

No. _____

In the
Supreme Court of the United States

Jason M. Smith,

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

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Counsel for Petitioner
Jason M. Smith

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

Petitioner Jason Smith, by and through his Counsel, respectfully requests that the time for him to file a petition for writ of certiorari or for issuance of a certificate of appealability in this matter be extended for 62 days from Tuesday, July 21, 2026, to Monday, September 21, 2026 (the 60th day after July 21, 2026, being a Saturday).

The Court of Appeals issued an order denying his application for a certificate of appealability of the denial of his *Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. § 2255* on January 13, 2026 (see Appendix A). His motion for rehearing filed pursuant to *F.R.App.P.* 40 was denied on April 22, 2026.

Petitioner's petition for relief from this Court therefore would be due on July 21, 2026, absent an extension. He is filing this application at least ten days before that date.

The Court has jurisdiction over the judgment under 28 U.S.C. § 1254(1).

Petitioner was convicted in the U.S. District Court for the Western District of New York upon a guilty plea to two counts of producing child pornography (Counts 1 and 2) and four counts of possessing child pornography (Counts 3-6). See Case No. 1:15-cr-002, Dkt. 9. He filed a timely *Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. § 2255*, which was denied by the District Court on the merits on February 14, 2025.

In that *Motion*, Petitioner argued that he received ineffective assistance of counsel during the pre-plea suppression of the search warrant, during the change-of-plea phase, and during sentencing. The District Court denied Petitioner's § 2255 motion, holding that his "trial counsel mounted an objectively reasonable challenge to the search warrants, albeit one that did not include the colorable particularity argument that Smith now presses," a claim that the trial court all but conceded was meritorious. *Smith v. United States*, Case No. 15-CR-2S (W.D.N.Y. Apr. 9, 2025), 2025 U.S. Dist. LEXIS 68104, at *23-25, 2025 WL 1071145 (§ 2255 Order). Even

had the particularity argument been raised, the District Court held, suppression of the evidence would have been denied under *United States v. Leon*, 468 U.S. 897, 909 (1984).

Smith filed a timely notice of appeal (Dkt. 112, filed June 9, 2025) and petitioned for issuance of a certificate of appealability. The United States Court of Appeals for the Second Circuit denied that petition.

The time to file a petition for a writ of certiorari should be extended for 60 days for the following reasons:

1. Communications with Petitioner, who is confined in a United States Penitentiary at Tucson, is extraordinarily difficult due to frequent staff shortages and consequent difficulty in scheduling unmonitored legal calls.
2. The issue raised is ineffective assistance of counsel in addressing the sufficiency of several search warrants, each based in part on the former. Underlying the issues is a question of the enforceability of an appeal and collateral attack waiver. Undersigned counsel believes that these issues are or may be informed by this Court's

decisions in *Hunter v. United States*, Case No. 24-1063, 608 U.S. ---, 2026 U.S. LEXIS 2558 (June 18, 2026) and *Chatrie v. United States*, Case No. 25-112, 608 U.S. ---, 2026 U.S. LEXIS 2878 (June 29, 2026).

3. By extending the date for the petition in this case, the Court is more likely to have the benefit of analysis of the foregoing opinions when deciding whether to grant a petition.
4. An extension will not prejudice Respondent. Petitioner is currently incarcerated and will continue to serve his sentence until a final favorable decision in this matter after any remand that may be ordered.

For the foregoing reasons, the Court should extend the time to file a petition for a writ of certiorari in this appeal by 62 days, to and including Monday, September 21, 2026.

Executed July 9, 2026

/s/ Matthew Gilmartin

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(Member of the Bar of the
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No. _____

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JASON M. SMITH,

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PROOF OF SERVICE

I, MATTHEW GILMARTIN, COUNSEL TO JASON M. SMITH SWEAR OR DECLARE THAT ON THIS DATE, JULY 9, 2026, AS REQUIRED BY SUPREME COURT RULE 29, I HAVE SERVED THE ENCLOSED *MOTION FOR EXTENSION OF TIME* ON EACH PARTY TO THE ABOVE PROCEEDING OR THAT PARTY'S COUNSEL, AND ON EVERY OTHER PERSON REQUIRED TO BE SERVED, BY DEPOSITING AN ENVELOPE CONTAINING THE ABOVE DOCUMENTS IN THE UNITED STATES MAIL PROPERLY ADDRESSED TO EACH OF THEM AND WITH FIRST-CLASS POSTAGE PREPAID.

THE NAMES AND ADDRESSES OF THOSE SERVED ARE AS FOLLOWS:

TIFFANY H. LEE, ATTORNEY
U.S. ATTORNEY'S OFFICE
138 DELAWARE AVENUE
BUFFALO, NY 14202

SOLICITOR GENERAL OF THE
UNITED STATES
ROOM 5614
DEPARTMENT OF JUSTICE,
950 PENNSYLVANIA AVE., N.W.,
WASHINGTON, D.C. 20530-0001

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. EXECUTED ON JULY 9, 2026.

/s/ Matthew Gilmartin

Matthew Gilmartin
Matthew Gilmartin, Attorney at Law, LLC
P.O. Box 38040
Olmsted Falls, OH 44138

Counsel to Petitioner

APPENDIX A

W.D.N.Y.
19-cv-1365
15-cr-2
Skretny, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 13th day of January, two thousand twenty-six.

Present:

Barrington D. Parker,
Reena Raggi,
Michael H. Park,
Circuit Judges.

Jason M. Smith,

Petitioner-Appellant,

v.

25-1458

United States of America,

Respondent-Appellee.

Appellant moves for a certificate of appealability. Upon due consideration, it is hereby ORDERED that the motion is DENIED, and the appeal is DISMISSED because Appellant has not “made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *see also Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

FOR THE COURT:

Catherine O’Hagan Wolfe, Clerk of Court




APPENDIX B

UNITED STATES COURT OF APPEALS
for the
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 22nd day of April, two thousand twenty-six,

Present: Barrington D. Parker,
Reena Raggi,
Michael H. Park
Circuit Judges,

Jason M. Smith,

Petitioner - Appellant,

v.

United States of America,

Respondent - Appellee.

ORDER

Docket No. 25-1458

Appellant Jason M. Smith filed a motion for reconsideration and the panel that determined the motion has considered the request.

IT IS HEREBY ORDERED, that the motion is denied.

For The Court:
Catherine O'Hagan Wolfe,
Clerk of Court


