

No. \_\_\_\_\_

IN THE SUPREME COURT OF THE UNITED STATES

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TON TON AQUINO,  
*Petitioner,*

v.

UNITED STATES OF AMERICA,  
*Respondent.*

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**APPLICATION TO THE HONORABLE CLARENCE THOMAS,  
ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED  
STATES AND CIRCUIT JUSTICE FOR THE ELEVENTH CIRCUIT,  
FOR AN EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF  
CERTIORARI**

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Counsel for Petitioner

To the Honorable Clarence Thomas, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Eleventh Circuit:

Pursuant to Rule 13.5 of the Rules of the Supreme Court of the United States, Petitioner respectfully requests a 60-day extension of time, to and including August 17, 2025, to file a petition for a writ of certiorari in this case. The United States Court of Appeals for the Eleventh Circuit denied Petitioner's petition for rehearing en banc and motion for reconsideration on March 20, 2025. Absent an extension, the petition is due on June 18, 2025. This application is submitted more than ten days before that date. No previous request for an extension has been made.

### **Statement of Jurisdiction**

This Court has jurisdiction over this application and the eventual petition for writ of certiorari pursuant to 28 U.S.C. § 1254(1), as Petitioner intends to seek review of a decision by a three-judge panel of the Court of Appeals for the Eleventh Circuit. That court, on December 18, 2024, dismissed Petitioner's appeal from his conviction in the Southern District of Georgia, then denied Petitioner's petition for rehearing en banc and petition for panel rehearing on March 20, 2025. Pursuant to Supreme Court Rule 13.1, a petition for a writ of certiorari is due within 90 days of the date of the court of appeals' final order. This application is submitted under Rule 13.5, which allows for an extension of time to file such a petition for good cause.

## Background

This case presents a question concerning the limits of appeal waivers and the legality of imposing requirements under the Sex Offender Registration and Notification Act (SORNA) for non-qualifying offenses. Petitioner Ton Ton Aquino was convicted in the United States District Court for the Southern District of Georgia of misprision of a felony under 18 U.S.C. § 4. That offense is not a qualifying sex offense under 42 U.S.C. § 16911, but the district court imposed SORNA registration as a condition of probation.

Mr. Aquino's plea agreement included a general appeal waiver, and he challenged the legality of the SORNA condition as plain error. The Eleventh Circuit interpreted the appeal waiver to bar review of whether the SORNA condition was plainly unlawful. Mr. Aquino sought rehearing and rehearing en banc, arguing that the registration requirement exceeded statutory authority and constituted plain error. The court denied the petitions on March 20, 2025.

The Eleventh Circuit's treatment of appeal waivers is unusually rigid and diverges from the standards applied by other circuits. While many courts recognize exceptions to waiver enforcement in cases involving unlawful sentences, statutory-maximum errors, or miscarriages of justice, the Eleventh Circuit does not. In other circuits—including the First, Third, Fourth, Sixth, Ninth, and Tenth—Mr. Aquino could have challenged the district court's plain error notwithstanding the appeal waiver. *See United States v. Andruchuk*, 122 F.4th 17, 23 (1st Cir. 2024) (appeal waiver does not shield errors made during sentencing, as such errors undermine the

fairness and integrity of judicial proceedings); *United States v. Warner*, 301 Fed. App'x 137, 141 (3d Cir. 2008) (appeal waiver does not prohibit remedy for manifest injustice); *United States v. Cornette*, 932 F.3d 204, 210 (4th Cir. 2019) (expanding a statutory-maximum exception to cover certain claims); *Vowell v. United States*, 938 F.3d 260, 268 (6th Cir. 2019) (same); *United States v. Torres*, 828 F.3d 1113, 1125 (9th Cir. 2016) (appeal waiver will not bar a challenge to an “illegal” sentence); *United States v. Maurek*, 661 Fed. App'x 553, 554 (10th Cir. 2016). The Eleventh Circuit is an outlier, enforcing appeal waivers even in the face of plain sentencing errors that other courts would deem reviewable. *United States v. King*, 41 F.4th 1363, 1370 (11th Cir. 2022) (citing *United States v. Cornette*, 932 F.3d 204, 210 (4th Cir. 2019)).

Mr. Aquino intends to seek review in this Court on whether an appeal waiver can insulate a plainly unlawful sentencing condition from appellate scrutiny, and to ask this Court to restore consistency across the federal courts regarding the scope and enforceability of such waivers.

### **Grounds for the Request**

In support of this application, Petitioner attaches the Declaration of Michael Haber, which describes the diligent but unsuccessful efforts to obtain qualified counsel who could petition for certiorari by the current deadline, June 18, 2025.

After the Eleventh Circuit denied rehearing, Petitioner expressed his intent to seek review in this Court. He and his father promptly contacted the undersigned, who represented Petitioner in the lower courts. The undersigned advised Petitioner

that he had never previously filed a petition for certiorari and recommended he seek representation from an attorney with that specific experience.

Petitioner and Haber then conducted a diligent, nationwide search over the course of approximately two months, contacting attorneys and law firms in Washington, D.C., Georgia, Florida, Illinois, and the State of Washington. Despite persistent outreach, Petitioner was unable to retain experienced Supreme Court counsel due to unavailability, conflicts, or cost. Only in mid-May 2025, after exhausting his efforts, did Petitioner return to the undersigned, who agreed to represent him in preparing and filing the petition for certiorari.

Because counsel was not retained until approximately six weeks into his 90-day period to petition for certiorari, and because of the undersigned's lack of experience with this Court's rules and practices, Petitioner requests an extension of time for 60 days allowed under Rule 13.5. The legal issues involved—including the scope and enforceability of a plea waiver—are significant and require careful analysis and briefing. Although these legal questions are particularly complex, an attorney's presentation of any issue to this Court for this first time is a significant undertaking. Undersigned counsel has endeavored to educate himself on the requirements for a petition for a writ of certiorari and render competent assistance of counsel. He is confident of his ability to provide such assistance by August 17, 2025, but not sooner.

This request is made in good faith, not for purposes of delay, and will not prejudice the Government. The requested extension is necessary to ensure effective assistance of counsel and meaningful access to this Court.

### **Conclusion**

For the foregoing reasons, Petitioner respectfully requests a 60-day extension, to and including August 17, 2025, within which to file a petition for a writ of certiorari.

Respectfully submitted,

*/s/ Michael A. Schwartz*  
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Counsel for Petitioner  
Dated: June 6, 2025

## CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of June 2025, I caused a copy of the foregoing Application for Extension of Time to File a Petition for a Writ of Certiorari in *Ton Ton Aquino v. United States of America*, to be filed via the Court's e-filing system with service via United States mail upon the following:

Patricia Green Rhodes  
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Counsel for the United States of America

I further certify that all parties required to be served have been served.

Respectfully submitted,

/s/ *Michael A. Schwartz*  
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Dated: June 6, 2025