

No. A-____

IN THE
SUPREME COURT OF THE UNITED STATES

ERIC IBARGUEN,

Applicant,

v.

STATE OF NEW YORK,

Respondent.

On Petition for a Writ of Certiorari to
The New York Court of Appeals

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

Patricia Pazner
Benjamin Welikson
APPELLATE ADVOCATES
111 John Street, 9th Floor
New York, NY 10038

Kendall Turner
O'MELVENY & MYERS, LLP
1625 Eye Street, NW
Washington, D.C. 20006

Jeffrey L. Fisher
Counsel of Record
STANFORD LAW SCHOOL
SUPREME COURT
LITIGATION CLINIC
559 Nathan Abbott Way
Stanford, CA 94305
(650) 724-7081
jlfisher@stanford.edu

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TO: Justice Sonia Sotomayor, Circuit Justice for the Second Circuit:

Under this Court’s Rules 13.5 and 22, Applicant Eric Iburguen requests an extension of sixty (60) days to file a petition for a writ of certiorari in this case. His petition will seek review of a judgment of the New York Court of Appeals, which affirmed his conviction and rejected his claim that his Fourth Amendment rights were violated. The decision of the New York Court of Appeals is available in the Westlaw database at 2021 WL 4777276, and a copy is attached. App. 1-28. In support of this application, Applicant states:

1. The New York Court of Appeals issued its decision on October 14, 2021. Without an extension, the petition for a writ of certiorari would be due on January 12, 2022. With the requested extension, the petition would be due on March 13, 2022. This Court’s jurisdiction will be based on 28 U.S.C. § 1257(a).

2. This case is a serious candidate for review. It presents the question whether, or under what circumstances, a social guest within a home may claim a violation of the Fourth Amendment’s protection against unreasonable searches.

Two decisions from this Court—*Minnesota v. Olson*, 495 U.S. 91 (1990), and *Minnesota v. Carter*, 525 U.S. 83 (1998)—frame this issue. In *Carter*, the Court held that an “overnight guest” obtains Fourth Amendment rights in the home in which he is located, whereas in *Olson*, the Court held that a business visitor whose connection to the premises is purely commercial does not.

Between these bookends, federal and state courts have reached conflicting results. Noting the critical significance that the home plays in Fourth Amendment jurisprudence,

many courts have read *Carter* and *Olson* as drawing a line between business and social guests, and thus have embraced protection for short-term visitors who do not stay the night. *See, e.g., Figueroa v. Mazza*, 825 F.3d 89, 108-11 (2d Cir. 2016); *United States v. Rhiger*, 315 F.3d 1283, 1285-87 (10th Cir. 2003); *State v. Talkington*, 345 P.3d 258, 275-78 (Kan. 2015). Other courts, like the New York Court of Appeals, interpret this Court’s precedent to limit the Amendment’s protections to social guests who have stayed the night or have acquired some property rights in the dwelling. *See, e.g., App. 1-2, 8; United States v. Majors*, 328 F.3d 791, 795 (5th Cir. 2003); *State v. Cortis*, 465 N.W.2d 132, 138-39 (Neb. 1991).

At least five of the Justices of the Court have expressed views in line with the former group of courts—that is, that all social guests fall on the protected end of this spectrum. *See Carter*, 525 U.S. at 99, 102 (Kennedy, J., concurring); *id.* at 106 (Ginsburg, J., dissenting); *see also* 6 Wayne R. LaFare, *Search & Seizure: A Treatise on the Fourth Amendment* § 11.3(b) (5th ed. 2017) (explaining that the majority of Justices in *Carter* “embraced the position” that social guests enjoy Fourth Amendment protection, regardless of whether they spend the night in the host’s home). But in the over twenty years since *Carter* was decided, the Court has not definitively resolved the issue.

3. This case presents an excellent opportunity for the Court to provide clarity to this recurring and important question presented. Before his trial, applicant moved to suppress evidence that the police had obtained following their warrantless entry into his friends’ apartment where he was present as a social guest. App. 1-2, 4-8. He argued that he had the right to challenge the officers’ entry and subsequent search of the residence because he had had been invited over by his friends for dinner at their home and also received mail at the premises. App. 7-8. The trial court denied applicant’s motion, ruling that his allegations were

insufficient to confer “standing” under the Fourth Amendment, and the intermediate appellate court and the New York Court of Appeals both subsequently affirmed. App. 1-2, 8. The question of whether social guests are afforded Fourth Amendment protection is thus squarely presented for this Court’s review.

4. This application for a sixty-day extension seeks to accommodate Applicant’s legitimate needs. Applicant has only recently affiliated undersigned counsel at the Stanford Supreme Court Litigation Clinic. The extension is needed for undersigned counsel and other members of the Clinic to fully familiarize themselves with the record, the decisions below, and the relevant case law. In light of the holiday season and the Clinic’s many other current obligations, the Clinic would not be able adequately to complete these tasks by the current due date.

For these reasons, Applicant requests that the due date for his petition for a writ of certiorari be extended to March 13, 2022.

Dated: December 22, 2021

Respectfully submitted,

By: /s/ Jeffrey L. Fisher

Patricia Pazner
Benjamin Welikson
APPELLATE ADVOCATES
111 John Street, 9th Floor
New York, NY 10038
(212) 693-0085

Kendall Turner
O’MELVENY & MYERS, LLP
1625 Eye Street, NW
Washington, D.C. 20006

Jeffrey L. Fisher
Counsel of Record
STANFORD LAW SCHOOL
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