

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

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

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ADNAN SYED,

*Applicant,*

v.

STATE OF MARYLAND,

*Respondent.*

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**APPLICATION FOR AN EXTENSION OF TIME TO FILE A  
PETITION FOR A WRIT OF CERTIORARI  
TO THE MARYLAND COURT OF APPEALS**

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June 17, 2019

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## APPLICATION

To the Honorable John G. Roberts, Jr., Chief Justice of the Supreme Court of the United States and Circuit Justice for Maryland:

Pursuant to Rule 13.5 of the Rules of this Court and 28 U.S.C. § 2101(c), applicant Adnan Syed respectfully requests a 30-day extension of time, to and including August 19, 2019, within which to file a petition for a writ of certiorari to review the judgment of the Maryland Court of Appeals below.

1. The Maryland Court of Appeals issued its decision on March 8, 2019. *See Maryland v. Syed*, No. 24 (Appendix A). Syed sought reconsideration, which was denied on April 19, 2019 (Appendix B). Unless extended, the time to file a petition for certiorari will expire on July 18, 2019. This application is being filed more than ten days before the petition is currently due. *See* Sup. Ct. R. 13.5. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1257(a).

2. This case presents an important question of federal law on which state and federal courts are now divided: whether trial counsel's failure to investigate a credible, non-cumulative, and independent alibi witness is prejudicial under *Strickland v. Washington*, 466 U.S. 668 (1984).

3. In 1999, Maryland charged Syed with the first-degree murder, robbery, kidnapping, and false imprisonment of Hae Min Lee. Syed, however, had an alibi: classmate Asia McClain had written to Syed after his arrest

stating that she had talked to him at the library at the precise day and time that the State alleges Lee was killed miles away. *Syed v. Maryland*, 181 A.3d 860, 896-897 (Ct. Spec. App. 2018). Despite Syed informing trial counsel of his alibi and providing counsel with these letters, trial counsel failed even to contact McClain. App. 19a-20a. Syed was convicted of all counts. *Id.* at 2a-3a.

4. After seeking direct review, Syed filed a petition for state post-conviction relief. *Id.* at 3a. Among other claims, he alleged that trial counsel's failure to investigate a credible, non-cumulative, and independent alibi witness was ineffective under *Strickland*. *Id.* The trial court denied post-conviction relief, holding that "although Mr. Syed's trial counsel was deficient for not contacting Ms. McClain, counsel's failure to investigate Ms. McClain's claim did not prejudice Mr. Syed." *Id.* at 5a. The Court of Special Appeals reversed and ordered a new trial. *Id.* at 6a. The Court of Appeals, in turn, reversed the Court of Special Appeals. In a 4-to-3 decision, the Court of Appeals majority concluded that counsel's failure to investigate a credible, non-cumulative, and independent alibi witness was deficient—but nevertheless non-prejudicial. *Id.* at 33a.

5. The decision below created a clear split with numerous state and federal courts. It is directly contrary to the Connecticut Supreme Court's opinion in *Skalel v. Comm'r of Correction*, 188 A.3d 1, 37-44 (Conn. 2018), and the Wisconsin Supreme Court's opinion in *State v. Cooks*, 726 N.W.2d

322, 333-336 (Wis. 2006). It is also contrary to the decisions of multiple circuit courts. *See, e.g., Bigelow v. Haviland*, 576 F.3d 284, 289-292 (6th Cir. 2009); *Brown v. Myers*, 137 F.3d 1154, 1156-58 (9th Cir. 1998); *Code v. Montgomery*, 799 F.2d 1481, 1484 (11th Cir. 1986). Each of those courts has held that trial counsel's failure to investigate a credible, non-cumulative, and independent alibi witness violates *Strickland's* prejudice prong. This Court's review is warranted to resolve this clear split, which affects Syed and numerous other defendants seeking post-conviction relief based on ineffective assistance of counsel.

6. Syed has retained Catherine E. Stetson of Hogan Lovells US LLP, Washington, D.C., as pro bono counsel to file a petition for a writ of certiorari. During the next several weeks, counsel is handling summary judgment briefing in *Mallinckrodt ARD LLC v. Verma*, No. 1:19-cv-01471 (D.D.C.), with oral argument in that case scheduled for July 23. Counsel is also filing an intervenor brief in *Atlantic Coast Pipeline, LLC v. FERC*, No. 18-1224 (D.C. Cir.) on June 26; an opening brief in *Apple v. United States*, No. 19-1869 (Fed. Cir.), on July 15; a reply brief in *Meritor v. EPA*, No. 18-01235 (D.C. Cir.), on July 16; and an opening brief in *Estate of Arturo Giron Alvarez v. The Johns Hopkins University*, No. 19-1530 (4th Cir.), on July 29. Counsel assisting with the petition also are occupied with a number of other matters, including merits briefing in *McKinney v. Arizona*, No. 18-1109 (due

July 25, 2019), and a petition for certiorari in *Samarripa v. Kizziah*, No. 18A1158 (due August 1, 2019).

7. For these reasons, applicant respectfully requests that an order be entered extending the time to file a petition for certiorari to and including August 19, 2019.

Respectfully submitted,



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