

No. 19A

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IN THE SUPREME COURT OF THE UNITED STATES

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David Zachary Morgan,  
*Applicant,*

v.

State of Washington,  
*Respondent.*

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**APPLICATION FOR AN EXTENSION OF TIME  
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI**

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AMIR H. ALI  
*Counsel of Record*  
RODERICK & SOLANGE  
MACARTHUR JUSTICE CENTER  
777 6th Street NW, 11th Floor  
Washington, DC 20001  
(202) 869-3434  
amir.ali@macarthurjustice.org

*Attorney for Applicant*  
*David Zachary Morgan*

July 26, 2019

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To the Honorable Elena Kagan, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Ninth Circuit:

Pursuant to this Court’s Rules 13.5, 22, and 30.3, Applicant David Zachary Morgan requests a 60-day extension of time to file a petition for a writ of certiorari to review the judgment of the Washington Supreme Court in this case, to October 13, 2019.

As discussed herein, this case involves an exceptionally important question of federal constitutional law relating to protection afforded to “effects” under the Fourth Amendment. Applicant requests this extension because he only recently retained Counsel of Record Amir H. Ali to represent him *pro bono* before this Court. Mr. Ali has several substantial briefing deadlines and oral arguments during the relevant period, and requires additional time to research the factual record and to conduct the level of analysis that aids this Court in determining whether to grant certiorari.

In support of this request, Applicant states as follows:

1. The Washington Supreme Court issued its opinion on May 16, 2019. *See State v. Morgan*, 440 P.3d 136 (Wash. 2019) (attached hereto at Attachment A). The time for filing a petition would thus expire on August 14, 2019 absent an extension. Consistent with Rule 13.5, this application has been filed at least 10 days before that date. This Court has jurisdiction over the case under 28 U.S.C. § 1257(a).

2. This case concerns an exceptionally important constitutional issue—namely, whether an investigator who believes that a person’s effects has evidentiary value may, in lieu of obtaining a warrant, send a fellow officer to just find and seize the effects, on the theory that the effects will have come into the seizing officer’s “plain view.” A majority of the Washington Supreme Court answered this question in the affirmative, holding that the seizure of Applicant’s clothing from his hospital room, at the instruction of the investigating Sergeant, was justified under the “plain view” exception to the Fourth Amendment.

3. The dissenting Justices would have held that the seizure of Applicant’s clothing could not be justified under the “plain view” doctrine, at a minimum, because the seizing officer did not have any personal knowledge of the possibly incriminating nature of the clothing when he seized it. The dissenting Justices would not have imported this Court’s “fellow officer” rule, which allows officers to make warrantless arrests based on their collective information, to the plain view doctrine.

4. Applicant intends to file a petition for certiorari asking this Court to resolve this constitutional issue. Applicant requests additional time to file the

petition because he only just retained Amir H. Ali to represent him *pro bono* before this Court. Because counsel is new to the case, he requires additional time to gather the relevant record materials for the state court proceedings in this case and to undertake the research and analysis that aids this Court in determining whether to add a case to its merits docket.

5. During the period of the sought extension, counsel also has several substantial briefing deadlines and oral arguments. These include:

- A reply brief in the U.S. Court of Appeals for the Second Circuit in *Jones v. Treubig*, No. 18-3775, due August 5, 2019;
- A merits-stage amicus in *McKinney v. Arizona*, No. 18-1109, due August 28, 2019;
- Oral argument in the U.S. Court of Appeals for the Third Circuit in *Jones v. Capozza*, No. 18-03671, scheduled for September 13, 2019;
- A petition for certiorari from the Supreme Court of Pennsylvania in *Commonwealth v. Shaffer*, No. 16 WAP 2018, 2019 WL 2509345 (Pa. June 18, 2019), due September 16, 2019;
- Oral argument in the U.S. Court of Appeals for the Tenth Circuit in *Smart v. City of Wichita*, No. 18-3242, scheduled for September 23, 2019.

6. Applicant has not previously sought an extension of time from this Court.

7. For these reasons, Applicant respectfully requests that the time to file a petition for a writ of certiorari be extended to and including October 13, 2019.

Respectfully submitted,



AMIR H. ALI

*Counsel of Record*

RODERICK & SOLANGE

MACARTHUR JUSTICE CENTER

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Washington, DC 20001

(202) 869-3434

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