

No. \_\_\_\_\_

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

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JUAN JESUS CHAIDEZ, PETITIONER

vs.

UNITED STATES OF AMERICA, RESPONDENT

---

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

---

**MOTION FOR LEAVE TO PROCEED  
*IN FORMA PAUPERIS***

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The Petitioner, JUAN JESUS CHAIDEZ, by his undersigned counsel, asks leave to file the attached Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit, without prepayment of costs and to proceed *in forma pauperis*. Vicki Marolt Buchanan was appointed counsel for Mr. Chaidez in the court of appeals under the Criminal Justice Act, 18 U.S.C. § 3006A(b).

\* \* \*

This motion is brought pursuant to Rule 39.1 of the Rules of the  
Supreme Court of the United States.

Dated: March 18, 2026

Respectfully submitted,

s/ Vicki Marolt Buchanan

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## **QUESTION PRESENTED**

Under this Court's decision in *Morrissey v. Brewer*, 408 U.S. 471, 489 (1972), a defendant "is guaranteed the right to confront and cross-examine adverse witnesses at a revocation hearing, unless the government shows good cause for not producing the witness." Does the government meet the good cause standard if it subpoenas a witness, but informs the witness that it will not enforce the subpoena?

## **PARTIES TO THE PROCEEDING**

Petitioner, Juan Jesus Chaidez, is an individual. The Respondent is the United States of America.

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**PETITION FOR WRIT OF CERTIORARI**

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JUAN JESUS CHAIDEZ petitions this Court for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit.

**OPINION BELOW**

On January 12, 2026, the Ninth Circuit Court of Appeals issued a Memorandum that affirmed the revocation of Petitioner’s supervised release and resulting sentence. (Appendix A.)

**JURISDICTION OF THE SUPREME COURT OF THE  
UNITED STATES**

The Ninth Circuit Court of Appeals judgment is dated January 12, 2026. Petitioner invokes this Court’s jurisdiction under 28 U.S.C. § 1254(1).

**CONSTITUTIONAL AND STATUTORY PROVISIONS  
INVOLVED**

U.S. CONST. amend. XIV

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**STATEMENT OF THE CASE**

**Jurisdiction of the Court Below**

The district court had jurisdiction under 18 U.S.C. § 3231. The Court of Appeals had jurisdiction under 28 U.S.C. § 1291.

**Background and District Court Proceedings**

On January 19, 2022, Petitioner was convicted of violating 18 U.S.C. § 922(g)(1) by being a felon in possession of ammunition. The court sentenced Petitioner to 40 months in prison and three years of supervised release. (Appendix C.)

On January 24, 2024, his probation officer filed a Petition for Warrant for a Person Under Supervision. The petition alleged that, during supervised release, the Petitioner violated Cal. Penal Code § 273.5(A) by inflicting corporal injury on a spouse or cohabitant, leading to a petition for revocation of supervised release.

The petition alleged that Petitioner and Jane Doe, who were in a relationship, had a verbal altercation after she broke up with him. Petitioner punched her one time with his right hand, striking her on the mouth, and causing her lip to be inflamed. Petitioner fled the scene using Jane Doe's vehicle. She did not report the incident as she thought he would return her vehicle.

The next day, Petitioner arrived at Jane Doe's apartment and was still upset about the breakup. After a verbal exchange, he punched her in the nose one time, and he pushed her head into a wall two times, causing bleeding from her right eyebrow. He fled before the police arrived. The victim's eleven-year-old son witnessed the altercation and provided police with a statement confirming the physical altercation. Officers observed a half-inch cut above the victim's right eyebrow that was bleeding when they arrived. She was also observed to have bruising on her upper lip.

The petition was subsequently amended to add another count. Chaidez was arrested on March 22, 2024.

An evidentiary hearing was held on January 9 and 13, 2025. On February 11, 2025, the court issued an Amended Order Following Evidentiary Hearing. Although she had been subpoenaed, Jane Doe did not appear at the evidentiary hearing. Relying on hearsay evidence, the court found the government met its burden on the violation related to the domestic abuse.

On February 25, 2025, the court sentenced Chaidez to 24 months in prison for the supervised release violation. (Appendix B.)

### **Decision Below**

Petitioner appealed his conviction for revocation of supervised release and the resulting sentence. He argued that he was deprived of his constitutional right to confront and cross-examine the witness against him. The court was required to balance his rights against the government's good cause for failing to produce the witness, who was subpoenaed but did not appear. On appeal, the Petitioner argued that subpoenaing the witness did not satisfy the good cause requirement because the probation officer who served the subpoena advised the witness that the subpoenas would not be enforced. The Ninth Circuit

affirmed the conviction, despite the government's lack of good cause in producing the witness. (Appendix A.)

## **REASONS FOR GRANTING THE WRIT**

### **I. The Ninth Circuit Upheld the District Court's Violation of Petitioner's Due Process Right to Confront a Witness by Relying on the Fact the Government Subpoenaed a Witness Even Though It Told the Witness it would not Enforce the Subpoena.**

The government's case relied entirely on hearsay evidence to prove that Petitioner assaulted Jane Doe and thereby violated a condition of his supervised release. The court was required to balance Petitioner's constitutional right to confront and cross-examine the witness against whether the government had good cause for not producing her at the hearing.

In finding that the government had good cause not to produce Jane Doe, the court relied on the fact that the government subpoenaed her. However, the subpoenas were flawed because the probation officer repeatedly told her the government would not enforce them. Because the court knew this information, it could not find good cause based on the service of a subpoena the witness knew it did not intend to enforce.

The primary violation was Count One, which involved Petitioner’s alleged assault of Jane Doe, his ex-girlfriend. The government sought to prove the allegations by presenting her 911 operator recording and body camera footage of her statements to a police officer and a medical professional. In these hearsay statements, she identified Petitioner as her assailant. The issue was whether the court could rely on hearsay evidence to prove this charge.

Under *Morrissey v. Brewer*, 408 U.S. 471, 489 (1972), a defendant “is guaranteed the right to confront and cross-examine adverse witnesses at a revocation hearing, unless the government shows good cause for not producing the witness.” Accordingly, the court applies a balancing test to determine

whether the admission of hearsay evidence violates the releasee’s right to confrontation in a particular case, the court must weigh the releasee’s interest in his constitutionally guaranteed right to confrontation against the Government’s good cause for denying it. *See United States v. Walker*, 117 F.3d 417, 420 (9th Cir. 1997) (citations omitted).

*United States v. Comito*, 177 F.3d 1166, 1170 (9th Cir. 1999). The balancing test applies to testimonial and nontestimonial evidence, including evidence otherwise subject to hearsay exceptions. *Valdivia v. Schwarzenegger*, 599 F.3d 984, 990-91 (9th Cir. 2010).

As part of the balancing process, the court must determine whether the right to confrontation was substantial under the circumstances. *United States v. Martin*, 984 F.2d 308, 311 (9th Cir. 1993). Some factors in determining whether the right is substantial are the importance of the evidence to the court's findings, whether there was an opportunity to refute the evidence, and the consequences of the court's finding. *Id.* at 311-312. As for good cause, a court looks at the "difficulty and expense of procuring witnesses" and the traditional "indicia of reliability" of the evidence. *Id.* at 312.

Before the evidentiary hearing, the government planned to rely solely on hearsay evidence to prove the allegations in the petition. The government said it had good cause not to produce Jane Doe at trial. It relied on the general notion that it would be difficult to get a victim of domestic violence to testify against her abuser. Petitioner objected to the hearsay to prove the case because it violated his due process rights to confront and cross-examine the witness.

The court issued a ruling. It applied the balancing test, which weighed the confrontation right against the government's "good cause for denying it." The court said that if it were not for the balancing test, it would admit both the hearsay statements as excited utterances under

Fed. R. Evid. 803(2). However, the court concluded that the government had not shown good cause for failing to produce Jane Doe. It concluded, “unless the Government demonstrates good cause, the court will not permit the Government to rely on [Jane Doe’s] hearsay statements.”

At a later evidentiary hearing, the court heard testimony from the probation officer, Salvador Tinoco, who had contact with Jane Doe after the alleged domestic incident on December 26 and 27, 2024. His first contact with her was on January 2, 2024. At the time, Jane Doe said she was pregnant. She later said she had a miscarriage.

On January 4, 2024, Jane Doe requested a restraining order against Petitioner. A hearing was scheduled for January 29, 2024. There was no evidence that the request was served on Petitioner, and Jane Doe did not appear at the hearing.

On February 8, 2024, she filed an amended petition and testified at the hearing on March 4, 2024. However, the court dismissed the petition without prejudice because there was no evidence that she served Petitioner.

On March 27, 2024, Jane Doe reported that Petitioner’s sister came to her house, knocked on her door, and left a note on her car

saying that Petitioner wanted to know the status of her baby. Between April 6 and April 29, 2024, Petitioner sent several letters to Jane Doe asking about the baby. She did not respond.

On May 30, 2025, Officer Tinoco phoned Jane Doe. She did not want to testify in person at the Petitioner revocation hearing. She mentioned Petitioner's letters that she thought were threatening. On June 5, 2024, she told Officer Tinoco she was not going to pursue the domestic violence charges against Petitioner because she did not want to testify against him.

On August 24, 2024, Officer Tinoco contacted her to discuss her testimony at the upcoming revocation hearing. She said she was not interested in testifying even if served with a subpoena.

On November 26, 2024, Officer Tinoco met with Jane Doe at a coffee shop in Oakland. He served her a subpoena to attend the December 11, 2024, hearing. She indicated she would not attend and asked whether a warrant would be issued if she did not. She added, however, that she did not want to get in trouble because she was trying to get her life together. Officer Tinoco told her it was unlikely a warrant would be issued if she failed to honor the subpoena.

She met again with Tinoco at an IHOP in San Leandro on January 6, 2025. He served her with another subpoena for a rescheduled hearing. She said she understood the consequences of not going to court but wanted to “put it all behind her and move on with her life.” She never wanted to see his face again.

She confirmed she had not heard from Petitioner since he last wrote to her almost a year earlier, in April 2024. She once again asked whether a warrant would be issued if she did not appear, and Officer Tinoco confirmed that no warrant would be issued if she failed to comply with the subpoena. Jane Doe did not appear at the January 9, 2025, evidentiary hearing.

On February 11, 2025, after the revocation hearing, the court issued its order revoking supervised release. The court held that Petitioner’s due process interest in confronting Jane Doe was high. As part of its order, it performed the balancing test and found the government had good cause not to produce her at trial.

The court relied on Jane Doe's hearsay statements to Officer Tinoco to establish her fear of testifying. The court found her attempts to obtain a restraining order, her refusal to provide a current address to Officer Tinoco, and the significant number of letters in a short period,

indicating Petitioner was “fixated on their relationship,” thereby establishing that she feared him. Accordingly, the court admitted the hearsay evidence, including the 911 call and the video camera evidence, to find that Petitioner had violated Cal. Penal Code § 273.5(a). It held that the government proved by the preponderance of the evidence that Petitioner violated his conditions of supervised release as alleged in Count One.

The court erred in finding that the government had shown good cause for not producing Jane Doe at the hearing. In finding good cause, the court reasoned that in *Comito*, 177 F.3d at 1170 (9th Cir. 1999)

... the Ninth Circuit determined the government failed to show good cause because it did not “offer evidence of any kind” regarding the witness’s fear of the defendant and did not ask the probation officer who recounted her statements about his efforts to serve the witness. 177 F.3d at 1172. Moreover, there was evidence that the complaining witness continued to visit the defendant in jail as well as other evidence undermining her claim that she was afraid to testify. *Id.*; see also *United States v. Avila*, 791 Fed. Appx. 591, 594 (9th Cir. 2017) (government made no effort to secure complaining witness’s presence at hearing). Here, however, the Government, through Mr. Tinoco, was able to serve the complaining witness with a subpoena. See *United States v. Taylor*, 804 Fed. Appx. 731, 732 (9th Cir. 2020) (showing of good cause supported by service of subpoena on complaining witness).

Unlike the victim in *Comito*, Jane Doe did not contact Petitioner after the incident. However, unlike the victim in *Comito*, the record does not establish that the victim feared Petitioner at the time of the hearing. Most of the facts the court relied on to support her claimed fear occurred shortly after the incident. At that time, she filed two petitions and testified in the second petition hearing.

A few months after the incident, Petitioner wrote the letters asking about Jane Doe's pregnancy and the baby. By the end of April, he learned of the miscarriage and stopped writing. Therefore, at the time of the hearing, he was no longer "fixated on the relationship." At the time of the hearing, Jane Doe had not seen or heard from Petitioner for almost a year.

The government did not show good cause for failing to produce Jane Doe because it failed to secure her attendance through an enforceable subpoena. One of the main factors supporting a finding of good cause is the government's service of a subpoena on the witness. *See Redix v. Kilpatrick*, 2009 WL 347374 (E.D. Cal. Feb. 9, 2009); *Walker v. Tilton*, 2009 WL 1155663 (E.D. Cal. Apr. 29, 2009). The district court cited the issuance of a subpoena as an important factor in finding good cause and referred to *United States v. Avila*, 719 Fed.

Appx. 591, 594 (9th Cir 2017) [no good cause because no subpoena] and *United States v. Taylor*, 804 Fed. Appx. 731, 732 (9th Cir. 2020) [good cause because of service on complaining witness]. The court relied on the service of subpoenas to find good cause.

The problem is that when Officer Tinoco served the subpoenas, he essentially told her to ignore them. The Ninth Circuit dismissed this problem, stating, “The probation officer’s remarks that a warrant was unlikely to issue if Doe ignored the subpoena did not undermine the government’s documented efforts or the strong evidence of Doe’s fear.” (Appendix A at 2.) However, the district court relied on the service of subpoenas as its primary basis for finding good cause. The Memorandum approves the government serving a witness with a subpoena that the witness knows it will not be enforced as sufficient for good cause not to produce her. In that situation, there is no reason to even bother serving a witness if they once claimed they feared a defendant.

It is likely Jane Doe would have appeared if Officer Tinoco had told her the government would not enforce the subpoena. She told him she did not want to get in any trouble. Then, before the final hearing, she told him she would not attend because she “wanted to put [the

incident] behind her and move on with her life.” She no longer claimed she feared him.

The court’s reliance on the service of a subpoena on a witness who knew there would be no consequences for failing to appear did not establish good cause to avoid appearing. The finding was erroneous because it assumed the subpoenas were enforceable like those in *Taylor*, *Redix*, and *Walker*, and Jane Doe was under compulsion to testify.

The Fifth Circuit found that the government lacks good faith when it attempts to produce a witness but fails to follow up on a subpoena. *Haggerty v. Johnson*, 204 F.3d 1114 (5th Cir. 1999); 1999 WL 1328003. Like here, the court issued a subpoena to the witness who failed to appear. At a subsequent hearing, the government did not bother issuing another subpoena and did not explain why it failed to do so. *Id.* at \*8. The court found the government failed to show good cause because it was not serious about compelling the witness, and the case was reversed.

Similarly, the government was not serious about compelling Jane Doe’s testimony. It issued two subpoenas, which Jane Doe knew the government would not enforce. The court cannot credit the

government with serving a subpoena, which it told the witness to ignore. Because this case lacks a showing of good cause, it should be reversed. This Court should make it clear that to have good cause not to produce an adverse witness for cross-examination as required by the Constitution, the witness must not only be served with the subpoena, but also that the government will enforce it.

### CONCLUSION

For these reasons, the Court should grant the petition and consider this case.

Dated: March 18, 2026

Respectfully submitted,

s/ Vicki Marolt Buchanan  
Vicki Marolt Buchanan  
Counsel for Petitioner  
*Juan Jesus Chaidez*