

No. _____

IN THE
Supreme Court of the United States

EMILIANO EMMANUEL FLORES-GONZÁLEZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

**MOTION FOR EXTENSION OF TIME TO FILE PETITION
FOR A WRIT OF CERTIORARI**

Petitioner respectfully requests a thirty-day extension of time to file a petition for a writ of certiorari from the U.S. Court of Appeals for the First Circuit’s order in *United States v. Flores-González*, 86 F.4th 399 (1st Cir. 2023) (*en banc*), *pet. reh’g denied* Dec. 6, 2023. The undersigned has been working diligently to research and prepare a certiorari petition, but preparation is still underway. Given the nature of the issues on appeal, and counsel’s other responsibilities, we respectfully submit good cause supports extending this deadline by thirty days.

This case relates to sentencing issues of exceptional importance in the District of Puerto Rico. In sentencing a defendant for a non-vio-

lent gun-possession offense, what role, if any, should a district court's stereotyped views about firearms in general and the surrounding population in particular, play in fashioning a sentence? And when circuit judges vote to hear a case en banc, what should happen to the appellant when judges who vote to hear the case en banc but fail to overturn binding precedent?

In a 2022 panel opinion, a two-judge majority ruled that Mr. Flores's upwardly variant sentence had to be vacated under binding Circuit and Supreme Court precedent. See *United States v. Flores-González*, 34 F.4th 103, 118 (1st Cir. 2022), *reh'g en banc granted, op. withdrawn*, 46 F.4th 57 (1st Cir. 2022). In addition to the main panel opinion, a concurring opinion agreed that the sentence below had to be reversed under this Circuit's binding precedent, stating that "*Rivera-Berríos* and *Carrasquillo-Sánchez* preclude[] us from affirming what would otherwise seem to be a properly justified upward variance aimed at deterring an offense more serious than the mine-run version precisely because of the increased threats faced by the community in which it occurred." *Flores-González*, 34 F.4th at 121 (Kayatta, J., concurring); see *United States v. Rivera-Berríos*, 968 F.3d 130 (1st Cir. 2020); *United States v. Carrasquillo-Sánchez*, 9 F.4th 56 (1st Cir. 2021).

Incredibly, despite Mr. Flores's right to appellate review, when the First Circuit, sitting en banc, reached a stalemate, it issued an order affirming the District Court's procedurally unreasonable sentence. As the full Court stated before getting to two non-precedential opinions: "The judgment entered in the district court is affirmed by an equally divided en banc court." *Flores-González*, 86 F.4th at 407 (citation omitted).

While I have endeavored to prepare the petition by the March 5, 2024 deadline, our court-assigned workload has been severely impacted

since Mr. Flores's petition for rehearing was denied. I'm currently preparing a certiorari petition in another matter, I'm drafting a number of First Circuit briefs and substantive district court pleadings, and I'm preparing for two First Circuit oral arguments, which are set for March 6, 2024.

As such, to adequately research Mr. Flores's certiorari petition, while honoring parallel responsibilities and obligations, we seek an additional thirty days beyond the present petition due date to submit a certiorari petition by April 4, 2024.

Respectfully submitted.

Executed on February 16, 2024, in San Juan, Puerto Rico.

S/KEVIN E. LERMAN
Research & Writing Attorney,
Federal Public Defender, District of Puerto Rico
First Circuit Bar No. 1194361
241 F.D. Roosevelt Ave.
San Juan, P.R. 00918-2441
T: (787) 281-4922 / D: (787) 474-6389
E: Kevin_Lerman@fd.org