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

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In the  
**Supreme Court of the United States**

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**JORGE GUERRERO**, Petitioner

v.

**UNITED STATES OF AMERICA**, Respondent

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On Petition for Writ of Certiorari to the  
United States Court of Appeals  
for the Ninth Circuit

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

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Attorneys for the Petitioner  
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**Application for Extension of Time**  
**to File Petition for Writ of Certiorari**  
**[28 U.S.C.A § 2101(c); Supreme Court Rules 13.5, 22, 30.3]**

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

Pursuant to 28 U.S.C. §2101(c) and Supreme Court Rule 13.5, application is hereby made for an extension of time within which to file a petition for a writ of certiorari from September 30, 2019, to and including November 29, 2019.

**Basis for Jurisdiction**

In *United States v. Guerrero*, Case No. 17-50384, the Ninth Circuit affirmed the district court's denial of a suppression motion on April 22, 2019.<sup>1</sup> It denied the petition for rehearing en banc on July 1, 2019.<sup>2</sup> This Court has jurisdiction pursuant to 28 U.S.C. §1254(1).

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<sup>1</sup> App., *infra*, 1a-7a. "App." refers to the attached appendix.

<sup>2</sup> App., *infra*, 8a.

### **Judgment Sought to be Reviewed**

The judgment sought to be reviewed is the Ninth Circuit's published, per curiam opinion in *Guerrero*, which affirmed the district court's denial of a suppression motion.<sup>3</sup> The Ninth Circuit concluded that Guerrero had raised a new theory in support of his suppression motion on appeal, and that the issue was therefore waived under Federal Rule of Criminal Procedure 12 unless Guerrero could show good cause for the waiver.<sup>4</sup> It noted that Rule 12 had been amended in 2014 to remove "waiver" terminology, and that the courts of appeals had reached conflicting conclusions on the post-amendment standard of review.<sup>5</sup> However, the Ninth Circuit concluded that its prior precedent was not clearly irreconcilable with the 2014 amendments to Rule 12, and that it was bound to apply the "good cause" standard, rather than review for plain error. Finding no good cause for the waiver, the Ninth Circuit affirmed the district court's denial of the suppression motion.<sup>6</sup>

### **Reasons to Justify a 60-Day Extension**

Petitioner Jorge Guerrero seeks a 60-day extension of time to file his petition for writ of certiorari in this case.

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<sup>3</sup> App., *infra*, 1a-7a.

<sup>4</sup> App., *infra*, 5a.

<sup>5</sup> App., *infra*, 4a-5a.

<sup>6</sup> App., *infra*, 6a-7a.

First, although counsel of record promptly notified Petitioner of the denial of his petition for rehearing en banc, due to Petitioner's intervening release from custody and change of contact information, Petitioner did not confirm until yesterday that he wished to file a petition for certiorari.

Second, counsel requests this extension due to preexisting work commitments as a deputy federal public defender in the Central District of California. My workload until late October includes:

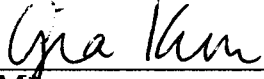
- Two oral arguments before the Ninth Circuit, one of which involves travel outside the Central District of California: *United States v. Ped*, CA 18-50179 (September 9, 2019); *United States v. Wang*, CA 17-10275/17-10277 (October 23, 2019).
- Three opening briefs: *United States v. Garrett*, CA 19-50119; *United States v. Bailey*, CA 19-50180; *United States v. Cano*, CA 19-50133.
- Three reply briefs: *United States v. Ataba*, CA 18-50231; *Bernabe-Ramirez v. United States*, CV 19-5491-JAK; *United States v. Kabir*, CA 15-50078. *Bernabe-Ramirez* involves a motion brought under 28 U.S.C. § 2255 regarding a six-week trial. The appeal in *Kabir* involves a five-week trial.

For these reasons, Petitioner respectfully requests a 60-day extension of this deadline (to and including November 29, 2019).

Respectfully submitted,

HILARY POTASHNER  
Federal Public Defender

DATED: September 5, 2019

By:   
GIA KIM  
Deputy Federal Public Defender

Attorneys for the Petitioner  
\* Counsel of Record