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In The
SUPREME COURT OF THE UNITED STATES
October Term 2025

SUSAN MELISSA NICKAS,

Petitioner,

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 Third Circuit**

**APPLICATION TO THE HONORABLE
SAMUEL A. ALITO, JR., AS CIRCUIT JUSTICE**

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February 12, 2026

PARTIES TO THE PROCEEDINGS

Petitioner herein was the defendant-appellant below: Susan Melissa Nickas. On February 24, 2023, undersigned counsel was appointed to represent Petitioner pursuant to the Criminal Justice Act, 18 U.S.C. § 3006A, in the Third Circuit Court of Appeals. *See* Supreme Court Rule 9.1 (exempting CJA attorneys from admission to the Bar of this Court).

Respondent herein was the appellee below: the United States of America.

APPLICATION FOR EXTENSION OF TIME

Pursuant to Supreme Court Rule 13.5, the applicant-petitioner herein requests a 30-day extension of time within which to file a petition for writ of certiorari, to and including March 26, 2026. The current deadline is February 24, 2026.

JUDGMENT FROM WHICH REVIEW IS SOUGHT

The U.S. Court of Appeals for the Third Circuit affirmed Petitioner's conviction and 20-year statutory-minimum prison sentence in *United States v. Susan Melissa Nickas* (No. 23-1316). Appendix 1a-16a. Petitioner filed a petition for rehearing in the Third Circuit, which was denied. Appendix 17a-41a, 42a. A copy of the opinion, rehearing petition, and its denial are attached as exhibits to this application.

JURISDICTION

This Court will have jurisdiction over a certiorari petition filed in this matter pursuant to 28 U.S.C. § 1254(1).

The Third Circuit issued a non-precedential opinion affirming Petitioner's conviction on September 30, 2025. For good cause shown, the Third Circuit extended

the deadline for filing a Petition for Rehearing. Petitioner timely filed a Petition for Rehearing in the Third Circuit, which was denied on November 26, 2025.

Under Supreme Court Rules 13.1, 13.3, and 30.1, the current deadline for the filing of a certiorari petition in this matter is February 24, 2026.

REASONS JUSTIFYING AN EXTENSION OF TIME

When determining whether insufficient evidence supports a federal criminal conviction, it appears reviewing courts have developed varying tests. *Compare Burks v. United States*, 437 U.S. 1, 16-17 (1978) (“a federal appellate court … must sustain the verdict if there is substantial evidence, viewed in the light most favorable to the Government, to uphold the jury's decision” (citation omitted)), *United States v. Nevils*, 598 F.3d 1158, 1164-65 (9th Cir. 2010) (en banc) (explaining 2-step test, in which conflicting evidence and inferences are drawn in government's favor, then entire trial record is reviewed, “including any evidence of innocence,” to determine if any rational trier of fact could find essential elements met beyond a reasonable doubt), and *United States v. Lovern*, 590 F.3d 1095, 1109 (10th Cir. 2009) (“evidence supporting a conviction ‘must raise more than the mere suspicion of guilt, and the jury's inferences must be more than speculation and conjecture in order to be reasonable’” (citation omitted)), with *United States v. Nickas*, 3d Cir. 23-1316, Appendix 7a-9a.

But the Third Circuit's test is an outlier. By failing to consider (a) evidence of innocence, (b) the rationality of the chain of inferences required for conviction, and (c) the effect that prosecutorial misstatements about the evidence have on the jury's verdict, *see* Appendix 25a-38a (Rehearing Petition), the Third Circuit's test resurrects the “no evidence” test of *Thompson v. Louisville*—which this Court overruled in

Jackson v. Virginia, 443 U.S. 307, 312-20 (1979); *id.* at 320 (“mere modicum of evidence may satisfy a ‘no evidence’ standard,” “[b]ut it could not seriously be argued that such a ‘modicum’ of evidence could by itself rationally support a conviction beyond a reasonable doubt” (citations omitted)).

Indeed, sometimes the Third Circuit commits a Freudian slip and explicitly calls its test a “no evidence” test: “only when the record contains no evidence, however it is weighed, from which the jury could find guilt beyond a reasonable doubt, will we overturn a verdict.” *United States v. Zayas*, 32 F.4th 211, 221 (3d Cir. 2022) (citation omitted); *United States v. Abrams*, --- F.4th ----, 2026 WL 250656, at *8 (3d Cir. 2026) (defendant “must establish that ‘the record contains no evidence, regardless of how it is weighted,’ from which a ‘rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt’” (citation omitted)). Problematically, *Zayas* was relied in Petitioner’s Opinion. Appendix 7a, n.5.

Thus, undersigned believes Petitioner’s case presents an important question of federal law, on which the federal courts of appeals have reached conflicting decisions, and on which the Third Circuit has ruled in a way that conflicts with this Court’s relevant decisions. *See* Supreme Court Rule 10(a), (c).

The requested extension is necessary, however, to adequately present the issue to the best of undersigned appointed counsel’s ability. Additional research and drafting are required on Petitioner’s petition. The extension request is made in good faith without dilatory motive. Since the denial of rehearing in Petitioner’s appeal (November 26, 2025), undersigned has litigated substantive pleadings in 2 cases in

which the defendants are serving life-in-prison sentences¹; has filed opening briefs in 3 other appeals²; and has 4 other opening briefs³ due immediately surrounding the February 24 deadline for Petitioner's certiorari petition.

These obligations will make it difficult for undersigned to finalize and file a satisfactory petition by the current deadline, despite diligent efforts to do so. To provide undersigned counsel with adequate time to thoroughly analyze the applicable law and prepare a petition for writ of certiorari that will assist this Court in resolving this matter, a 30-day extension of the period for filing a certiorari petition is respectfully requested.

¹ *U.S. v. David Darby*, 3d Cir. 24-3091 - Reply Brief filed 1/14/2026; *U.S. v. Robert Jackson*, 3d Cir. 23-2733 - Petition for Rehearing filed 12/23/2025; Reply to Government's Response filed 2/3/2026.

² *U.S. v. Jason Mika*, 3d Cir. 25-2473 – filed 12/18/2025;

U.S. v. Timothy Riddy, 3d Cir. 25-2995 – filed 1/24/2026;

U.S. v. Naajeh Torres, 3d Cir. nos. 25-2842, 25-2865 – filed 2/6/2026 (*Anders Brief*).

³ *U.S. v. Reginald Law*, 3d Cir. 25-1908 (due 2/19/2026); *U.S. v. Naquann Simmons*, 3d Cir. 25-3409 (due 2/20/2026); *U.S. v. Jazmyn Warshawsky*, 3d Cir. 25-3378 (due 2/25/2026); *U.S. v. Lawrence Handlovic*, 3d Cir. 25-3304 (due 2/27/2026).

CONCLUSION

For the foregoing reasons, the applicant-petitioner respectfully requests that this Court grant a 30-day extension, to and including March 26, 2026, in which to file a petition for a writ of certiorari.

Dated: February 12, 2026

Respectfully submitted,

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