

No. _____

In the Supreme Court of the United States

ALANTE MARTEL NELSON, *Applicant*,

v.

UNITED STATES OF AMERICA

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

To the Honorable John G. Roberts, Jr.
Chief Justice of the Supreme Court of the United States
and Circuit Justice for the Fourth Circuit

Pursuant to Rule 13(5) of this Court, counsel for Alante Martel Nelson respectfully requests a 30-day extension of time, to and including Tuesday, January 13, 2026, within which to file his petition for writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254. Unless extended, the time for filing a petition for a writ of certiorari will expire on Friday, December 12, 2025. This application is submitted at least ten (10) days prior to the scheduled filing date for the Petition. The pertinent dates are:

- a. **August 15, 2025:** Issuance of written opinion of United States Court of Appeals for the Fourth Circuit, *United States v. Nelson*, No. 22-4658,

151 F.4th 577 (4th Cir. 2025). A copy of the opinion is attached hereto as Exhibit A.

- b. September 15, 2025:** Issuance of a denial of a timely-filed petition for rehearing in the Fourth Circuit.
- c. December 2, 2025:** Deadline for seeking extension of time within which to file a petition for writ of certiorari in the United States Supreme Court.
- d. December 12, 2025:** Expiration of time for filing a petition for writ of certiorari in the United States Supreme Court, unless extended.

3. This extension is requested due to the demands of counsel's other cases in this Court and others, and proximate argument dates in the Fourth Circuit Court of Appeals, in combination with holiday closures falling between now and the current due date. Specifically, counsel's most recent certiorari petition in *United States v. Eric Arthur Walton* (no Supreme Court case number yet assigned) was just filed today—November 25, 2025. And counsel is arguing two cases back-to-back in the Fourth Circuit's December argument session: oral argument in *United States v. Jones*, No. 23-4711 on December 11, 2025; and oral argument in *United States v. Umeti*, No. 24-4478, on December 12, 2025—the same day Mr. Nelson's petition for certiorari is presently due. Between the demands of counsel's other cases, court/office closures for the Thanksgiving holiday, and argument preparation for both the *Jones* and *Umeti* oral arguments, there will be insufficient time to complete Mr. Nelson's petition for certiorari without an extension.

4. Petitioner intends to ask this Court to grant review on an important question splitting the courts of appeals: whether this Court’s decision in *Brown v. United States*, 602 U.S. 101 (2024) extends to the federal Sentencing Guidelines.

In *Brown*, this Court held that the Armed Career Criminal Act (ACCA) requires sentencing courts to determine whether prior convictions count as sentence-enhancing “serious drug offenses” using a time-of-prior-conviction approach, as opposed to at the time of federal sentencing. 602 U.S. at 106. In so doing, Justice Alito explained why the ordinary Guidelines practice of using a time-of-federal-sentencing approach was not relevant to ACCA:

Brown also likens his interpretation to the “ordinary practice” of applying Guidelines sentencing enhancements as they exist at sentencing. But there is reason to doubt that the Guidelines practice is relevant here. That is because Congress has expressly directed courts to apply the Guidelines “in effect on the date the defendant is sentenced.” 18 U.S.C. § 3553(a)(4)(A)(ii). ACCA contains no similar instruction.

602 U.S. at 120, n.7 (citation omitted).

Below, Mr. Nelson argued that if the Guidelines time-of-federal-sentencing practice was not relevant to ACCA, as *Brown* made clear, then ACCA’s time-of-prior-conviction approach was not relevant to the Guidelines. 151 F.4th at 583. The Fourth Circuit acknowledged that the courts of appeals had split on their interpretation of this part of *Brown*. *Id.* (citing *United States v. Minor*, 121 F.4th 1085, 1092 (5th Cir. 2024) (adopting the time-of-sentencing approach for a Guidelines career offender analysis and observing that “the Court in *Brown* cast doubt on whether it would employ the [time-of-conviction] approach in the Guidelines context”) and *United*

States v. Drake, 126 F.4th 1242, 1245-46 (6th Cir. 2025) (adhering to the time-of-conviction approach adopted in *United States v. Clark*, 46 F.4th 404 (6th Cir. 2022), and explaining that “[n]othing in *Brown*'s footnote undermines [*Clark*'s] reasoning”). The panel, incorrectly believing it needed to “adhere” to an earlier Fourth Circuit from 1997 on a different question, determined that the time-of-conviction approach was required for the guidelines in the Fourth Circuit. *Id.* at 584.

Under the time-of-federal-sentencing approach Congress mandated for the Sentencing Guidelines, Mr. Nelson would not be a career offender because his prior conviction for distributing a schedule I or II controlled substance would be categorically overbroad. And under that approach, the district court committed procedural error by incorrectly calculating Mr. Nelson’s guideline range as 151-188 months, when it should only be 41-51 months.

5. On November 24, 2025, undersigned counsel contacted the Office of the Solicitor General in an effort to obtain the government’s position on this request, leaving a contact number as directed by the answering machine. As of the time of filing, no response has been received.

For the foregoing reasons, counsel respectfully requests that this Court grant an extension of 31 days, to and including January 12, 2026, within which to file Mr. Nelson’s petition for writ of certiorari.

Respectfully submitted, this the 25th day of November, 2025.

/s/ Jenny R. Thoma
Jenny Thoma
Research & Writing Attorney
Federal Public Defender’s Office

Northern District of West Virginia
230 West Pike Street, Suite 360
Clarksburg, WV 26301
(304) 622-3823
jenny_thoma@fd.org