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IN THE
Supreme Court of the United States

JOSE OSVALDO ARTEAGA,

Petitioner,

v.

KEN CLARK, WARDEN,

Respondent.

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

**PETITIONER'S APPLICATION TO EXTEND TIME TO FILE
PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT (PETITION DUE JANUARY 26, 2020)**

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**APPLICATION FOR EXTENSION OF TIME TO FILE
PETITION FOR WRIT OF CERTIORARI**

To the Honorable Anthony M. Kennedy, Associate Justice of the Supreme Court of the United States, as Circuit Justice for the Ninth Circuit:

Petitioner Jose Osvaldo Arteaga respectfully requests that the time to file his Petition for a Writ of Certiorari in this matter be extended to and including February 25, 2020. (Supr. Ct. R. 30.1.) The Court of Appeals entered its order denying Arteaga's request for a certificate of appealability on October 28, 2019. (*See* Pet. App. 7.) Without an extension of time, the certiorari petition would be due on January 26, 2020. Arteaga is filing this Application at least ten days before that date. (Supr. Ct. R. 13.5.) This Court would have jurisdiction over the judgment under 28 U.S.C. § 1254(1).

Background

In this 28 U.S.C. § 2254 case, Jose Osvaldo Arteaga is challenging his 2003 state conviction for a California state conviction for an attempted murder that took place one year earlier. Arteaga is serving an indeterminate life sentence. He has always maintained his innocence.

There is no video of the crime, no physical evidence of the crime, and no confession. In fact, the only evidence against Arteaga comes from the eyewitness identifications of the shooting victim, Richard Carlyle, and his boyfriend, Sergio

Ulloa, who was with Carlyle when he was shot. At various points in the police's investigation, the police gave Carlyle and Ulloa opportunities to identify Arteaga as the shooter—and both did not. At trial, defense counsel called Bayron Peres in support of a misidentification defense. Peres observed the crime take place and testified that Arteaga was not the shooter. Counsel called no other witnesses.

But there was someone else counsel could have called: Mauro Ortega. Ortega would have testified that Arteaga could not have committed this crime because Arteaga was with him in a different part of Los Angeles when the shooting was taking place. By way of his habeas petition, Arteaga has sought to overturn his conviction based on trial counsel's failure to investigate and present this alibi witness.

There is “Good Cause” for This Motion

The attached declaration of counsel provides the basis for granting this request for an extension of time. In brief, counsel has begun working on this petition for certiorari, but his duties in other matters have taken away from the time necessary to complete the petition.

No meaningful prejudice would arise from the extension.

On January 3, 2020, counsel communicated with Deputy Attorney General Toni Raven Johns Estaville, counsel for the Warden, about this motion. Ms. Johns Estaville advised that the Warden does not oppose this request for an extension of time.

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Conclusion

For the foregoing reasons, the time to file a Petition for a Writ of Certiorari in this matter should be extended to and including February 25, 2020.

Respectfully submitted,

AMY M. KARLIN
Interim Federal Public Defender



By:

MICHAEL D. WEINSTEIN*
Deputy Federal Public Defender

Attorneys for Petitioner
JOSE OSVALDO ARTEAGA

**Counsel of Record*

DATED: January 3, 2020

DECLARATION OF MICHAEL D. WEINSTEIN

I, Michael D. Weinstein, declare:

1. I am an attorney licensed to practice law in the State of California. I am a Deputy Federal Public Defender in the Capital Habeas Unit of the Office of the Federal Public Defender for the Central District of California. I represent Jose Osvaldo Arteaga in this habeas corpus action and am responsible for drafting and filing Arteaga's petition for writ of certiorari. I make this declaration in support of his request for an extension of time to file his petition for writ of certiorari in this Court.

2. On October 28, 2019, the Court of Appeals for the Ninth Circuit filed its order denying Arteaga's request for a certificate of appealability. Arteaga's petition for writ of certiorari is due on January 26, 2020. To date, I have reviewed all of Arteaga's prior pleadings and opinions, conducted legal research, and begun drafting the text of the petition.

3. Other case obligations will prevent me from completing the petition by its current due date. Specifically, I am currently finalizing an amicus brief in a California state-court habeas case, due on January 6, 2020. I am also preparing for an oral argument in the Ninth Circuit Court of Appeals, to be held on January 8, 2020. After that I need to finalize a supplemental traverse in a Central District of California non-capital habeas case, due on January 16, 2020, and complete part of an investigation in another non-capital habeas case, this one pending in a California state court, in preparation for a February 5, 2020 status conference for

an upcoming evidentiary hearing. Finally, I am preparing two separate petitions for rehearing en banc for two Ninth Circuit capital habeas appeals, both of which are due on January 9, 2020, but which I plan on seeking additional time to file.

4. For the foregoing reasons, I request additional time to file the petition for writ of certiorari to and including February 25, 2020.

5. On January 3, 2020, I sent Deputy Attorney General Toni Raven Johns Estaville, counsel for the Warden, an email informing her that I planned to seek this extension and inquiring whether she objected to this request. Later that day, I received an email from Ms. Johns Estaville informing me that the Warden does not oppose this request for an extension of time.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on January 3, 2020, at Los Angeles, California.



MICHAEL D. WEINSTEIN