

No. _____

DOUGLAS DARREN MALATARE, Applicant,

v.

UNITED STATES OF AMERICA, Respondent.

APPLICATION TO THE HONORABLE ELENA KAGAN, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE NINTH CIRCUIT, FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI

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Applicant, Pro Se

Filed pursuant to the prisoner mailbox rule on September 23, 2026.

TO THE HONORABLE ELENA KAGAN, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE NINTH CIRCUIT:

Applicant Douglas Darren Malatare respectfully requests, under Rules 13.5, 22, and 30.2 of the Rules of this Court, a 45-day extension of the time within which to file a petition for a writ of certiorari, to and including November 19, 2026. The petition is presently due October 5, 2026, and this application is filed more than ten days before that date. The extension is sought solely for applicant. No other party joins in it.

Applicant is confined at a federal correctional institution and prepares this application without the assistance of counsel. He asks the Court's indulgence as to its form, which reflects the circumstances described below and the limited time available to prepare it.

1. THE JUDGMENT SOUGHT TO BE REVIEWED, AND JURISDICTION

Applicant seeks review of the judgment of the United States Court of Appeals for the Ninth Circuit in United States v. Malatare, No.. 25-675 (9th Cir. July 6, 2026), an unpublished memorandum disposition that is not precedent except as provided by Ninth Circuit Rule 36-3. A complete copy is attached as Exhibit A. That judgment affirmed the judgment of the United States District Court for the District of Montana, United States v. Malatare, No. 4:23-cr-00080-BMM-1 (Morris, C.J.), entered January 28, 2025, convicting applicant of distribution of fentanyl resulting in death and of possession of fentanyl with intent to distribute, both in violation of 21 U.S.C. 841(a)(1), and sentencing him to 240 months of imprisonment.

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). No petition for panel rehearing or rehearing en banc was filed by any party, so the time to petition runs from the date of entry of judgment rather than from any later date, and there is no order respecting rehearing to attach. See Sup. Ct. R. 13.3. The mandate issued July 28, 2026, which does not bear on the computation. Id. Ninety days from July 6, 2026 falls on Sunday, October 4, 2026, and the period therefore runs to Monday, October 5, 2026. See Sup. Ct. R. 30.1.

2. THE QUESTION APPLICANT INTENDS TO PRESENT

The court of appeals held that two text messages applicant received from the decedent were properly admitted under Federal

Rule of Evidence 804(b)(3) as statements against the declarant's penal interest, assuming without deciding that the messages are hearsay. The petition will address the standard governing admission of a decedent's transactional text messages under Rule 804(b)(3) in a prosecution of the person who received them.

3. REASONS WHY AN EXTENSION IS JUSTIFIED

Applicant has been working diligently, within the constraints of his incarceration, to prepare and present a petition for a writ of certiorari. He seeks additional time not because the work has been set aside, but because the conditions under which he must do it have limited how much of it he has been able to complete.

Applicant is now without counsel. He was represented in the court of appeals by Elizabeth Tipton Musick and Paul Gallardo III, both appointed under the Criminal Justice Act of 1964, 18 U.S.C. 3006A. Neither continues to represent him. He must prepare the petition himself, without counsel and without the benefit of counsel's familiarity with a record that runs to several volumes.

Applicant received the memorandum disposition on July 14, 2026, eight days after it was entered; the copy attached as Exhibit A bears the institution's date stamp reflecting that date. He then had to work out what remained available to him. He did not know what his former counsel's closing letter meant for his case or what steps, if any, he could still take. He researched the question in the institution's law library and consulted inmates with more experience in federal appellate practice. ~~He also had to return to the case materials his former counsel had sent him.~~ He had reviewed those materials when he received them, but not in depth, because he had been relying on counsel to handle the appeal. Reviewing them as the person now responsible for the case is a different and considerably longer undertaking.

Research resources at the institution are electronic, dated, and difficult to use. There is no paper law library at FCI Sandstone, and this institution does not provide tablet access to the electronic law library, so all legal research must be done on terminals in the law library itself. The electronic library is curated by the Bureau of Prisons, and vendor difficulties have left its case law between two and six months out of date. Its search function and indexing are purpose-built and do not operate the way commercial legal research services do. Learning to use the system takes time, as does acquiring a working understanding of how case law and precedent operate.

Access to those resources has been reduced and is difficult to predict. For one week, education staff who normally support the law library were augmented to a different security post within this institution that had to be covered because of a vacancy. Staff vacations and staff training have had a similar effect at other times. The result is that law library hours are curtailed without advance notice, and applicant cannot reliably plan research time or count on the hours he expects to have.

The 45 days requested is less than the 60 days Rule 13.5 makes available and is no more than applicant reasonably requires to prepare a petition that complies with Rule 14.

4. CONCLUSION

Applicant respectfully requests that the time within which to file a petition for a writ of certiorari be extended by 45 days, to and including November 19, 2026.

Respectfully submitted,



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Dated: September 22, 2026