

No. _____

IN THE
Supreme Court of the United States

MANUEL ALEJANDRO SANCHEZ,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

**Unopposed Application for Extension of Time
to File a Petition for Writ of Certiorari**

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

PAUL E. SHELTON
Assistant Federal Public Defender
Federal Defenders of
Eastern Washington and Idaho
306 E Chestnut Ave
Yakima, WA 98901
(509) 248-8920
paul_shelton@fd.org

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

Applicant-Defendant Manuel Alejandro Sanchez (“Mr. Sanchez”) respectfully requests an extension of time to file a petition for writ of certiorari under Supreme Court Rule 13.5. As explained below, the current deadline for Mr. Sanchez to file his petition is October 18, 2022. For good cause set forth herein, Mr. Sanchez is requesting a 60-day extension to December 17, 2022, to file his petition for a writ of certiorari. The United States does not oppose this request for an extension.

Background and Procedural History

The United States originally indicted Mr. Sanchez in August 2019, charging him with one count of illegal re-entry into the United States in violation of 8 U.S.C. § 1326. Mr. Sanchez was in Immigration and Customs Enforcement (“ICE”) custody and transferred into U.S. Marshals’ custody on August 22, 2019. He remained in federal custody until the district court granted his motion to dismiss his indictment on March 5, 2020.

The basis for Mr. Sanchez’s prosecution is removal proceedings that occurred in 2016. Following a conviction for simple possession of methamphetamine, ICE took him into custody in May 2016 and served him with a putative Notice to Appear (“NTA”) to initiate removal proceedings against him. The NTA charged Mr. Sanchez was removable due to his possession conviction. The NTA directed him to appear at a

removal hearing at a date and time “to be set” at the Northwest Detention Center in Tacoma, Washington, where he was being held. His removal hearing ultimately occurred on December 1, 2016. Immigration officials never served Mr. Sanchez with any written notice that his removal hearing would occur on that date.

Mr. Sanchez appeared at his removal hearing and was assisted by counsel Vicky Currie (“Ms. Currie”). Prior to that hearing, Ms. Currie had filed an application for asylum and withholding of removal for Mr. Sanchez; a hearing had been set on those applications on March 20, 2017. However, after being denied bond at his December 1, 2016 hearing, upon Ms. Currie’s advice, Mr. Sanchez withdrew that application, abandoned all other forms of relief, and instead sought voluntary departure. The immigration judge ultimately denied his request for voluntary departure, almost exclusively relying on Mr. Sanchez’s criminal history and particularly his conviction for possession of meth, which is an aggravated felony. Mr. Sanchez then orally waived appeal, after Ms. Currie had already stated that he would not be filing an appeal.

During his prosecution in the district court below, Mr. Sanchez filed two motions to dismiss the indictment. The first argued that the immigration judge was never properly vested with subject matter jurisdiction over his removal proceedings because the NTA did not contain all information required by the relevant statute (8 U.S.C. §1229(a)(1)), relying on this Court’s ruling in *Pereira v. Sessions*, 138 S. Ct. 2105 (2018). The second argued that the immigration judge violated his due process rights and his

attorney provided ineffective assistance, including failing to adequately advise him about either waiving potential relief from removal or waiving appeal of the immigration judge's ruling denying his request for voluntary departure. The district court denied the first motion, relying on the Ninth Circuit's ruling in *Karingithi v. Whitaker*, 913 F.3d 1158 (9th Cir. 2019). The district court granted the second motion, finding the record insufficient to establish that the immigration judge considered all the relevant positive and negative equities,¹ and further found it was plausible that Mr. Sanchez could have received relief in the form of voluntary departure. Additionally, the district court found Mr. Sanchez's waiver of appeal was invalid because he was not given a "genuine opportunity" to present evidence regarding his application for voluntary departure.

The United States appealed the district court's ruling to the Ninth Circuit. Following briefing and argument, the Ninth Circuit panel reversed the district court's ruling.² The Ninth Circuit found that Mr. Sanchez was barred from collaterally attacking his underlying removal order because he waived appeal, and thus failed to exhaust administrative remedies, relying on this Court's ruling in *United States v. Palomar-Santiago*, 141 S. Ct. 1615 (2021).³ The Ninth Circuit further found that it was not plausible that

¹ The immigration judge specifically noted during Ms. Currie's presentation that certain evidence of positive equities was "in the bond record not the removal record." Ms. Currie never formally moved this evidence into the removal record and the immigration judge did not address them when ruling on the voluntary departure request.

² See Appendix A (Ninth Circuit panel memorandum opinion dated July 14, 2021).

³ See *id.* at p. 2.

Mr. Sanchez could have received relief from removal, and thus he suffered no prejudice in his removal proceedings.⁴ Finally, the Ninth Circuit affirmed the district court's denial of the first motion to dismiss, finding that defects in the NTA did not affect the immigration court's jurisdiction. The Ninth Circuit held this Court's ruling in *Niz-Chavez v. Garland*, 141 S. Ct. 1474 (2021) was "not 'clearly irreconcilable'" with the Ninth Circuit's ruling in *Karingithi*.⁵

Mr. Sanchez filed a timely petition for rehearing in August 2021. The Ninth Circuit denied that petition on July 20, 2022, effectively rendering its panel decision final as of that date. Mr. Sanchez then filed a motion to stay the mandate, which the Ninth Circuit also denied. Under Supreme Court Rule 13, Mr. Sanchez's petition for a writ of certiorari to this Court is due by October 18, 2022, 90 days from when the petition for rehearing was denied.

Opinion Below

As noted above, Mr. Sanchez's appeal (20-30084) presented a number of issues to the Ninth Circuit, to wit: 1) whether the district court was correct in finding the immigration judge violated his due process rights in his removal proceedings, and that it was plausible that he suffered prejudice; 2) whether the district court correctly excused Mr. Sanchez's waiver of appeal; and 3) whether the immigration judge lacked subject

⁴ See *id.* at pp. 3-4.

⁵ See *id.* at pp. 4-5.

matter jurisdiction due to defects in the NTA, rendering the underlying removal order void. The Ninth Circuit panel overruled the district court's ruling as to the first two issues and affirmed as to the third issue, effectively reversing the grant of Mr. Sanchez's motion to dismiss. The Ninth Circuit's opinion is attached as Appendix A.

Jurisdiction

This Court has jurisdiction under 28 U.S.C. § 1254.

Reasons Extension of Deadline is Justified

Mr. Sanchez's appeal presents two distinct issues of significance that will be presented in his petition for certiorari. First, the Ninth Circuit relied on this Court's ruling in *Palomar-Santiago* to find that Mr. Sanchez's waiver of appeal (which he argued was due largely to ineffective advice from counsel) precluded his collateral attack on his removal order. The Ninth Circuit memorandum opinion effectively ignores Mr. Sanchez's arguments that his waiver of appeal was due in large part to ineffective assistance of counsel, instead finding the district court simply failed in excusing this waiver without more analysis and remanding for further proceedings.

The second issue presented in Mr. Sanchez's appeal is whether the immigration judge was ever properly vested with subject matter jurisdiction given apparent defects in the NTA. This Court has spoken to that issue twice, in *Pereira v. Sessions* and *Niz-Chavez v. Garland*. To date, every circuit court to have considered the issue has effectively

found either that defects in a NTA do not affect the subject matter jurisdiction of immigration judges or that any such defects can be cured through a subsequent written notice of hearing.

With respect to the second issue, Mr. Sanchez's counsel has litigated that in several cases before the Ninth Circuit. One such case was *United States v. Bastide-Hernandez*, 19-30006. Following the panel ruling in Mr. Sanchez's appeal, the Ninth Circuit granted *en banc* rehearing in *Bastide-Hernandez*. Though no formal order or notice was entered in Mr. Sanchez's appeal, it appears clear that the panel waited to rule on his timely-filed petition for rehearing until the Ninth Circuit issued its *en banc* decision in *Bastide-Hernandez*. Specifically, the Ninth Circuit issued its *en banc* ruling in *Bastide-Hernandez* on July 11, 2022.⁶ The panel denied Mr. Sanchez's petition for rehearing nine days later, just shy of one year after it had been filed, with no intervening pleadings or orders.

Counsel anticipates filing a petition for a writ of certiorari to this Court in *Bastide-Hernandez*. However, Mr. Bastide-Hernandez filed a timely petition seeking full *en banc* review following the *en banc* panel's ruling; the Ninth Circuit denied that petition on August 17, 2022. Consequently, the deadline for Mr. Bastide-Hernandez to file a petition for a writ of certiorari with this Court is currently November 15, 2022. Counsel would prefer to file his petition for certiorari in *Bastide-Hernandez* prior to filing the

⁶ See *United States v. Bastide-Hernandez*, 39 F. 4th 1187 (9th Cir. 2022)

petition in this case because the former case has a more complete record, both at the district court and circuit court levels, on this particular issue. Most importantly, *Bastide-Hernandez* would now be a petition for certiorari arising from an *en banc* circuit court ruling—to counsel’s knowledge, the first and only *en banc* ruling on this issue from any circuit court. There is a far more compelling justification for certiorari in *Bastide-Hernandez* than in Mr. Sanchez’s case. Moreover, a potential grant of certiorari in *Bastide-Hernandez* would arguably justify a stay of appellate proceedings or some other relief in Mr. Sanchez’s case, as any ruling in *Bastide-Hernandez* would be dispositive and controlling as to that common issue. Given the paramount importance of this particular issue, which affects thousands upon thousands of both criminal immigration prosecutions and civil immigration proceedings over approximately the last 30 years, counsel simply endeavors to present this Court with the most reasonable and efficient pleadings. For the reasons set forth herein, the most efficient and reasonable process would be for Mr. Bastide-Hernandez to file his petition for a writ of certiorari first, and then for Mr. Sanchez to file his. To accomplish that, Mr. Sanchez requires the requested extension of his filing date.

Position of the United States

Mr. Sanchez’s counsel has communicated with counsel for the United States, who has indicated they have no objection to the requested extension of the deadline for Mr. Sanchez to file a petition for a writ of certiorari.

CONCLUSION

For the reasons set forth herein, Mr. Sanchez respectfully requests an extension of time to file his petition for a writ of certiorari under Rule 13.5. Specifically, Mr. Sanchez requests a 60-day extension, which would result in a new deadline of December 17, 2022.

Dated: October 12, 2022.

s/ Paul Shelton

Paul Shelton, 52337

Federal Defenders of Eastern
Washington and Idaho

306 East Chestnut Avenue

Yakima, Washington 98901

(509) 248-8920

(509) 248-9118 (fax)

Paul_Shelton@fd.org

Attorney for Defendant-Appellee

No. _____

IN THE
Supreme Court of the United States

MANUEL ALEJANDRO SANCHEZ,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

Proof of Service

STATE OF WASHINGTON)

COUNTY OF YAKIMA)

Paul E. Shelton, being first duly sworn, deposes and says:

I am employed by the Federal Defenders of Eastern Washington and Idaho as counsel appointed to represent petitioner;

That this Application for Extension of Time to File a Petition for Writ of Certiorari is made pursuant to my obligations to represent indigent defendants in federal court and at the request of the petitioner;

On October 12, 2022, the Application for an Extension Petition for Writ of Certiorari in the above-entitled case was sent by United States mail to the Clerk of the

Supreme Court within the time allowed for filing, including one original and two copies in compliance with Supreme Court Rule 22.2;

An additional copy of the Application was served on counsel for Respondent by placing the same in the United States mail addressed to:

The Honorable Elizabeth Prelogar
Solicitor General of the United States
Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Mr. Richard A. Burson
Assistant United States Attorney
402 E Yakima Avenue, Suite 210
Yakima, WA 98901



Paul E. Shelton, Affiant

Subscribed and Sworn to before me this 12th day of October, 2022.



Notary Public in and for Yakima County, Yakima, Washington.

Commission Expires: 5/13/2024