

CASE NO. \_\_\_\_\_  
SUPREME COURT OF THE UNITED STATES  
October 2023 Term

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Hussein Kadhim Abood Khalaf, )  
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 )  
   Petitioner, )  
 )  
 v. )  
 )  
 UNITED STATES OF AMERICA, )  
 )  
   Respondent. )

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APPLICATION TO JUSTICE KAVANAUGH FOR ADDITIONAL TIME TO FILE PETITION FOR A WRIT OF CERTIORARI TO THE EIGHTH CIRCUIT COURT OF APPEALS

Submitted on Behalf of Petitioner

Submitted By:

Mohammed G. Ahmed  
Assistant Federal Public Defender  
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ATTORNEY FOR PETITIONER

To Justice Brett M. Kavanaugh:

Petitioner Hussein Khalaf, through his attorney of record, Assistant Federal Public Defender Mohammed G. Ahmed, requests an additional 60 days in which to file a petition in this Court seeking certiorari to the Eighth Circuit Court of Appeals, up through September 14, 2024. Petitioner requests this extension under Supreme Court Rule 13.5.

### **JURISDICTION**

Petitioner requests an extension to file a petition for writ of certiorari. Petitioner is preparing to request this Court's review of the judgment issued by the Eighth Circuit Court of Appeals on February 26, 2024, affirming his conviction for blackmail to which he pled guilty, but which he sought to withdraw citing his attorney's erroneous and misleading advice on the record that his own research revealed a conviction under this statute would "not certainly" compel his deportation as an unauthorized citizen of another country.

Mr. Khalaf appealed to the Eighth Circuit Court of Appeals alleging that the District Court abused its discretion and clearly erred in failing to grant leave to withdraw his plea of guilty given the record evidence of Counsel's unreasonable advice about the consequences of deportation, contrary to this Court's ruling in *Padilla v. Kentucky*, 559 U.S. 356 (2010), and *Lee v. United States*, 582 U.S. 357 (2017).

The Court of Appeals denied Mr. Khalaf's timely motion for rehearing on April 17, 2024. Appendix at 4. The deadline for filing a petition for a writ of certiorari in this case is July 16, 2024. Petitioner files this request for additional time at least 10 days before the date the petition is currently due, in compliance with Supreme Court Rule 13.5.

**REASONS FOR APPLICATION FOR EXTENSION**

1. Petitioner believes that the Court of Appeals ruling in his case conflicts with this Court's previous decisions in *Padilla* and *Lee* establishing that an attorney's false assurances that a conviction for a particular charge would not compel his deportation constitutes ineffective assistance and invalidates a plea of guilty. The issue also implicates the proper standards for granting a motion to withdraw a plea of guilty that was improperly induced by false assurances competent counsel would not make under *Padilla*.

2. Petitioner's Counsel is an assistant federal public defender in the Eastern District of Missouri shouldering a full case load of appointed cases requiring consultation with clients in detention facilities in remote parts of Missouri and other states. Counsel makes this request with no dilatory purpose. Counsel seeks only to ensure proper presentation of the important federal questions raised in petitioner's case while also providing effective representation in all cases to which counsel is assigned.

WHEREFORE, petitioner requests leave to file his Petition for Writ of Certiorari, up through and including September 15, 2024.

Respectfully submitted,



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ATTORNEY FOR PETITIONER

CASE NO. \_\_\_\_\_  
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Petitioner,	)
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v.	)
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UNITED STATES OF AMERICA,	)
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Respondent.	)

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Appendix to Petitioner’s Motion for More Time to File Petition for a Writ of Certiorari

Contents

1. *United States v. Khalaf*, No. 23-2159,  
Slip Opinion (8th Cir., Feb. 26, 2024) ..... 1 – 3
  
2. *United States v. Khalaf*, No. 23-2159,  
Order denying rehearing (8th Cir., April 17, 2024) ..... 4

United States Court of Appeals  
For the Eighth Circuit

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No. 23-2159

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United States of America

*Plaintiff - Appellee*

v.

Hussein Kadhim Abood Khalaf

*Defendant - Appellant*

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Appeal from United States District Court  
for the Eastern District of Missouri - St. Louis

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Submitted: January 8, 2024

Filed: February 26, 2024

[Unpublished]

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Before BENTON, ERICKSON, and KOBES, Circuit Judges.

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PER CURIAM.

Hussein Kadhim Abood Khalaf first entered the United States on an F-1 student visa in 2013. In 2022, he pled guilty to one count of blackmail, in violation of 18 U.S.C. § 873. Just a few days after his plea hearing, Khalaf wrote to the district

court<sup>1</sup> asking to withdraw his plea and to have new counsel appointed. His letter was later formalized into a motion to withdraw guilty plea by newly appointed counsel. At the sentencing hearing, the district court denied Khalaf's motion to withdraw his plea and sentenced him to time served with a period of one-year supervised release to follow. Khalaf now appeals, challenging the district court's denial of his motion to withdraw his guilty plea. We affirm.

We review a district court's denial of a defendant's request to withdraw a guilty plea for abuse of discretion. United States v. Lawhorn, 735 F.3d 817, 819 (8th Cir. 2013). Under Federal Rule of Criminal Procedure 11(d)(2)(B), a defendant may withdraw his guilty plea before sentencing if he "can show a fair and just reason." On appeal, Khalaf presents an ineffective assistance of counsel claim as a fair and just reason for withdrawal.

Ineffective assistance can be a fair and just reason for withdrawal if Khalaf can demonstrate that his prior counsel's performance was deficient, and that this deficiency prejudiced him. United States v. McMullen, 86 F.3d 135, 137 (8th Cir. 1996). To show deficient performance, Khalaf must establish that counsel's performance fell below objective standards of reasonableness. United States v. Cruz, 643 F.3d 639, 642 (8th Cir. 2011) (citing Strickland v. Washington, 466 U.S. 668, 687–88 (1984)). To show prejudice, Khalaf must prove there was a reasonable probability that, but for his counsel's errors, "he would not have pleaded guilty and would have insisted on going to trial." Lawhorn, 735 F.3d at 820 (quoting McMullen, 68 F.3d at 137).

Khalaf has failed to show prejudice stemming from his prior counsel's representation because he has not asserted that he would not have pled guilty if he had received different advice. Khalaf identifies two aspects of his prior counsel's representation that he takes issue with: his prior counsel's analysis of his

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<sup>1</sup>The Honorable Henry Edward Autrey, United States District Judge for the Eastern District of Missouri.

immigration status and his prior counsel's decision to not request copies of digital evidence. First, Khalaf, on his own, raised concerns about the potential consequence his criminal case could have on his immigration status before his counsel made any statement on the topic to the court. Further, the plea agreement disclosed that Khalaf's conviction could impact his immigration status or result in deportation. In addition, during Khalaf's change of plea hearing, the government noted that Khalaf's immigration status may be affected by his agreement to plead guilty.

Second, while Khalaf contends that his prior counsel failed to properly request and review digital forensic evidence, he has failed to explain how this evidence would have influenced his decision to accept the plea. Because Khalaf has not shown there was a reasonable probability that he would not have pled guilty if he had received different advice, Khalaf has failed to provide a fair and just reason in support of his motion to withdraw.

For the foregoing reasons, the district court did not abuse its discretion when denying Khalaf's motion to withdraw his guilty plea. We affirm.

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**UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT**

No: 23-2159

United States of America

Appellee

v.

Hussein Kadhim Abood Khalaf

Appellant

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Appeal from U.S. District Court for the Eastern District of Missouri - St. Louis  
(4:22-cr-00062-HEA-1)

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**ORDER**

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

April 17, 2024

Order Entered at the Direction of the Court:  
Acting Clerk, U.S. Court of Appeals, Eighth Circuit.

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/s/ Stephanie N. O'Banion