

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

**IN THE SUPREME COURT OF THE UNITED STATES**

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CARLOS MEJIA-QUINTANILLA,

Petitioner/Applicant,

v.

UNITED STATES OF AMERICA,

Respondent.

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ON 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 FOR AN EXTENSION OF TIME  
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, Petitioner Carlos Mejia-Quintanilla, by and through his court-appointed counsel, respectfully requests a 60-day extension of time from January 1, 2023, until March 2, 2023, to file his petition for a writ of certiorari.

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

On August 11, 2022, the Ninth Circuit Court of Appeals dismissed Mr. Mejia-Quintanilla's appeal, finding that it is barred by the appellate waiver in his plea agreement. *United States v. Mejia-Quintanilla*, No. 17-15899 (9th Cir. Aug. 11, 2022) (attached as Exhibit 1). Mr. Mejia-Quintanilla submitted a *pro se* petition for rehearing, which the Ninth Circuit denied on October 3, 2022. *United States v. Mejia-Quintanilla*, No. 17-15899 (9th Cir. Oct. 2, 2022) (attached as Exhibit 2).

## **JURISDICTION**

This Court will have jurisdiction over any timely filed petition for a writ of certiorari in this case pursuant to 28 U.S.C. § 1254(1). Supreme Court Rules 13.1, 13.3, and 30.1 mandate the filing deadline (absent extension) for a certiorari petition 90 days following the order sought to be reviewed; here, that deadline falls on January 1, 2023. Rule 13.5 requires this motion for extension of time to come no later than 10 days before the certiorari petition filing deadline: in this case, December 22, 2022.

## **PROCEDURAL HISTORY**

On August 11, 2022, following a petition from the government for panel rehearing, a three-judge panel of the Ninth Circuit dismissed Mr. Mejia-Quintanilla's appeal of the district court's denial of his amended motion to vacate his conviction and sentence under 28 U.S.C. § 2255, finding that the appeal was barred by the appellate waiver in his plea agreement. Exhibit 1.

Mr. Mejia-Quintanilla submitted a *pro se* petition for panel rehearing, which was deemed filed on September 30, 2022; the three-judge panel of the Ninth Circuit unanimously voted to deny this *pro se* petition for panel rehearing on October 3, 2022. Exhibit 2.

Mr. Mejia-Quintanilla remains incarcerated at the USP Terre Haute with a projected release date of April 7, 2035. See <https://www.bop.gov/inmateloc/> (last visited December 13, 2022).

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

Petitioner seeks an extension of time from this Court for good cause.

The vast majority of federal criminal prosecutions no longer proceed to trial but, rather, are resolved by way of written plea agreement; and appellate waivers, of varying severity, are becoming commonplace in said plea agreements. Whether a court can summarily enforce an appellate waiver to bar motions to vacate convictions and mandatory prison sentences for which the district court lacked

authority to enter a judgment is a question of great importance. The authority on which the Ninth Circuit rests its decision, *United States v. Goodall*, 21 F.4th 555 (9th Cir. 2021), is contrary to this Court's precedent and other Circuits' holdings, *see, e.g., Class v. United States*, 138 S.Ct. 798 (2018) (direct appeal not barred by guilty plea or appellate waiver where claims at issue call into question the government's power to constitutionally prosecute the defendant); *Blackledge v. Perry*, 417 U.S. 21 (1974); *Menna v. New York*, 423 U.S. 61 (1975); *United States v. McBride*, 826 F.3d 293, 295 (6th Cir. 2016) (challenge to a sentence's constitutionality cannot be waived).

Mr. Mejia-Quintanilla is, understandably, invested in the petition for a writ of certiorari that will be submitted on his behalf to this Court. Mr. Mejia-Quintanilla speaks only Spanish and is incarcerated at a federal penitentiary halfway across the country from appointed counsel. Undersigned counsel was appointed by the district court to assist Mr. Mejia-Quintanilla in submitting his petition for a writ of certiorari only two months ago on October 4, 2022.

Undersigned counsel, pursuant to ethical obligations as well as decisions from this Court, must consult with Mr. Mejia-Quintanilla prior to submission of the petition. *See, e.g., McCoy v. Louisiana*, 138 S.Ct. 1500, 1507-09 (2018); *Gonzalez v. United States*, 553 U.S. 242, 248-49 (2008); and *Jones v. Barnes*, 462 U.S. 745, 751 (1983). Given both the logistical and language barriers, undersigned counsel seeks

the maximum 60-day extension of time to afford sufficient time for this consultation.

### CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant the maximum extension of 60 days, up to and including March 2, 2023, within which to file a petition for a writ of certiorari in this case.

Respectfully submitted this 13th of December, 2022.

*/s/ Darlene Bagley Comstedt*  
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