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**In The**  
**SUPREME COURT OF THE UNITED STATES**  
**October Term 2022**

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**Raul Alvarez,**  
***Applicant/Petitioner,***

**v.**

**State of New York,**  
***Respondent.***

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**Application for Extension of Time Within**  
**Which to File for a Writ of Certiorari to the**  
**Court of Appeals of New York**

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**ADDITIONAL APPLICATION TO THE HONORABLE JUSTICE**  
**SONIA SOTOMAYOR AS CIRCUIT JUSTICE**

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November 9, 2022

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## **APPLICATION FOR AN EXTENSION OF TIME**

Pursuant to Rule 13.5 of the Rules of this Court, Applicant Raul Alvarez hereby requests an additional 30-day extension of time within which to file a petition for a writ of certiorari up to and including Monday, December 19, 2022.

## **JUDGMENT FOR WHICH REVIEW IS SOUGHT**

The judgment for which review is sought is *People v. Alvarez*, 38 N.Y.3d 1131 (N.Y. Ct. App. 2022), denying review of *The People of the State of New York v. Raul Alvarez*, 205 A.D.3d 577 (N.Y. App. Div. 2022).

## **JURISDICTION**

This Court will have jurisdiction over any timely filed petition for certiorari in this case under 28 U.S.C. § 1257(a). Under Rules 13.1, 13.3, and 30.1 of the Rules of this Court, a petition for a writ of certiorari was due to be filed on or before October 19, 2022. In accordance with Rule 13.5, this application is being filed more than 10 days in advance of the filing date for the petition for a writ of certiorari.

## **REASONS JUSTIFYING AN EXTENSION OF TIME**

Applicant respectfully requests an additional 30-day extension of time within which to file a petition for a writ of certiorari seeking review of the decision of the New York Supreme Court in this case, up to and including December 19, 2022.

In *McCoy v. Louisiana*, this Court held that a criminal defendant has a Sixth Amendment right to determine whether his attorney will concede factual guilt at trial. 138 S.Ct. 1500, 1512 (2018). Like the right to decide whether to plead guilty and

the right to testify, *McCoy* made clear that counsel may not override the client's wishes to refrain from conceding guilt at trial.

Mr. Alvarez consistently and repeatedly insisted to counsel that he intended to pursue innocence. However, in closing statements and against Mr. Alvarez's wishes, his trial counsel conceded guilt to third-degree assault and several other misdemeanors. The Appellate Division held that Mr. Alvarez failed to establish a *McCoy* violation because he did not expressly object in open court to his counsel's statements in closing arguments. *People v. Alvarez*, 205 A.D.3d 577, 577 (N.Y. App. Div. 2022).

Federal and state courts are divided over how a defendant must object to show a colorable *McCoy* claim. Some courts require an express objection by the client on the record. See, e.g., *United States v. Perry*, No. 13-57-SDD-RLB, 2022 WL 3273279, at \*6 (M.D. La. Aug. 10, 2022) (no viable *McCoy* claim when the defendant failed to "explicit[ly]" object, "on the record or in the presence of the trial judge"); *accord Cope v. Vannoy*, No. 5:18-CV-1445-P, 2019 WL 8918835 (W.D. La. Dec. 16, 2019).

Other courts have found a *McCoy* violation when a client privately expresses their intent to pursue innocence to counsel, and counsel concedes guilt. See *Gonzalez v. Lumpkin*, No. 1:20-cv-190, 2022 WL 509038 (S.D. Tex. Jan. 28, 2022) (requiring "contemporaneous evidence to demonstrate that [defendant] clearly expressed to his trial counsel that he did not wish to concede any guilt."); *accord United States v. Read*, 918 F.3d 712 (9th Cir. 2019).

Further, some courts have examined how “adamantly” or “repeatedly” a client objects to his counsel’s plans to concede guilt. See *State v. Jackson*, No. 1-18-20, 2019 WL 9200 (Ohio Ct. App. Feb. 25, 2019) (defendant did not “repeatedly or adamantly” object during sentencing); *Harper v. State*, No. 20-1537, 2022 WL 1100280 (Iowa Ct. App. Apr. 13, 2022) (“[T]he pertinent inquiry . . . is whether the defendant “adamantly objected” to the admission of guilt . . .”).

Given the complexity and importance of the legal issues at hand, an extension of time will allow counsel to properly analyze the reasoning for the divergent decisions and present a thorough and coherent petition.

2. Applicant has requested that the Northwestern University School of Law Supreme Court Practicum assist in preparing his petition. An extension of time will grant the participants the time necessary to complete a cogent and well-researched petition within the academic semester, which commenced August 29, 2022, and ends December 15, 2022.

3. The extension of time is also necessary because of other client matters. For example, in the coming months, the Northwestern Practicum has several overlapping commitments representing other clients in this Court, including petitions for writs of certiorari in *Brown v. United States* (22-), *Rodriguez v. United States* (22-), and *Washington v. Shinn* (22-), as well as reply briefs in *Barrieta-Barrera v. United States* (No. 21-8229), *Miclaus v. United States* (No. 21-8129), and *Vargas-Soto v. United States* (No. 20-10705).

Xiao Wang, Director of the Northwestern Appellate Advocacy Center and Co-Director of the Supreme Court Practicum, also has several pending matters in the federal circuit courts where he is lead counsel. Professor Wang has an opening brief due in *Spillard v. Ivers* (21-16772) in the United States Court of Appeals for the Ninth Circuit on November 14, 2022; an opening brief due in *Ford v. Reagle* (21-3061) in the United States Court of Appeals for the Seventh Circuit on November 28, 2022; ; an opening brief due in *Dyer v. Fulgam* (22-5608) in the United States Court of Appeals for the Sixth Circuit on December 2, 2022; and an opening brief due in *Saffeels v. United States* (20-3524) in the United States Court of Appeals for the Third Circuit on December 12, 2022. An additional 30-day extension would allow Professor Wang to effectively contribute to his pending matters, including this one.

4. Jeffrey Green, Co-Director of the Supreme Court Practicum, is also appointed counsel in five D.C. Circuit Court of Appeals cases currently briefing and/or preparing for oral argument, *Johnson v. United States* (No. 13-CF-493), *Parker v. United States* (No. 19-CF-1168), *Proctor v. United States* (No. 22-CF-0349), *Minor v. United States* (No. 18-CF-0686), and *Neal v. United States* (No. 17-CF-1346). Mr. Green has ongoing, active litigation in the United States District Court for the District of Columbia, the District of Columbia Superior Court, the United States District Court for the District of Delaware, the United States District Court for the District of Utah, the United States District Court for the Eastern District of Pennsylvania, and the Superior Court of the U.S. Virgin Islands. An additional 30-

day extension would allow Mr. Green to effectively contribute to his matters including Applicant's petition as well as his other client business.

5. Mark Zeno of the Center for Appellate Litigation also has several upcoming deadlines. Mr. Zeno has opening briefs as assigned counsel in New York's Appellate Division, First Department due in *People v. Scott Parilla* (Bronx indictment 1005/16), *People v. Joseph Taveras* (New York indictment 1455/16), *People v. Jordan Ruiz* (New York indictment 1938/19), and *People v. Elijah Randolph* (New York indictment 3319/19).

## CONCLUSION

For the foregoing reasons, Applicant respectfully requests that this Court grant an additional extension of 30 days, up to and including December 19, 2022, within which to file a petition for a writ of certiorari in this case.

Respectfully submitted,

/s/ Xiao Wang

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