

No. ____ - _____

IN THE
SUPREME COURT OF THE UNITED STATES

JUAN CARLOS GARCIA TORRES,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

**APPLICATION FOR EXTENSION OF TIME IN WHICH TO
FILE PETITION FOR A WRIT OF CERTIORARI**

To the Honorable John G. Roberts, Jr., Chief Justice of the United States and Circuit
Justice for the Fourth Circuit:

Petitioner Juan Carlos Garcia-Torres,¹ by his counsel, respectfully makes application pursuant to Supreme Court Rule 13.5 and Rule 22 to extend the time in which to file a petition for writ of certiorari from the judgment entered by the United States Court of Appeals for the Fourth Circuit. In support thereof, counsel states the following.

1. Mr. Garcia-Torres was charged with illegal re-entry after deportation, and he later pled guilty to that offense. After his plea, this Court decided *Pereira v. Sessions*, 138

¹ The Fourth Circuit and district court docket captions, along with the Fourth Circuit's opinion, list Mr. Garcia-Torres's last name as "Garcia Torres," so the caption to this application and the eventual petition will use that styling. The indictment and other documents in the record, including (in line with Mr. Garcia-Torres's preference) his appellate briefs, use the hyphenated form, so the body of this document will do so as well.

S. Ct. 2105 (2018), concerning the requirements for a notice to appear in removal proceedings. Mr. Garcia-Torres moved to withdraw his plea and to dismiss the indictment, arguing that *Pereira*'s holding made his underlying removal order invalid. Mr. Garcia-Torres's notice to appear lacked a time or date for his removal hearing, and he argued that the omission of such information is a jurisdictional defect rendering his removal proceedings void. As a valid removal order is an element of the illegal re-entry offense, the invalidity of the order would mean that Mr. Garcia-Torres is legally innocent and that his guilty plea lacked a legal basis.

The district court denied the motion, concluding that *Pereira* only applied to the specific immigration provision at issue in that case. The court later sentenced Mr. Garcia-Torres to 36 months in prison.

2. Mr. Garcia-Torres appealed, but the Fourth Circuit affirmed his conviction. *See* App. A. The appeals court held that Mr. Garcia-Torres's claim was "squarely foreclosed" by its decision in *United States v. Cortez*, 930 F.3d 350 (4th Cir. 2019). App. 3a. *Cortez* had held that a defective notice to appear did not deprive the immigration judge of jurisdiction, because DOJ regulations defined the requirements for a notice to appear in removal proceedings. *Cortez*, 930 F.3d at 363. Accordingly, the Fourth Circuit rejected Mr. Garcia-Torres's argument and affirmed the district court's ruling. App. 3a-4a.

3. Mr. Garcia-Torres filed a timely petition for rehearing. The court denied the petition without explanation. *See* App. B.

4. The Fourth Circuit issued its order denying rehearing on December 17, 2019, App. 5a, making Mr. Garcia-Torres's petition for a writ of certiorari due by March 16, 2020. This Court has jurisdiction under 28 U.S.C. § 1254(1).

5. Mr. Garcia-Torres's petition for a writ of certiorari will argue that the Fourth Circuit's judgment is inconsistent with *Pereira*. The decision in *Pereira* has already led to widespread disagreements among the lower courts over the scope of its holding. See App. to Appellant's Br., *United States v. Torres*, 4th Cir. No. 18-4714 (filed Feb. 8, 2019) (listing over 40 decisions splitting at least three ways in interpreting *Pereira*). In *Cortez* itself, the Fourth Circuit noted the division of authority. 930 F.3d at 363 & n.3. Mr. Garcia-Torres is aware of other petitions raising similar arguments. See, e.g., *Karingithi v. Barr*, No. 19-475 (filed Oct. 7, 2019); *Pierre-Paul v. Barr*, No. 19-779 (filed Dec. 16, 2019).

6. Between the time the Fourth Circuit denied the rehearing petition and the current due date for Mr. Garcia-Torres's petition, undersigned counsel of record has filed or will file five opening briefs² and up to five reply briefs.³ Counsel was also out of the office for several days for the Christmas holiday. In recent weeks, counsel spent considerable time

² *United States v. Diaz-Martinez*, 4th Cir. No. 19-4642 (Jan. 6); *United States v. Thompson*, 4th Cir. No. 19-4807 (Jan. 21); *United States v. Bragg*, 4th Cir. No. 19-4731 (Feb. 3); *United States v. Terrazas-Silas*, 4th Cir. No. 19-4802 (Feb. 20); *United States v. Abraham*, 4th Cir. No. 19-4790 (Mar. 4).

³ *United States v. Dennis*, 4th Cir. No. 19-4494 (Feb. 28); *Diaz-Martinez*, supra (Feb. 28); *Bragg*, supra (Mar. 3); *Thompson*, supra (Mar. 13); *Terrazas-Silas*, supra (Mar. 23).

helping a colleague prepare for a January 30 en banc argument, at which undersigned counsel sat second-chair.

In addition, counsel will soon be filing two other certiorari petitions, in *Hill v. United States*, No. 19A596, due February 21; and *Steward v. United States* (4th Cir. No. 15-4422), due by March 16 (the same day as Mr. Garcia-Torres's petition).

7. In light of counsel's briefing deadlines and other obligations, counsel requests an extension of 60 days, from March 16, 2020, to May 15, 2020, in which to file the petition for writ of certiorari in Mr. Garcia-Torres's case.

Wherefore, Petitioner prays that this application be granted.

Respectfully submitted,

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