IN A SECOND COLLATERAL PROCEEDING . THESE CLAIMS WERE DISCOVERED BELATEDLY IN CT , WHERE THE TRANSCRIPTS OF THE RECORDINGS WERE DISCLOSED .

THE UNDERLYING HABEAS PETITION WAS FILED ON NOVEMBER 24 , 2016 IN THE NEW YORK DISTRICT COURT FOR THE SOUTHERN DISTRICT ( 16 CV 9342 ( V B ) ) . ON JULY 5 , 2018 , THE HON. VINCENT BRICETTI , U.S.D.J. , ADOPTED THE REPORT AND RECOMMENDATION GRANTING RESPONDENT'S MOTION TO DISMISS THE PETITION AS TIME BARRED . THE COURT OF APPEALS FOR THE SECOND CIRCUIT DENIED PETITIONER'S MOTION FOR RECONSIDERATION ON JANUARY 23 , 2019 .

**REASONS FOR GRANTING THE PETITION**

**TO PROVIDE ONE OPPORTUNITY FOR MERITS REVIEW OF FEDERAL  
CONSTITUTIONAL CLAIMS.**

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Shirley D. Miller

Date: 4/18/19