

No. 18-

In the Supreme Court of the United States

John Ching En Lee, Petitioner
(Defendant-Appellee)

v.

United States of America, Respondent
(Plaintiff-Appellant)

**John Ching En Lee's Application to Chief Justice John
Roberts to Extend Time To File Petition for Writ of
Certiorari to Review Judgment of the United States Court
of Appeals for the Ninth Circuit**

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SUMMARY

Petitioner (Defendant-Appellant) John Ching En Lee respectfully asks Chief Justice John Roberts, a Circuit Justice for the United States Court of Appeals for the Ninth Circuit, to extend the time for Lee to file a petition for writ of certiorari. The current deadline for Lee to file his petition is Tuesday, September 4, 2018, which is ninety days from Wednesday, June 6, 2018, the date when the Ninth Circuit denied Lee's timely petition for review. Lee requests that the deadline be extended by sixty days, so that the new deadline would be Monday, November 5, 2018.

BACKGROUND

Lee is not in criminal custody. This is a criminal appeal arising from a conviction for one count of making a false statement in violation of 18 U.S.C. § 1001(a)(2). Lee had been employed as an officer of the U.S. Citizenship and Immigration Services. While employed, his wife was the owner of a massage parlor and was arrested for suspicion of soliciting prostitution. When Lee posted bail at the police department, he affirmatively identified himself as an officer with the U.S. Citizenship and Immigration Services. The police department charged Lee's wife with a misdemeanor count of solicitation of prostitution, for which she received diversion. No further criminal activity against her was charged. By August 2009, her business shut down.

In 2008, the Department of Homeland Security Office of the Inspector General opened an investigation into Lee to determine if he improperly interfered with any of the immigration applications for his wife's employees, whether he might be involved in human trafficking, whether he was receiving improper monetary compensation from his wife's business or any criminal enterprise, and whether Lee was associated with any criminal enterprise that would subject him to blackmail.

In August 2009, the government investigators met with Lee and asked a number of questions to determine if he had funded his wife's business. At the time, Lee answered no. No evidence of wrongdoing was discovered in the course of the investigation.

In August 2013, the investigators again interviewed Lee and asked if how his wife had started her business. To this answer, Lee truthfully answered that he had loaned her \$30,000 to start the business.

In October 2013, the agents conducted a third interview in which they asked Lee if he ever had used the background check database for personal reasons. Lee answered no and evidence later showed that Lee had made three searches for his wife.

From these statements, the government charged and secured a conviction of two counts of making a false statement in violation of 18 U.S.C. § 1001(a)(2).

Lee filed for a motion for acquittal pursuant to Federal Rules of Criminal Procedure, Rule 29. The district court granted the motion with respect to the false statement made at the October 2013 interview and affirmed the conviction for the statement made at the August 2013 interview.

Before the Ninth Circuit, Lee argued that his conviction for making a false statement was not supported by the evidence because there was no written or audio recording of the August 2013 interview and the agent could not accurately recall the exact wording of the question asked.

Lee next argued that, even accepting that the statement at issue was that he had answered “no” to the question of whether he “gave” money to his wife, the statement was not false. A loan is different from a gift and a false statement conviction may not be upheld when a defendant provides a literally true statement to an ambiguous question.

Lee further argued in the alternative that he lacked the mens rea to make a false statement because the Ninth Circuit, and other circuits, have not clearly defined what is needed to meet this element. Lee’s statement that he loaned his wife money is not unlawful activity and cannot support the intent needed to support a false statement conviction.

Lee lastly argued that any false statement lacked materiality. The government did not prove how a husband’s financial loan to his wife’s business was relevant to any of the investigation’s initial objectives of investigating human trafficking, criminal activity, and professional impropriety.

In an unpublished decision, the Ninth Circuit rejected these arguments.

Lee intends to petition this Court for a writ of certiorari to review the Court's judgment and now asks for additional time to file such petition.

ARGUMENT

Recognizing that an extension of the time for the filing of a petition for writ of certiorari requires good cause and that requests for extensions of time are not favored, Lee respectfully asks Chief Justice Roberts, as Circuit Justice for the Ninth Circuit, to extend the time for Lee to file a petition for writ of certiorari. Lee requests that the deadline be extended by sixty days, so that the new deadline would be Monday, November 5, 2018. To establish good cause for his request, Lee makes the following four arguments in favor of extending the deadline.

First, Lee's application satisfies the express procedural requirements of Supreme Court Rule 13.5. This Court has subject matter jurisdiction to hear Lee's petition for a writ of certiorari because Lee is challenging the legality of his federal conviction under 18 U.S.C. § 1001(a)(2). The Ninth Circuit filed its unpublished decision on June 6, 2018. Lee is seeking a timely petition for a writ of certiorari over his criminal conviction, for which there is jurisdiction under 28 U.S.C. § 1254(1).

The judgment that Lee seeks to review is the Ninth Circuit's June 6, 2018 decision, which affirmed the September 20, 2016 District Court's order denying in part and granting in part a Rule 29 motion seeking acquittal. Lee has included a copy of both the June 6, 2018 Circuit Court decision (Exhibit A to this Application) and the September 20, 2016 District Court decision (Exhibit B to this Application).

Lee is filing this application more than ten days before the date his petition is due because, as of now and without any extension, Lee's petition would be due on September 4, 2018. Lee also asks for an extension of time only for himself, as no other party has need to file a petition for writ of certiorari.

Second, Lee has good cause for his application because his attorney is not experienced in Supreme Court

practice. His attorney has prepared over 100 appeals at the Ninth Circuit Court of Appeals but this is only her second petition for a writ of certiorari before this Court and her first criminal case before this Court. Accordingly, she is seeking the advice and counsel of experienced Supreme Court practitioners to assist her in best preparing the important legal issues in this case. Counsel has contacted seasoned attorneys who will have time to review and comment on materials in September 2018. The additional time then will be spent in circulating drafts, receiving feedback, and making revisions before filing this case to this Court.

Third, Lee has good cause for his application because his attorney can certify that this petition will raise important legal issues questions that warrant this Court's attention. Circuit Courts do not have clear guidance over the important definitions of intent and materiality set forth in 18 U.S.C. § 1001(a)(2). This petition then will present questions of exceptional importance to this Court.

Fourth, there is unfair prejudice if the Court or opposing party to grant Lee's extension. This is petition involving a criminal conviction for which the sentence has been served and Lee is no longer in detention or custody. There is no pressing event that would be affected by a sixty-day extension of time for filing a petition for a writ of certiorari.

CONCLUSION

For those reasons, Lee respectfully asks Chief Justice Roberts, as Circuit Justice for the Ninth Circuit, to extend the time for Lee to file a petition for writ of certiorari. Lee requests that the deadline be extended by sixty days, so that the new deadline would be new deadline would be Monday, November 5, 2018.

This application is submitted on August 21, 2018.

s/ Kari Hong

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