

No.

IN THE
Supreme Court of the United States

RAMESH “SUNNY” BALWANI,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

**APPLICATION TO THE HON. ELENA KAGAN FOR A 60-DAY EXTENSION
OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF
CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT**

Pursuant to Supreme Court Rules 13.5 and 30.2, Applicant Ramesh “Sunny” Balwani requests a 60-day extension of time, to and including May 21, 2026, within which to file a petition for a writ of certiorari.

1. Applicant Balwani will seek review of the judgment of the United States Court of Appeals for the Ninth Circuit in *United States v. Ramesh Sunny Balwani*, No. 22-10338. A copy of the Ninth Circuit’s Amended Opinion is attached as Exhibit A. The Ninth Circuit’s order respecting rehearing appears on page 7 of Exhibit A. Unless extended, Applicant’s time to seek certiorari in this Court expires March 22, 2026. Applicant is filing this application at least ten days before that date. *See* S. Ct. R. 13.5 and 30.2. This Court’s jurisdiction will be invoked under 28 U.S.C. § 1254(1). Counsel for Applicant Balwani has been advised that the government does not object to this extension request.

2. Undersigned counsel anticipates that Applicant will raise two issues in his petition for a writ of certiorari.

a. The first issue concerns the Ninth Circuit's decision to dramatically lower the standards applicable to federal prosecutors for knowingly eliciting false testimony in violation of *Napue v. Illinois*, 360 U.S. 264 (1959). The government introduced testimony at trial in this case that both it and the district court unequivocally knew was false, successfully fought to keep the truth from the jury, and then capitalized on the false testimony by repeatedly arguing at closing and rebuttal closing that it was evidence of guilt. In conflict with other Circuit Courts of Appeal, the Ninth Circuit applied a plain error standard and then used that standard to excuse the presentation of, and failure to correct, the false testimony.

b. The second issue concerns the Ninth Circuit's decision to essentially eliminate three of the four requirements of Rule 702 of the Federal Rules of Evidence for admission of expert testimony. The Ninth Circuit endorsed the government's ploy to elicit expert testimony from M.D. and Ph.D-level witnesses it called as lay witnesses to testify on the central issue in the case, whether Theranos' blood testing technology worked. In ruling that the testimony was admissible simply because the witnesses' resumes were sufficient to satisfy Rule 702(a), without regard to Rules 702(b), 702(c), and 702(d), the Ninth Circuit

has set a dangerous precedent that all but eliminates the gatekeeping function of the district courts with respect to expert testimony in criminal and civil cases.

3. A 60-day extension within which to file a certiorari petition is reasonable and necessary. Applicant Balwani is presently in federal custody at the Satellite Camp at FCI Lompoc II, with a projected release date of April 21, 2033. Communicating with Applicant Balwani has been difficult at times, with prison mail often delayed by weeks and legal visitations typically difficult to arrange and requiring counsel to travel. Applicant Balwani has been very involved with his defense and appellate proceedings, and the petition for certiorari will require frequent communications and review of drafts. The request is also justified by undersigned counsel's press of business on other pending matters. Among other things, counsel has a sentencing hearing on a sentencing hearing on March 5, 2026 in *United States v. Nevin Shetty*, No. 2:23-cr-00084-TL (W.D.Wa); a sentencing hearing on March 24, 2026 in *United States v. Eric Edward Haeger*, No. 2:25-cr-00187-RLP (E.D.Wa.) that will require substantial briefing and preparation; a sentencing hearing on May 12, 2026 in *United States v. Geoffrey K. Auyeung*, No. CR24-145-JCC (W.D.Wa.) that will require substantial briefing and preparation; five cases in active negotiations with the Department of Justice with respect to criminal or civil charging decisions; ongoing litigation in *City of Seattle v. Trump, et. al.*, No. 2:25-cv-01435-BJR (W.D.Wa) (preliminary injunction appeal, Ninth Circuit Case No. 25-8096, stayed pending

ruling in related case); and two state court appeals where briefing will be required in the next two to three months.

4. As noted above, counsel for the government does not object to this extension request.

February 20, 2026

Respectfully submitted,

/s/ Jeffrey B. Coopersmith

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