
IN THE SUPREME COURT OF THE UNITED STATES

No. _____

JOSE SOLIS,
Petitioner,
v.

UNITED STATES OF AMERICA,
Respondent.

**Application to the Honorable Elena Kagan for Extension of Time
to File a Petition for a Writ of Certiorari
to the United States Court of Appeals for the Ninth Circuit**

Application to the Honorable Associate Justice Kagan as Circuit Justice

January 31, 2023

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

Petitioner, Jose Solis, through counsel, respectfully requests that the time to
file a petition for a Writ of Certiorari in this matter be extended for sixty days up to
and including April 16, 2022. The Court of Appeals denied rehearing and rehearing
en banc on November 17, 2022. *United States v. Solis*, 21-50140, ECF No. 47.

Absent an extension of time, the petition would be due on or before February 15,

2023. This application is being filed at least ten days before that due date, in accordance with S. Ct. R. 13.5. This Court has jurisdiction under 28 U.S.C. § 1257.

Reasons Justifying an Extension of Time

Counsel respectfully requests a 60-day extension of time because:

1. Additional time is needed so that counsel can prepare the petition for certiorari and review it with his supervisor. Counsel is an Appellate Attorney at Federal Defenders of San Diego, Inc., a community defender organization. This case presents questions about whether a *preserved* Guidelines error requires a remand when the district court never considered the defendant's correct range under the U.S. Sentencing Guidelines. *Cf. Molina-Martinez v. United States*, 578 U.S. 189, 198 (2016) (holding that an *unpreserved* Guidelines error usually requires a remand). That issue is of great importance to defendants in the Southern District of California, including a large proportion of Federal Defenders' clients. Because of the issue's importance, counsel for Mr. Solis will need significant time and supervision to adequately prepare an effective petition.

2. Counsel has a number of time-sensitive obligations in other Ninth Circuit Court of Appeals cases. Since rehearing was denied in this case, counsel has argued before the Ninth Circuit in *United States v. Tirado*, No. 21-50247; completed and filed the opening brief in *United States v. Jimenez*, 22-50054; drafted and filed the reply brief in *United States v. Mac Cleary*, 21-50240; drafted and filed the opening brief in *United States v. Campos-Atrisco*, 21-50263; and drafted and filed the opening brief in *United States v. Cruz-Cruz*, 22-50111, an appeal of a trial

verdict that involves a novel challenge under *Batson v. Kentucky*, 476 U.S. 79 (1986). Going forward, counsel will be responsible for reply briefs in the *Jimenez*, *Campos-Atrisco*, and *Cruz-Cruz* matters this winter and spring.

3. Counsel also has duties in district court cases. Counsel has briefed and had to resolve other issues with a motion for compassionate release in *United States v. Bautista*, 3:15-cr-0721. He also has been researching issues and advising colleagues with respect to litigation following this Court's decision in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2122 (2022). He also is advising regarding novel issues regarding the Fourth Amendment and digital searches in *United States v. Dotson*, 22-cr-1502-W.

4. As noted, counsel must coordinate with his supervisor, Chief Appellate Attorney Vincent J. Brunkow, to prepare an effective petition. Mr. Brunkow directly supervises eight appellate attorneys, sits on the management team for Federal Defenders of San Diego, and maintains appeals of his own. The requested extension will ensure that Mr. Brunkow has sufficient time to assist in preparing the petition.

5. Finally, personal circumstances have made preparation of an effective petition substantially more difficult than anticipated. Counsel currently is on parental leave (from December 23, 2022, until March 20, 2023) and acts as the primary caregiver for his first child. Counsel also had to assist with funeral services in Chicago on January 29–30 following the sudden death of a family member.

6. Counsel recognizes that an “application to extend the time to file a petition for a writ of certiorari is not favored,” S. Ct. R. 13.5, and does not file this

one lightly. But additional time is sought to provide effective assistance of counsel to Mr. Solis on an issue not squarely addressed by this Court's cases.

For the reasons expressed above, Jose Solis, through counsel, respectfully requests that this Court grant him a sixty-day extension to file a petition for a writ of certiorari up to and including April 16, 2023.

Respectfully submitted,

Date: January 31, 2023

s/ Daniel J. Yadron, Jr.
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