

No. 22A _____

IN THE
Supreme Court of the United States

Jose Madrid-Becerra,

Petitioner,

vs.

United States of America,

Respondent.

**APPLICATION FOR AN EXTENSION OF TIME
TO FILE A PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

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APPLICATION

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

Pursuant to Rule 13.5 of the Rules of this Court and 28 U.S.C. § 2101(c), applicant Jose Madrid-Becerra respectfully asks for a 40-day extension of time, to and including September 27, 2022, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this matter.

1. The Ninth Circuit entered judgment on October 1, 2021. *See United States v. Madrid-Becerra*, 14 F.4th 1096 (9th Cir. 2021). Mr. Madrid-Becerra filed a petition for rehearing and rehearing en banc on November 15, 2021. The Ninth Circuit denied the petition on May 20, 2022. Unless extended, the time to file a petition for writ of certiorari will run on August 18, 2022. This application is being filed more than ten days before the petition is currently due. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1).

2. Mr. Madrid-Becerra's appeal to the Ninth Circuit Court of Appeals concerned United States Sentencing Guideline ("U.S.S.G.") § 4A1.1(d), which adds two points to a defendant's criminal history score if the defendant committed an offense "while under any criminal justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape." More specifically, the appeal addressed whether U.S.S.G. § 4A1.1(d) applied to Mr. Madrid-Becerra, who pled guilty in 2019 to illegal re-entry in violation of 8 U.S.C. § 1326. In 2014, Mr. Madrid-Becerra was released from an Arizona state prison after serving half of a 2.5-year sentence for solicitation to commit the sale or transportation of marijuana. His early release transpired pursuant to a now-repealed Arizona statute that allowed the Arizona Department of Corrections, at its discretion, to release to the United States Immigration and Naturalization Service prisoners with deportation orders after they had served one half of their state sentences.

See Arizona Revised Statutes (“A.R.S.”) § 41–1604.14, repealed 2016 Ariz. Sess. Laws, ch. 89, § 1.

3. In a 2-1 opinion, a panel of the Ninth Circuit (Senior Circuit Judge Bybee, Circuit Judge Bress, and District Court Judge Cardone, sitting by designation) held that USSG § 4A1.1(d) does apply to federal defendants who were previously released under the now-defunct Arizona “half-term release for deportation” program. The Court held that such defendants must be considered “under [a] criminal justice sentence” for purposes of calculating their criminal history score, regardless of how many years have transpired since their release from state custody and regardless of whether their state court sentences would have long since expired. *Madrid-Becerra*, 14 F.4th at 1098-1103.

4. In reaching this conclusion, the panel majority reasoned that Arizona’s “half-term release for deportation” program contained a mandatory condition that defendants released pursuant to the program not return illegally to the United States. Relying solely on this aspect of the early-release program, the majority held that the program was thus “akin to probation.” 14 F.4th at 1102. On this basis alone, the panel majority concluded that Mr. Madrid-Becerra’s 2014 release under the now-repealed Arizona statute meant that he was “under [a] criminal justice sentence” when he was arrested for illegal reentry in December 2017. *Id.*

5. Judge Cardone dissented from this ruling, observing that the panel majority’s interpretation of U.S.S.G. § 4A1.1(d) was at odds with the language, structure, and intended purpose of that provision. *Madrid-Becerra*, 14 F.4th at 1104-1108. Judge Cardone would have held that Arizona’s repealed “half-term release for deportation” program did not qualify as a “criminal justice sentence” under U.S.S.G. § 4A1.1(d), noting that “Arizona’s scheme is distinguishable from every ‘criminal justice sentence’ contemplated by § 4A1.1(d),” particularly with regard to the fact that a defendant

released under the Arizona program would remain indefinitely under a “criminal justice sentence,” a result not contemplated by the sentencing guidelines. *Id.* at 1105.

6. The effects of the panel majority’s ruling extend far beyond Mr. Madrid-Becerra’s sentence. Arizona’s “half-term release for deportation” program was in use for two decades and presumably affected thousands of state prisoners. The record in this case reveals that the district courts in Arizona have regularly been called upon to address the impact of that program in determining appropriate sentences for federal criminal defendants.

7. Further, Arizona’s “half-term release for deportation” program was not unique. Federal statutes and seven states statutes (Connecticut, Michigan, New Hampshire, North Carolina, Oklahoma, Pennsylvania, and Washington) are similar in language or effect to the now-repealed Arizona statute. This case thus presents an important national question about the proper application of the Sentencing Guidelines.

8. Assistant Federal Public Defender Michael Burke was assigned to represent Mr. Madrid-Becerra on appeal, including certiorari proceedings in this Court. *See* 9th Cir. R. 4-1(e). Counsel’s schedule since May has prevented him from working on Mr. Madrid-Becerra’s certiorari petition. In the coming weeks, counsel is occupied with briefing deadlines in other cases, including a reply brief in *United States v. Eller*, Ninth Circuit No. 20-10425, due on August 12, 2022, and reply briefing on a motion for new trial in *United States v. Lane*, No. CR-18-08295-PCT-GMS, District of Arizona, due on August 19, 2022. Counsel requests a 40-day extension of time to permit him adequate time to research the relevant legal and factual issues and to prepare a petition that fully addresses the important questions described in this application.

9. For these reasons, Mr. Madrid-Becerra respectfully asks that an order be entered extending the time for filing a petition for certiorari to and including September 27, 2022.

Respectfully submitted:

August 4, 2022.

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