

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

RUFINO VALDEZ-LOPEZ, Petitioner

vs.

UNITED STATES OF AMERICA, Respondent.

**APPLICATION FOR EXTENSION OF TIME TO
FILE PETITION FOR WRIT OF CERTIORARI
PURSUANT TO RULE 13(5)**

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

1. Petitioner, Rufino Valdez-Lopez, pursuant to Rule 13(5), Rules of the Supreme Court, respectfully seeks a sixty (60) day extension of time within which to file his Petition for Writ of Certiorari in this Court. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). This application is submitted more than ten (10) days prior to the scheduled filing date for the Petition. The relevant dates are:
 - a. **7/16/2021:** Issuance of written opinion of the United States Court of Appeals for the Ninth Circuit, *United States v. Rufino Valdez-Lopez*, 4 F.4th 886 (9th Cir. 2021), affirming the sentence imposed by the district court. A copy of the opinion is attached hereto as Exhibit A.

b. **8/30/2021:** Petitioner filed a Petition for Panel Rehearing or Rehearing *En Banc.*

c. **9/29/2021:** Issuance of written order denying panel rehearing and rehearing *en banc.* A copy of the order is attached hereto as Exhibit B.

d. **12/18/21:** Deadline for seeking an extension of time within which to file a Petition for Writ of Certiorari to the United States Supreme Court.

e. **12/28/2021:** Deadline for filing a Petition for Writ of Certiorari in the United States Supreme Court, unless extended.

2. In this case Petitioner successfully moved to set aside a 924(c) count for which he had been convicted. On resentencing, before a different Judge, a harsher sentence was imposed. The sentence was increased by 60 months over the original sentence that was imposed prior to the 924(c) count being set aside. The panel affirmed the harsher sentence finding that the *Pearce* presumption of judicial vindictiveness did not apply where a second sentencer imposed the new sentence and Petitioner failed to otherwise demonstrate actual vindictiveness.

3. Undersigned is counsel in *State of Arizona v. Jerry Cockhearn*, CR2010-007912, an ultra-complex eleven-year-old first-degree murder case. The trial will involve over 150 witnesses, thousands of photographs, hundreds of hours of interviews and audio, over 50,000 Bates pages, over 100,000 pages of relevant documents, multiple co-defendants, multiple counts and alleged offenses and is acknowledged by all involved as one of the most complex cases pending in the State of Arizona. This matter is set for a firm trial on January 10, 2022. However, in October 2021 it was tentatively

postponed until at least March or April 2022 because the State proceeded to trial in a capital resentencing case.

Due to sudden health issues involving defense counsel the case ended in mistrial. As a result, the January 10, 2022, trial date in this case was reinstated and undersigned counsel's focus was necessarily diverted almost exclusively back to trial preparations and extensive complex litigation.

Accordingly, undersigned counsel's ability to focus sufficient attention on this petition has been unexpectedly and materially altered.

4. This Court will be asked to grant review on whether the Ninth Circuit erred when it refused to apply the *Pearce* presumption and affirmed the harsher sentence imposed by a new sentencing judge following a successful collateral attack upon no new or intervening facts or circumstances. Counsel will further seek to demonstrate that there is a circuit split regarding the application of the *Pearce* presumption to cases where a harsher sentence is imposed by a new judge. *See Plumley v. Austin*, 574 U.S. 1127 (2015)(Justice Thomas joined by Justice Scalia dissenting from the denial of certiorari, noting a circuit split, expressing the need to resolve the split).

5. Opposing Counsel, Assistant United State's Attorney Raymond Woo, has no objection to this motion.

For the foregoing reasons Petitioner, through CJA appointed counsel, respectfully moves this Court to grant this application for an extension of sixty (60) days to and including February 25, 2022.¹

¹ The deadline technically falls on February 26, 2022, but with that day being a Saturday, Petitioner notes a deadline of Friday, February 25, 2022, which does not exceed 60 days.

Respectfully submitted, this the 17th day of December, 2021.

/s/ David J. Teel
David J. Teel, Bar #024570
CJA Panel Appointed
LAW OFFICE OF DAVID J.
TEEL, PLLC
2303 N. 44th. Street, Ste. 14-
1518, Phoenix, AZ 85008
TELEPHONE: 602.441.3434
teel@arizonalegal.org
Attorney for Petitioner

CERTIFICATE OF SERVICE

I, David J. Teel, certify that I have this day served the foregoing Motion for Extension of Time to file Petition for Writ of Certiorari by first-class mail, postage prepaid, addressed to Raymond Woo, Assistant United States Attorney, 40 N. Central Avenue, Ste 1800, Phoenix, Arizona 85004.

This the 17th day of December, 2021.

/s/ David J. Teel
David J. Teel
Attorney for Petitioner