

No. 25-6889

**IN THE
SUPREME COURT OF THE UNITED STATES**

ASHU JOSHI,
Petitioner,

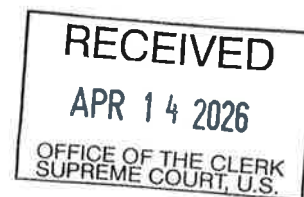
v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Eighth Circuit

PETITION FOR REHEARING

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Pro Se Petitioner
Filed: March 23, 2026



PRELIMINARY STATEMENT

This Court denied certiorari without a government response, three days before that response was due, in a case where the district court's central factual finding is refuted by the court's own docket. The petitioner is a man convicted of a federal crime for conduct that occurred within his marriage — a marriage a Kentucky circuit court formally declared valid, based on sworn testimony the alleged victim herself gave before the court. The parties have a child together, born of that union, acknowledged in the record of the criminal proceedings. On the day of Petitioner's arrest, government officers confiscated from the alleged victim a wedding ring and diamond earrings he had given her. Eleven days after Petitioner rejected the government's plea offer at a formal Frye hearing — while his constitutional motion to dismiss was fully pending — she publicly stated there was "nothing illegal about a husband and a wife sharing intimate photos" and that she wanted the charges dropped. Associated Press, Dec. 13, 2019.

What followed has never been fully examined by any court. The government's investigator traveled to Kentucky and attempted ex parte contact with the judge who had issued the marriage ruling. The judge refused to meet. The government then faxed that judge a letter describing the federal charges and requested the case file. Within weeks, the alleged victim recanted her sworn testimony — doing so within 48 hours of her attorney sending Petitioner a text message demanding increased child support. The government used her recantation to revoke Petitioner's pretrial release. Four months after Petitioner had rejected the plea at the Frye hearing, his attorneys secretly withdrew his constitutional defenses without his knowledge, as a negotiating gesture to the prosecutor. Five months after that, he pleaded guilty.

Not one court has ever ruled on whether these federal statutes may constitutionally be applied to conduct occurring within a marriage formally recognized by a state court of competent jurisdiction. The preserved prosecutorial misconduct claim was dismissed in a single sentence by a court that relied on the very evidence the misconduct produced, without examining the circumstances that surrounded it. This petition asks the Court to correct the record before these questions are permanently foreclosed.

RULE 44.2 STATEMENT

Pursuant to Supreme Court Rule 44.2, Petitioner petitions for rehearing of this Court's order denying certiorari, entered March 23, 2026. The grounds are limited to: (1) intervening circumstances of substantial and controlling effect — the government's waiver of its right to respond, this Court's pending decision in *Fernandez v. United States*, and this Court's grant of certiorari in *T.M. v. University of Maryland Medical System Corporation*; and (2) substantial grounds not previously presented — a documented false factual premise in the district court's ruling, the unauthorized withdrawal of constitutional defenses, and a pattern of prosecutorial misconduct that received a one-sentence dismissal and has never been examined on its merits. This petition is presented in good faith and not for delay.

Petitioner discloses a material error in the prior petition. That petition cited *United States v. Thaxton*, No. 23-4196 (9th Cir. Feb. 25, 2025) for the proposition that § 2251(a)'s purpose element is ambiguous. That citation was inaccurate — *Thaxton* is a drug-sentencing case concerning U.S.S.G. § 2D1.1(b)(12) and does not address § 2251(a). Petitioner is an incarcerated pro se litigant without access to legal research services. This petition does not repeat that citation. All remaining

arguments rest on the court's own docket, established Supreme Court precedent, and documented facts of record.

STATEMENT OF THE DOCUMENTED TIMELINE

The following is established from the public docket of United States v. Joshi, No. 4:18-cr-00876-JAR (E.D. Mo.), and facts of record: On November 8, 2019, the Knox County Circuit Court of Kentucky formally declared the parties' marriage valid, based on M.D.'s personal sworn testimony before Judge Jones. On November 22, 2019, defense counsel filed a constitutional motion to dismiss. On December 2, 2019, Petitioner rejected a plea offer at a Frye hearing before Judge Ross while that motion was fully pending — establishing on the record his willingness to contest the charges when his defenses were active. In late 2019 or early 2020, the government's investigator traveled to Kentucky and attempted ex parte contact with Judge Jones; the judge refused to meet; the government then faxed a letter to the judge describing the federal charges and requested the case file, which the judge released. The investigator admitted this contact on the record at a hearing in the federal criminal case. In approximately March 2020, M.D. gave a statement to the prosecution recanting the marriage — within 48 hours of her attorney sending Petitioner a text message demanding increased child support. That statement was used to revoke Petitioner's pretrial release. On April 6, 2020, the constitutional motion was withdrawn without Petitioner's knowledge or authorization. No plea existed on that date. On September 16, 2020 — five months and ten days after the withdrawal — Petitioner entered a guilty plea. The district court stated the motion was withdrawn because a plea had been reached. That finding is false and is refuted by the court's own docket.

POINTS OVERLOOKED OR MISAPPREHENDED

I. THE DISTRICT COURT'S CENTRAL FACTUAL FINDING IS DEMONSTRABLY FALSE AND HAS NEVER BEEN CORRECTED.

The district court stated: "the motion to dismiss became moot and was therefore withdrawn when the parties reached a plea agreement." Memorandum and Order, Aug. 21, 2023, at 13. The court further concluded that counsel "did not 'abandon' these arguments" because the withdrawal was a natural consequence of the plea. *Id.* The court's own docket refutes both findings. The motion was withdrawn April 6, 2020. The plea was not entered until September 16, 2020 — five months and ten days later. No agreement existed at withdrawal. No negotiations had produced a deal. The withdrawal preceded the plea by the same interval that separates April from September.

The consequences of this error cascade through every conclusion that followed. The district court's finding that counsel was competent rested entirely on the premise that withdrawal was compelled by and simultaneous with the plea. Once the five-month gap is recognized, that foundation collapses. The questions that should have been asked — why were the defenses withdrawn months before any agreement existed, whether Petitioner authorized the withdrawal, what counsel communicated during the five-month gap, and what Petitioner understood about his legal options when he eventually entered the plea — were never asked because the court's false premise made them appear irrelevant. Petitioner raised this precise error in his Rule 59(e) motion. The district court acknowledged the argument but dismissed it as relitigation rather than correcting the manifest factual error at the core of its ruling. The Eighth Circuit and this Court never corrected it. The conviction rests on a factually false foundation that has infected every stage of review without correction.

II. COUNSEL'S UNAUTHORIZED WITHDRAWAL OF PETITIONER'S CONSTITUTIONAL DEFENSES HAS NEVER BEEN EXAMINED AS A SIXTH AMENDMENT VIOLATION.

Petitioner did not learn the motion had been withdrawn until he independently raised the issue of delaying plea negotiations to allow the pretrial motions to be adjudicated. Counsel then disclosed the withdrawal had already occurred and had been done to demonstrate good faith to the prosecutor — not because any agreement existed or had been negotiated. Petitioner received the motion to dismiss when filed but received no copy of the withdrawal motion and no advance notice that it was being filed. This was not a strategic decision entitled to Strickland deference — it was a unilateral act taken without the client's knowledge, for the attorney's own negotiating purposes, on the most fundamental question in the case.

Under *McCoy v. Louisiana*, 584 U.S. 414 (2018), the decision whether to assert or abandon the objective of a constitutional defense belongs exclusively to the defendant. The Court held that such choices "are not strategic choices about how best to achieve a client's objectives — they are choices about what the client's objectives in fact are." *Id.* at 422. Counsel may not unilaterally surrender that objective as a bargaining chip without authorization. Where counsel does so, *McCoy* recognizes a structural error requiring no separate showing of prejudice — the violation is complete the moment the client's fundamental objective is abandoned without consent. *Strickland v. Washington*, 466 U.S. 668 (1984), deference applies only to decisions made after adequate investigation and consultation. There was no consultation here.

The district court found counsel's performance entirely competent without obtaining or receiving a single word from prior defense counsel. No affidavit from counsel was submitted — leaving wholly uncontradicted Petitioner's specific allegations about what was communicated, when, and whether the withdrawal was authorized. The court that did not consult the one party who could answer those questions cannot be said to have conclusively refuted them. Where a petitioner's specific factual allegations about attorney-client communications are wholly

uncontradicted by any affidavit from counsel, § 2255(b)'s requirement of a hearing unless the record conclusively refutes the claims cannot be satisfied.

The December 2, 2019 Frye hearing satisfies the contemporaneous evidence standard of *Lee v. United States*, 582 U.S. 357 (2017), which directs courts to look for contemporaneous evidence of a defendant's preferences. See *Missouri v. Frye*, 566 U.S. 134 (2012). At that hearing — before the same judge, with the government's attorneys, M.D., and her attorney all present — Petitioner rejected the plea offer on the record while his constitutional motion was fully active. The court reporter was Reagan Fiorino and a transcript of this hearing is available. No stronger contemporaneous evidence of a preference to contest the charges could exist. The district court never cited or applied *Lee*. Petitioner's statement of satisfaction at the plea hearing does not foreclose this claim — he said he was satisfied because counsel provided a plausible explanation for the withdrawal, and he lacked legal training to recognize that unilaterally surrendering a client's constitutional defenses without authorization falls below the Sixth Amendment standard. *Hill v. Lockhart*, 474 U.S. 52 (1985), explicitly recognized that ineffective assistance claims survive guilty pleas — a rule that would be meaningless if the satisfaction colloquy were an absolute bar.

III. NO COURT HAS ADJUDICATED WHETHER THESE STATUTES MAY CONSTITUTIONALLY BE APPLIED TO CONDUCT WITHIN A STATE-RECOGNIZED MARRIAGE.

At every stage the constitutional questions have been disposed of on procedural grounds — not one court has ruled on whether these statutes may constitutionally be applied to conduct within a marriage formally recognized by a court of competent domestic-relations jurisdiction. Petitioner has been sentenced to 96 months, ordered to pay \$800,000 in restitution, and subjected to lifetime supervised release for conduct the Knox County Circuit Court declared occurred within a valid marriage — a decree that has never been vacated, appealed, or disturbed in any state proceeding.

This Court's decisions establish the governing framework. *United States v. Windsor*, 570 U.S. 744 (2013), held the federal government may not disregard valid state marital relationships and specifically cautioned that doing so could be "particularly grave in the context of the federal penal code," where denial might strip married couples of statutory protections available to other married individuals. 570 U.S. at 773. *Obergefell v. Hodges*, 576 U.S. 644 (2015), reaffirmed the constitutional centrality of state domestic-relations authority. These principles were firmly established at the time of the plea and at every stage of review. They have never been applied to this case because the procedural history ensured the merits were never reached. The federal government never challenged the Kentucky decree in any Kentucky court, never appealed it, and never formally intervened in the state proceeding. Federal criminal prosecution is not an available mechanism for relitigating a state domestic-relations judgment the government disfavors. This Court's grant of certiorari in *T.M. v. University of Maryland Medical System Corporation* (cert. granted Dec. 2025), addressing federal courts' authority with respect to state court proceedings, presents an additional intervening circumstance of substantial and controlling effect directly relevant to this question.

A genuine circuit conflict over the statutory elements also remains unresolved. Courts apply divergent standards to the 'distribution' element of § 2252A(a)(2) and the 'purpose' element of § 2251(a), producing opposite outcomes for identical private conduct based solely on geography. The First Circuit requires production be the dominant purpose, see *United States v. Ortiz-Graulau*, 526 F.3d 16 (1st Cir. 2008); the Fifth and Tenth Circuits construe both elements broadly regardless of context, see *Richardson v. United States*, 713 F.3d 232 (5th Cir. 2013); *United States v. Shaffer*, 472 F.3d 1219 (10th Cir. 2007). These conflicts were not resolved by the denial of certiorari and remain live questions affecting prosecutions nationwide.

The government's positions on the marriage's validity are irreconcilable and present a substantial ground not previously addressed by any court. The government contested the validity of the marriage to defeat Petitioner's constitutional defense while simultaneously obtaining an \$800,000 restitution award on the theory that M.D. was a victim of the offense under 18 U.S.C. § 2259. The parties have a child together — a biological reality acknowledged in the criminal proceedings that cannot be reconciled with the government's theory that no genuine marital relationship existed. And the government's position, if accepted, does not merely deny a marriage formally recognized by a Kentucky court — it renders that child illegitimate, stripping from a minor the legal status conferred by a valid state court order to which the child was never a party and in which the child had no opportunity to be heard. These positions cannot all stand simultaneously. If the constitutional defense was meritorious — that federal child-exploitation statutes cannot be applied to conduct within a valid state-recognized marriage — then no offense occurred and M.D. was not a victim entitled to restitution. If M.D. was a victim entitled to restitution, then the offense occurred and the constitutional defense must be adjudicated on its merits. The government obtained the conviction, the restitution award, and acknowledged the child without any court ever resolving that threshold question. No court has addressed this contradiction.

IV. A DOCUMENTED PATTERN OF PROSECUTORIAL MISCONDUCT — PRESERVED IN THE PLEA AGREEMENT — RECEIVED A ONE-SENTENCE DISMISSAL AND HAS NEVER BEEN EXAMINED ON ITS MERITS.

Petitioner's plea agreement explicitly preserved two grounds for collateral attack: ineffective assistance of counsel and prosecutorial misconduct. The prosecutorial misconduct claim encompasses a documented pattern of conduct that has never been presented to any court as an integrated argument and constitutes a substantial ground not previously presented under Rule 44.2. The district court dismissed this preserved claim in one sentence — "Joshi's assertion that the

Government engaged in prosecutorial misconduct by scrutinizing the validity of the purported marriage is equally unavailing, particularly insofar as M.D. herself denied it." Memorandum and Order, Aug. 21, 2023, at 14. That dismissal was constitutionally inadequate for the following reasons, none of which has been presented to any court.

First — M.D.'s sworn testimony. M.D. appeared personally before the Knox County Circuit Court and testified under oath confirming the marriage. Judge Jones issued his order based on that sworn testimony. The government's investigator subsequently traveled to Kentucky and attempted ex parte contact with Judge Jones — the investigator admitted this on the record at a hearing in the federal criminal case. The judge refused to meet. The government then faxed Judge Jones a letter describing the federal charges against Petitioner and requested the case file, which the judge released. Within weeks of this extrajudicial contact with the judge who had accepted M.D.'s sworn testimony, M.D. gave a statement to the prosecution recanting the marriage. The district court used that statement to dismiss the misconduct claim without ever acknowledging M.D.'s prior sworn testimony, the sequence of events preceding her change of position, or the government's extrajudicial contact with the issuing judge.

Contemporaneous with those proceedings, M.D. independently submitted a handwritten letter directly to the presiding federal judge requesting dismissal of the charges and asserting the lawfulness of the relationship. She did so without counsel and without prompting from defense attorneys — acting on her own initiative to communicate her position to the federal court. She later filed a formal written letter with the court through counsel making the same request, and gave a public interview on her eighteenth birthday stating there was nothing illegal about a husband and wife sharing intimate photos and that she wanted the charges dropped. Associated Press, Dec. 13, 2019. The government's response to this sustained, multi-form expression of support was to

characterize it entirely as a product of Petitioner's undue influence — an argument it applied selectively, as addressed below, and never disclosed as an inconsistency to any court.

Second — Physical evidence the government never addressed. On the day of Petitioner's arrest, law enforcement officers confiscated from M.D. a wedding ring and diamond earrings Petitioner had given her. Those items are documented in the government's own arrest records — evidence created by the government's own officers before any coaching, any recantation, and any contact with the Kentucky judge. This is not testimonial evidence subject to the credibility disputes that pervade this case. It is physical evidence, documented contemporaneously by the arresting officers, establishing that M.D. was in possession of marital jewelry at the precise moment the federal government claims no valid marriage existed. No explanation consistent with the government's theory — that the marriage was a sham engineered to defeat a federal prosecution — accounts for why M.D. was wearing a wedding ring on the day Petitioner was arrested. This physical evidence was never addressed in the § 2255 proceeding, was never referenced in the district court's one-sentence dismissal of the misconduct claim, and has never been examined by any court.

Third — Giglio violation. M.D. gave her recanting statement within 48 hours of her attorney sending Petitioner a text message demanding increased child support. That text message exists on a phone in Petitioner's family's possession and was known to defense attorneys. The financial motive immediately preceding M.D.'s change of position was never disclosed to the court and was never raised by defense counsel — a violation of *Giglio v. United States*, 405 U.S. 150 (1972), which requires disclosure of any inducement or motive connected to a government witness's account.

Fourth — Brady violation and missing audio recording. M.D.'s written statement to the prosecution described interactions with Petitioner's named friend and characterized them as coaching sessions. Petitioner specifically requested the audio recording of M.D.'s full interview with the prosecution's investigators. No audio recording was ever produced to the defense. Whether it was not made, not preserved, or withheld has never been adjudicated. *Brady v. Maryland*, 373 U.S. 83 (1963), requires disclosure of material exculpatory evidence including any information that would bear on the reliability of the government's account of those interactions or the completeness of the written statement submitted to the court. Neither the full account of those interactions nor the unproduced audio recording has ever been raised in any proceeding.

Fifth — The government's acceptance of M.D.'s coaching account creates an independent constitutional violation. The government maintains that M.D.'s statement to the prosecution — that she was coached before her Kentucky testimony — is true. That position carries consequences the government has never acknowledged. If the coaching account is true, then M.D.'s sworn testimony before Judge Jones was false — she testified under oath to facts she claims were fed to her rather than known to her. That is perjury. The government has never charged M.D. with perjury for that sworn false testimony. It has instead used her coaching account to defeat the Kentucky court order while simultaneously relying on a conviction built on the ruins of that order. Under *Glossip v. Oklahoma*, 604 U.S. ____ (2025), and *Napue v. Illinois*, 360 U.S. 264 (1959), the government cannot knowingly allow a witness to give false sworn testimony — in any proceeding — without correction, and then use the false testimony's implications to benefit its own prosecution. The friend whom M.D. named as the source of coaching denied any such contact directly to defense attorneys. No evidence of coaching or phone contact was ever established. Whether the coaching account is true or false, the government's use of it is constitutionally infirm — if false, it is an

uncorrected Napue violation; if true, it is an admission of uncorrected perjury in state court. Either way, a preserved constitutional claim was dismissed in one sentence on that foundation.

Sixth — Compulsory Process violation. Three separate defense-connected individuals were silenced by the government's conduct before they could give sworn testimony. First, the named friend — who had already spoken favorably on Petitioner's behalf at the bail hearing and who had communicated directly to defense attorneys her denial of any coaching — was the only person who could refute M.D.'s central account under oath. Before she could testify, the AUSA personally traveled to Kentucky and told her she would be prosecuted for helping Petitioner. She retained counsel and went silent. Second, a second friend working with the first to assist Petitioner's defense was told she would face prosecution for maintaining contact with the first friend. She too went silent. Third, Petitioner's Kentucky family law attorney — the attorney who had obtained the marriage recognition order from Judge Jones and who had direct personal knowledge of those proceedings — was told she might face charges if she continued to represent Petitioner. She withdrew from representation. Each of these individuals possessed information that would have directly supported the constitutional defense and directly challenged the government's theory. Under *Webb v. Texas*, 409 U.S. 95 (1972), government conduct that drives defense witnesses into silence violates the Sixth Amendment right to present a defense. Petitioner informed his defense attorney of this entire pattern. Counsel responded that this is how prosecutors generally work and declined to raise it. That conclusion was legally incorrect. The claim was preserved, specific, and supported by the on-the-record admission of the government's investigator. Its one-sentence dismissal, relying on the product of the very misconduct challenged, does not constitute a merits adjudication.

V. THE GOVERNMENT'S WAIVER AND PENDING COURT DECISIONS PRESENT INTERVENING CIRCUMSTANCES OF CONTROLLING EFFECT.

On March 2, 2026, the government waived its right to respond to the petition, which had been due March 26, 2026. The Court distributed the case for the Conference of March 20 — six days before the response deadline — and denied certiorari on March 23, without any response from the United States. Substantial constitutional questions raising issues of national significance — the application of *Windsor* and *Obergefell* to state-recognized marriages, a documented factual error in the lower court record, a genuine circuit conflict over the statutory elements, and a pattern of preserved prosecutorial misconduct that received a one-sentence dismissal — were denied without adversarial briefing on any of them. This Court regularly calls for the views of the Solicitor General before acting on petitions raising important federal questions. That procedure exists precisely for cases like this one, where the government's decision not to respond left the Court without the government's position on substantial constitutional and statutory questions. Rehearing to request a CVSG would ensure the Court has a complete record before reaching a final disposition.

This Court is also currently considering *Fernandez v. United States* (argued Nov. 12, 2025, decision expected June 2026), which presents whether unresolved legal error may constitute extraordinary and compelling grounds for compassionate release under 18 U.S.C. § 3582(c)(1)(A). If *Fernandez* holds that constitutional error never adjudicated on the merits may support sentence reduction, it will directly govern whether the district court must consider for the first time the questions raised throughout this litigation. This Court's grant of certiorari in *T.M. v. University of Maryland Medical System Corporation* (oral argument April 20, 2026) on the scope of federal courts' authority with respect to state court proceedings presents a second pending matter of direct relevance. A hold pending both decisions would preserve Petitioner's rights pending clarification of the applicable legal standards without requiring further action by this Court at this time.

The cumulative picture has never been examined as a whole by any court. A false factual premise prevented examination of the unauthorized withdrawal. The unauthorized withdrawal prevented examination of the constitutional merits. The government's extrajudicial contact with the Kentucky judge preceded the recantation that was used to dismiss the preserved misconduct claim. Three defense witnesses were silenced before they could testify. A financial motive preceded M.D.'s change of position by 48 hours and was never disclosed. The audio recording of M.D.'s interview was never produced. Physical evidence from the government's own arrest records contradicts the government's theory. And the only court to address the misconduct claim did so in a single sentence, relying on the very evidence the misconduct produced. Petitioner does not ask this Court to resolve these questions — he asks only that a court somewhere, at some point, examine them. None has.

One additional inconsistency warrants notice. Throughout these proceedings the government argued that M.D.'s pro-defense statements — her court filings, her sworn Kentucky testimony, her public advocacy — were products of Petitioner's undue influence rather than her independent judgment. The government then credited her recantation as reliable and independent, despite the fact that it occurred after Petitioner was incarcerated and therefore unable to exert the influence previously claimed. The government applied its reliability theory selectively — treating M.D.'s statements as compromised when they supported Petitioner and as credible when they did not — without ever disclosing this inconsistency to any court. Under *Glossip v. Oklahoma*, 604 U.S. ___ (2025), and *Napue v. Illinois*, 360 U.S. 264 (1959), a prosecution cannot present a witness as alternately reliable and unreliable based solely on which characterization serves the government's interest, without correction.

RELIEF REQUESTED

For the foregoing reasons, Petitioner respectfully requests that this Court:

1. Grant rehearing and issue a writ of certiorari to the United States Court of Appeals for the Eighth Circuit;
2. In the alternative, call for the views of the Solicitor General on the questions presented before issuing a final disposition; or
3. In the alternative, hold the petition pending the Court's decisions in *Fernandez v. United States* and *T.M. v. University of Maryland Medical System Corporation* and dispose of it accordingly; or
4. Remand with instructions that the district court conduct an evidentiary hearing on Petitioner's § 2255 claims, addressing the documented false factual premise, the unauthorized withdrawal of constitutional defenses, and the preserved prosecutorial misconduct claim in its full factual context; or
5. Direct the district court to address the irreconcilable contradiction between the government's denial of the marriage for purposes of criminal liability and its assertion of victim status for purposes of the \$800,000 restitution award.

Respectfully submitted,



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