

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

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IN THE  
SUPREME COURT OF THE UNITED STATES

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AZIBO AQUART, Petitioner,

v.

UNITED STATES OF AMERICA, Respondent.

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**APPLICATION FOR 60-DAY EXTENSION TO FILE PETITION FOR  
WRIT OF CERTIORARI  
(PETITION DUE JUNE 5, 2019)**

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To the Honorable Ruth Bader Ginsburg, Associate Justice of the United States and Circuit Justice for the Second Circuit:

Azibo Aquart, a federal death-row inmate, respectfully applies, under Supreme Court Rule 13.5, for a 60-day extension to file his petition for writ of certiorari to the United States Court of Appeals for the Second Circuit. In support of his application, Mr. Aquart states as follows.

1. Mr. Aquart will be filing a petition for writ of certiorari challenging the affirmance of his federal convictions, on direct appeal, by the United States Court of Appeals for the Second Circuit. That court filed its judgment and opinion on December 20, 2018. *United States v. Aquart*, 912 F.3d 1 (2d Cir. 2018) (Appendix A). It denied the government's timely petition for rehearing on March 7, 2018 (Appendix B). This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1). The District Court had jurisdiction under 18 U.S.C. § 3231. The Court of Appeals had jurisdiction under 28 U.S.C. § 1291, 18 U.S.C. § 3595(a), and 18 U.S.C. § 3742.

2. Mr. Aquart's petition for writ of certiorari is due to be filed in this Court by June 5, 2019. Consistent with Rule 13.5, this application for additional time is being filed at least 10 days before that date.

3. This is a capital case in which preparing the petition for certiorari demands extensive work. The trial record in the case was voluminous, comprising almost 12,200 pages of transcripts, hundreds of pleadings, and more than 600 exhibits. The Second Circuit opinion, affirming Mr. Aquart's convictions but vacating his death sentence and remanding for a new penalty proceeding, was 139 pages in length. Mr. Aquart's petition for certiorari will challenge the affirmance of his convictions. Two of the issues he contemplates including in his petition were properly preserved in his briefs to the Second Circuit, but not extensively briefed, because the issues were foreclosed by controlling circuit case law. Including either or both of those issues, therefore, will require extensive additional research and writing beyond what was included in the appellate briefs to the circuit. For these reasons, counsel require an unusual amount of time and effort to determine exactly which issues to present to this Court and how to present them, and to draft and produce the petition.

4. Moreover, although counsel of record, along with her co-counsel, has given and will continue to give Mr. Aquart's case priority, she is a solo practitioner in private practice and has a heavy professional workload of other commitments, including other federal capital matters, that she cannot set aside or delegate to others. These include the preparation and filing of an opening appellate

brief on May 24, 2019, in *United States v. Beqiraj*, No. 19-133 (2d Cir.); drafting discovery motions that must be filed by June 4, 2019, in *United States v. Arnold*, No. 015-cr-20652 (GCS), an authorized capital prosecution in the United States District Court for the Eastern District of Michigan; attendance at an Authorized Case Consultation conference on June 6-8, 2019, in St. Louis, in connection with a potential capital prosecution in *United States v. Jairo Saenz*, No. 16-403 (JFB), in the Eastern District of New York; preparation for oral argument calendared for June 12, 2019, in *United States v. Tucker*, No. 18-181 (2d Cir.); preparation and filing of an appellate brief by July 8, 2019, in *People v. Gjinaj*, Ind. No. 2381-2016, in New York's Appellate Division, First Department; and in the last six weeks, preparation and filing of supplemental and reply briefs in *United States v. Ramsey/Muschette*, No. 15 Cr. 525 (ERK), in the Eastern District of New York; a reply brief in *United States v. Rahimi*, No. 18-478 (2d Cir.); and motions challenging the death penalty and the Federal Death Penalty Act in *United States v. Arnold*, No. 015-cr-20652 (GCS) (E.D.Mich.). Co-counsel, attorneys with the Federal Capital Appellate Resource Counsel Project — a project within the federal defender system, created by the Defender Services Committee of the United States Administrative Office of Courts and charged with the tasks of providing direct representation in a number of other federal death-penalty appeals; recruiting and

advising courts on the appointment of other capital counsel; and training and consulting with such counsel — have similarly heavy workloads.

5. This Court has granted other federally death-sentenced prisoners in Second Circuit similar extensions of time to file their petitions for writ of certiorari. *See, e.g., United States v. Donald Fell*, No. 17-6261.

Accordingly, Mr. Aquart respectfully asks that the Court grant this application and extend for 60 days the time allowed to file his petition for writ of certiorari to the United States Court of Appeals for the Second Circuit.

Respectfully submitted,

Dated: May 17, 2019

*s/Beverly Van Ness*

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## **Appendix**

- A: Opinion, *United States v. Aquart*  
No. 12-5086 (2d Cir. December 20, 2018)
- B: Order Denying Petition for Panel Rehearing  
No. 02-5086 (2d Cir. March 7, 2019)