

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

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IN THE SUPREME COURT OF THE UNITED STATES

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MARK JOSEPH DERRICO,  
*Petitioner*

v.

STATE OF GEORGIA.

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***APPLICATION FOR AN EXTENSION OF TIME IN WHICH  
TO FILE A PETITION FOR A WRIT OF CERTIORARI TO  
THE SUPREME COURT OF GEORGIA***

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To the Honorable Clarence Thomas, Associate Justice of the United States and Circuit Justice for the Eleventh Circuit:

Pursuant to 28 U.S.C. § 2101(d) and Rules 13.5, 22, and 30.2 of this Court, Mark Joseph Derrico (“Applicant”) respectfully requests a 60-day extension of the time in which to file a petition for a writ of certiorari in this Court, to and including Friday, January 3, 2020. The Supreme Court of Georgia entered judgment on August 5, 2019, in *Derrico v. The State*, No. S19A0665. A copy of the Supreme Court of Georgia’s opinion is attached as

Exhibit 1. See 831 S.E.2d 794 (Ga. 2019). A copy of the judgment/remittitur is attached as Exhibit 2. This Court’s jurisdiction would be invoked under 28 U.S.C. § 1257. Applicants’ time to file a petition for a writ of certiorari in this Court will currently expire on November 4, 2019. This application is being filed more than 10 days before that date, and no prior application has been made in this case.

Under *Kolender v. Lawson*, 461 U.S. 352, 357-358 (1983), the Court has cautioned, “Where the legislature fails to provide ... minimal guidelines, a criminal statute may permit ‘a standardless sweep [that] allows policemen, prosecutors, and juries to pursue their personal predilections,” citing *Smith v. Goguen*, 415 U.S. 489, 575 (1974). The resulting rule—sometimes known as the void-for-vagueness doctrine—has proven to have a blind spot, a presentation in which clearly arbitrary enforcement is lost sight of in application. As in the instant case, the alleged victim meets the same criteria (the elements) of each of the statutes or offenses under which Applicant Derrico was prosecuted. This is a sort of arbitrariness *per se*, in that Defendant was prosecuted and convicted and the alleged victim was not.

This case presents the question whether the void-for-vagueness doctrine extends to cases such as Derrico’s, where courts have rested on the authority of judges and juries to ratify arbitrary enforcement. In the

decision below, the Supreme Court of Georgia wholly ignores arbitrary enforcement because it concludes that the evidence was sufficient to convict Derrico. The problem is that the evidence is also sufficient to convict the victim who was not prosecuted, on each of the same charges.

Undersigned counsel is working diligently, but respectfully submits that the additional time requested is necessary to complete preparation of a petition for a writ of certiorari. Undersigned counsel represents Applicant on a private retained but *low bono basis*. Undersigned counsel has represented Applicant throughout this case, but has struggled with resources to manage the case since the case has entered its appellate stages. Undersigned counsel has supported the case in part by way of his other trial and appellate cases, from which he has not been relieved at any stage of the proceedings for the case.

Substantial work remains to present the Petition for Certiorari in a manner befitting the Supreme Court of the United States, to wit to complete research on the authorities supporting this Court's review, and to prepare the petition and appendix for filing. Among other things, this case requires detailed research of the void-for-vagueness doctrine, this Court's precedents on arbitrary enforcement, and lower courts' differing interpretations of those authorities. The undersigned counsel of record has also faced numerous overlapping deadlines in other matters, including a

briefing deadline in the Georgia Court of Appeals on October 28, 2019.

Wherefore, Applicant respectfully requests that an order be entered extending his time to file a petition for writ of certiorari up to and including January 3, 2020.

Respectfully submitted,  
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