

IN THE SUPREME COURT OF THE UNITED STATES

No. 19A-_____

UNITED STATES OF AMERICA, APPLICANT

v.

IRA ALAN ARIAS

APPLICATION FOR AN EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Pursuant to Rules 13.5 and 30.3 of this Court, the Solicitor General, on behalf of the United States, respectfully requests a 30-day extension of time, to and including April 2, 2020, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case. The court of appeals entered its judgment on August 26, 2019, and denied the government's petition for rehearing on December 4, 2019. Unless extended, the time within which to file a petition for a writ of certiorari will expire on March 3, 2020. The jurisdiction of this Court would be invoked under 28 U.S.C. 1254(1). Copies of the opinion of the court of appeals and the order denying rehearing are attached. App., infra, 1a, 2a-16a.

1. In May 2015, respondent allegedly sexually assaulted his minor niece, K.P., while the two shared a hotel room at an out-of-town family wedding. App., infra, 3a. Respondent was charged with three counts of aggravated sexual abuse of a child, in violation of 18 U.S.C. 1153 (2012 & Supp. III 2015); 21 U.S.C. 2241(c) and 2246(2) (A)-(C). Indictment 1-2; see App., infra, 3a. In advance of trial, respondent filed two motions seeking the production of K.P.'s medical records from the possession of third parties. App., infra, 2a-3a. The district court denied both motions, describing them as "fishing expedition[s]." Ibid. But it ruled that respondent would be permitted to question K.P. about her bipolar disorder, which was diagnosed before the alleged abuse. Id. at 4a.

During K.P.'s direct examination by the government at trial, she first testified that before the alleged assault, she had been diagnosed with depression. App., infra, 4a. When asked by the prosecutor whether she had been diagnosed with anything else, she indicated that after the alleged incident, she had been diagnosed with "Anxiety and PTSD." Id. at 5a. Defense counsel moved to strike the answer and moved for a mistrial, arguing that the Confrontation Clause precluded that testimony unless respondent had access to K.P.'s medical records. Ibid. The court instructed the jury that "psychological symptoms diagnosed post-incident, post-May of 2015, are extremely limited relevance to you all, if

any." Ibid. But it otherwise denied the motions. Id. at 5a-6a.

Respondent was convicted on all three counts. Id. at 6a.

2. A divided panel of the court of appeals remanded. App., infra, 2a-16a. In the majority's view, "if the PTSD testimony was allowed to be weighed by the jury, the defendant had a constitutionally protected opportunity for effective cross-examination" under the Confrontation Clause, which could require access to K.P.'s medical records. Id. at 11a. The court ordered the district court to "conduct[] an in camera review of the records" to determine whether any error was harmless. Id. at 12a.

Judge Colloton dissented in relevant part. App., infra, 13a-16a. He explained that this case does not implicate the Confrontation Clause's concerns, which address the admission of certain out-of-court statements and restrictions on the scope of cross-examination. Id. at 13a-14a. He noted that the challenged testimony occurred in open court and the district court "did not limit the scope or nature of defense counsel's cross-examination in any way." Id. at 14a (citation omitted). And he observed that this Court declined to endorse a claim similar to respondent's in Pennsylvania v. Ritchie, 480 U.S. 39 (1987), App., infra, 15a, in which a plurality of the Court refused to "transform the Confrontation Clause into a constitutionally compelled rule of pretrial discovery." 480 U.S. at 52. He further observed that, "[i]n light of Ritchie, several circuits * * * have ruled that

the Confrontation Clause does not guarantee a right to compelled discovery," and that "[t]he majority's decision creates a stark conflict in the circuits." App., infra, 16a (collecting cases).

3. The Solicitor General has not yet determined whether to file a petition for a writ of certiorari in this case. Additional time is needed for further consultation with other components of the Department of Justice and, if a petition is authorized, to permit its preparation and printing.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General

FEBRUARY 2020