

No. _____

IN THE SUPREME COURT
OF THE UNITED STATES

BENJAMIN ALLEN TOLLE,

Petitioner,

v.

TROY BOWSER,

Respondent.

On Petition for Writ of Certiorari to
the United States Court of Appeals
for the Ninth Circuit No. 24-5862

APPLICATION TO EXTEND THE TIME TO FILE
A PETITION FOR WRIT OF CERTIORARI

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

Applicant Benjamin Allen Tolle, through undersigned counsel and pursuant to Supreme Court Rules 13.5, 22, and 30.3, moves for a **30-day extension** of time to file a petition for certiorari, to and including **July 28, 2026**.

Mr. Tolle seeks review of the Ninth Circuit decision affirming the dismissal of his habeas petition attached as Exhibit A. *See Tolle v. Bowser*, No. 24-5862, 2026 WL 473757 (9th Cir., Feb. 19, 2026). The Court will have jurisdiction over any timely-filed petition for certiorari in the case pursuant to 28 U.S.C. § 1254(1).

The Ninth Circuit denied rehearing on March 30, 2026, making the deadline for the petition for certiorari June 29, 2026. *See* Exhibit B. This application is being filed ten days before that date.

There is good cause to extend the petition deadline in this case. Mr. Tolle is serving a life sentence on a conviction for felony murder, after an earlier jury acquitted him of causing physical injury to the same victim and failed to reach a verdict on aggravated murder and arson charges. He raised a claim of ineffective assistance of counsel arguing that his attorney should have objected to his second trial on double jeopardy grounds. The district court found that the claim was addressed on the merits by the state courts, and that it was defaulted by failure to seek review in the Oregon Supreme Court. Mr. Tolle appealed, arguing that the written opinion by the postconviction trial court plainly identified a violation of a state procedural rule, making the claim eligible for the *Martinez v. Ryan*, 566 U.S. 1 (2012), exception. A panel of the Ninth Circuit held that the basis of the

postconviction trial court's decision was ambiguous because the court appeared receptive to the state's merits arguments, even though the opinion did not address those issues and rested on procedural grounds.

Counsel has completed a substantial portion of the petition but requires additional time to research the prevalence of similar decisions throughout the circuit courts in order to explain the need for this Court's intervention. Counsel's progress on that research and drafting has been delayed by her duties in other habeas cases. Counsel has three amended habeas petitions due in the first two weeks of July and the review of the state court records in those cases has monopolized a significant portion of counsel's time. Counsel must prioritize those cases because statutory deadlines cannot be extended.

Wherefore, Petitioner respectfully requests that this Application be granted and that he be allowed until July 28, 2026, to file his petition for writ of certiorari.

Respectfully submitted this 16th day of June 2026

/s/ Julie Vandiver
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