
IN THE SUPREME COURT OF THE UNITED STATES

No. _____

JESUS PEREZ-GARCIA, JOHN FENCL,
Petitioners,
v.

UNITED STATES OF AMERICA,
Respondent.

**Application to the Honorable Elena Kagan for Extension of Time
to File a Petition for a Writ of Certiorari
to the United States Court of Appeals for the Ninth Circuit**

Application to the Honorable Associate Justice Kagan as Circuit Justice

October 21, 2024

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

Petitioners, Jesus Perez-Garcia and John Fencl, through counsel, respectfully
request that the time to file a petition for a Writ of Certiorari in this matter be
extended for thirty days up to and including January 2, 2025. Petitioners seek
review of the Ninth Circuit's judgment in *United States v. Perez-Garcia*, 96 F.4th
1166, 1170 (9th Cir. 2024), issued on March 18, 2024. The Court of Appeals denied a

petition for rehearing or rehearing en banc on September 4, 2024, along with concurrals and dissentals. Absent an extension of time, the petition would be due on or before December 3, 2024. Both the opinion and the order denying en banc rehearing are attached to this motion, and this application is being filed at least ten days before the due date, all in accordance with S. Ct. R. 13.5. This Court has jurisdiction under 28 U.S.C. § 1257.

Reasons Justifying an Extension of Time

Counsel respectfully requests a 30-day extension of time because:

1. Additional time is needed so that counsel can prepare the petition for certiorari and review it with her supervisor. Counsel is an Appellate Attorney at Federal Defenders of San Diego, Inc., a community defender organization. This case ostensibly presents questions about the Second Amendment's application to the Bail Reform Act. But in addition to holding that history and tradition permits disarming persons on pretrial release, the panel in this case reached a second, alternative holding: that the state could disarm those who were not "law-abiding, responsible citizens," including those whom legislatures consider to "pose an unusual danger, beyond the ordinary citizen, to themselves or others." *United States v. Perez-Garcia*, 96 F.4th 1166, 1186 (9th Cir. 2024). That alternative holding has the potential to impact a wide range of cases beyond the Bail Reform Act context. For both reasons, this issue is of great importance to defendants in the Southern District of California, including many Federal Defenders' clients.

2. The length of the opinions below and their unusual procedural posture adds to the case's complexity. The original opinion ran 43 pages. Later on, in response to petitioners' petitions for rehearing or rehearing en banc, Ninth Circuit judges released 66 additional pages of concurrences and dissents. (Both opinions are attached to this application.) The various opinions not only addressed substantive Second Amendment issues but also mootness and party-presentation issues.

3. For all of these reasons, counsel for petitioners will need significant time and supervision to adequately prepare an effective petition on these weighty and complex matters. That requires coordination with counsel's supervisor, Vincent Brunkow. Mr. Brunkow directly supervises seven appellate attorneys, sits on the management team for Federal Defenders, and maintains appeals of his own.

4. Several time-sensitive matters have required counsel's attention since the resolution of the en banc petition. First, the Ninth Circuit took *United States v. Duarte*, 101 F.4th 657, 661 (9th Cir.), *reh'g en banc granted, opinion vacated*, 108 F.4th 786 (9th Cir. 2024), en banc. That case considered whether the federal felon-in-possession ban is unconstitutional in some applications. Amicus briefs were due in September, and counsel was unexpectedly assigned to serve as the primary author and editor for an amicus brief on behalf of all Ninth Circuit Federal Defenders. Counsel also devoted significant time to finding other amici and assisting with their briefs. In the meantime, counsel wrote a time-sensitive reply brief for a case set for oral argument, as well as another cert petition due in

October. Counsel was also out of the office for about a week and a half to attend a conference and take time off.

5. Counsel had planned to turn to this petition for certiorari after that, but the Ninth Circuit unexpectedly issued two orders informing counsel that no further extensions would be granted for two opening briefs. One opening brief, due the last week of November, was especially complicated, involving a suppression motion with a full evidentiary hearing in addition to a multi-day trial. In October, counsel took leave for a week for a pre-planned vacation. Counsel will also be off for a week in November over the Thanksgiving holidays, and she hopes to take additional leave in December for Christmas. Counsel's supervisor also intends to take several days off throughout the holiday season. Due to counsel's unavailability and her supervisor's unavailability over the holidays, she anticipates not being able to adequately draft and receive feedback until after the new year. The requested extension will ensure that Mr. Brunkow has sufficient time to assist in preparing the petition.

6. Additional time is not sought for the purpose of delay, but rather, to provide effective assistance of counsel to petitioners.

For the reasons expressed above, Jesus Perez-Garcia and John Fencil, through counsel, respectfully requests that this Court grant a thirty-day extension to file a petition for a writ of certiorari up to and including January 2, 2025.

Respectfully submitted,

Date: November 21, 2024

s/ Katie Hurrelbrink
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