No. _____

IN THE

Supreme Court of the United States

LAIRON GRAHAM, *PETITIONER*

V.

UNITED STATES OF AMERICA

APPLICATION FOR AN EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI

To the Honorable Sonia Sotomayor, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Court of Appeals for the Second Circuit:

1.	Pursuant to Supreme Court Rule 13.5, petitioner Lairon Graham respectfully requests a 30-day extension of time, until Wednesday, October 29, 2025, to file a petition for a writ of *certiorari*.

2. The Court of Appeals for the Second Circuit issued the attached summary order [hereinafter "SO"] on April 21, 2025. On June 5, 2025, Graham filed a timely petition for panel rehearing or rehearing *en banc*. On July 1, 2025, the Second Circuit issued the attached order denying Graham's request for rehearing.

3. Graham is currently serving a prison term for which his projected release date is April 19, 2032. This Court has jurisdiction to review his case under 28 U.S.C. § 1254(1).

4. Pursuant to Supreme Court Rules 13.1 and 13.3, Graham's petition for *certiorari* is currently due on September 29, 2025. This application is being filed more than 10 days in advance of that date.

5. This case presents two important questions. The first question, which has divided federal courts of appeals, is whether, by signing a plea agreement with a generic appeal waiver, a criminal defendant waives his right to challenge his attorney's past, present, and future performance under *Strickland v. Washington*, 466 U.S. 668 (1984). The second question presented is whether an appellate court's violation of the party presentation principle may also amount to a deprivation of the right to due process on appeal.

6. This case is an ideal vehicle for the Court to address either or both of these questions. On appeal, Graham argued that it was unreasonable "under prevailing professional norms," *Strickland*, 466 U.S. at 688, for his prior attorney to advise him to stipulate to a sentencing enhancement based on the unsupported and unchallenged assumption that his prior state-law purse snatching conviction

qualifies as a "serious violent felony" predicate under 18 U.S.C. § 3559(c)(2)(F)(i).

Moreover, Graham argued that the appeal waiver set forth in his plea agreement

did not preclude him from raising a *Strickland* claim relating to this sentencing

issue on direct appeal. The government did not acknowledge or present a response

in opposition to Graham's arguments regarding the scope of his appeal waiver.[1] As

such, Graham presented supplemental letter briefing and oral arguments relating

to the "principle of party presentation." *United States v. Sineneng-Smith*, 590 U.S.

371, 375-76 (2020). Among other things, Graham argued that a rejection of his

appeal "would . . . require resort to non-presented counter-arguments that [he] did

not have an adequate opportunity to contest." C.A. Dkt. 41, at 2.

> 7. The Second Circuit ultimately issued a "summary order" that: (1) did

not acknowledge the party presentation principle; and (2) rejected Graham's

arguments relating to the scope of his appeal waiver on the grounds that he "has

not argued, much less shown, that the appeal waiver itself was the result of

ineffectiveness of counsel." SO.5. In a timely petition for panel rehearing or

rehearing *en banc*, Graham argued that this aspect of the summary order "relies on

an argument that the government did not present and has broadly renounced as a

matter of policy,"[2] in violation of *Sineneng-Smith*. C.A. Dkt. 58, at 2-3. *See id.* at 12-

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[1] The Department of Justice "no longer ask[s] criminal defendants who plead guilty to waive their right to bring future claims of ineffective assistance of counsel." U.S. Department of Justice, Attorney General Holder Announces New Policy to Enhance Justice Department's Commitment to Support Defendants' Right to Counsel (Oct 14, 2014).

[2] *See supra*, n.1.

14. Furthermore, Graham emphasized that the Second Circuit's *sua sponte* argument on the government's behalf "conflicts with the well-reasoned decisions of other circuits who do not permit criminal defense lawyers to advise their clients to waive their right to bring claims of ineffective assistance of counsel." *Id.* at 3. For example, in *In re Sealed Case*, 901 F.3d 397, 403 (2018), the D.C. Circuit held that, "construing a generic appeal waiver to extend to ineffective-assistance-of-counsel claims would be inconsistent" with the notion that such waivers must be knowing, intelligent, and voluntary. *See id.* at 404 ("We recognize that other courts of appeals have determined otherwise."). *See also United States v. Johnson*, 410 F.3d 137, 151 (4th Cir. 2005) ("[A] defendant's agreement to waive appellate review of his sentence is implicitly conditioned on the assumption that the proceedings following entry of the plea will be conducted in accordance with constitutional limitations.") (quoting *United States v. Attar*, 38 F.3d 727, 732 (4th Cir. 1994)). Graham's petition for rehearing was denied on July 1, 2025.

8.   Pursuant to the Criminal Justice Act, 18 U.S.C. § 3006A, the undersigned was appointed to represent Graham as substitute appellate counsel. Soon after the Second Circuit issued the attached order denying rehearing, I spoke with Graham and began working on a petition for *certiorari*. However, because of the press of work in other cases, and because I am effectively a solo practitioner with respect to the appellate matters I am assigned as a member of the CJA panels for the First and Second Circuits, I will require additional time to conduct adequate research and prepare an effective petition while also attending to other obligations.

9.   Therefore, I respectfully request an additional 30 days to prepare

Graham's petition for *certiorari*.

Dated: New York, New York   Respectfully submitted,
            September 10, 2025

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