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**In The**  
**SUPREME COURT OF THE UNITED STATES**  
**October Term 2022**

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**Daniel Alexander Rodriguez,**  
*Applicant/Petitioner,*

v.

**David Shinn, et al.,**  
*Respondents.*

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**Application for an Extension of Time Within**  
**Which to File for a Writ of Certiorari to the**  
**United States Court of Appeals for the Ninth Circuit**

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**APPLICATION TO THE HONORABLE JUSTICE**  
**ELENA KAGAN AS CIRCUIT JUSTICE**

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## **APPLICATION FOR AN EXTENSION OF TIME**

Pursuant to Rule 13.5 of the Rules of this Court, Applicant Daniel Rodriguez respectfully requests a 30-day extension of time within which to file a petition for a writ of certiorari, up to and including Friday, November 18, 2022.

### **JUDGMENT FOR WHICH REVIEW IS SOUGHT**

The judgment for which review is sought is *Daniel Alexander Rodriguez v. David Shinn*, No. 21-16024 (9th Cir. May 27, 2022) (attached as Exhibit 1). The Ninth Circuit denied Applicant's motion for rehearing on July 19, 2022 (Doc. 43 of Docket Sheet, attached as Exhibit 2).

### **JURISDICTION**

This Court will have jurisdiction over any timely filed petition for certiorari in this case pursuant to 28 U.S.C. § 1254(1). Per Rules 13.1, 13.3, and 30.1 of the Rules of this Court, a petition for a writ of certiorari was due to be filed on or before October 19, 2022. In accordance with Rule 13.5, this application is being filed more than ten days prior to the filing date for the petition for a writ of certiorari.

### **REASONS JUSTIFYING AN EXTENSION OF TIME**

1. Applicant respectfully requests a 30-day extension of time within which to file a petition for a writ of certiorari seeking review of the decision of the United States Court of Appeals for the Ninth Circuit in this case. Opposing counsel for the State of Arizona has expressed no objection to granting this motion.

2. Eighty-seven years ago, this Court established that a conviction based upon perjured testimony and false argument is "inconsistent with the rudimentary demands of justice," invoking constitutional grounds for relief. *Mooney v. Holohan*,

294 U.S. 103, 112 (1935). Noting that the sole basis of Mooney’s conviction was the prosecutor’s knowing use of perjured testimony, this Court held:

. . . if a state has contrived a conviction through the pretense of a trial which in truth is but used as a means of depriving a defendant of liberty through a deliberate deception of court and jury by the presentation of testimony known to be perjured.

*Id.* This Due Process principle has been unfalteringly upheld in a strong line of precedent ever since. *See Napue v. Illinois*, 360 U.S. 264 (1959) (listing cases at 269); *Miller v. Pate*, 386 U.S. 1 (1967); *United States v. Agurs*, 427 U.S. 97 (1976) (listing cases in fn. 8). The Court additionally recognized that granting certiorari was necessary not just to correct misconduct, but because presenting false testimony “involve[s] a corruption of the truth-seeking function of the trial process.” *Agurs*, 427 U.S. at 104. Using perjured testimony violates “any concept of ordered liberty.” *Napue*, 360 U.S. at 269.

Mr. Rodriguez was convicted of offenses arising from two shooting incidents during a tumultuous period with his girlfriend; no one was hurt. The critical evidence used to establish the offenses were cell phone texts sent to her leading up to the second incident. Whoever sent those texts using the Heywire app was the shooter. However, the texts revealed that she was having relations with other men at the time. The police had seized Mr. Rodriguez’s phone and examined it, finding neither the Heywire app nor any of those incriminating texts. When the defense objected to the texts’ admission, the prosecutor assured the judge that the all the texts on the girlfriend’s phones were found on Mr. Rodriguez’s phone—a bald lie. Persuaded by carefully orchestrated misleading testimony from the detective, the judge overruled

the objection. That false misleading testimony was also presented to the jury who never learned the truth. The prosecutor dishonestly argued in rebuttal closing that those threatening Heywire texts were found on Mr. Rodriguez's phone.

3. Applicant has requested that the Northwestern University School of Law Supreme Court Practicum assist in preparing his petition. The Practicum begins its work for the upcoming Term in mid-August. An extension of time will permit the participants the time necessary to complete a cogent and well-researched petition after the beginning of the academic calendar for fall 2022, which commenced August 29, 2022.

4. The extension of time is also necessary because of the press of other client business. For example, in the coming months, the Northwestern Practicum has several overlapping commitments representing other clients in this Court, including a petition for writ of certiorari in *Womack v. United States* (No. 22-), and reply briefs in *McGill v. United States* (No. 22-5073), *Santos v. United States* (No. 21-1418), *Barrieta-Barrera v. United States* (No. 21-8229), and *Miclaus v. United States* (No. 21-8129). Mr. Green is also appointed counsel in five D.C. Court of Appeals cases currently briefing and/or preparing for oral argument, *Johnson v. United States* (No. 13-CF-493), *Parker v. United States* (No. 19-CF-1168), *Proctor v. United States* (No. 22-CF-0349), *Minor v. United States* (No. 18-CF-0686), and *Neal v. United States* (No. 17-CF-1346) and has ongoing, active litigation in the United States District Court for the District of Columbia, the District of Columbia Superior Court, the United States District Court for the District of Delaware, the United States District Court for the

District of Utah, the United States District Court for the Eastern District of Pennsylvania, and the Superior Court of the U.S. Virgin Islands. An additional 30-day extension for the Applicant would allow Mr. Green the necessary amount of time to effectively contribute to all open matters including Applicant's petition as well as his other client business abroad, and would also allow the Northwestern Practicum students sufficient time for research and drafting efforts per Applicant's request.

5. Extending the time to file the petition here is also necessary for counsel of record. Ms. Elm has an immutable deadline of October 22, 2022 for filing a habeas petition in *United States v. Josytewa* (D. Ariz. No. CR-18-8300). Recent investigation uncovered new exculpatory witnesses and evidence demanding attention in the little remaining time. Ms. Elm is also lead on two demanding substantial appeals of a terrorism case, *United States v. Abdul Kareem* (9<sup>th</sup> Cir. Nos. 21-10315 & 20-10155), due November 3, 2022. An extension of time is optimistically anticipated. Ms. Elm has pending two active habeas corpus (28 U.S.C. § 2254) cases in the Middle District of Florida, an appeal in the Eleventh Circuit Court of Appeals, and an appeal in the Ninth Circuit Court of Appeals as well.

## CONCLUSION

For the foregoing reasons, Applicant Daniel Rodriguez respectfully requests a 30-day extension of time to file a petition for a writ of certiorari, up to and including Friday, November 18, 2022.

Respectfully submitted this 14<sup>th</sup> day of  
September, 2022,

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