No. _____

IN THE
Supreme Court of the United States

KRIS RAYMOND MCCLAIN,
Petitioner,

vs.

RYAN THORNELL, ET AL.,
Respondents.

ON APPLICATION FOR AN EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI

APPLICATION FOR AN EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI

TO THE HONORABLE ELENA KAGAN, CIRCUIT JUSTICE FOR THE NINTH CIRCUIT:

Pursuant to Rules 13.5 and 30, petitioner Kris McClain respectfully asks the Court for a 60-day extension of time, up to and including January 22, 2027, to file a petition for a writ of certiorari in this matter.

The United States Court of Appeals for the Ninth Circuit issued an unpublished memorandum decision on June 2, 2026, denying Mr. McClain's appeal from the denial of his habeas petition. (App. A). *See McClain v. Thornell,* 2026 WL 1758578 (9th Cir. June 2, 2026). On August 25, 2026, the Ninth Circuit denied a timely filed petition for rehearing and rehearing en banc. (App. B) This Court's jurisdiction is invoked under 28 U.S.C. § 1254.

This extension is necessary because Mr. McDonald has several other deadlines in state and federal courts pending within the next few weeks, including a reply brief in *State v. Chafino*, Arizona Court of Appeals no. 1 CA-CR 25-0499; a reply in another habeas case, *Valvano v. Thornell*, District of Arizona no. CV–26–01452–PHX–SHD; an opening brief in *Doody v. Thornell*, Ninth Circuit Court of Appeals no. 25-7170; a petition for review in *State v. McCutcheon*, Arizona Supreme Court; a petition for review in *State v. Bell*, Arizona Supreme Court no. CR-26-0307-PR; and several other post-conviction proceedings in the Arizona Superior Court.

Additionally, just last week the Arizona Supreme Court granted review in two cases in which Mr. McDonald is counsel of record: *State v. Traverso*, CR-26-0006-PR and *State v. Johnson*, CR-26-0110-PR. Counsel will have to brief both of those cases before the end of the month and will argue both in the Supreme Court in successive weeks in December, requiring the dedication of significant time that otherwise might have been dedicated to completing this petition.

Accordingly, Mr. McClain respectfully asks the Court to extend the time for filing a petition for certiorari to and including January 22, 2027.

Respectfully submitted: November 10, 2026

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APPENDIX A

NOT FOR PUBLICATION

FILED

JUN 2 2026

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KRIS RAYMON MCCLAIN,

Petitioner - Appellant,

v.

RYAN THORNELL, Director of the Arizona Department of Corrections, Rehabilitation; KRIS MAYES; ATTORNEY GENERAL OF THE STATE OF ARIZONA,

Respondents - Appellees,

UNITED STATES OF AMERICA,

Intervenor.

No. 24-797

D.C. No. 3:23-cv-08056-SPL

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Steven Paul Logan, District Judge, Presiding

Argued and Submitted October 24, 2025
Submission Withdrawn October 27, 2025
Resubmitted June 2, 2026
Phoenix, Arizona

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

Before: GRABER and BADE, Circuit Judges, and NAVARRO, District Judge. **

Kris McClain appeals the district court's denial of his habeas petition under 28 U.S.C. § 2254. We have jurisdiction under 28 U.S.C. §§ 1291 and 2253(a), and we affirm.

1. McClain first argues that, after the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), federal courts cannot apply the Antiterrorism and Effective Death Penalty Act's ("AEDPA") highly deferential standard when reviewing state court decisions. This argument is foreclosed by *Bradford v. Vang*, No. 23-99005, 2026 WL 1340217 (9th Cir. May 14, 2026), which was decided after briefing. *See id.* at *17 ("AEDPA's requirement that a federal habeas court must apply a 'highly deferential standard' in reviewing a state court's resolution of a federal constitutional claim raises no constitutional concerns under *Loper Bright* or otherwise.").

We review de novo the district court's denial of habeas relief. *Ybarra v. McDaniel*, 656 F.3d 984, 989 (9th Cir. 2011). Under AEDPA, we may grant relief only if the state court's adjudication on the merits was (1) "contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by

** The Honorable Gloria M. Navarro, United States District Judge for the District of Nevada, sitting by designation.

the Supreme Court of the United States," or (2) "an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d).

2. The Arizona Court of Appeals concluded that McClain was not in custody for the purposes of *Miranda* before he was placed under arrest at the hospital. *See Miranda v. Arizona*, 384 U.S. 436, 444–45 (1966). The state court's determination that McClain was not in custody was neither contrary to, nor an unreasonable application of, clearly established federal law. Contrary to McClain's argument that the state court took a piecemeal approach, the Arizona Court of Appeals identified the correct totality-of-the-circumstances test, *see Stansbury v. California*, 511 U.S. 318, 322 (1994) (per curiam), and reasonably applied it to McClain's case, *see Wiggins v. Smith*, 539 U.S. 510, 520–21 (2003) (explaining that overcoming AEDPA deference requires the application of precedent be "objectively unreasonable," not just "erroneous" (citation omitted)).

3. McClain next asserts that the state court's conclusion that his statements were voluntary is contrary to clearly established federal law because the facts here are materially indistinguishable from those in *Mincey v. Arizona*, 437 U.S. 385 (1987). *See Williams v. Taylor*, 529 U.S. 362, 412–13 (2000). In *Mincey*, the defendant had been wounded in a gun battle with the police and was found "lying on the floor, wounded[,] and semiconscious." 437 U.S. at 387. The Court

concluded that Mincey's statements made to the police from a hospital bed were not voluntary, explaining that "Mincey was weakened by pain and shock, isolated from family, friends, and legal counsel, and barely conscious, and his will was simply overborne." *Id.* at 401–02.

This case is distinguishable. Although there is evidence that McClain appeared disoriented and confused at the scene of the accident, there is no evidence to suggest that his confusion persisted while he was being questioned at the hospital. Further, given his lack of disorientation at the hospital, McClain's requests for a lawyer at the hospital could support, rather than undermine, the state court's finding that McClain's free will was not overborne as Mincey's was. *See id.* at 399.

4. We decline to expand the certificate of appealability to address McClain's uncertified claims. McClain has not made a substantial showing that his constitutional sentencing error claims were not procedurally defaulted or that his double jeopardy claim was not barred under Arizona's waiver bar. He also has not met his burden of showing that the introduction of his DUI conviction violated his due process rights because he fails to point to United States Supreme Court precedent to support his argument. In sum, McClain has not made a "substantial showing of the denial of [his] constitutional right" as to any of the uncertified issues. *Catlin v. Broomfield*, 124 F.4th 702, 721 (9th Cir. 2024) (quoting

Robertson v. Pichon, 849 F.3d 1173, 1187 (9th Cir. 2017)), *cert. denied*, 146 S. Ct. 333 (2025).

AFFIRMED.

APPENDIX B

FILED

AUG 25 2026

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KRIS RAYMOND MCCLAIN,

Petitioner - Appellant,

v.

RYAN THORNELL, Director of the Arizona Department of Corrections, Rehabilitation; et al.,

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No. 24-797

D.C. No. 3:23-cv-08056-SPL
District of Arizona, Prescott

ORDER

Before: GRABER and BADE, Circuit Judges, and NAVARRO, District Judge.*

The panel has unanimously voted to deny the petition for panel rehearing. Judge Bade voted to deny the petition for rehearing en banc; Judge Graber and Judge Navarro so recommended. The full court has been advised of the petition for rehearing en banc, and no judge of the court has requested a vote on it. Fed. R. App. P. 40.

* The Honorable Gloria M. Navarro, United States District Judge for the District of Nevada, sitting by designation.

The petition for panel rehearing and petition for hearing en banc, (Docket Entry No. 54), is DENIED. No further petitions for rehearing or rehearing en banc will be entertained.