

No. 22A-\_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

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DARRELL HEMPHILL,

*Applicant,*

v.

NEW YORK,

*Respondent.*

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On Petition for a Writ of Certiorari to the  
New York Court of Appeals

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

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

TO: Justice Sonia Sotomayor, Circuit Justice for the United States  
Court of Appeals for the Second Circuit:

Under this Court's Rules 13.5 and 22, Applicant Darrell Hemphill requests an extension of thirty (30) days in which to file a petition for a writ of certiorari in this case. His petition will challenge the New York Court of Appeals' decision in *People v. Hemphill*, No. 82 SSM 12 (N.Y. 2022), in which the New York Court of Appeals held that the violation of the Confrontation Clause that occurred at Applicant's trial was harmless beyond a reasonable doubt. A copy of the New York Court of Appeals' decision is attached at App. 1. In support of this application, Applicant states:

1. This case arises from a fatal shooting and prosecution in New York City. The New York Court of Appeals issued its opinion upholding Applicant's conviction for murder in the second degree on July 21, 2022. App. 5. Without an extension, the petition for a writ of certiorari would be due on October 19, 2022. With the requested extension, the petition would be due on November 18, 2022. This Court's jurisdiction will be based on 28 U.S.C. § 1257.

2. This case is a serious candidate for review. In fact, this Court has reviewed it once already. Last Term, this Court held that petitioner's constitutional right to confrontation was violated when the trial court admitted an out-of-court statement by the alternative suspect, who did not testify at trial. *Hemphill v. New York*, 142 S. Ct. 681 (2022). On remand, the New York

Court of Appeals has now held that error harmless beyond a reasonable doubt. *See* App. 1-5.

That holding is implausible in the extreme. The evidence against petitioner was so thin that one judge on the intermediate court of appeals would have held earlier in this case that there was insufficient evidence to convict. *See People v. Hemphill*, 173 A.D. 471, 480-84 (N.Y. App. Div. 2019) (Manzanet-Daniels, J., dissenting). The State itself initially prosecuted the alternative suspect, and several eyewitnesses identified him as the shooter. *See Hemphill*, 142 S. Ct. at 686-87. Furthermore, the State successfully argued at trial and initially on appeal that introducing the alternative suspect's statement in Applicant's trial was "reasonably necessary to correct a misleading impression" the jury would otherwise have had that the alternative suspect was the actual shooter. *Id.* at 688 (cleaned up). Under these circumstances and others, it is impossible to conclude that introducing the statement at Applicant's trial did not "contribute to [his] conviction[]." *Chapman v. California*, 386 U.S. 18, 26 (1967). This Court's intervention is necessary to protect the integrity its decisions and to cure a grave injustice.

3. This application is not filed for purposes of delay. Rather, undersigned counsel at the Stanford Law School Supreme Court Litigation Clinic needs additional time to prepare the petition for certiorari. The Clinic commences its new academic quarter on September 26, 2022, and it is currently at work on other projects with due dates in the next couple of weeks. The extra time

requested here will enable the Clinic to devote its full attention and resources to this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. Fisher", written in a cursive style.

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Dated: September 21, 2022