No. 19–

In the Supreme Court of the United States

RAMINDER KAUR, PETITIONER

v.

STATE OF MARYLAND, RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

PETITION FOR A WRIT OF CERTIORARI

SAMUEL BRYANT DAVIDOFF
Counsel of Record
COLETTE T. CONNOR
WILLIAMS & CONNOLLY LLP
725 Twelfth Street, N.W.
Washington, DC 20005
(202) 434-5000
sdavidoff@wc.com

QUESTION PRESENTED

Whether the Sixth Amendment prohibits trial of a criminal defendant by prosecutors with extensive knowledge of both her privileged communications with her defense counsel and that counsel's investigative and strategic work product.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases:

In the Supreme Court of the United States

No. 20-

RAMINDER KAUR, PETITIONER

v.

STATE OF MARYLAND, RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

PETITION FOR A WRIT OF CERTIORARI

Petitioner Raminder Kaur respectfully petitions for a writ of certiorari to review the judgment of the Court of Appeals of Maryland in this case.

OPINIONS BELOW

The opinion of the Maryland Court of Appeals declining to review the judgment of the Maryland Court of Special Appeals is available at Pet. App. 1a. The unreported opinion of the Maryland Court of Special Appeals is at

Pet. App. 3a. The oral ruling of the Maryland Circuit Court is at Pet. App. 101a.

JURISDICTION

The Maryland Court of Appeals entered its judgment on October 18, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides in relevant part:

> In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence.

U.S. Const. amend. VI.

STATEMENT

"The Sixth Amendment stands as a constant admonition that if the constitutional safeguards it provides be lost, justice will not 'still be done.'" *Johnson v. Zerbst*, 304 U.S. 458, 462 (1938); *see also Gideon v. Wainwright*, 372 U.S. 335, 342–44 (1963). That these safeguards promise freedom from unwarranted intrusion into a criminal defendant's communications with his trial counsel has never been doubted. In *Weatherford v. Bursey*, 429 U.S. 545 (1977), the Court strongly suggested that the Sixth Amendment cannot tolerate a conviction secured after the prosecution learned "the details of [attorney-client] conversations about trial preparations" or where there has been "communication of defense strategy to the prosecution." *Id.* at 554, 558. Such an intrusion into a criminal defense would "unfairly advantage[] the prosecution, and threaten[] to subvert the adversary system of criminal justice." *Id.* at 556.

That type of intrusion is what occurred here. Petitioner's original trial counsel's complete file—which included strategic communications with her lawyers, records of her interviews with counsel, and investigative memoranda—was disclosed to the government during litigation over an ineffective assistance of counsel claim. After petitioner's success in that litigation, the Maryland trial court allowed prosecutors who had reviewed the privileged material to retry the defendant, notwithstanding the lead prosecutor's admission that "I have all the information in my head." Transcript of Hearing ("T.") (11/01/16) 11:1–11.

Petitioner was convicted, and on appeal, the Maryland Court of Special Appeals acknowledged petitioner's privilege was in "tatters" and that the "better course" would have been not to allow the tainted prosecutors to try the case. It nevertheless allowed the conviction to stand because it found insufficient prejudice, namely, that:

> The State's theory of the case did not change between trials. In each, the State theorized that [the] murderer could have been either [petitioner or her husband], but that it was more likely [petitioner].

Pet. App. 68a–69a. In other words, to make a finding of prejudice, the Maryland court would have required a showing that the privileged disclosure was so dramatic that it caused the prosecution to undergo a fundamental shift in its thinking about the nature of the crime and the relative culpability of the defendant.

This result flies in the face of the Sixth Amendment and the concerns the Court expressed in *Weatherford.* It would not stand in the federal courts of appeals and other

state courts of last resort that have considered this question. These courts have consistently held that a prosecutor's knowledge of privileged defense trial strategy renders any ensuing conviction a violation of the Sixth Amendment. Further, they have rejected the notion that a reviewing court can retrospectively salvage such a conviction by finding that the prosecution's knowledge of privileged defense strategy had an insufficiently prejudicial effect. But that is exactly the outcome the Maryland court sanctioned here.

If the Maryland court's ruling is allowed to stand, it would limit the Sixth Amendment's protections to only those privileged disclosures that contain such breathtaking revelations that they compel a radical rethinking of trial strategy. This would erode a right this Court has held "fundamental to our system of justice" and "meant to assure fairness in the adversary criminal process." *United States v. Morrison*, 449 U.S. 361, 364 (1981). For these reasons, the petition for certiorari should be granted.

1. On November 22, 2013, Baldeo Taneja and his wife, petitioner Raminder Kaur, were indicted for first-degree murder, conspiracy to commit murder, and a firearms charge. Indictment, No. 123952C, Dkt. No. 2 (Montgomery Cty. Cir. Ct.). The victim was Mr. Taneja's ex-wife, Preeta Gabba. Pet. App. 7a.

The evidence implicating Mr. Taneja in the murder was substantial. His divorce from the victim was acrimonious and followed by contentious personal and legal disputes between the two. T.(11/01/16) 93:20–25, 107:2–23. In the weeks before the murder, Mr. Taneja had taken shooting classes, obtained firearms, purchased a disguise, and attempted to convince a co-worker to lend him a car. T.(11/01/16) 80:6–17, 218:3–8; T.(11/07/16) 53:23–25; Def.'s

Ex. 61; T.(11/07/16) 15:25–16:12. After the murder, his DNA was found on the murder weapon. T.(11/03/16) vol. 1, 195:4–10.

The evidence linking Ms. Kaur to the murder was far more ambiguous. Ms. Kaur had no animosity towards the victim and no obvious motive. T.(11/01/16) 84:2–12. Her DNA was not present on the murder weapon (or on any of Mr. Taneja's firearms). T.(11/03/16) vol. 1, 195:4–21. Indeed, the only material evidence linking her to the crime was eyewitness testimony that the shooter, while unidentified, appeared to be a woman. T.(11/01/16) 269:7–9. Even this scant evidence was substantially undercut by Mr. Taneja's purchase of a disguise (including makeup and a long-haired wig) and the fact that the size and weight of the shooter matched Mr. Taneja, not Ms. Kaur. *See* T.(11/09/16) 154:7–155:19, 157:8–17, 170:23–24 (summarizing the evidence).

2. Mr. Taneja and Ms. Kaur were tried jointly in the summer of 2014, and the jury found them both guilty on all counts. Pet. App. 16a.

Ms. Kaur moved for a new trial on the ground that she received ineffective assistance of counsel because her trial counsel had failed to prepare for trial and had incorrectly advised her that the trial court would not permit her to testify in her own defense. *See* Def.'s Mot. for New Trial, Dkt. Nos. 270, 281.

In response to Ms. Kaur's motion, the government filed five motions seeking to subpoena the "entire" investigative and trial files of Ms. Kaur's lawyers, investigators, experts, and law clerks. Mot. Subpoenas, Dkt. Nos. 314–318. The trial court granted the motions and ordered the defense to "turn over the files in their entirety." T.(02/25/15) 13:7–23. The defense accordingly produced

the full case files maintained by each member of Ms. Kaur's defense team.

These files included, among other things: (1) extensive written correspondence from Ms. Kaur to her counsel regarding the charges against her and Mr. Taneja; (2) written summaries of meetings between Ms. Kaur and her counsel; (3) notes Ms. Kaur exchanged with her counsel during her trial; (4) e-mails between Kaur's attorneys discussing trial strategy; and (5) various memoranda and e-mails regarding the defense's factual investigations. Appellant's Br. 14–16, June 27, 2017.

Hearings on the motion for a new trial spanned six days of testimony, followed by oral argument. Dkt. Nos. 396, 400, 403, 408, 416, 421, 430. This included extensive cross-examination of Ms. Kaur and her defense team, including on their privileged communications and trial strategy. *See* T.(07/13/15) vol. 1, 83:3–149:8; T.(08/03/15) 125:22–160:4. The court ultimately found that the interests of justice required granting Ms. Kaur a new trial. T.(11/06/15) 3:23–14:17.

3. In anticipation of retrial, Ms. Kaur obtained a new defense team. Her new counsel immediately filed a motion for a protective order seeking to prevent the privileged information compulsorily disclosed during the post-trial proceedings from infecting Ms. Kaur's retrial. *See* Def.'s Mot. for Protective Order, Dkt. No. 469. Specifically, the defense asked the trial court to enter a protective order both barring further use of Ms. Kaur's privileged disclosures and requiring the government to litigate the retrial with a prosecution team untainted by those disclosures. Pet. App. 20a. The defense contended that merely prohibiting the evidentiary use of the disclosed information was inadequate because the privileged infor-

mation was indelibly imprinted on the minds of the prosecution team and inevitably would influence decision-making and strategy during the retrial. Def.'s Mot. for Protective Order, Dkt. No. 469, at 16.

The trial court refused to require a new prosecution team or even to hold an evidentiary hearing on the scope of the taint arising from the prosecution team's access to privileged information. Sealed T.(04/14/16) 4:3–11:22. The court merely required the prosecution team to refrain from introducing any privileged materials as evidence at the retrial. Sealed T.(04/14/16) 9:23–10:2. As even the lead prosecutor acknowledged, this restriction was nominal at best because "I have all the information in my head .... I can't, none of us can ever take out what's in our head." T.(11/01/16) 11:1–11.

4. Ms. Kaur was retried in the fall of 2016, by the same two prosecutors who tried her first case and who had cross-examined Kaur and her lawyers about their trial strategy and privileged communications in connection with the motion for new trial. *See* Pet. App. 59a. After a full day of deliberations, including a note stating that the jury was dead-locked, Ms. Kaur was convicted on all three counts and sentenced to life imprisonment. Pet. App. 6a.

5. Ms. Kaur appealed the trial court's denial of her request for a new trial team to the Maryland Court of Special Appeals. On June 7, 2019, the Court of Special Appeals affirmed Ms. Kaur's convictions in a 60-page unreported opinion. Pet. App. 3a. The court concluded that Ms. Kaur had failed to demonstrate that "there was 'at least a realistic possibility' that she was harmed in the second trial by the State's access to her privileged information, or that the State used such information to its advantage in the second trial." Pet. App. 56a.

6. Ms. Kaur petitioned the Maryland Court of Appeals to review the Court of Special Appeals' decision. On October 18, 2019, the Court of Appeals denied the petition. Pet. App. 1a.

ARGUMENT

I. The Maryland Court's Decision Conflicts with Decisions of the Federal Courts of Appeals and State Courts of Last Resort

1. In *Weatherford v. Bursey*, 429 U.S. 545, 547 (1977), the Court addressed whether a retrial was mandated when there was a knowing invasion of a criminal defendant's attorney-client relationship by an undercover agent. The Court held there was no such mandate and that retrial was not appropriate in that case because the district court had expressly found that "nothing at all" had been communicated "to the prosecution about [defendant's] trial plans or about the upcoming trial." *Id.* at 556. But in reaching its conclusion, the Court distinguished several prior precedents on the grounds that, "[i]n each case, some, but not all, of the conversations overheard were between the criminal defendant and his counsel during trial preparation." *Id.* at 551. It further noted that "had the prosecution learned from [the] undercover agent, the details of the [attorney-client] conversations about trial preparations, [the defendant] would have a much stronger case," and it suggested that, had that happened, it would have been "inherently detrimental to [the defendant], unfairly advantaged the prosecution, and threatened to subvert the adversary system of criminal justice." *Id.* at 554.

2. This principle—that the disclosure of privileged communications relating to strategy for an upcoming criminal trial is inherently prejudicial—has been readily adopted by lower courts. Indeed, no federal court of ap-

peals or state court of last resort has ever, until the Maryland court's decision here, suggested the Constitution permits trial following such a disclosure unless the defendant can show that the disclosure caused a radical change to the prosecution's theory of the case.

a. In *United States v. Levy*, 577 F.2d 200, 207–09 (3d Cir. 1978), the court of appeals addressed a situation where, unlike the situation in *Weatherford*, privileged information obtained by a government agent was actually transmitted to the prosecutor. The district court declined to grant relief, finding no prejudice notwithstanding that "there was both an admitted invasion of the attorney-client privilege and a transmittal of confidential information to the government." 577 F.2d at 208. The Third Circuit rejected this approach because it "would put future courts[] in the position of speculating about the prejudice to the defense of the disclosure in question." *Id.* This type of speculation, the court explained, was untenable. Even if a court were to learn of the disclosure before trial and hold an evidentiary hearing:

> [I]t is highly unlikely that a court can, in such a hearing, arrive at a certain conclusion as to how the government's knowledge of any part of the defense strategy might benefit the government in its further investigation of the case, in the subtle process of pretrial discussion with potential witnesses, in the selection of jurors, or in the dynamics of trial itself.

Id.

And were the court to address the issue after trial (as the Maryland appellate court attempted to do here, albeit solely based on a review of trial transcripts), it "would face

the virtually impossible task of reexamining the entire proceeding to determine whether the disclosed information influenced the government's investigation or presentation of its case or harmed the defense in any other way." *Id.*

Recognizing the inherent danger in such "prejudice" inquiries, the Third Circuit announced a clear rule for this type of Sixth Amendment analysis—a rule it found consistent with *Weatherford*—that "the inquiry into prejudice must stop at the point where attorney-client confidences are actually disclosed to the government enforcement agencies responsible for investigating and prosecuting the case." 577 F.2d at 209.

b. In *Bittaker v. Woodford*, 331 F.3d 715 (9th Cir. 2003) (en banc), the Ninth Circuit addressed a situation similar to the one presented here—an ineffective assistance proceeding where privileged material would need to be disclosed.[1] There, unlike here, the trial court proactively issued an order barring the state from disclosing the privileged materials to the prosecutors who would handle a retrial. 331 F.3d at 717 n.1. The Ninth Circuit

---

[1] The principle focus of the *Bittaker* court was the scope of the waiver of the attorney–client privilege attendant to a claim of ineffective assistance of counsel. *Bittaker v. Woodford*, 331 F.3d 715, 716–17 (9th Cir. 2003). The Ninth Circuit concluded, consistent with this Court's holding in *Simmons v. United States*, 390 U.S. 377 (1968), that the waiver did not extend beyond the proceedings necessary for the ineffective assistance claim. *Bittaker*, 331 F.3d at 722–23. In this case, the Maryland Court of Special Appeals agreed with that analysis, holding that Ms. Kaur's compelled production of her defense counsel's file and submission to cross-examination effected a limited waiver that did not extend to her retrial. Pet. App. 43a.

approved of this procedure as necessary to prevent tainting the retrial, noting that *not* issuing such an order would have been an abuse of discretion. *Id.* at 728.

In reaching this conclusion, the Ninth Circuit noted that the opposite result—allowing the retrial prosecutors access to the defense file—would "immediately and perversely skew the second trial in the prosecution's favor by handing to the state all the information in petitioner's first counsel's casefile." *Id.* at 722. It explained that allowing the prosecutors at a retrial "to use information gathered by the first defense lawyer—including defendant's statement to his lawyer—would give the prosecution a wholly gratuitous advantage." *Id.* at 724. And it emphasized that allowing the prosecution "such a munificent windfall" was "assuredly not consistent with the fairness principal" embodied in the Sixth Amendment. *Id.*

c. The Supreme Court of Nebraska in *Nebraska v. Bain*, 292 Neb. 398 (2016), demonstrated a similar understanding of the constitutional problems with allowing a defendant to be tried by prosecutors who had knowledge of privileged case strategy. In that case, prosecutors had gained access to defendant's privileged communications with his prior counsel through an inadvertent disclosure when that counsel had joined the attorney general's office. *Id.* at 401–02. Although the prosecuting attorney who tried the case had apparently not seen the disclosed communications, it was not clear whether other government representatives who conducted the pre-trial investigation had reviewed any of the material. *Id.* at 422.

The Nebraska Supreme Court surveyed the case law from federal and state courts and concluded the Sixth Amendment required a presumption of prejudice when the government becomes privy to a defendant's confidential trial strategy. *Id.* at 406–18. It so held based on its

view that federal courts had consistently held that: "(1) *any* use of the confidential information to the defendant's detriment is a Sixth Amendment violation that taints the trial and requires a reversal of the conviction; *and* (2) a defendant cannot know how the prosecution could have used confidential information in its possession." *Id.* at 418. It concluded this presumption could only be rebutted by a government demonstration with clear and convincing evidence that the defendant was not prejudiced. *Id.* at 423. As a result, it vacated the defendant's conviction and remanded the case for an evidentiary hearing. *Id.*

d. The Connecticut Supreme Court reached a nearly identical conclusion in *Connecticut v. Lenarz*, 301 Conn. 417 (2011). There the state had inadvertently obtained the defendant's privileged trial strategy discussions via a valid search warrant. *Id.* at 420–22. The state acknowledged its prosecutor had read the materials but claimed that there was no prejudice because he had not used them to conduct further investigation. *Id.* at 422. As in *Bain*, the Connecticut Supreme Court concluded that "because the privileged materials at issue contained the defendant's trial strategy and were disclosed to the prosecutor, the defendant was presumptively prejudiced" at trial. 301 Conn. at 426.

The court explained that, regardless of how the prosecution obtained the privileged information, if it related to defendant's trial strategy and was disclosed to prosecutors involved in the subsequent trial, its disclosure was "*inherently prejudicial.*" *Id.* at 436–37. Like the court in *Bain*, the Connecticut court concluded the presumption could only be rebutted by a clear and convincing evidentiary showing. 301 Conn. at 438. The government was unable to meet that burden. And because the defendant

had been publicly retried by a prosecutor who—like the prosecutors here—had reviewed "privileged communications that contained a detailed, explicit road map of the defendant's trial strategy," the court concluded that the only reasonable remedy was dismissal of the indictment. *Id.* at 558.

e. Other courts, while not explicitly presuming prejudice from the disclosure of trial strategy, require the government to make an affirmative showing that there was no prejudice to the defendant by proving the government did not directly or indirectly use the information to prepare its case against the defendant. *See United States v. Danielson*, 325 F.3d 1054, 1072 (9th Cir. 2003); *United States v. Mastroianni*, 749 F.2d 900 (1st Cir. 1984). In *Mastroianni*, for example, the First Circuit held that a defendant makes a prima facie showing of prejudice when the defendant "prove[s] that confidential communications were conveyed as a result of the presence of a government informant at a defense meeting." 749 F.2d at 907–08. The burden then shifts to the government to show that the communications will not result in prejudice. *Id.*[2]

---

[2] While uniform on the constitutional prejudice from a disclosure of privileged trial strategy, lower courts have reached different conclusions about what circumstances require dismissal of an indictment rather than a new trial. *Cf. United States v. Levy*, 577 F.2d 200, 210 (3d Cir. 1978) (dismissing indictment); *Connecticut v. Lenarz*, 301 Conn. at 426 ("[B]ecause, after reviewing the privileged materials, the prosecutor tried the case to conclusion, the taint caused by the state's intrusion into the privileged communications would be irremediable on retrial and the charge of which the defendant was convicted must be dismissed."); *Delaware v. Robinson*, 209 A.3d 25, 58 (Del. 2019) (en banc) (reversing dismissal of indictment and instead disqualifying prosecutors where "'taint' was contained and did not infect the prosecutors").

3. None of the federal courts of appeal or state courts of last resort have come close to sanctioning what happened here. No court has, as the Maryland court did here, made a finding of a Sixth Amendment violation contingent on the defendant's showing that a prosecutor's review of privileged defense trial strategy—let alone the defense counsel's entire case file—caused a seismic shift in trial strategy and tactics. Not only does such a holding dramatically reduce the Sixth Amendment's protections in this area, but it places a nearly impossible evidentiary burden on the defendant whose privilege has been violated. As the courts above have recognized, attempting in hindsight to show how a prosecutor's trial actions might have been different but for knowing the defense's trial strategy is an exercise in speculation and futility. *See, e.g.*, *Danielson*, 325 F.3d at 1071; *Mastroianni*, 749 F.2d at 907. "The prosecution makes a host of discretionary and judgmental decisions in preparing its case," and "[i]t would be virtually impossible for an appellant or a court to sort out how any particular piece of information in the possession of the prosecution was consciously or subconsciously factored into each of those decisions." *Danielson*, 325 F.3d at 1071 (internal quotation marks omitted). It cannot be the rule that the defendant must face the "virtual[] impossib[ility]" of showing a drastic responsive change in the prosecution's strategy. *Id.* This case presents an opportunity for this Court to correct the Maryland court's departure from the holdings of the other federal and state courts regarding the Sixth Amendment's protection of the attorney-client privilege and defense trial strategy.

II. The Decision Below Decides an Important Federal Question in a Way that Undermines the Sixth Amendment's Protections

If allowed to stand, the Maryland court's opinion portends a retreat from Sixth Amendment protections that had previously protected a defendant's communication with criminal trial counsel.

1. The opportunities for the government to obtain privileged information in a criminal context are many. As was the case here, defendants may be forced to disclose privileged information to vindicate a claim of ineffective assistance of counsel. That vindication will prove hollow if the result is surrendering a strategic windfall to the prosecution at a retrial—precisely what occurred here. Indeed, it was just such a concern that troubled the Court in *Simmons v. United States* when it pronounced it "intolerable that one constitutional right should have to be surrendered in order to assert another." 390 U.S. 377, 393–94 (1968).

The government might also obtain privileged information through the use of cooperating witnesses or undercover agents or through the execution of search warrants, as occurred in several of the cases cited above. *See, e.g.*, *Levy*, 577 F.2d at 202–04, 208; *Lenarz*, 301 Conn. 417, 420–22. These opportunities will only expand with the proliferation of electronic communications. An undercover agent with access to a defendant's computer or e-mail could easily encounter myriad privileged documents. A routine warrant covering a cell phone or computer could capture the entirety of a defendant's written communications with counsel over e-mail or text messages.

2. Protection of the Sixth Amendment's guarantees to criminal defendants is vital in this context. Confidentiality between attorney and accused is "the oldest of the

privileges for confidential communications known to the common law." *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981). The protection of this privilege is critical to a criminal defendant's exercise of his right to assistance of counsel. *See Weatherford*, 429 U.S. at 566 n.4; *Greater Newburyport Clamshell All. v. Pub. Serv. Co. of N.H.*, 838 F.2d 13, 21 (1st Cir. 1988) ("[U]tmost candor between an attorney and client is essential to effective assistance of counsel."); *United States v. Rosner*, 485 F.2d 1213, 1224 (2d Cir. 1973) ("[T]he essence of the Sixth Amendment right is, indeed, privacy of communication with counsel."). Similarly the protections of the work-product doctrine are vital to the proper functioning of the criminal justice system. "The interests of society and the accused in obtaining a fair and accurate resolution of the question of guilt or innocence demand that adequate safeguards assure the thorough preparation and presentation of each side of the case." *United States v. Nobles*, 422 U.S. 225, 238 (1975).

3. As explained above, this Court has not yet provided guidance on the contours of this right when privileged communications are disclosed or on how the right may be vindicated. The lower courts in both the federal and state systems have generally reached consensus on some issues (e.g., the inherent prejudice from disclosure of trial strategy) but have taken varied approaches to others (e.g., the process for rebutting a presumption of prejudice; the propriety of dismissal as a remedy).

4. The rule announced by the Maryland court, however, is a stark outlier. It holds that a defendant cannot obtain relief unless he can show, based solely on the trial record, that a disclosure of privileged information changed the theory of the case or altered the course of the trial. Pet. App. 69a. This is not a reasonable standard. As

courts have recognized, even with a right to a hearing (which was denied petitioner here), a defendant would be hard pressed to show all the ways a prosecution team might change its investigative strategy, trial strategy, theory of the case, presentation of evidence, or questions on cross examination. *Danielson*, 325 F.3d at 1071; *Mastroianni*, 749 F.2d at 907.

The Maryland court's holding neuters the Sixth Amendment's protection of a criminal defendant's privilege. Under that court's ruling, an accused individual consults with an attorney with the knowledge that his communications will not be meaningfully protected if they are obtained by the government. The result is inevitable—defendants will find that keeping their own counsel is safer than seeking the advice of their attorney. *See Fisher v. United States*, 425 U.S. 391, 403 (1976) ("if the client knows that damaging information could more readily be obtained from the attorney following disclosure than from himself in the absence of disclosure, the client would be reluctant to confide in his lawyer"). And this is precisely the result the Sixth Amendment seeks to avoid.

5. At a minimum, this case presents an opportunity for the Court to undo the harm to the Sixth Amendment occasioned by the Maryland court's opinion here. If it desires, the Court could also use this case as an opportunity to provided needed clarification on the contours of the protection that Amendment affords to a criminal defendant's attorney-client privilege.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

SAMUEL BRYANT DAVIDOFF
COLETTE T. CONNOR
WILLIAMS & CONNOLLY LLP
725 Twelfth Street, N.W.
Washington, DC 20005
(202) 434-5000
sdavidoff@wc.com

JANUARY 15, 2020