No. 25A___

IN THE

Supreme Court of the United States

RAMI GHANEM,

Applicant,

v.

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 United States Supreme Court 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 Rami Ghanem respectfully requests a 30-day extension of time 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 case. The extension would make the petition due February 13, 2026.

1. The Ninth Circuit issued its decision on July 17, 2025. *See United States* v. *Ghanem*, 143 F.4th 1114 (9th Cir. 2025) (Appendix A). Mr. Ghanem sought panel rehearing and rehearing en banc, which the court denied on October 16, 2025 (Appendix B). Unless extended, the time to file a petition for certiorari will expire on January 14, 2026. This application is being filed more than ten days before a petition is currently due. *See* Sup. Ct. R. 13.5. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1).

2. Mr. Ghanem pleaded guilty to several counts related to his attempt to export certain munitions out of the United States without the necessary license. App.4a, 6a. Mr. Ghanem admitted that he intended to export pistols, ammunition, night-vision goggles, and machine guns from the United States as part of what turned out to be a "sting" operation by the U.S. Government. In all, Mr. Ghanem made two payments, each just under $90,000, before he was arrested. App.6a.

3. In a superseding indictment, the Government additionally charged Mr. Ghanem with conspiring to acquire, transport, and use surface-to-air missiles in violation of 18 U.S.C. § 2332g. App.4a. Mr. Ghanem vigorously disputed his guilt of that charge and went to trial on it. The jury convicted him, and the district court sentenced him to a term of 30

years' imprisonment. App.38a. But the Ninth Circuit subsequently vacated Mr. Ghanem's § 2332g conviction on the ground that the jury had been improperly instructed, and there was "a reasonable likelihood that the jury may have acquitted Mr. Ghanem" but for "the erroneous venue instruction." App.63a.

4. On remand, the Government opted not to retry Mr. Ghanem on the § 2332g charge, resulting in a Guidelines range of 78–97 months on the remaining counts. App.10a, 30a. Despite the vacatur of the § 2332g charge, however, the district court imposed the exact same 30-year sentence that had previously been imposed—*quadrupling* Mr. Ghanem's Guidelines range based on the district court's own finding that he violated § 2332g. App.11a.

5. Back before the Ninth Circuit, Mr. Ghanem maintained that the 30-year sentence violated his due process and jury trial rights under the Fifth and Sixth Amendments. Mr. Ghanem explained that, had the district court sentenced him to 30 years based solely on the conduct Mr. Ghanem admitted in his plea, that sentence would have been substantively unreasonable. The district court was permitted to impose that exorbitant sentence only by making its own findings of fact related to the vacated charge. That was unconstitutional: "any 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 a judge." *Jones* v. *United States*, 574 U.S. 948, 949 (2014) (Scalia, J., joined by Thomas and Ginsburg, JJ., dissenting from denial of certiorari).

6. In a majority opinion authored by Judge Collins, the Ninth Circuit affirmed. The court acknowledged that, "[g]iven the loadbearing weight that we have placed on the district court's factual findings in concluding that Ghanem's sentence is substantively

reasonable, his sentence here would violate the Sixth Amendment under Justice Scalia's view." App.27a. But the court held that "Justice Scalia's position has not commanded a majority of the Supreme Court," and that the court was bound by Ninth Circuit precedent that "squarely rejected" Justice Scalia's reasoning. App.27a-28a (citing *United States* v. *Treadwell*, 593 F.3d 990 (9th Cir. 2010)). Under *Treadwell*, a district court may "impose a sentence anywhere within the range established by the statute of conviction without violating the Sixth Amendment." App.28a (quoting *Treadwell*, 593 F.3d at 1017).

7. Judge Collins then concurred in his own majority opinion. He reiterated that the "discrete" and "limited" facts underlying Mr. Ghanem's guilty pleas "support, at most, a guidelines range of 78–97 months, and therefore any upward departure from that range would require additional fact-finding that," under the Sixth Amendment, "only a jury may make." App.30a. Judge Collins therefore concluded that allowing "a district judge to make the findings necessary to raise Ghanem's sentence above the 97-month cap" was "a flagrant violation of Ghanem's Sixth Amendment rights." App.30a-31a. He explained that this Court's decision in *Booker* v. *United States*, 543 U.S. 220 (2005), and its progeny required the Court to affirm Mr. Ghanem's sentence in this case even though it "is patently unlawful." App.32a. Indeed, "even the Government's lawyer candidly conceded at oral argument" that Mr. Ghanem's 30-year sentence "was 'absolutely' unlawful under" the Guidelines as originally written by Congress. App.32a. Nonetheless, Judge Collins explained that he was "required to affirm" the sentence under circuit precedent. App.32a. "Only the Supreme Court has the authority, if it sees fit, to address this disquieting anomaly." App.32a.

8. The Ninth Circuit's opinion warrants this Court's review. "As this Court has repeatedly explained, any increase in a defendant's authorized punishment contingent on

the finding of a fact requires a jury and proof beyond a reasonable doubt no matter what the government chooses to call the exercise." *United States* v. *Haymond*, 588 U.S. 634, 647 (2019) (quotation marks and citation omitted); *see also Alleyne* v. *United States*, 570 U.S. 99, 114-115 (2013) ("When a finding of fact alters the legally prescribed punishment so as to aggravate it, the fact necessarily forms a constituent part of a new offense and must be submitted to the jury. It is no answer to say that the defendant could have received the same sentence with or without that fact."). The Ninth Circuit's decision cannot be reconciled with that precedent—particularly because the facts underlying Mr. Ghanem's 30-year sentence "could, in themselves, constitute entirely free-standing offenses under the applicable law." *United States* v. *Faust*, 456 F.3d 1342, 1352 (11th Cir. 2006) (Barkett, J., concurring).

9. Justices of this Court, joined by many other judges, have repeatedly expressed concern over using acquitted, dismissed, and uncharged conduct to increase a defendant's sentence. *See McClinton* v. *United States*, 143 S. Ct. 2400, 2401-03 (2023) (Justices Sotomayor, Kavanaugh, Gorsuch, and Barrett all noting that the use of acquitted conduct at sentencing raised important issues warranting this Court's review); *Jones*, 574 U.S. at 949 (Scalia, J., joined by Thomas and Ginsburg, JJ., dissenting from denial of certiorari) ("the Sixth Amendment is violated when courts impose sentences that, but for a judge-found fact, would be reversed for substantive unreasonableness"); *United States* v. *Watts*, 519 U.S. 148, 170 (1997) (Stevens, J., dissenting) ("The notion that a charge that cannot be sustained by proof beyond a reasonable doubt may give rise to the same punishment as if it had been so proved is repugnant" to the Constitution.); *id.* (Kennedy, J., dissenting) ("to increase a sentence based on conduct underlying a charge for which the defendant was acquitted does raise concerns about undercutting the verdict of acquittal"); *United States* v. *Bell*, 808 F.3d

926, 928 (D.C. Cir. 2015) (Kavanaugh, J., concurring in denial of rehearing en banc) ("Allowing judges to rely on acquitted or uncharged conduct to impose higher sentences than they otherwise would impose seems a dubious infringement of the rights to due process and to a jury trial."); *United States* v*. Sabillon-Umana*, 772 F.3d 1328, 1331 (10th Cir. 2014) (Gorsuch, J.) ("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.").[1]

10. Circuit precedent, however, leaves the circuits with no choice but to uphold substantial sentencing enhancements based on judge-found facts. *E.g.*, *United States* v. *Ralston*, 110 F.4th 909, 915-916, 920-921 (6th Cir. 2024) (affirming a sentence 12 years over the Guidelines range based on circuit precedent); *United States* v. *Lasley*, 832 F.3d 910, 913 (8th Cir. 2016) (upholding consecutive life sentences); *United States* v. *Carvajal*, 85 F.4th 602, 608-609, 613-615 (1st Cir. 2023) (upholding a sentence double the Guidelines range); *United States* v. *Legins*, 34 F.4th 304, 313, 326 (4th Cir. 2022) (same). The decision below exemplifies the circuits' predicament; writing for the panel, Judge Collins followed circuit precedent in affirming a sentence that could only be justified by judge-found facts regarding charges the Government had dismissed, but in a separate concurring opinion, Judge Collins

[1] *See also, e.g.*, *Faust*, 456 F.3d at 1349 (Barkett, J., concurring); *United States* v. *Norman*, 926 F.3d 804, 811 (D.C. Cir. 2019) (Sentelle, J.); *United States* v. *Brown*, 892 F.3d 385, 409 (D.C. Cir. 2018) (Millett, J., concurring); *United States* v. *White*, 551 F.3d 381, 387 (6th Cir. 2008) (Merritt, J., dissenting); *United States* v. *Canania*, 532 F.3d 764, 776-778 (8th Cir. 2008) (Bright, J., concurring); *United States* v. *Grier*, 475 F.3d 556, 574 (3d Cir. 2007) (en banc) (Ambro, J., concurring); *United States* v. *Mercado*, 474 F.3d 654, 658-665 (9th Cir. 2007) (Fletcher, J., dissenting); *United States* v. *Fisher*, 502 F.3d 293, 311-312 (3d Cir. 2007) (Rendell, J., concurring).

emphasized that this sentence "is patently unlawful," and made clear that "[o]nly" this Court can resolve the "disquieting anomaly." App.32a.

11. While precedent in the federal courts of appeals compels upholding sentences that depend on judge-found facts regarding acquitted and uncharged conduct, several state supreme courts have interpreted the federal Constitution to prohibit such sentences. *See Taylor* v. *State*, 670 N.W.2d 584, 588 (Minn. 2003) ("reliance on other offenses that are not part of the charge and of which the defendant was not convicted is not a permissible basis" for a sentencing enhancement); *State* v. *Marley*, 364 S.E.2d 133, 139 (N.C. 1988) ("due process and fundamental fairness precluded the trial court from aggravating defendant's" sentence for first degree murder "after the jury had acquitted defendant of first degree murder"); *State* v. *Melvin*, 258 A.3d 1075, 1092 (N.J. 2021) (similar); *People* v. *Beck*, 939 N.W.2d 213, 225-226 (Mich. 2019) (similar); *State* v. *Cote*, 530 A.2d 775, 785 (N.H. 1987) (similar); *In re Lewallen*, 590 P.2d 383, 388 n.3 (Cal. 1979) (similar). The Ninth Circuit's decision below accordingly entrenches a split between federal and state courts on an important federal constitutional question, giving criminal defendants in federal court diminished sentencing rights under the Fifth and Sixth Amendments as compared to defendants in many states.

12. Three Terms ago, this Court denied review in *McClinton*, which presented a similar question. In statements respecting the denial of certiorari, Justices Sotomayor, Gorsuch, Kavanaugh, and Barrett explained that the case "raise[d] important questions" but that review was unwarranted because the Sentencing Commission was "considering the issue." 143 S. Ct. at 2403 (statement of Kavanaugh, J., respecting the denial of certiorari); *see id.* (statement of Sotomayor, J., respecting the denial of certiorari) ("If the Commission does

not act expeditiously or chooses not to act, however, this Court may need to take up the constitutional issues presented.").

13. In 2024, the Commission amended the Guidelines to provide that "[r]elevant conduct does not include conduct for which the defendant was criminally charged and acquitted in federal court." U.S.S.G. 1B1.3(c). That amendment, however, did not cure the constitutional problem. For one thing, the amendment prohibits sentencing enhancements only based on acquitted conduct; it "does not comment on the use of uncharged, dismissed, or other relevant conduct." U.S.S.G. Amend. 826.[2] The amendment therefore does not reach cases like Mr. Ghanem's. More fundamentally, the Commission can only "preclude[] consideration of acquitted conduct in the context of *calculating the Guidelines*." *Ralston*, 110 F.4th at 921 (brackets, quotations, and citation omitted). The recent Amendment therefore does not prohibit courts from relying on acquitted or uncharged conduct in deciding whether to depart from the Guidelines, as the district court did here. Lower courts have thus continued to impose substantially increased sentences based on acquitted and uncharged conduct even after the amendment. *E.g.*, App.27a-28a (relying on uncharged conduct); *Ralston*, 110 F.4th at 921 (acquitted conduct). Only this Court can end that practice by holding sentencing enhancements based on acquitted and uncharged conduct unconstitutional under the Fifth and Sixth Amendments.

14. Counsel of record is new to the case in this Court, and an extension will allow counsel to research the relevant issues and prepare a petition that fully addresses the important questions raised by the proceedings below. An extension is also warranted because Mr. Ghanem's incarceration makes communication with counsel more difficult. And

[2] *Available at* https://www.ussc.gov/guidelines/amendment/826.

counsel has upcoming briefing deadlines and oral argument in several matters that warrant an extension: a reply brief due November 26, 2025, in *Welch* v. *Plappert*, No. 24-6022 (6th Cir.), a reply brief in support of certiorari due December 3, 2025, in *Poore* v. *United States*, No. 25-227 (U.S.), a response brief due December 15, 2025, in *Federated Indians of Graton Rancheria* v. *Koi Nation of Northern California*, No. 25-4604 (9th Cir.), a response brief due December 17, 2025, and an oral argument on January 20, 2026, in *Wolford* v. *Lopez*, No. 24-1046 (U.S.), a reply brief in support of certiorari due December 19, 2025, in *Fire-Dex, LLC* v. *Admiral Insurance Company*, No. 25-245 (U.S.), a brief in opposition to certiorari due December 19, 2025, in *National Rifle Association of America* v. *Vullo*, No. 25-479 (U.S.), and a reply brief in support of certiorari due December 24, 2025, in *Filyaw* v. *Corsi*, No. 25-491 (U.S.).

15. For these reasons, Mr. Ghanem respectfully requests that an order be entered extending the time to file a petition for certiorari to and including February 13, 2026.

Respectfully submitted,

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