

IN THE SUPREME COURT OF THE UNITED STATES

No. 22A-_____

UNITED STATES OF AMERICA, APPLICANT

v.

JOSE FELIPE HERNANDEZ-CALVILLO AND MAURO PAPALOTZI

APPLICATION FOR AN EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Pursuant to Rules 13.5 and 30.3 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully requests a 30-day extension of time, to and including December 28, 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 Tenth Circuit in this case. The court of appeals entered its judgment on July 13, 2022, and denied the government's petition for rehearing on August 30, 2022. Unless extended, the time within which to file a petition for a writ of certiorari will expire on November 28, 2022. The jurisdiction of this Court would be invoked under 28 U.S.C. 1254(1). A copy of the opinion below is attached.

Under 8 U.S.C. 1324(a)(1)(A)(iv), any person who "encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such

coming to, entry, or residence is or will be in violation of law" shall be punished as provided in Section 1324(a)(1)(B). The statute also prohibits "engag[ing] in any conspiracy to commit any of the preceding acts." 8 U.S.C. 1324(a)(1)(A)(v)(I). As relevant here, Section 1324(a)(1)(B) states that a person who conspires to violate Section 1324(a)(1)(A) shall be "imprisoned not more than 10 years." 8 U.S.C. 1324(a)(1)(B)(i).

Following a jury trial in the United States District Court for the District of Kansas, respondents were convicted of conspiring to encourage or induce unlawful immigration activities, in violation of Section 1324(a)(1)(A)(iv) and (v)(I), for their respective roles in a scheme to hire noncitizens to work as drywallers in Lawrence, Kansas. App., infra, 3a-5a. The district court granted respondents' post-trial motion to dismiss the charges on the theory that Section 1324(a)(1)(A)(iv) is "facially unconstitutional" on First Amendment overbreadth grounds. Id. at 5a. A divided panel of the court of appeals affirmed on that same theory. Id. at 1a-42a.

The government sought panel rehearing and asked the Tenth Circuit to hold this case in abeyance pending this Court's disposition of the government's petition for a writ of certiorari in United States v. Hansen, No. 22-179 (filed Aug. 25, 2022), which seeks review of the Ninth Circuit's judgment in United States v. Hansen, 25 F.4th 1103 (2022). The government's certiorari petition

in Hansen presents the issue of Section 1324(a)(1)(A)(iv)'s constitutionality in the more straightforward posture of a substantive conviction, akin to the posture of a previous case in which this Court granted review of the same First Amendment issue. See United States v. Sineneng-Smith, 140 S. Ct. 1575 (2020). The Tenth Circuit denied rehearing. App., infra, 43a.

This Court is presently scheduled to consider the government's certiorari petition in Hansen at the Court's conference of December 2, 2022. Absent an extension, a petition in this matter would be due on November 28, 2022. The Court's disposition of the petition in Hansen would guide the government's course of action with respect to any potential filing in this follow-on case. The requested extension will allow sufficient time for the Court to act on the government's petition in Hansen, the Solicitor General to engage in whatever intragovernmental consultation may be necessary at that point, and, if a petition were authorized, for it to be prepared and printed.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General

NOVEMBER 2022