

No. _____

IN THE
Supreme Court of the United States

ANDRES BURGARA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Unopposed 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 OF PETITIONER TO THE
HONORABLE ELENA KAGAN AS CIRCUIT
JUSTICE**

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UNOPPOSED 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 United States Court of Appeals for the Ninth Circuit:

Pursuant to Rule 13.5 of the Rules of this Court and 28 U.S.C. § 2101(c), Applicant Andres Burgara prays for a 60-day extension of time within which to file a petition for a writ of certiorari in this Court, to and including July 11, 2025. The government does not object to this extension.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The judgment for which review is sought is *United States v. Andres Burgara*, No. 23-581 (9th Cir. Jan. 2, 2025), *reh'g denied* Feb. 11, 2025. The panel opinion is attached as Exhibit A, and the denial of panel rehearing and rehearing en banc is attached as Exhibit B.

JURISDICTION

The Ninth Circuit entered judgment on January 2, 2025 and denied rehearing en banc on February 11, 2025. This Court has jurisdiction over any timely filed petition for a writ of 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, Mr. Burgara's time to petition for a writ of certiorari expires on May 12, 2025. In accordance with Rule 13.5, Mr. Burgara 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 counsel's need for additional time to prepare a petition that will assist the Court in deciding whether to grant certiorari.

Importance of issue presented. Mr. Burgara's petition will present an important question of statutory interpretation and double jeopardy—whether an individual can be convicted of two counts of possession with intent to distribute a controlled substance, 21 U.S.C. § 841(a)(1), when police find two separate packages of the same controlled substance in two nearby locations and the packages were possessed contemporaneously by the defendant. In Mr. Burgara's case, a traffic stop led police to find cocaine and a firearm in Mr. Burgara's car. Mr. Burgara was arrested, and law enforcement subsequently searched a different vehicle parked at his home, where they located additional cocaine and additional firearms. For these caches of cocaine and firearms, Mr. Burgara was convicted of two counts of possession with intent to distribute a controlled substance, 21 U.S.C. § 841(a)(1), and two counts of possessing a firearm during and in relation to, and in furtherance of, a drug trafficking crime, 18 U.S.C. § 924(c)(1)(A).

On appeal, Mr. Burgara argued that the two § 841(a)(1) counts involving cocaine were multiplicitous and therefore violated the Double Jeopardy Clause of the Fifth Amendment. The Ninth Circuit affirmed,

holding that Mr. Burgara's two convictions were not plainly erroneous under *United States v. Privett*, 443 F.2d 528 (9th Cir. 1971). *Privett*, in turn, held that three different caches of heroin, one found in the defendant's shirt pocket, another under the front seat of his car, and a third in the trunk, constituted multiple offenses because the three packages contained heroin of different purity and were found in separate locations. *Id.* at 531.

The Ninth Circuit's decision in Mr. Burgara's case highlighted a long-standing circuit split concerning whether two separate caches of the same controlled substance, possessed by the defendant on the same date and at the same time, constitute a single offense under 21 U.S.C. § 841(a)(1). The Sixth and Eleventh Circuits have held that such circumstances constitute a single § 841(a)(1) offense. *United States v. Stephens*, 118 F.3d 479, 480-82 (6th Cir. 1997) (holding cocaine found in defendant's car and in his house constituted single § 841(a)(1) offense); *United States v. Clay*, 355 F.3d 1281, 1284-85 (11th Cir. 2004) (per curiam) (holding "two caches of crack cocaine" that were "separated by only 'a few blocks'" constituted one § 841(a)(1) offense); *cf.* *United States v. Bennafield*, 287 F.3d 320, 323-24 (4th Cir. 2002) (holding that possession of multiple packages of same controlled substance was single offense under 21 U.S.C. § 844).

On the other side of the split, the Third, Seventh, and D.C. Circuits, like the Ninth Circuit, have held that simultaneous possession of the same

controlled substance at two distinct locations constitutes two offenses under § 841(a)(1). *United States v. Kennedy*, 682 F.3d 244, 257 (3d Cir. 2012) (holding heroin stashes in two different cars that had different purities and packaging constituted two offenses); *United States v. Griffin*, 765 F.2d 677, 682-83 (7th Cir. 1985) (holding cocaine packages on defendant's person and in nearby car had different purity and constituted two offenses); *United States v. Blakeney*, 753 F.2d 152, 155 (D.C. Cir. 1985) (explaining marijuana found at defendant's home and place of employment were separate and distinct possessions); *cf. United States v. Rich*, 795 F.2d 680, 683 (8th Cir. 1986) (holding that finding the same controlled substance on the defendant's person and in his home marked distinct offenses under 21 U.S.C. § 844).

This question is particularly important in cases like Mr. Burgara's that also involve firearms, as whether the defendant's conduct constitutes one or more controlled substance offenses may determine whether the defendant can be convicted of multiple offenses under 18 U.S.C. § 924(c)(1)(A), each of which carries a five-year mandatory minimum sentence.

Counsel's need for additional time. Undersigned counsel has substantial professional commitments that have prevented him from working exclusively on researching the legal issue presented and preparing a petition that fully and concisely addresses the important issue of statutory interpretation and double jeopardy raised by the Ninth Circuit's decision.

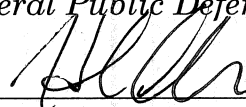
These commitments warrant the requested extension of time and include an opening brief in *United States v. Dong*, No. 25-641 (9th Cir.), currently due on May 19, 2025; an oral argument in *United States v. Gonzalez*, No. 24-3951 (9th Cir.), scheduled for June 3, 2025; an opening brief in *United States v. Villegas*, No. 25-1749 (9th Cir.), currently due on June 6, 2025; an opening brief in *United States v. Tyne*, No. 24-7574 (9th Cir.), currently due on June 9, 2025; and a reply brief in *United States v. Reid*, No. 24-3903 (9th Cir.), currently due on June 16, 2025. Undersigned counsel is also counsel in emergency litigation involving a petition for a writ of habeas corpus in *Lepe-Cholico v. Warden*, No. 2:25-cv-2796-DOC-SHK (C.D. Cal.). *Lepe-Cholico* involves a pending motion for a temporary restraining order, and a further hearing on the motion has been scheduled for May 1, 2025.

CONCLUSION

Mr. Burgara respectfully requests a 60-day extension, up to and including July 11, 2025, within which to file a petition for a writ of certiorari.

Respectfully submitted,

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MAY 1, 2025