

No. 22A714

IN THE
SUPREME COURT OF THE UNITED STATES

LORENZO ELIAS MENDEZ

Applicant/Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

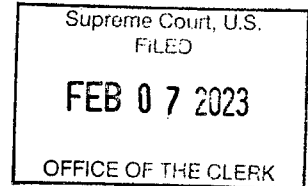
Application for an extension of time within which to file a
petition for a writ of certiorari to the United States Court of
Appeals for the Ninth Circuit

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

Mr. Lorenzo Mendez
Proceeding *Pro Se*

/s/ Lorenzo Mendez

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APPLICATION FOR EXTENSION OF TIME

Pursuant to this Court's Rule 13.5 and 28 U.S.C. § 2101(c), Applicant Lorenzo Mendez hereby requests a 60-day extension of time within which to file a petition for a writ of certiorari to review the judgement of the Ninth Circuit Court of Appeals, up to and including April 13, 2023.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The judgment for which review is sought is *United States v. Mendez*, 35 F.4th 1219 (9th Cir. 2022). The judgment, opinion, and orders of the Ninth Circuit are attached to this application as Exhibit A.

JURISDICTION

The Ninth Circuit entered its final judgment on November 14, 2022. This Court's jurisdiction will rest on 28 U.S.C. § 1254(1). Under Rules 13.1, 13.3, and 30.1 of this Court, a petition for a writ of certiorari is due to be filed on or before February 13, 2023. In accordance with Rule 13.5, Applicant has filed this application more than 10 days in advance of that due date.

REASONS JUSTIFYING AN EXTENSION OF TIME

Applicant respectfully requests a 60-day extension of time, up to and including April 13, 2023, within which to file a petition for a writ of certiorari seeking review of the Ninth Circuit's decision in this case. An extension is warranted because of the importance of the issue presented and because of Applicant's need for additional time to prepare a petition that will assist this Court in deciding whether to grant certiorari.

1. This case concerns the application of 18 U.S.C. § 2251(a), which provides, in relevant part, that no person shall “use[] ... any minor to engage in ... sexually explicit conduct for the purpose of producing any visual depiction of such conduct.” Section 2256(2)(A) of Title 18 defines “sexually explicit conduct,” as used in § 2251(a), to include the “lascivious exhibition of the anus, genitals, or pubic area of any person.”

2. The circuits are divided as to the meaning of the statutory term “lascivious exhibition of the anus, genitals, or pubic area of any person.” The First through Eleventh Circuits hold that in the context of a prosecution under § 2251(a), the term “lascivious exhibition” refers to the visual depiction that the defendant produced or intended to produce, or, in other words, to the defendant’s act of exhibiting a minor’s genitals on film. *See United States v. Charriez-Rolón*, 923 F.3d 45, 52–53 (1st Cir. 2019); *United States v. Spoor*, 904 F.3d 141, 148–52 (2d Cir. 2018); *United States v. Larkin*, 629 F.3d 177, 181–85 (3d Cir. 2010); *United States v. Courtade*, 929 F.3d 186, 191–94 (4th Cir. 2019); *United States v. Mecham*, 950 F.3d 257, 266 (5th Cir. 2020); *United States v. Hodge*, 805 F.3d 675, 680 (6th Cir. 2015); *United States v. Schenck*, 3 F.4th 943, 948–49 (7th Cir. 2021); *United States v. McCoy*, __ F.4th __, 2022 WL 17685607 at *2–3 (8th Cir. 2022); *United States v. Wiegand*, 812 F.2d 1239, 1244 (9th Cir. 1987); *United States v. Wells*, 843 F.3d 1251, 1253–57 (10th Cir. 2016); *United States v. Moon*, 33 F.4th 1284, 1301–02 (11th Cir. 2022). By contrast, the D.C. Circuit holds that in the context of a prosecution under § 2251(a), the term “lascivious exhibition” refers to a type of conduct in which the subject of the visual depiction must

have engaged. See *United States v. Hillie*, 39 F.4th 674, 685–86, 688, 692 (D.C. Cir. 2022).

3. This circuit split is important because it impacts the reach of § 2251(a). Section 2251(a) applies, as relevant here, to defendants who engage in sexually explicit conduct by using minors. If the First through Eleventh Circuits are correct that the term “lascivious exhibition” refers to the defendant’s act of exhibiting a minor’s genitals on film, then § 2251(a) may apply to defendants like Applicant who surreptitiously film minors under the theory that such defendants use minors to lasciviously exhibit their genitals, and thereby use minors to engage in sexually explicit conduct. (This seems to have been the Ninth Circuit’s reasoning here: it explained that it “read the statute as focusing on the conduct of the perpetrator—not the minor,” *Mendez*, 35 F.4th at 1223; that “‘sexually explicit conduct’ includes ... ‘lascivious exhibition’ of intimate body parts,” *id.* at 1221; and that there was “no doubt that [Mr. Mendez’s] visual depictions of the minor fall within this definition,” *id.*). By contrast, if the D.C. Circuit is correct that the term “lascivious exhibition” does not refer to the defendant’s act of exhibiting a minor’s genitals on film, then § 2251(a) cannot apply to defendants who surreptitiously film minors, because such defendants cannot be said to have engaged in sexually explicit conduct.

4. Applicant is currently incarcerated. He only recently discovered the aforementioned circuit split, and respectfully requests more time to research the issue and to find a qualified attorney to represent him. Applicant prepared this application with help from an attorney, Owen Senders (MA Bar No. 708454), who has

not been admitted to practice in the highest court of a State for a period of three years, and so may not practice in this Court.

CONCLUSION

For the foregoing reasons, Applicant respectfully requests an extension of 60 days, up to and including April 13, 2023.

Respectfully submitted,

/s/ Lorenzo Mendez

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