

No. 22A_____

IN THE
Supreme Court of the United States

FRANKLIN PAUL ELLER, JR.,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

**APPLICATION FOR AN EXTENSION OF TIME
TO FILE A PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

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APPLICATION

To the Honorable Elena Kagan, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Ninth Circuit:

Pursuant to Rule 13.5 of the Rules of this Court and 28 U.S.C. § 2101(c), applicant Franklin Paul Eller, Jr., respectfully asks for a 45-day extension of time, to and including August 17, 2023, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this matter.

1. The Ninth Circuit entered judgment on January 25, 2023, in both a published opinion and an unpublished memorandum decision. *See United States v. Eller*, 57 F.4th 1117 (9th Cir. 2023); *and United States v. Eller*, No. 20-10425, 2023 WL 395938 (9th Cir. 2023). (Pursuant to Rule 13.5, copies of the opinion and memorandum decision are attached to this application. *See* A-001 to A017.) Mr. Eller filed a petition for rehearing and rehearing en banc on March 10, 2023. The Ninth Circuit denied the petition on April 4, 2023. (Pursuant to Rule 13.5, a copy of the Ninth Circuit's order denying rehearing is also attached to the application. *See* A-018.) Unless extended, the time to file a petition for writ of certiorari will run on **July 3, 2023**. This application is being filed more than ten days before the petition is currently due. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1).

2. Mr. Eller's appeal to the Ninth Circuit Court of Appeals challenged his convictions and sentences on four counts each of attempted coercion or enticement of minors, attempted production of child pornography, and attempted receipt of child pornography. *See* 18 U.S.C. §§ 2251(a), 2252(a)(2), 2422(b). Specifically, Mr. Eller challenged (1) a search warrant issued by the United States District Court for the District of Columbia that permitted the FBI to obtain the entirety of his Yahoo! email account from the date of the account's creation; (2) the sufficiency of the evidence supporting the jury's finding of guilt on four counts of attempted coercion or enticement of minors; and (3) the district court's imposition of lifetime supervised release.

3. A panel of the Ninth Circuit (Circuit Judges Owens and Collins, and Senior Circuit Judge Bybee) rejected each of the above three challenges. *See Eller*, 57 F.4th at 1119-1121 (sufficiency of evidence on attempted coercion or enticement of minors), *and Eller*, No. 20-10425, 2023 WL 395938 at *2-7 (validity of Yahoo! email warrant and life term of supervised release).

4. Assistant Federal Public Defender Michael Burke was assigned to represent Mr. Eller on appeal, including certiorari proceedings in this Court. *See* 9th Cir. R. 4-1(e). Counsel's schedule prevents him from preparing the petition for writ of certiorari before the current deadline of July 3, 2023. In the coming weeks, counsel is occupied with briefing deadlines in other cases, including opening briefs in *United States v. Amalicar*, Ninth Circuit No. 23-320, due on July 5, 2023, and *United States v. Tellez*, Ninth Cir. No. 22-15781, due on July 14, 2023.

5. Counsel requests a 45-day extension of time, until August 17, 2023, to permit him adequate time to research the relevant legal and factual issues and to prepare a petition that fully addresses the important questions described in this application.

6. For these reasons, Mr. Eller respectfully asks that an order be entered extending the time for filing a petition for certiorari to and including August 17, 2023.

Respectfully submitted:

June 8, 2023.

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