

No. 13-1112

In the Supreme Court of the United States

WILLIAM GEORGE GAMMON, PETITIONER

v.

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT*

MEMORANDUM FOR THE UNITED STATES

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Petitioner contends that 18 U.S.C. 2259 authorizes a court to order a defendant convicted of possessing images of child pornography to pay restitution to an exploited child victim for only those losses that proximately resulted from the defendant's offense. The resolution of that question is likely to be influenced by the Court's decision in *Paroline v. United States*, No. 12-8561 (argued Jan. 22, 2014), in which the Court formulated the following question: "What, if any, causal relationship or nexus between the defendant's conduct and the victim's harm or damages must the government or the victim establish in order to recover restitution under 18 U.S.C. § 2259?"

Nevertheless, the petition for a writ of certiorari is substantially out of time. The court of appeals issued its decision on April 29, 2013. Pet. App. 1. This Court's Rules provide in pertinent part that a petition

“is timely when it is filed * * * within 90 days after entry of the judgment.” Sup. Ct. R. 13.1. Accordingly, petitioner’s deadline for filing a petition for a writ of certiorari was July 29, 2013 (the 90th day being a Sunday). Petitioner did not file his petition for a writ of certiorari until March 19, 2014. Although this Court has discretion to consider an untimely petition for a writ of certiorari in a criminal case if “the ends of justice so require,” *Schacht v. United States*, 398 U.S. 58, 63-65 (1970); see also *Bowles v. Russell*, 551 U.S. 205, 212 (2007), petitioner offers neither explanation nor justification for the untimeliness of his petition, and none is apparent from the record.

Accordingly, absent a sufficient justification by petitioner, the Court may wish to deny the petition as untimely. Should the Court choose not to deny the petition as untimely, it should hold the petition pending the disposition of *Paroline* and then disposed of as appropriate in light of the decision in that case.*

Respectfully submitted.

DONALD B. VERRILLI, JR.
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* The government waives any further response to the petition unless this Court requests otherwise.