IN THE SUPREME COURT OF THE UNITED STATES

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No. 25A_____

UNITED STATES OF AMERICA, APPLICANT

v.

LEOPOLDO RIVERA-VALDES

_____

APPLICATION FOR AN 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

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Pursuant to Rules 13.5 and 30.2 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully requests a 30-day extension of time, to and including Friday, January 16, 2026, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case. The en banc court of appeals entered its judgment on September 18, 2025. Therefore, unless extended, the time within which to file a petition for a writ of certiorari will expire on December 17, 2025. The jurisdiction of this Court would be invoked under 28 U.S.C. 1254(1). A copy of the opinion of the en banc court of appeals, which is not yet reported, is attached. App., infra, 1a-66a.

1. This case arises from respondent's motion to dismiss his indictment for illegal reentry following a deportation order, in violation of 8 U.S.C. 1326. Respondent is a native and citizen of Mexico. App., infra, 7a. He unlawfully entered the United States in 1992 and filed an asylum application with the Immigration and Naturalization Service (INS) in 1993, falsely claiming that he was a citizen of Guatemala. Ibid. On his asylum application, he listed an address in Portland, Oregon (4037 N. Cleveland Ave.) as his address. Ibid.

The INS mailed notices regarding respondent's asylum application and work authorization to that address, instructing him to appear in person at the INS office in Portland in early 1994. App., infra, 7a. But when respondent appeared in person to pick up his work authorization papers, he presented false identification documents. Ibid. When confronted by the agency regarding the fraudulent documents, respondent admitted to the fraud and withdrew his asylum application, and the agency personally served him with an Order to Show Cause. Ibid. The show-cause order stated that respondent would later be notified of the date, time, and place of his deportation hearing, and that notice would be mailed to the address he had provided on his asylum application. Ibid. The show-cause order listed that address as "4037 N. Cleveland, Portland, OR, 97212" (thus omitting "Ave." from what respondent had listed on his asylum application). Id. at 7a-8a. The show-cause order also informed respondent that he must notify

the agency of any change of address, and that if he failed to appear at the deportation hearing, the immigration judge could order his deportation in absentia. Id. at 7a. The show-cause order was read to respondent in Spanish, and he acknowledged receipt by signing the document. Id. at 8a; id. at 33a (Bennett, J., dissenting).

Soon thereafter, the INS moved to schedule the case for hearing. App., infra, at 8a. A copy of the scheduling motion was sent by regular mail to the address listed on the order, but it was returned by the U.S. Postal Service as "Not Deliverable As Addressed[,] Unable to Forward." Ibid.; id. at 34a (Bennett, J., dissenting). The immigration court sent a notice of hearing -- which contained the date, time, and location of the hearing -- to the same address by certified mail. Id. at 8a (majority opinion). That notice was "Returned to Sender" as "Unclaimed." Ibid.; id. at 35a (Bennett, J., dissenting). Four months later, the immigration court held the hearing. Id. at 8a (majority opinion). Respondent did not appear and was ordered deported in absentia. Ibid. Respondent was ultimately removed pursuant to that order in 2006, but by 2019, he had returned to the United States. Id. at 8a-9a.

2. a. In 2019, respondent was detained under the 1994 removal order and charged with one count of illegally reentering the United States following deportation in violation of 8 U.S.C. 1326(a). App., infra, 8a-9a. He conditionally pleaded guilty,

but he moved to dismiss the indictment, contending that he had not received adequate notice of the removal hearing and that the underlying removal order was therefore invalid. Id. at 9a. The district court denied the motion to dismiss, holding that the removal order was valid because the government sent its notice of hearing by certified mail to the last known address listed on his asylum application. Ibid. The district court concluded that the government's approach was "reasonably calculated" to give notice to respondent and that respondent was not entitled to actual notice of his hearing. Ibid.

b. A divided panel of the court of appeals affirmed. 105 F.4th 1118. In a per curiam opinion, the majority concluded that respondent's deportation in absentia did not violate due process. Id. at 1121. It explained that the Ninth Circuit had previously concluded that the government's compliance with the statutory notice requirements was constitutionally sufficient, and that "mailing notice to an alien's last provided address is constitutionally sufficient." Ibid. The majority rejected respondent's contention that the government was required to take "additional reasonable steps" to notify him of the hearing under Jones v. Flowers, 547 U.S. 220 (2006), reasoning that the Ninth Circuit had not previously applied Jones in the immigration context and that the statutory scheme for notice was adequate in that context. 105 F.4th at 1122-1123. It further reasoned that even if Jones did apply,

there were no additional reasonable steps it would have been practicable for the government to take. Id. at 1124.

Judge Bumatay filed a concurring opinion, expressing concerns about the dissent's "attempt to break new constitutional ground to resolve [the] case." 105 F.4th at 1124. He objected to an approach that would expand Jones to the immigration context, and noted that the dissent's approach could "wreck the federal courts' dockets with an explosion of litigation" and "undermine finality for hundreds, if not thousands, of cases." Id. at 1125. Judge Baker also filed a concurring opinion, noting that a rule that allowed unclaimed certified mail to rebut the presumption of adequate notice "would reward an alien's evasion." Id. at 1127.

Judge Sanchez dissented. App., infra, 1130-1138. In his view, the Ninth Circuit had already indicated that Jones applies in the immigration context. Id. at 1133. He further concluded that compliance with statutory notice requirements does not satisfy due process in every circumstance. Id. at 1135-1136. He would have remanded for the district court to apply Jones. Id. at 1131.

c. The court of appeals granted rehearing en banc, 125 F.4th 991, which vacated the panel's decision, see App, infra, 9a.

3. After holding oral argument, the eleven-member en banc court vacated the district court's denial of respondent's motion to dismiss the indictment and remanded for further proceedings. Id. at 1a-66a.

a. The majority of the en banc court of appeals concluded that under this Court's precedents in Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950), and Jones, supra, the Fifth Amendment's due-process guarantee requires that notice by the government of removal proceedings must be "reasonably calculated to apprise noncitizens of the pendency of removal proceedings and to afford them the opportunity to be present and to participate." App., infra, 20a; see id. at 10a-21a. The court further held that "[w]here the Government learns that its notice efforts have not succeeded, that knowledge triggers an obligation on the Government's part to take additional reasonable steps to effect notice, if it is practicable to do so." Id. at 20a-21a. The court rejected the government's argument that by fulfilling its statutory obligations under the Immigration and Nationality Act, it necessarily satisfied any constitutional due process requirements. Id. at 21a-23a. And the court concluded that personally serving the show-cause order on respondent was not constitutionally adequate notice, given that the show-cause order did not contain the date, time, and location of the hearing. Id. at 23a-26a. The court further found that the record did not establish that respondent had moved and failed to update his address with the agency, and that even if he had failed to comply with his obligation to update his address, he was still entitled to constitutionally sufficient notice. Id. at 26a.

The court therefore concluded that the appropriate remedy was to remand for the district court to examine whether the agency had other practicable alternatives to provide notice to respondent. App., infra, 26a-29a. The majority declined to decide whether respondent could demonstrate prejudice, administrative exhaustion, and deprivation of judicial review, as would be required for him to succeed in his collateral attack on his prior removal order under 8 U.S.C. 1326(d). App., infra, 29a.

b. Judge Bennett, joined in full by Judges Callahan and Ikuta and joined in part by Judges Miller and Forrest, dissented. App., infra, 30a-59a. Judge Bennett rejected the majority's "new and unjustified per se rule" imposing an obligation on the Government to take additional steps to effect notice "any time a mailed notice is returned." Id. at 36a. He instead concluded that "the steps the government did take and the notice the government did provide were constitutionally adequate." Ibid.; see id. at 36a-47a. He further explained even if those steps were insufficient, there were no "additional reasonable steps" the Government should have taken to effect notice once the mailed notices were returned. Id. at 47a-56a. Finally, he reasoned that respondent's collateral attack would necessarily fail based on Section 1326(d)'s additional requirements for a collateral attack, as respondent could not show prejudice from the alleged due-process violation. Id. at 56a-59a.

Judge Forrest, joined by Judge Miller, also dissented. App., infra, at 66a. She agreed with Judge Bennett that there were no "'additional reasonable steps'" that the government could have taken to attempt to provide notice to respondent, and that respondent could not "satisfy other requirements for collaterally attacking his removal order." Ibid.

4. The Solicitor General has not yet determined whether to file a petition for a writ of certiorari in this case. The additional time sought in this application is needed to continue consultation with components of the federal government, and to assess further the legal and practical impact of the court's ruling. Additional time is also needed, if a petition is authorized, to permit its preparation and printing.

Respectfully submitted.

D. JOHN SAUER
Solicitor General
Counsel of Record

DECEMBER 2025

APPENDIX