No. _____

In The Supreme Court of the United States

David Roger Franklin,

Petitioner,

v.

United States of America,

Respondent.

On Application for Extension of Time
to File a Petition for a Writ of Certiorari
to the United States Court of Appeals for the Ninth Circuit

Petitioner's Application for Extension of Time to File Petition for Writ of Cert

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To the Hon. Elena Kagan, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Ninth Circuit:

Pursuant to Rule 13.5 Petitioner David Roger Franklin respectfully requests that the time to file a Petition for Writ of Certiorari in this Court be extended for under 60 days from August 27 to October 23, 2026.

On May 29, 2026 the Ninth Circuit issued a Memorandum decision (Appendix A). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1). Mr. Franklin' petition for certiorari is currently due on or before August 27, 2026. This application for extension is being filed more than ten days before that date in compliance with Supreme Court Rule 30.2.

The prospective petition will raise the important question of whether the federal district court violated Mr. Franklin's constitutional rights by sentencing him based on disputed allegations from a pending state prosecution, which he could not meaningfully contest at his federal sentencing hearing without jeopardizing his constitutional rights in a prospective future state-court jury trial.

I am unable to research and draft the petition for wit of certiorari within the 90 days provided by Rule 13 because my caseload, difficulty communicating with client in BOP custody, and summer travel has not allowed me sufficient time to fully research and brief the issues at stake. I am also scheduled to be out of the office from August 25 to September 2,

2026. This extension is reasonably necessary to enable me to spend the required time researching and briefing the issue(s) at stake.

Assistant U.S. Attorney, Ian Garriques, advised via e-mail the United States has no objection to the requested extension of time. Petitioner David Roger Franklin respectfully requests this Court grant him an extension of time up to and including October 23, 2026 to file his petition for writ of certiorari.

Dated: August 14, 2026

Federal Defenders of Eastern Washington & Idaho
Attorneys for David Roger Franklin

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Service Certificate

I certify that on this date and pursuant to Supreme Court Rule 29, I mailed the foregoing Application to the United States by U.S. Mail to:

Solicitor General of the United States
Room 5616
Department of Justice
950 Pennsylvania Ave., N.W.
Washington, DC. 20530-0001

Dated: August 14, 2026

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APPENDIX A

NOT FOR PUBLICATION

FILED

MAY 29 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. DAVID ROGER FRANKLIN, Defendant - Appellant.	No. 25-1208 D.C. No. 1:23-cr-02026-SAB-1 MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Stanley Allen Bastian, District Judge, Presiding

Submitted May 26, 2026**

Before: S.R. THOMAS, MILLER, and H.A. THOMAS, Circuit Judges.

David Roger Franklin appeals from the district court's judgment and challenges the 360-month sentence imposed following his guilty-plea conviction for production, transportation, and possession of child pornography in violation of 18 U.S.C. §§ 2251(a), (e) and 2252A(a)(1), (a)(5)(B), (b)(1), and (b)(2). We have

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

jurisdiction under 28 U.S.C. § 1291, and we affirm.

Franklin argues that his sentence, which is effectively a life sentence given his age, is substantively unreasonable because: (1) the district court improperly considered pending state charges alleging that Franklin had committed hands-on offenses; (2) the district court's Guidelines calculation was empirically flawed; and (3) the sentence does not sufficiently account for Franklin's advanced age, health conditions, low risk of recidivism, lack of criminal history, and the need to avoid sentencing disparities. Having reviewed the record, we conclude that the district court did not abuse its discretion in imposing the 30-year sentence. *See Gall v. United States*, 552 U.S. 38, 51 (2007).

First, contrary to Franklin's assertion, even if the district court considered the allegations underlying the state charges, that did not violate due process. The allegations were supported by "minimal indici[a] of reliability beyond mere allegation" in that they were consistent with Franklin's admitted conduct. *See United States v. Vanderwerfhorst*, 576 F.3d 929, 936 (9th Cir. 2009). Moreover, the court did not "demonstrably" make the state allegations the basis of the sentence. *See id.* at 935-37. Rather, the court relied primarily on other factors in selecting the sentence, including the nature of the federal offenses, the trauma suffered by the victim and other family members, and Franklin's lack of remorse.

Second, because the Guidelines range of life was higher than the statutory

maximum for each offense, the court properly calculated an alternate range of 130 years under U.S.S.G. § 5G1.1(a). Even if Franklin is correct that this calculation is "nonsensical," it did not result in a substantively unreasonable sentence here.

Finally, the record reflects that the district court was aware of Franklin's mitigating and disparity arguments. Though it agreed that some of Franklin's mitigating arguments weighed in favor of a shorter sentence, it found that they were "moderated" by the aggravating factors. Franklin's "mere disagreement" with how the district court weighed the factors does not amount to abuse of discretion. *See United States v. Dunn*, 728 F.3d 1151, 1159 (9th Cir. 2013). The 30-year sentence is substantively reasonable under the 18 U.S.C. § 3553(a) factors and the totality of the circumstances. *See Gall*, 552 U.S. at 51.

AFFIRMED.