

No. 19A\_\_\_\_\_

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IN THE  
**Supreme Court of the United States**

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LOUIS TAYLOR,  
*Applicant,*

v.

COUNTY OF PIMA; CITY OF TUCSON,  
*Respondents.*

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**APPLICATION FOR AN EXTENSION OF TIME TO FILE A  
PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT**

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October 28, 2019

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## APPLICATION

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

Pursuant to Rule 13.5 of the Rules of this Court and 28 U.S.C. § 2101(c), applicant Louis Taylor respectfully requests a 30-day extension of time, to and including December 12, 2019, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

1. The Ninth Circuit entered judgment on January 17, 2019. *See Taylor v. County of Pima*, 913 F.3d 930 (App. 1a-25a). Applicant filed a timely petition for rehearing en banc, which was denied on August 14, 2019. *See App. 26a-27a*. Unless extended, the time to file a petition for certiorari will expire on November 12, 2019. This application is being filed more than ten days before a petition is currently due. *See S. Ct. R. 13.5*. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1).

2. In 1970, a fire burned down the Pioneer Hotel in Tucson, Arizona, killing 28 people inside. Louis Taylor, a 16-year old African-American, was found in the hotel as he helped guests to safety. After an all-night interrogation in which Taylor insistently denied any involvement in the fire, Taylor was arrested and charged with murder by Pima County. His trial was marred by numerous constitutional violations: The prosecution's principal witness was an arson "expert" who believed that Taylor was guilty because "black boys" are more likely to start fires; an-

other prosecution witness falsely testified that Taylor had confessed to setting the fire using accelerants; and the prosecutor—who was simultaneously defending himself against five ethics charges, for which he was later jailed—concealed from the defense an expert report indicating, contrary to testimony the prosecution presented, that no accelerants were used in the fire. In 1972, an all-white jury convicted Taylor and a judge sentenced him to life imprisonment.

3. In 2011, after Taylor had spent nearly four decades in prison, Pima County released previously sealed portions of its file, including the “no accelerant” report it had withheld from the defense. The following year, an Arson Review Committee composed of fire experts reviewed the evidence in Taylor’s case and concluded that the Pioneer Hotel fire could not be classified as arson at all. Taylor filed a motion for post-conviction relief seeking his immediate release. Pima County acknowledged that, in light of the new evidence, “the State would be unable to proceed with a retrial, and the convictions would not stand.” Nonetheless, the county refused to agree to Taylor’s release unless Taylor pled no contest to time served. Faced with the Hobson’s choice of either accepting a no-contest plea and obtaining his immediate release, or remaining indefinitely in prison while the county fought his release in the courts, Taylor agreed to the no-contest plea, while maintaining his innocence. In 2013, a state court vacated Taylor’s conviction, accepted the plea, and ordered Taylor’s immediate release.

4. Taylor then filed a 42 U.S.C. § 1983 suit against the City of Tucson and Pima County, alleging that the defendants had committed numerous constitutional

violations in his 1972 trial, and seeking compensation for his 42 years of wrongful imprisonment. After initially ruling that Taylor's claim could proceed, the district court later reversed course and held that *Heck v. Humphrey*, 512 U.S. 477 (1994), barred Taylor from recovering *any* damages for his term of imprisonment, because such an award would "necessarily imply the invalidity" of his 2013 sentence to time served. *Id.* at 487.

5. In a sharply divided 2-1 decision, the Ninth Circuit affirmed. App. 14a. The majority reasoned that because "Taylor's 2013 conviction . . . remains valid," he is barred by *Heck* from bringing a § 1983 claim that "would necessarily imply the invalidity of his [2013] conviction or sentence." App. 11a (brackets in original) (quoting *Heck*, 512 U.S. at 487). The panel further asserted that "Taylor's valid 2013 conviction and sentence are the sole legal cause of his incarceration." App. 13a. It thus concluded that Taylor could not recover any damages for his term of imprisonment, because any such damages would call into question the validity of his "unchallenged [2013] conviction and sentence." App. 14a.

6. Judge Schroeder dissented. She explained that the majority's ruling "magnifies an already tragic injustice" and "perpetuates an abuse of power that § 1983 should redress." App. 22a, 25a. She argued that the majority "den[ie]d the reality of the situation" by asserting that Taylor's after-the-fact plea to time served had "caused" the preceding 42 years of wrongful imprisonment. App. 25a. And she observed that Supreme Court precedent and the decisions of other circuits "support[] the award of damages" here. App. 23a.

7. Taylor petitioned for rehearing and rehearing en banc. Over Judge Schroeder's dissent, the Ninth Circuit denied the petition. App. 26a-27a.

8. The Ninth Circuit's decision sharply conflicts with the precedents of this Court, splits with the decisions of other Circuits, and presents a question of profound importance. Five Justices and several Courts of Appeals have concluded that *Heck* does not bar relief by a former prisoner, like Taylor, who lacked an opportunity to challenge his conviction or sentence while incarcerated. See *Spencer v. Kemna*, 523 U.S. 1, 20-21 (1998) (Souter, J., joined by O'Connor, Ginsburg, and Breyer, JJ., concurring); *id.* at 24 n.8 (Stevens, J., dissenting); see also *Teichman v. New York*, 769 F.3d 821, 829 & n.1 (2d Cir. 2014) (Calabresi, J., concurring) (outlining circuit split). Courts in other Circuits have also held that, even where *Heck* applies, plaintiffs similarly situated to Taylor may recover damages for their period of incarceration. See, e.g., *Thomas v. City of Philadelphia*, 2019 WL 4039575 (E.D. Pa. Aug. 27, 2019); *Kitchen v. Pa. Bd. of Probation & Parole*, 2017 WL 4151170, (M.D. Pa. Sept. 19, 2017); *McFarlane v. Carothers*, 2018 WL 4625660 (S.D. Ind. Sept. 27, 2018), *adopting report and recommendation*, 2018 WL 5914848 (S.D. Ind. July 10, 2018). By splitting from the decisions of these courts—and barring Taylor from obtaining *any* recovery for his 42 years of wrongful imprisonment because Pima County insisted, as a condition of his release, that Taylor plead no contest to time served—the Ninth Circuit has provided prosecutors a fool-proof means of barring recovery by the wrongfully incarcerated.

9. Applicant Louis Taylor has retained Neal Kumar Katyal of Hogan Lovells US LLP, Washington, D.C., to file a petition for certiorari. Over the next several weeks, counsel is occupied with briefing deadlines and arguments for a variety of matters, including: (1) a reply in support of certiorari in *Garmin USA, Inc. v. Cellspin Soft, Inc.*, No. 19-400 (S. Ct.), due November 6; (2) a petition for certiorari in *Apache Deepwater, L.L.C. v. W&T Offshore, Inc.*, 930 F.3d 647 (5th Cir. 2019), due November 12; (3) a merits reply brief in *Rodriguez v. FDIC*, No. 18-1269 (S. Ct.), due November 18; (4) a certiorari reply brief in *Butler v. Bd. of County Commissioners for San Miguel Cty.*, No. 19-285, due November 20; (5) a merits reply brief in *McKinney v. Arizona*, No. 18-1109 (S. Ct.), due November 25, with oral argument scheduled on December 11; (6) a petition for certiorari in *City of Miami v. Wells Fargo & Co.*, No. 14-14544 (11th Cir.), due November 25; (7) a merits response brief in *Romag Fasteners Inc. v. Fossil Inc.*, No. 18-1233 (S. Ct.), due November 26; (8) summary judgment response and reply briefs in *United States ex rel. Krahling v. Merck & Co., Inc.*, No. 10-cv-4374 (E.D. Pa.), due November 26 and December 20, respectively; (9) an en banc brief in *Price v. Godiva Chocolatier, Inc., et al.*, No. 16-16486 (11th Cir.), due December 4; and (10) a petition for certiorari in *Steiner v. Utah State Tax Commission*, No. 20180223 (Utah S. Ct.), due December 12.

12. Applicant requests this extension of time to permit counsel to research the relevant legal and factual issues and to prepare a petition that fully addresses the important questions raised by the proceedings below.

10. For these reasons, Applicant respectfully requests that an order be entered extending the time to file a petition for certiorari to and including December 12, 2019.

Respectfully submitted,



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