

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

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

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**NOE FLORES-PEREZ,**

*Applicant,*

**v.**

**UNITED STATES of AMERICA,**

*Respondent.*

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**APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE  
A PETITION FOR A WRIT OF CERTIORARI TO U.S. COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

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Pursuant to 28 U.S.C. § 2101(c) and Rule 13.5 of the Rules of this Court, applicant Noe Flores-Perez respectfully requests a 60-day extension of time, to and including January 7, 2022, to file a petition for a writ of certiorari in this case.

On June 16, 2021, the Sixth Circuit Court of Appeals issued an opinion and order affirming the district court's order denying Mr. Flores-Perez's motions to dismiss under 8 U.S.C. § 1326(d). The court denied his petition for rehearing en banc on August 9, 2021. Unless extended, the time to file a petition for a writ of certiorari will expire on November 8, 2021. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1). The Sixth Circuit opinion is available at 1 F.4th 454 (6th Cir. 2021). A copy of the opinion and order is attached.

1. In a prosecution for illegal re-entry after removal, 8 U.S.C. § 1326(a), a non-citizen can challenge the validity of the removal order if three conditions are met. *See id.* § 1326(d). The first requirement is that the non-citizen "exhausted any administrative remedies that may have been available to seek relief against the order." *Id.* § 1326(d)(1).

Noe Flores-Perez was ordered removed *in absentia* after an immigration officer mistranscribed his address. Flores-Perez did not learn why he missed the hearing until this prosecution. The panel held that he failed to exhaust administrative remedies because he did not move to reopen removal proceedings. But this overlooks why that remedy was unavailable.

The questions presented will likely be (1) whether a person ordered removed *in absentia* must file a motion to reopen to exhaust administrative remedies under

8 U.S.C. § 1326(d)(1); and (2) whether this remedy was “available” to Mr. Flores-Perez.

2. Good cause exists for an extension of time to prepare a petition for a writ of certiorari in this case. Undersigned counsel has been working diligently to prepare a petition for certiorari, but other pressing deadlines and court hearings have interfered with her ability to draft the petition. Undersigned handles federal criminal and habeas cases in the district court and court of appeals. In addition, she represents a person in Oklahoma facing first-degree murder charges for which out-of-district travel has been necessary.

For the foregoing reasons, the application for a 60-day extension of time, to and including Friday, January 7, 2022, within which to file a petition for a writ of certiorari should be granted.

Respectfully submitted,

s/Colleen P. Fitzharris

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