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IN THE UNITED STATES SUPREME COURT

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ARVIN TERRILL CARMEN,

Applicant,

vs.

UNITED STATES OF AMERICA,

Respondent.

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**APPLICATION TO THE HON. ELENA KEGAN
FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE
A PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT**

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Pursuant to Supreme Court Rule 13.5, Arvin Terrill Carmen (“Applicant”) hereby moves for an extension of time of 60 days, to and including April 27, 2026, for the filing of a petition for writ of certiorari.¹ Unless an extension is granted, the deadline for filing the petition is February 24, 2026.

In Support of this request, Applicant states as follows:

1 The United States Court of Appeals for the Ninth Circuit entered its decision in an

¹ Day 60 lands on a Saturday, April 25, 2026. Therefore, a 60 day extension deadline is April 27, 2026, pursuant to Rule 30.1

unpublished memorandum on December 24, 2024. Attached at 1-4. On November 26, 2025, the Ninth Circuit denied a timely petition for hearing and suggestion for rehearing en banc. Attached at 5. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

2. The Court previously held that each narcotics violation that make up a series of violations are not alternative means of committing a controlled substances Continuing Criminal Enterprise (CCE) pursuant to 21 U.S.C. § 848(c)(1) and (2), but rather, each violation alleged to make up the series of violations are separate elements of a CCE offense, and therefore, a jury must unanimously find facts identifying each separate violation making up the series of narcotics violations to support a defendant's guilt. *Richardson v. United States*, 526 U.S. 813 (1999).

The question in this case centers on a determination of the proper application of 21 U.S.C. § 848(c)(2)(A) and what legal standards and facts are necessary for the government to prove beyond a reasonable doubt the element of "in concert with five or more persons."

The petition for writ of certiorari results from the denial of Carmen's motion to vacate set aside or correct sentence pursuant to 28 U.S.C. § 2255, filed in the district court, wherein he claimed his right to effective assistance of counsel was violated by trial counsel's failure to object to an instruction on the CCE charge defining the "in concert with five or more persons" element.

3. After a five-week jury trial, Applicant was convicted CCE charge, involving the distribution oxycodone pills in Spokane, Washington. The district court sentenced Applicant to 50 years in prison. The indictment alleged that he conspired with 61 other named codefendants, and others unnamed in the indictment. The question in the petition requires a fact intensive statement to lay the ground work for the legal analysis, including a detailed account of

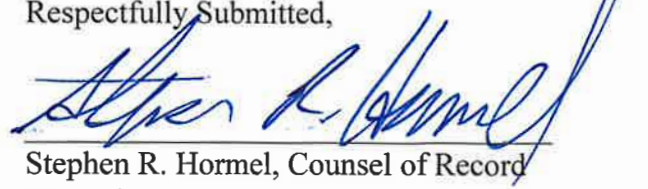
Applicants's relationship or lack of relationship with each of the 61 named co-conspirators and the other unnamed co-conspirator.

4. Counsel's work on the petition has been delayed due to the government shut-down which required counsel to move multiple trials and extend motion and appellate deadlines. Also, counsel must travel from Spokane Valley, Washington to Anchorage, Alaska for a sentencing hearing in *United States v. Pugal*, DC No. 25-cr-005-TMB-2, on February 1, returning on February 3. Counsel then must travel from Spokane Valley, Washington to Ephrata, Washington on February 5, 2026 for a hearing on the admissibility of expert testimony in *State v. LeGrande*, No. 24-1-00529-13. Thereafter, counsel has a deadline of March 9, 2026, to file a reply brief in the Ninth Circuit in *United States v. Hopkins*, CA No. 25-1220. Counsel has an opening brief due on January 30, 2026, in the Ninth Circuit, and has moved to extend that deadline to March 6, 2026, in *United States v. Standingrock*, CA No. 25-3932. Counsel will travel from Spokane Valley, Washington to Ephrata, Washington for a first degree arson jury trial scheduled for either the week of March 16, 2026, or that week of March 23, 2026, and could extend into early April in Ephrata, Washington in *State v. LeGrande*, No. 24-1-00529-13. Counsel needs the additional time to effectively prepare Carmen's petition for writ of certiorari to the Court.

5. WHEREFORE, for the foregoing reasons, Applicant requests that an extension of time to and including April 27, 2026, be granted within which Applicant may file a petition for writ of certiorari.

Dated January 26, 2026.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Stephen R. Hormel", is written over a horizontal line.

Stephen R. Hormel, Counsel of Record

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