

No. \_\_\_\_\_

IN THE SUPREME COURT OF THE UNITED STATES

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EDWIN RICARDO FLORES,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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Application for Extension of Time  
to File Petition for Writ of Certiorari

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Application to the Honorable Justice Elena Kagan  
as Circuit Justice

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Attorneys for Petitioner

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

Pursuant to Supreme Court Rules 13.5, 22, and 30, Edwin Ricardo Flores respectfully applies to extend by sixty days—up to and including September 23, 2019—his time to file a petition for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit to review *United States v. Flores*, 901 F.3d 1150 (9th Cir. 2018) (attached as Exhibit A).<sup>1</sup> The Court of Appeals issued its decision on August 28, 2018, and denied Mr. Flores's petition for rehearing en banc on April 24, 2019. (Order denying petition for rehearing en banc attached as Exhibit B.) The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1). This extension application is timely because it is filed at least ten days before the current deadline to file the petition for a writ of certiorari, which is July 23, 2019. *See* S. Ct R. 13.5, 30.2.

#### Reasons for Granting an Extension of Time

1. This criminal case involves a charge under 8 U.S.C. § 1326 of illegal reentry as a removed noncitizen. It presents a substantial and important question of federal law: Whether the constitutionality of a criminal conviction and sentence can depend on an administrative agency's interpretation of a statute that has criminal-law applications. Below, the Ninth Circuit deferred under *Chevron* to the Board of Immigration Appeals' interpretation of the phrase "theft offense (including

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<sup>1</sup> September 23, 2019, is the next business day after Saturday, September 21, 2019, which is the sixtieth day after July 23, 2019. *Cf.* S. Ct. R. 30.1 (periods of time for acts under the Court's Rules cannot expire on weekends).

receipt of stolen property)" under 8 U.S.C. § 1101(a)(43)(G). In doing so, the Ninth Circuit extended this phrase to reach property that was obtained with consent of the owner, creating a split of authority with the Fourth Circuit. *See, e.g., Mena v. Lynch*, 820 F.3d 114, 120 (4th Cir. 2016) ("a necessary element of a 'theft offense' is a taking from the owner without consent").

2. Ryan Fraser is counsel of record for Mr. Flores under the Criminal Justice Act. Counsel currently represents twenty-six defendants in matters pending in the United States District Court for the Southern District of California, and is likely to receive five to ten new felony case assignments from July 8 to 12, 2019. Counsel is scheduled for a jury trial to begin on July 30, 2019, which involves charges that carry a ten-year mandatory minimum sentence. All of these commitments will limit counsel's availability to work on this matter between today and July 23, 2019.

Accordingly, Mr. Flores respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari by sixty days, up to and including September 23, 2019.

Respectfully submitted,

Dated: July 8, 2019

  
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