

FILED
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SUPREME COURT, U.S.

No. 25 - 6990

IN THE
SUPREME COURT OF THE UNITED STATES

Tarun Kumar Vyas — PETITIONER
(Your Name)

vs.

Commonwealth of Virginia — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Supreme Court of Virginia
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Tarun Kumar Vyas
(Your Name)

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(Phone Number)

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QUESTION(S) PRESENTED

This case squarely presents two questions under the 4th, 5th, 6th and 14th amendments in which a state court of last resort has decided two very important and recurring federal issues in a way that conflicts with the relevant decisions of this court.

I. Whether admitting the cybertip report of the National Center For Missing And Exploited Children (NCMEC) to the jury violated the Confrontation clause of the 6th amendment, as well as the Due Process clauses of the 5th and 14th amendments, when its author was never made available for cross-examination.

It did under [Crawford VS Washington, 541 US 36 (2004)].

II. Whether Kik and NCMEC acted as agents or instruments of the government when formulating the very cybertips that leads to criminal prosecution?

They did under [Skinner VS Railway Labor Executives' Assn., 489 US 602, 614 (1989)].

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LIST OF PARTIES

- All parties appear in the caption of the case on the cover page.
- All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

am
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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix C to the petition and is

- reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the Court of Appeals of Virginia court appears at Appendix A to the petition and is

- reported at Vyas VS Commonwealth, 2025 Va. App. LEXIS 198; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

[] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was _____.

[] No petition for rehearing was timely filed in my case.

[] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from state courts:

The date on which the highest state court decided my case was Sep. 30, 2025. A copy of that decision appears at Appendix C.

[] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

I respectfully state that the following constitutional and statutory provisions are involved :-

- ① Confrontation clause of the VIth amendment,
- ② Due process clause of the XIVth amendment,
- ③ Due process clause of the Vth amendment,
- ④ Legitimate expectation of personal and property based privacy clause of the IVth amendment.

STATEMENT OF THE CASE

I was convicted on 30 counts of child pornography (C.P.) possession and 7 counts of CP distribution after a jury trial on May 26, 2023 at the Rockingham County Circuit Court in Virginia. The direct criminal appeal was denied on April 8, 2025 by the Virginia Court of Appeals. The Supreme Court of Virginia (SCOVA) denied review on 9/30/2025. The appellate counsel presented five claims to SCOVA. Out of those five, I am presenting two to the court.

The first is concerning non-harmless confrontation clause violations. At trial, the state introduced the cyber tip reports from Kik and the National Center for Missing and Exploited Children (NCMEC). However, both those reports had human authors who were never made available for cross examination. Additionally, those reports were central to the prosecution's case and not cumulative of other evidence. Therefore, the introduction of those reports violated the confrontation clause of the VIth amendment.

The second is a novel issue within the ambit of the IVth amendment. In the past few recent

years, entertainment service providers (ESPs) like google, microsoft, Kik etc. have started reporting any contraband on their platform to an entity called the National Center for Missing and Exploited Children (NCMEC). Earlier in the reporting years, all such evidence was getting suppressed by the courts under [Skinner VS Railway Labor Executives' Assn., 489 US 602, 614 (1989)], because NCMEC acted as a government agent when it viewed the files sent by ESPs without a warrant, before forwarding the cyber tip to the appropriate law enforcement agency, or because law enforcement themselves opened and viewed the files in the cyber tip without a warrant; as the private search doctrine did not apply.

However, in the aftermath of this, ESPs have now started (allegedly) viewing the entire contents of all the files while formulating the cyber tips. This extra step has provided the law enforcement with an unconstitutional and unreasonable entitlement to the private search doctrine. The fact that the government and law enforcement have caused the ESPs to change their methodology of preparing and

reporting the cyber tips, such that it helps circumvent the IVth amendment via the private search doctrine, makes the ESPs an agent or instrument of the government.

REASONS FOR GRANTING THE PETITION

I. Please consider the following with respect to the first question :-

- ① If the business records are testimonial, then a defendant must be given an opportunity to confront the authors of those records.
- ② NCMEC introduced out of court ^{in a report} statements that:
 - ① Did not exist before the criminal activity was discovered,
 - ② Stated conclusions (though perhaps obvious ones) about the meaning of the underlying data,
 - ③ Was created for the express purpose of reporting criminal activity and identifying the perpetrator of that activity and
 - ④ Was reported to law enforcement.
- ③ The only evidence introduced at the jury trial to demonstrate the upload dates, times and I.P. addresses, were the Kik and NCMEC cyberdiscipline reports.

- ④ Kik's hash (#) database is a database populated with # values of known child sexual exploitation material (CSAM). When a file is uploaded to Kik, PhotoDNA automatically assigns it a specific alphanumeric number, known as # I.D. or # value.
- ⑤ When an image is assigned a # value, that value is matched against a repository provided by NCMEC and if... that # value is identified with something in NCMEC's repository, only then does Kik identify it as CSAM [USA vs Guard (2nd, 9/10/2025)].
- ⑥ NCMEC simply forwards testimonial statements made by Kik to law enforcement. Therefore, the confrontation clause problem with the Kik cybertip report also taints the admission of the NCMEC cybertip report, as the human author of the former was never made available for cross-examination under oath.
- ⑦ The cybertip reports of both Kik and

⑦ NCMEC were, therefore, testimonial.

⑧ As such the absence of the human author of the NCMEC report at or before the jury trial so that he could be cross examined under oath, violated the Confrontation clause of the VIth amendment, as well as the due process clauses of the Vth and XIVth amendments.

⑨ The violations were non-harmless; the improperly admitted reports were central to the prosecution's case and not cumulative of any other evidence.

[USA vs Cameron, 699 F.3d 621, 654 (1st, 11/14/2012)]

[USA vs Cabrera-Beltran, 660 F.3d at 752 (4th, 2011)]

[USA vs Garcia, 887 F.3d 205, 213 (5th, 2018)]

[USA vs Lorenzo-Lucas, 775 F.3d 1008, 1010 (8th, 2014)]

[USA vs James, 712 F.3d 79, 94-96 (2nd, 2013)]

[USA vs Smith, 640 F.3d 358, 363 (D.C. Cir., 2011)]

[USA vs Yelley - Davis, 632 F.3d 673, 679 (10th, 2011)]

[USA vs Orozco - Acosta, 607 F.3d 1156, 1163 (9th, 2010)]

[Bullcoming vs New Mexico, 564 US at 659, n.6 (2011)]

[Melendez - Diaz vs Massachusetts, 557 US at 321-322 (2009)]

[Smith vs Arizona, 602 US 779 (2024)]

[Hempill vs NY, 595 US 140, 156 (2022)]

[USA vs Arce, 49 F.4th at 393 (4th, 2022)]

[Crawford vs Washington, 541 US 36, 51 (2004)]

[Olden vs Kentucky, 488 US 227, 231 (1988)]

[Davis vs Alaska, 415 US 308, 316-17 (1974)]

[USA vs Ramos - Gonzalez, 664 F.3d 1, 5-6 (1st, 2011)]

[Davis vs Washington, 547 US at 827, n.5 (2006)]

[USA vs Lamons, 532 F.3d 1251, 1262-64 (11th, 2008)]

II. Please consider the following with respect to the second question :-

① NCMEC's law enforcement powers extend well beyond those enjoyed by private citizens. Its two primary authorizing statutes — 18 USC § 2258 A and 42 USC § 5773(b), mandate its collaboration with federal, state and local law enforcement in over a dozen ways. The special law enforcement powers and duties of NCMEC's cyber tipline function are :

① NCMEC alone is statutorily obligated to maintain an electronic tipline for Entertainment Service Providers (ESPs) to use to report child sexual ^{abuse} exploitation; (CSAM) material.

①① ESPs must report any CSAM material to NCMEC.

①①① When NCMEC confirms it has received a report, the ESP must treat that confirmation as a request to preserve evidence issued by the government itself.

①④ In aid of its tipline function, NCMEC is statutorily authorized to receive CSAM knowingly and to review its contents intentionally.

①⑤ 75% of NCMEC's budget comes from the federal government.

(vi) NCMFC has multiple law enforcement agencies in their building who provide support and help do its job — FBI, DHS, US marshals, USPS inspection service, DOD, Secret Service, DOT, office of juvenile justice and delinquency prevention and federal resources on missing and exploited children.

(vii) Furthermore, a quarter of NCMFC's board members represent either government or law enforcement agencies including FBI, US secret service, US marshals, ATF, ICE, Naval Criminal Investigation Service, USPS inspection service, US nuclear regulatory commission, national sheriff's association, fraternal order of police and national association of attorney generals.

So, how can any court deny that NCMFC does not act as a government agent? Hence, just like Amtrak, NCMFC also acts as a government agent when it ^{forwards or} inspects the hash (#) values, images and videos from any online tip.

[USA VS Ackerman (10th, 10/4/2016)]

② Having established that NCMEC is a government agent, leads to the conclusion that Kik is also an agent of the government.

③ A few years ago, all the evidence from the cyber tips would get suppressed because no one at ESPs like Kik would open and view the entire contents of all the files while formulating the cyber tip.

④ Now, all ESPs (including Kik/Media Lab) have specifically instructed their employees to view the entire contents of all the files while formulating the cyber tip. This has been intentionally done so that the private search doctrine applies, thereby making the evidence admissible in a court of law.

⑤ Any argument that reporting of CSAM on their platform by the ESPs is voluntary, is rendered wholly unavailing by the following:

① The fact that 18 USC § 2258 A imposes a negative reinforcement on ESPs like Kik to report CSAM on its platform, makes the action involuntary, since the failure to report leads

(5) (i) to huge monetary fines that increase with each failure to report.

(ii) If the reporting of CSAM was truly voluntary, then the number of cyberstips would surely be decreasing, however, data shows that the cyberstips have increased exponentially over the years. In fact, their number has increased so much that NCMEC had to stratify them into different priority levels.

(iii) Just like after [Mapp vs Ohio, 367 US 643 (1961)], the 'droopy testimony' became prevalent, the fact that the ESPs are now allegedly viewing all the files before sending the cyberstip to NCMEC, is also proof that they are acting as agents of the government by unconstitutionally helping it circumvent the IVth amendment.

(iv) All the three tests under [Blum vs Yaretsky, 457 US 991, 1004 (1982)] are satisfied: Function, Compulsion and Nexus; the ESPs are now performing a function test that has been 'traditionally and exclusively' performed by the government, the private actors have been given

(5) (iv) special powers and the government has exercised coercive power, and has ^{also} provided such significant encouragement, both overt and covert, that the choice in law has to be deemed to be that of the government.

(v) The law enforcement has influenced their decision to scan the account; the ESPs now have other intent than to rid their virtual spaces of criminal activity and to protect the business — the substantial penalty they face if they fail to report.

(6) How can ESPs "detect" CSAM on their platform, if they do not "monitor" in some form or fashion? Hence, the mandatory reporting clause of 2259A, also implies a mandatory search.

(7) The contention is further affirmed by the fact that Kik's # database is PhotoDNA's database, which is a database populated with # values of known CSAM. When a file is uploaded to Kik, PhotoDNA automatically assigns it a # value. That # value is then matched against a repository provided by NCMEC and if there

⑦ is a match, Kik identifies it as CSAM [USA VS Guard (2nd, 9/10/25)].

⑧ By preserving data pursuant to the preservation request sent either by NCMEC or the government, Kik acted as an agent of the government because the government now possesses data/evidence that:

① Kik copied in the initial set of the preserved records and

② was deleted before Kik turned over the records pursuant to the warrant or subpoena.

⑨ What would be the point of the IVth amendment if the government could have instantly rendered it a dead letter by the simple expedient of delegating to agents the very investigative work that it was forbidden from undertaking itself?

⑩ Please see [Wayne R. Lafare, Search and Seizure: A Treatise On The Fourth Amendment § 1.8(b) (6th ed.)]

Therefore, the petition should be granted as:-

① The Supreme Court of Virginia's (SCOVA) ruling is contrary to the IVth, Vth, VIth and XIVth amendments.

② The SCOVA's ruling is also contrary to the following precedents of the court:

[Skinner vs Railway Labor Executives' Assn., 489 US 602, 614 (1989)]

[Bullcoming vs New Mexico, 564 US at 659, n.6 (2011)]

[Melendez-Diaz vs Massachusetts, 557 US at 321-322 (2009)]

[Smith vs Arizona, 602 US 779 (2024)]

[Hempill vs N.Y., 595 US 140, 156 (2022)]

[Crawford vs Washington, 541 US 36, 51 (2004)]

[Olden vs Kentucky, 488 US 227, 231 (1988)]

[Davis vs Alaska, 415 US 308, 316-17 (1974)]

[Bruton vs USA, 391 US 123 (1968)]

③ This case presents an ideal vehicle for addressing the issues because:

- (3) (a) There are no factual or legal procedural impediments to the court in reaching the legal issues presented,
- (b) The facts are undisputed,
- (c) The resolution of the questions was outcome - dispositive,
- (d) There is a complete record,
- (e) The case is not interjurisdictional and
- (f) The facts are emblematic of how these legal issues generally arise.

(4) The petition presents questions of great importance to defendants, prosecutors and law enforcement alike, at not only the federal, but the state level as well.

(5) The issues are of fundamental legal significance — they affect the manner in which child pornography cases are prosecuted nationwide, and are, therefore, significantly important to the judicial economy as well.

⑥ No AEDPA deference is applicable when a certiorari is filed from the denial of the direct criminal appeal by the highest state court [Madison vs Alabama, 139 S.Ct. 718 (2019)].

⑦ Presumption of innocence applies on direct collateral review [Griffin vs Illinois, 351 US 12 (1956)].

CONCLUSION

Thus, I pray that the court grant the petition.

Respectfully submitted,

~~Tarun~~

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