

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

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IN THE  
**Supreme Court of the United States**

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JULIAN D. SCHMIDT,  
SERGEANT,  
UNITED STATES MARINE CORPS,  
*Petitioner,*

v.

UNITED STATES OF AMERICA,  
*Respondent.*

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Application for Extension of Time to File a Petition for a Writ of  
Certiorari to the United States Court of Appeals for the Armed Forces

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To the Honorable John G. Roberts, Circuit Justice for the United States Court of  
Appeals for the Armed Forces:

Pursuant to Supreme Court Rules 13.5, 22, and 30.2, the Petitioner, Julian D. Schmidt, respectfully requests a 60-day extension of time, to and including August 1, 2022, to file a Petition for a Writ of Certiorari. In support of this application, Petitioner states the following:

1. On October 30, 2018, Petitioner was convicted, contrary to his pleas, of a charge and specification of lewd act upon a child under the age of 16, in violation of Article 120b, UCMJ. The officer and enlisted panel sentenced Petitioner to

confinement for 15 months, a bad conduct discharge, and reduction to E-1. The convening authority approved the adjudged sentence and, except for the bad-conduct discharge, ordered it executed.

2. On August 7, 2020, the United States Navy-Marine Corps Court of Criminal Appeals affirmed the finding and sentence. *United States v. Schmidt*, 80 M.J. 586 (N-M. Ct. Crim. App. Aug. 7, 2020).

3. On February 11, 2022, a fractured United States Court of Appeals for the Armed Forces upheld the United States Navy-Marine Corps Court of Appeals' decision in a published opinion. *United States v. Schmidt*, 82 M.J. 68 (C.A.A.F. 2022). The Court subsequently denied a petition for reconsideration on March 4, 2022. *United States v. Schmidt*, 2022 CAAF LEXIS 180 (C.A.A.F. Mar. 4, 2022). The time for petitioning this Court for a writ of certiorari expires on June 2, 2022. This application is being filed more than 10 days before that date.

4. Attached to this application are copies of the opinions of the United States Navy-Marine Corps Court of Criminal Appeals and the United States Court of Appeals for the Armed Forces, as well as the denial of the request for reconsideration.

5. This Honorable Court has jurisdiction under 28 U.S.C. § 1259(3).

6. This case presents opportunities for this Court to interpret Congress' revision of Article 120b, UCMJ, to define "in the presence of a child," and identify the appropriate *mens rea* requirement. This case also involves important constitutional matters related to ineffective assistance of counsel and *ex post facto* violations.

7. Petitioner bases his request for an extension of time on the following:

a. Petitioner's lead attorney, a member of this Honorable Court's bar, is self-employed with the Law Office of Tami L. Mitchell. Ms. Mitchell represents approximately 6-7 servicemembers in appealing their courts-martial convictions. She has three briefs due in May to the Navy-Marine Corps Court of Appeals and the Air Force Court of Criminal Appeals, three briefs due in June to the Second Circuit Court of Appeals, Court of Appeals for the Armed Forces, and Navy-Marine Corps Court of Appeals, and an oral argument scheduled before the Coast Guard Court of Criminal Appeals mid-June. Ms. Mitchell is defending a Navy officer against the Government's second attempt to court-martial him for allegedly sexually abusing his 5-year-old daughter, with a trial scheduled for June 27-July 1, 2022. She is also defending an Army officer at a Board of Inquiry currently scheduled for July 11, 2022.

b. Ms. Mitchell underwent knee surgery on May 13, 2022 for a long-standing combat-deployment injury. Based on her prior experience with a similar surgery, Ms. Mitchell estimates it will take approximately 10-14 days for her to recover.

c. Finally, Ms. Mitchell has a trip scheduled with her daughter to Europe for approximately 2.5 weeks in July-August 2022, which has been postponed for two years due to COVID-19.

In balancing Ms. Mitchell's case load and personal matters, Petitioner needs additional time to complete the drafting of his Petition for a Writ of Certiorari, and to have it reviewed and submitted in the appropriate format.

For the foregoing reasons, Petitioner respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari to and including August 1, 2022.

Respectfully submitted,



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May 17, 2022