

No. 25A-\_\_\_\_

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IN THE  
**Supreme Court of the United States**

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EFRAIN LORA,

*Applicant,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

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

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To the Honorable Sonia Sotomayor, Associate Justice of the United States and  
Circuit Justice for the Second Circuit:

1. Pursuant to Supreme Court Rules 13.5, 22, and 30, petitioner Efrain Lora, through counsel, respectfully requests a 59-day extension of time, up to and including October 24, 2025, to file a petition for a writ of certiorari to the United States Court of Appeals for the Second Circuit to review *United States v. Lora*, No. 23-7682. This Court previously vacated Mr. Lora’s erroneous 30-year prison sentence. *See Lora v. United States*, 599 U.S. 453 (2023). On remand, the district court reimposed his 30-year sentence, and the Second Circuit affirmed it. The United States Court of Appeals issued its decision on February 10, 2025. A copy of that order is attached as Appendix A. It issued its order denying rehearing en banc on May 28,

2025. A copy of that order is attached as Appendix B. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254, and the time to file a petition for a writ of certiorari will otherwise expire on August 26, 2025. This Application for Extension of Time is timely because it has been filed on or before 10 days before the date on which the time for filing the petition is to expire.

2. The decision of the Second Circuit affirms the district court’s application of the preponderance of the evidence standard to find critical facts – that Mr. Lora supposedly ordered the murder at issue in the case – which the government had conceded were not supported by the evidence it had relied upon, all of which led to an increase of Mr. Lora’s sentence. Several Justices of this Court have identified application of the preponderance of the evidence standard to find facts that increase a sentence as raising serious constitutional concerns. *See, e.g., Jones v. United States*, 574 U.S. 948, 949 (2014) (Scalia, J., dissenting from the denial of certiorari) (“[A]ny fact necessary to prevent a sentence from being substantively unreasonable—thereby exposing the defendant to the longer sentence—is an element that must be either admitted by the defendant or found by the jury. It *may not* be found by the judge.”); *United States v. Sabillon-Umana*, 772 F.3d 1328, 1331 (10th Cir. 2014) (Gorsuch, J.) (explaining that it “is far from certain whether the Constitution allows” a district judge to “increase a defendant’s sentence (within the statutorily authorized range) based on facts the judge finds without the aid of a jury or the defendant’s consent”); *United States v. Bell*, 808 F.3d 926, 927 (D.C. Cir. 2015) (en banc) (Kavanaugh, J., concurring) (registering concern with the practice of “impos[ing] a sentence higher

than the sentence the judge would have imposed absent consideration of ... uncharged or acquitted conduct.”); *cf. McClinton v. United States*, 143 S. Ct. 2400 (2023) (mem) (statement of Sotomayor, J., respecting the denial of certiorari) (expressing concern about how this practice “raises important questions that go to the fairness and perceived fairness of the criminal justice system”); *see id.* at 2403 (statement of Kavanaugh, J., respecting the denial of certiorari) (similar).

3. Indeed, the district court’s fact finding that enhanced Mr. Lora’s sentence notwithstanding the Government’s concession that those facts could not be proven implicates a circuit split. At least two circuits have reasoned that, contrary to the Second Circuit below, a district court should accept the Government’s concession at sentencing when supported by specific evidence. *See United States v. Alfaro*, 30 F.4th 514, 520 (5th Cir. 2022) (“the district court should have accepted” “the Government’s concession” where “[s]pecific evidence supported the Government’s concession”); *United States v. Green*, No. 21-14425, 2024 WL 4880345, at \*12 (11th Cir. Nov. 25, 2024) (“the government’s concession does not bind us [only] to the extent the concession is one of law or is unsupported by the record.”). This case therefore presents an issue that has both drawn the attention of the Justices and created a circuit split.

4. Good cause exists for this motion. Undersigned counsel, Lawrence D. Rosenberg of Jones Day, directs the West Virginia University College of Law’s Supreme Court Litigation Clinic, which is co-counsel in this case. The Clinic students will start the semester on August 20, 2025, and need additional time to research the

issues and analyze the facts in the case so that they can meaningfully contribute to the petition for certiorari.

5. Mr. Rosenberg's ability to complete the petition without an extension has also been made extremely difficult by professional and personal obligations. Mr. Rosenberg is lead counsel in *Lufthansa Technik v. Panasonic Avionics Corp.*, No. 2:17-cv-01453-JCC (W.D. Wash.), in which he recently completed substantial discovery including depositions in Seattle, WA. He is also lead counsel in *Veltor Underground, LLC v. SBA, et al*, No. 24-2025 (6th Cir.), in which a petition for rehearing is due on August 25, 2025. He is also lead counsel in *In re Application of Adele Zarzur v. JP Morgan Chase & Co.*, No. 1:23-mc-24326 (S.D. Fla.), in which he is supervising discovery and in which depositions are expected to take place in the next few weeks. Mr. Rosenberg also has had recently and will have in the next several weeks substantial responsibilities for his roles with the American Bar Association, for which he serves as the chair of the Amicus Curiae Briefs Committee and is an Executive Officer of the Section of Litigation. He recently attended the ABA's Annual Meeting in Toronto, Canada and will need to be out of town from October 8-14 to attend the Section of Litigation's Fall Leadership Meeting. Mr. Rosenberg also has had recently and will have in the next few weeks several personal trips, including bringing both of his children to college for their fall semesters.

WHEREFORE, Mr. Lora respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari for 59 days, to and including October 24, 2025.

Dated: August 15, 2025

Respectfully submitted,

/s/ Lawrence D. Rosenberg

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