

No.

IN THE
Supreme Court of the United States

NIRAJ PRABHAKAR PATEL,

Petitioner,

v.

STATE OF CONNECTICUT,

Respondent.

APPLICATION 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 HONORABLE RUTH BADER GINSBURG, CIRCUIT JUSTICE FOR
THE SECOND CIRCUIT:

Pursuant to this Court's Rule 13.5, Niraj Prabhakar Patel respectfully requests a 60-day extension of time, up to and including August 10, 2019, within which to file a petition for a writ of certiorari to the United States Court of Appeals for the Second Circuit.

Judgment Sought To Be Reviewed

The judgment of the Connecticut Supreme Court was entered on January 8, 2019. *State v. Patel*, 201 A.3d 459 (Conn. 2019) (attached as Exhibit A). The state supreme court denied Mr. Patel's timely motion for reconsideration on March 13, 2019. (Order attached as Exhibit B). Unless extended, the time within which to file a petition for a writ of certiorari will expire on June 11, 2019.

Basis For Jurisdiction Of This Court

The jurisdiction of this Court would be invoked under 28 U.S.C. § 1257.

Statement of Grounds Justifying Relief Sought

1. Petitioner Niraj Prabhakar Patel, following a trial, was convicted in 2016 in Connecticut state court under the felony murder doctrine, and related charges, for a 2012 homicide. *State v. Patel*, 201 A.3d at 463-65. The Petitioner was accused of organizing a home invasion/robbery, and transporting two individuals to and from that robbery, which resulted in one of the participants shooting and killing the victim. *Id.*

2. This case presents two potential issues with constitutional implications justifying certification. First, the State's case relied heavily on testimony regarding an alleged co-conspirator's statements which implicated the Petitioner. *Id.* at 471-72. In particular, a lengthy secret recording between the co-conspirator and a fellow inmate, made with the involvement of law enforcement, was played at trial and very damaging to the Petitioner. *Id.* The alleged co-conspirator implicated himself in the shooting and the Petitioner in the planning of the crime. *Id.* The co-conspirator never testified. *Id.* at 471. The trial court permitted the admission of these out-of-court statements, finding they were non-testimonial under *Crawford v. Washington*, 541 U.S. 36 (2004), *Davis v. Washington*, 547 U.S. 813 (2006), and

their progeny. The Appellate Court of Connecticut upheld this admission, and the Connecticut Supreme Court denied certification of this issue.

This issue presents important questions about the extent of the Confrontation Clause following the testimonial/non-testimonial distinctions discussed in *Crawford* and *Davis*. The Petitioner was convicted in great part on the basis of this co-conspirator's out-of-court statements even though he was never confronted or cross-examined. This Court has not ruled on the admissibility of a statement such as this: a dual inculpatory statement, made in a prison setting with the involvement of law enforcement in making the recording. This important issue is worthy of this Court's certification.

3. Second, the Petitioner became ill, including being stricken with laryngitis, during a weekend of trial following the conclusion of the state's case. *State v. Patel*, 201 A.3d at 465-66. As trials did not proceed on Mondays, the court granted a one-day continuance from Tuesday, January 26, to Wednesday, January 27. *Id.* at 465. The trial court denied a further continuance, and the defense proceeded with its other witnesses on January 27. *Id.* On January 28, as he was still ill, and his testimony was the last remaining part of evidence, the Petitioner asked for a further continuance to the following Tuesday, February 2, allow his voice to recover. *Id.* The trial court denied that continuance, ruling that the Petitioner must proceed on January 29, because "(1) the defendant had contributed to his own problem by not

following medical advice when he returned to work earlier in the week, (2) the defendant's physician had testified that the defendant could testify, and (3) the court had an amplification system to project the defendant's voice." *Id.* at 466.

The Petitioner testified on January 29, and, at the time of the mid-morning break, had testified about all events up to and through the homicide. *Id.* at 468. During the mid-morning break, the jury sent out a note stating the jury had difficulty hearing the Petitioner's testimony. *Id.* The Petitioner requested to poll the jurors to determine how much testimony had not been heard, and how many jurors had not heard; the request was denied. *Id.* The Petitioner moved for a mistrial, which was denied. *Id.* The trial court instead had the Petitioner's prior testimony readback to the jury, then continued his testimony after reconfiguring the placement of the microphone and speaker. *Id.* The Petitioner renewed a motion for mistrial following his testimony, which was denied. *Id.* These rulings were upheld by the Appellate Court of Connecticut, and the Connecticut Supreme Court denied certification.

This issue directly implicates defendants' right to testify in their own defense, a fundamental pillar of the judicial system and due process. This case presents questions regarding the importance of watching a witness' demeanor on the stand as the witness testifies to determine credibility and the permissibility of

substituting readback testimony for live testimony, particularly in criminal cases.

These issues are sufficient to warrant certification.

4. For each of these other issues, the Petitioner seeks additional time to research and complete his Petition for Certification.
5. Undersigned counsel is part of a two-attorney law firm. Senior counsel has been out of the office on unexpected medical leave since early March. Counsel has thus been out during the entirety of the 90-day window to prepare the Petition for Certification. During that period, counsel of record has continued to manage the cases of the law firm, including multiple appellate briefs to Connecticut courts of appeals. Senior counsel is expected to return to the office during the month of June. Additional time is necessary in order to permit counsel to complete review of the record below, to research the relevant legal issues, and to prepare and file a petition properly limited to issues that meet this Court's rigorous criteria for discretionary review. An August deadline would permit senior counsel to return to the office and participate in the research and drafting. Counsel is not aware of any party that would be prejudiced by the granting of a 60-day extension. Counsel for Respondent has no objection to the requested extension of time.

Accordingly, the Petitioner respectfully requests that an order be entered extending his time to file a petition for a writ of certiorari by 60 days, up to and including August 10, 2019.

Respectfully submitted.



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