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

**October Term 2023**

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**JACQUELINE ANDERSON,**  
*Applicant / Petitioner,*

v.

**UNITED STATES OF AMERICA,**  
*Respondent.*

\_\_\_\_\_  
**Application for 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**

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March 24, 2023

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## **APPLICATION FOR EXTENSION OF TIME**

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

Pursuant to Rule 13.5 of the Rules of this Court and 28 U.S.C. § 2101(c), Applicant Jacqueline Anderson prays for a 34-day extension of time within which to file a petition for a writ of certiorari in this Court, to and including May 10, 2023.

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

The judgment for which review is sought is *United States v. Jacqueline Anderson*, 46 F.4th 1000 (9th Cir. 2022) (attached as Exhibit A), *reh'g denied* Jan. 6, 2023, a copy of which is attached as Exhibit B.

### **JURISDICTION**

The United States Court of Appeals for the Ninth Circuit entered judgment on August 25, 2022, and denied rehearing *en banc* on January 6, 2023. This Court will have jurisdiction over any timely filed petition for certiorari in this case pursuant to 28 U.S.C. § 1254. Under Rules 13.1, 13.3, and 30.1 of the Rules of this Court, Ms. Anderson's time to petition for a writ of certiorari expires on April 6, 2023.

In accordance with Rule 13.5, Ms. Anderson now files this application more than 10 days in advance of that date.

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

An extension is warranted because of the importance of the issue presented and undersigned counsels' need for additional time to prepare a petition that will assist the Court in deciding whether to grant certiorari.

That petition will present an important question of statutory interpretation—whether a federal statute that on its face only criminalizes threats against federal officials also applies to millions of federal contractors. In relevant part, 18 U.S.C. § 115 makes it a crime to

threaten[] to assault, kidnap, or murder . . . an official whose killing would be a crime under [18 U.S.C. § 1114], . . . while [that official is] engaged in the performance of official duties. . . .

18 U.S.C. § 115(a)(1)(B) (emphasis added).

Section 1119 of the same title, in turn, criminalizes killing two distinct classes of individual involved in carrying out federal policy: (1) “officer[s] or employee[s] of the United States . . . [who are] engaged in . . . the performance of official duties,” and (2) other “person[s] [who are] assisting such . . . officer[s] or employee[s] in the performance of such duties.” 18 U.S.C. § 1119(a).

In this case, a divided panel of the Ninth Circuit held that although the enacted text of § 115 incorporates § 1119 only to the extent it protects the former class—“official[s] . . . engaged in the performance of official duties”—its legislative history shows that Congress really meant to cover the latter class as well. On that basis, it held that Ms. Anderson could be convicted under § 115 for threatening a private security guard while he assisted in protecting a local Social Security Office.

Ms. Anderson intends to file a petition for certiorari that challenges the Ninth Circuit’s extratextual expansion of § 115 to apply to private contractors—a ruling that, given the millions of persons currently working as federal contractors, expands the universe of “officials” by orders of magnitude beyond what Congress provided. Ms.

Anderson respectfully makes this application in order to request an extension of time in which to prepare a petition that adequately presents the above issue.

1. An extension of time is warranted because Applicant's counsel of record has only recently become involved in this case. New counsel requires additional time to become familiar with the record in order to adequately present the significant legal issue for this Court's consideration.

2. In addition, pre-existing professional commitments will limit counsel's ability to prepare a petition for certiorari on or before April 6, 2023. In particular, in addition to other pending appellate and trial matters, Mr. Hochman is preparing for oral argument in support of a motion for summary judgment in the Circuit Court of Cook County, Illinois, in *State ex rel. Edelweiss Fund, LLC v. JPMorgan Chase & Co.*, No. 2017 L 000289. Likewise, Mr. Carpenter has lead responsibility for preparing a reply brief in the United States Court of Appeals for the Ninth Circuit in *Lytle v. Nutramax Laboratories, Inc.*, No. 22-55744, currently due on or before April 17, 2023. And Mr. Wedel has lead responsibility for preparing a petition for rehearing *en banc* in the United States Court of Appeals for the Tenth Circuit in *Honie v. Powell*, No. 19-4158, currently due on or before April 12, 2023, and (together with Messrs. Hochman, Carpenter, and Talai) is also preparing a petition for certiorari in this Court in *United States v. Nunez*, No. 22A804, 9th Cir. No. 21-50131, currently due on or before May 22, 2023.

3. An extension of time is warranted given the exceptionally important question of statutory interpretation that will be raised by the petition.

The decision below cannot be reconciled with this Court’s precedents, which have “stated time and again that courts must presume that [Congress] says in a statute what it means and means in a statute what it says.” *E.g., Conn. Nat’l Bank v. Germain*, 503 U.S. 249, 253-54 (1992). Congress defined in § 1119 two mutually exclusive classes of person—federal officers or employees who are *engaged* in official duties, and other persons who are *assisting* them—and textually incorporated only the former set of federal “officials” into § 115. The Ninth Circuit, however, relied on legislative history and the panel’s own intuition to hold that Congress meant to include in § 115’s scope precisely those assistants that were omitted from its text.

The Ninth Circuit’s approach conflicts with one of the “fundamental principle[s] of statutory interpretation” announced by this Court—“absent provisions cannot be supplied by the courts.” *Rotkiske v. Klemm*, 140 S. Ct. 355, 360-61 (2019) (quoting A. Scalia & B. Garner, *Reading Law: the Interpretation of Legal Texts* 94 (2012)). “Indeed, the only way to arrive at [the Ninth Circuit’s interpretation] is by taking a red pen to the statute—‘cutting out some’ words and ‘pasting in others’” to create a law different than the one Congress passed. *Milner v. Dep’t of Navy*, 562 U.S. 562, 573 (2011) (quoting *Elliott v. Dept. of Agriculture*, 596 F.3d 842, 845 (D.C. Cir. 2010)).

Although § 115 on its face protects only federal “officials,” Ms. Anderson now faces a felony conviction for threatening a private person contracted to assist them. The Ninth Circuit’s decision disregards that unambiguous statutory text in favor of legislative history and its own suppositions about what Congress would have wanted

(but failed to write). Counsel therefore respectfully asks this Court for the additional time needed to adequately prepare the petition.

4. Applicant notified Respondent of her intention to seek the extension requested herein, but did not receive a response before this Application was filed to indicate whether Respondent consents to the requested extension.

### **CONCLUSION**

For these reasons, Applicant respectfully requests that an order be entered extending his time to file her petition for a writ of certiorari to and including May 10, 2023.

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Respectfully submitted,

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