

***IN THE SUPREME COURT OF THE UNITED STATES***

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MOHAMMED JABATEH, Petitioner-Applicant,

v.

UNITED STATES OF AMERICA, Respondent.

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**APPLICATION FOR EXTENSION OF TIME  
TO FILE PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**

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TO THE HONORABLE SAMUEL A. ALITO, ASSOCIATE JUSTICE OF THE  
SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE  
FOR THE THIRD CIRCUIT:

Pursuant to Supreme Court Rules 13.5, 22.1–22.3, and 30.3, petitioner  
Mohammad Jabateh prays for a 60-day extension of time to file his petition for  
certiorari in this Court to and including September 28, 2026.

1. Timeliness. The judgment of the United States Court of Appeals for the  
Third Circuit affirming the denial of applicant Jabateh’s motion to vacate  
sentence under 28 U.S.C. § 2255 was entered on March 25, 2026, accompanied  
by a non-precedential opinion. Appx A. A timely petition for rehearing was  
denied on May 1, 2026. Appx. D. Pursuant to Rule 13.3 any petition for certiorari  
would be due for filing within 90 days thereafter, that is, on or before July 30,  
2026. This application is being filed on or before the tenth day prior to the due  
date, as required by this Court’s Rule 30.2.

2. Opinions Below and Jurisdiction. A copy of the opinion of the Court of  
Appeals (per Phipps, J., with Krause & Roth, JJ.), is not published but is avail-  
able at 2026 WL 822512. Appx. A. The Third Circuit’s precedential opinion on

direct appeal (per Matey, J., with Ambro & Fuentes, JJ.), filed September 8, 2020, is Appendix B. It is published at 974 F.3d 281, *cert. denied*, 595 U.S. —, 142 S.Ct. 73 (2021). The order of the United States District Court for the Eastern District of Pennsylvania (Diamond, J.) denying the applicant’s timely motion for § 2255 relief was filed October 21, 2024. The accompanying memorandum opinion is available at 2024 WL 4535453; a copy is Appendix C. The jurisdiction of this Court is to be invoked under 28 U.S.C. § 1254(1).

3. Reasons for Granting the Extension.

a. For making two related, sworn, false, oral affirmations of written statements he had submitted many years earlier to immigration authorities, the applicant, Mohammed Jabateh, was indicted in four counts, one for each statement under each of two statutes, 18 U.S.C. §§ 1546(a)(¶4) and 1621. He was convicted at trial and sentenced consecutively to four maximum terms, aggregating to 30 years.

b. On direct appeal, represented by new counsel, Mr. Jabateh challenged the two convictions predicated on the fourth paragraph of § 1546(a) as invalid under the plain text of the statute. The Third Circuit agreed, holding that § 1546(a), by its terms, is wholly inapplicable to oral statements. *United States v. Jabateh*, 974 F.3d 281 (3d Cir. 2020); *see* Appx. B. But Mr. Jabateh’s trial attorney had failed to notice this grave prosecutorial overreach, which likewise went unaddressed by the trial judge. On direct appeal, the court held that, in the absence of precedent construing and applying that law, conviction under an inapplicable statute (and resulting sentence of 20 additional years’ unauthorized imprisonment) did not necessarily amount to reversible “plain error.” *See* Fed.R.

Crim.P. 52(b). The convictions and sentence were therefore affirmed. Mr. Jabateh petitioned for rehearing on the basis that a long line of authority in the court of appeals as well as in this Court refutes this misapplication of the plain error rule, but rehearing was denied, as was certiorari. *See* 595 U.S. —, 142 S.Ct. 73 (2021) (No. 20-1369).

c. Mr. Jabateh then filed a timely motion to vacate the illegal sentences under 28 U.S.C. § 2255. The district court denied the petition, holding that an error that is not “plain” for purposes of appellate review *ipso facto* cannot support § 2255 relief, and that counsel was not ineffective for failing to apprehend the mismatch (on two of the indictment’s four counts) between his client’s indicted conduct and the charged statutory provision. Appx. C.

d. A Third Circuit motions panel granted Mr. Jabateh a certificate of appealability, but the merits panel affirmed. The Court relied on the plain error disposition of Mr. Jabateh’s direct appeal, even though that rule is procedurally inapplicable to litigation under § 2255, and even though the government had waived the potentially applicable doctrine (procedural default) by failing to invoke it below. The court then proceeded to affirm the rejection of Mr. Jabateh’s ineffective assistance claim on a rationale not invoked by the district court or by the government on appeal, and which is unsupported by the record. Appx. A. The applicant’s timely petition for rehearing was thereafter denied. Appx. D.

e. Undersigned counsel is concerned that he will not be able to complete a petition for certiorari prior to the current July 30, 2026, deadline for several reasons:

(i) Counsel has largely retired from a 45-year career practicing appellate criminal defense. He sold his office building in early 2024 and now has a home office with no staff, as he seeks to wrap up a handful of pre-existing important cases to which counsel is personally and professionally committed, mostly without fee, including this one.

(ii) Moreover, counsel was diagnosed this spring with prostate cancer and will commence a two-month course of radiation treatment beginning on August 10, 2026. The medications taken in preparation for that treatment have left counsel with less energy than before.

(iii) A 30-day extension would not suffice, as from August 1 to August 7, counsel will be out of town with family (in celebration of a grandchild's first birthday and counsel's own 50th wedding anniversary). And as noted his cancer treatment begins August 10.

(iv) In light of the severity of the applicant's sentence, which he is presently serving, to be followed by removal to Liberia whenever that sentence terminates, neither the applicant nor the government would be prejudiced by an extension of up to 60 days.

e. In counsel's professional opinion, the case presents one or more issues worthy of presentation to this Court in a petition for certiorari, including:

(1) May a federal court, consistent with the Due Process Clause and principles of fundamental justice, knowingly let stand – in the face of a timely-filed, first § 2255 motion – a legally baseless conviction and 20-year prison sentence imposed for conduct that admittedly does not violate the charged statute?

(2) Does the court's conclusion on direct appeal that an appellant's entirely illegal conviction and sentence should nevertheless be affirmed under the "obviousness" prong of the plain error rule foreclose later relief under 28 U.S.C. § 2255, to which (as this Court held in *United States v. Frady*, 456 U.S. 152 (1982)) the plain error rule does not apply?

f. For the reasons stated, the applicant cannot file a petition meeting counsel's own and this Court's high standards prior to the existing due date.

WHEREFORE, the Applicant prays that an Order be entered extending the time within which he may petition this Court for certiorari by sixty days, to and including Monday, September 28, 2026.

Dated: July 16, 2026

Respectfully submitted,

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