

No.

In the
SUPREME COURT OF THE UNITED STATES

SIMON HESSLER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

**MOTION FOR LEAVE TO FILE PETITION FOR A WRIT OF CERTIORARI
OUT OF TIME**

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Pursuant to Supreme Court Rule 13.5, Petitioner Simon Hessler respectfully moves for leave to file the accompanying Petition for a Writ of Certiorari out of time. In support of this motion, Petitioner states as follows:

1. The United States Court of Appeals for the Second Circuit entered its order denying a certificate of appealability on May 14, 2025. Under Supreme Court Rule 13.1, the deadline for filing a petition for a writ of certiorari was 90 days thereafter, or August 12, 2025.

2. On August 12, 2025—the final day of the 90-day period—Petitioner filed an application for a certificate of appealability directly with Justice Sonia Sotomayor, the Circuit Justice for the Second Circuit, pursuant to Supreme Court Rule 22.1 and 28 U.S.C. § 2253(c)(1)(B). This application sought a certificate of appealability to permit full appellate review in the Second Circuit of the district court's denial of Petitioner's 28 U.S.C. § 2255 motion. The application was docketed as No. 25A187 and submitted to Justice Sotomayor for consideration.

3. Applications to a Circuit Justice under Rule 22.1 do not automatically toll or extend the time for filing a petition for a writ of certiorari. *See* Sup. Ct. R. 13.3 (extensions only for applications to the Court before the deadline). Accordingly, the August 12, 2025, filing of the application to Justice Sotomayor did not extend the certiorari deadline.

4. Justice Sotomayor denied the application on August 21, 2025. Petitioner and counsel conferred upon receipt of the denial and determined that, in

light of the related nature of the issues (the denial of the certificate of appealability directly implicates the merits of the habeas claims, including equitable tolling and actual innocence, which form the basis for certiorari review), a petition for a writ of certiorari was warranted and should be filed to seek this Court's review of the Second Circuit's underlying order denying the certificate of appealability.

5. The delay in filing the petition is minimal and justified by good cause. The pendency of the application before Justice Sotomayor directly related to the certiorari issues, as it addressed whether the habeas claims were "debatable" under 28 U.S.C. § 2253(c)(2) and warranted further proceedings. Petitioner exercised diligence by promptly consulting with counsel and his father, who provides him financial support and lives out of country, about preparing the petition upon denial. Awaiting Justice Sotomayor's decision avoided premature filing and potential mootness, and the brief delay post-denial allowed counsel to gain authority to file this petition with this Court and convert the application into a full petition while incorporating the denial as part of the record.

6. This Court has discretion to enlarge the time for filing a petition "for good cause shown" or "in the interests of justice." Sup. Ct. R. 13.5. Courts have granted such motions in analogous circumstances involving minimal delays justified by related proceedings or equitable considerations. *See, e.g., Holland v. Florida*, 560 U.S. 631, 649 (2010) (equitable principles apply to tolling in habeas contexts); cf. cases granting extensions for awaiting related rulings, such as in capital or habeas matters where timing overlaps with circuit justice applications. Here, the interests

of justice strongly favor review, as the case presents a clear inter-circuit conflict on the interpretation of "sexually explicit conduct" under 18 U.S.C. § 2251(a) regarding passive minors, a recurring issue in child pornography prosecutions that affects uniformity of federal law and Petitioner's substantial constitutional claims of ineffective assistance of counsel and actual innocence.

7. No prejudice to Respondent will result from granting this motion, as the delay is *de minimis*, and Respondent has been on notice of the claims since the district court proceedings began in 2023. In light of his incarcerated status and financial dependency on others, petitioner has acted with diligence throughout.

8. This court has rejected the filing as untimely; for the reasons set forth above, we respectfully request its acceptance.

WHEREFORE, Petitioner respectfully requests that the Court grant leave to file the accompanying Petition for a Writ of Certiorari out of time.

Dated: New Paltz, New York
October 8, 2025

Respectfully submitted,

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