

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

ASHU JOSHI, Petitioner

v.

UNITED STATES OF AMERICA, Respondent

**On Application for Extension of Time to File a Petition for Writ of
Certiorari to the United States Court of Appeals for the Eighth Circuit**

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

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To the Honorable Brett Kavanaugh, as Circuit Justice for the United States Court of Appeals for the Eighth Circuit:

Pursuant to this Court's Rules 13.5, 22, 30.2, and 30.3, Petitioner Ashu Joshi respectfully requests a 60-day extension of time, up to and including Monday, April 1, 2025, to file his Petition for a Writ of Certiorari. The Court of Appeals issued its opinion on September 10, 2024 (App.1) and denied a timely filed petition for rehearing en banc on November 22, 2024 (App.2). Absent an extension of time, the Petition for

a Writ of Certiorari would be due on February 20, 2025. However, counsel was retained only on February 14, 2025, and, therefore, was unable to file this request at least ten days before the deadline. *See* S. Ct. R. 13.5. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1). The Government opposes this request for extension.

BACKGROUND

This case presents an important question regarding ineffective assistance of counsel under the Sixth Amendment: Whether defense counsel’s performance was deficient—falling below an objective standard of reasonableness—when counsel abandoned constitutional claims and defenses without Petitioner’s knowledge or consent. Specifically, counsel failed to advise Petitioner on the strength and likelihood of success of his as-applied constitutional challenge to the charges against him. Petitioner and the alleged victim, M.D., were lawfully married under Kentucky law, M.D. was old enough to consent under Ky. Rev. Stat. § 510.020, and the federal criminal statutes at issue do not provide an exception for circumstances in which minors are lawfully married under state law.

On June 23, 2018, Petitioner, then 46 years old, married a 16-year-old girl from Kentucky (“M.D.”) in a private ceremony in the Commonwealth of Kentucky. In October 2018, Petitioner was charged with production, distribution, and receipt of child pornography under 18 U.S.C. §§ 2251(a) and 2252A(a)(2), as well as transportation of a minor across state lines to engage in criminal sexual activity under 18 U.S.C. § 2423(a).

Shortly thereafter, on November 8, 2019, a Kentucky court validated Petitioner and M.D.'s marriage. The 27th Judicial Circuit determined that "the marriage conducted on June 23, 2018, between the parties [was] a valid marriage" and that "as of June 23, 2018, the parties [were] deemed married." Consequently, since all counts alleged conduct between March 1, 2018, and October 10, 2018, Petitioner and M.D. were either in a lawful relationship or legally married at the time of the alleged offenses.

Petitioner ultimately pleaded guilty to the distribution charge pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C) and was sentenced to 96 months in prison along with restitution of \$800,000. However, he maintains that his plea was entered unknowingly and involuntarily due to ineffective assistance of counsel that the charges improperly criminalized conduct arising from an entirely legal relationship, in violation of his rights under the First, Fourth, Fifth, Ninth, and Fourteenth Amendments to the United States Constitution. These substantial questions warrant this Court's review. *See, e.g., Hill v. Lockhart*, 474 U.S. 56-57 (1985) (quoting *McMann v. Richardson*, 397 U.S. 759, 771 (1970)). *See also Tollett v. Henderson*, 411 U.S. 258 (1973) (holding that a defendant who pleads guilty upon the advice of counsel "may only attack the voluntary and intelligent character of the guilty plea by showing that the advice he received from counsel was not within the standards set forth in *McMann*.")

At this certiorari stage, the relevant claims are:

1. Whether Petitioner's guilty plea resulted from ineffective assistance of counsel;
and
2. Whether trial counsel's failure to advise Petitioner on the strength and likelihood of success of his as-applied constitutional challenge to the indicted charges constituted ineffective assistance of counsel under *Strickland v. Washington*, 466 U.S. 668 (1984) and its progeny.

Petitioner's claim satisfies both prongs of *Strickland v. Washington*, 466 U.S. 668 (1984). First, trial counsel's performance was deficient because counsel failed to provide Petitioner with constitutionally adequate advice regarding his as-applied challenge to the charges. Counsel neither informed Petitioner of the legal significance of his valid marriage under Kentucky law nor advised him on the likelihood of success of an as-applied challenge. Second, Petitioner was prejudiced because, but for counsel's failure, he would not have entered a guilty plea and instead would have proceeded to trial. *See Hill v. Lockhart*, 474 U.S. 52, 60 (1985) (holding that where a defendant challenges a guilty plea based on ineffective assistance of counsel, the prejudice inquiry focuses on whether the defendant would have insisted on trial).

Furthermore, should the Court grant this extension, this matter presents an opportunity to examine the full faith and credit afforded to marriages not only under the Constitution but also under the Respect for Marriage Act. The Act explicitly provides that "[f]or the purposes of any Federal law, rule, or regulation in which marital status is a factor, an individual shall be considered married if that

individual's marriage is between 2 individuals and is valid in the State where the marriage was entered into." 1 U.S.C. § 7.

REASONS FOR GRANTING AN EXTENSION OF TIME

Petitioner retained new counsel on February 14, 2025, to prepare and file the Petition for a Writ of Certiorari. Given the constitutional implications of Petitioner's claims—particularly the interplay between federal criminal law, state marriage laws, and the Respect for Marriage Act—additional time is needed to ensure a comprehensive and well-researched petition. Counsel must also review extensive case records, trial transcripts, and prior appellate decisions to develop the most effective arguments for this Court's review. Further, additional time is necessary to identify and address potential circuit splits and ensure that the petition appropriately frames the issue for this Court's consideration.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the deadline to file his Petition for a Writ of Certiorari be extended 60 days, up to and including April 1, 2025.

Dated this 18th day of February 2025.

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