

No. _____

IN THE
Supreme Court of the United States

JOAN DIAZ GONZALEZ,

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 Joan Diaz Gonzalez requests a 30-day extension of time within which to file a petition for a writ of certiorari in this Court, to and including December 12, 2025. The government does not object to this extension. Mr. Diaz Gonzalez's petition will challenge the United States Court of Appeals for the Ninth Circuit's decision affirming his conviction on direct appeal. *United States v. Joan Diaz Gonzalez*, No. 24-3951 (9th Cir. June 30, 2025), *reh'g denied* Aug. 14, 2025. The panel opinion is attached as Exhibit A, and the denial of panel rehearing is attached as Exhibit B.

The Ninth Circuit entered judgment on June 30, 2025 and denied panel rehearing on August 14, 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. Diaz Gonzalez's time to petition for a writ of certiorari expires on November 12, 2025. In accordance with Rule 13.5, Mr. Diaz Gonzalez 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. Diaz Gonzalez's petition will present an important question of constitutional law—whether an appellate court reviews de novo a district court determination that, under the Sixth Amendment's Speedy Trial Clause, the government was not negligent in failing to prosecute timely a defendant. In Mr. Diaz Gonzalez's case, the government obtained an indictment against him in March 2020. Despite knowing Mr. Diaz Gonzalez's home address, the government subsequently failed to arrest him for nearly four years. After Mr. Diaz Gonzalez was brought to federal court in October 2023 and appointed counsel, he filed a motion to dismiss the indictment based on a violation of the Speedy Trial Clause. The district court denied the motion. In applying the four-factor balancing test established by *Barker v. Wingo*, 407 U.S. 514 (1972), the district court concluded that the second, and most important, factor—whether the government's delay in prosecuting Mr. Diaz Gonzalez was justified—weighed in favor of the government because its efforts to arrest Mr. Diaz Gonzalez were reasonable under the circumstances.

On appeal, Mr. Diaz Gonzalez again argued that the delay between his indictment and trial violated the Speedy Trial Clause. The United States Court of Appeals for the Ninth Circuit affirmed the district court. At the second *Barker* factor, the court concluded that it must review with considerable deference the district court's determination that the government acted with reasonable diligence in prosecuting Mr. Diaz Gonzalez's case. The court cited in support *Doggett v. United States*, 505 U.S. 647 (1992), which similarly addressed a Speedy Trial Clause claim. In *Doggett*, this Court considered the district court's determination that the government failed diligently to seek the defendant's arrest and explained that it "review[s] trial court determinations of negligence with considerable deference." *Id.* at 652.

The Ninth Circuit's decision highlighted the fact that this Court's conclusion in *Doggett*—that a trial court's determination as to whether the government was negligent in failing to prosecute timely the defendant must be reviewed with "considerable deference"—makes the standard of appellate review for claims under the Speedy Trial Clause an outlier relative to other constitutional protections. Elsewhere, this Court has explained that mixed questions of fact and law relating to constitutional rights protected by the First, Fourth, Fifth, and Fourteenth Amendments are reviewed de novo, "even when answering a mixed question primarily resolves plunging into a

factual record.” *U.S. Bank. Nat. Ass’n ex rel. CWC Capital Asset Mgmt. LLC v. Village at Lakeridge, LLC*, 583 U.S. 387, 396 n.4 (2018) (collecting cases).

The Ninth Circuit’s decision also emphasized a long-standing circuit split concerning the appropriate standard of appellate review for each *Barker* factor. The Ninth Circuit, as well as the Second, Third, Eighth, and Eleventh Circuits, frame a district court’s conclusion regarding the second *Barker* factor as a factual finding reviewed for clear error. *United States v. Sperow*, 494 F.3d 1223, 1226 (9th Cir. 2007);, *United States v. Cabral*, 979 F.3d 150, 158 (2d Cir. 2020); *United States v. Velasquez*, 749 F.3d 161, 176 (3d Cir. 2014); *United States v. Erenas-Luna*, 560 F.3d 772, 77 (8th Cir. 2009); *United States v. Vargas*, 97 F.4th 1277, 1285, 1290 (11th Cir. 2024); *see also United States v. Brown*, 169 F.3d 344, 349-50 (6th Cir. 1999). The D.C. Circuit and the Fifth Circuit, however, consider the district court’s conclusions regarding each *Barker* factor as mixed questions of fact and law that must be reviewed de novo. *United States v. Tchibassa*, 452 F.3d 918, 924 (D.C. Cir. 2006); *United States v. Molina-Solorio*, 577 F.3d 300, 304 (5th Cir. 2009). The Tenth Circuit has recognized the circuit split and declined to take a position. *United States v. Medina*, 918 F.3d 774, 788 (10th Cir. 2019).

This issue is “vitally important” because “[w]hen the standard governing the decision of a particular case is provided by the Constitution, this Court’s role in marking out the limits of the standard through the

process of case-by-case adjudication is of special importance.” *Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 503 & n.27 (1984) (“The simple fact is that First Amendment questions of ‘constitutional fact’ compel this Court’s de novo review.” (citation omitted)); *Hurley v. Irish-American Gay, Lesbian & Bisexual Group of Boston*, 515 U.S. 557, 567 (1995) (“The ‘requirement of independent appellate review . . . is a rule of federal constitutional law.’” (quoting *Bose Corp.*, 466 U.S. at 510)). In cases implicating the Speedy Trial Clause, the second *Barker* factor is crucial and often dispositive—this Court has described it as “[t]he flag all litigants seek to capture.” *United States v. Loud Hawk*, 474 U.S. 302, 315 (1986); *see also Doggett*, 505 U.S. at 656 (“[I]f the Government had pursued Doggett with reasonable diligence from his indictment to his arrest, his speedy trial claim would fail.”). By reviewing for clear error a district court’s determination that the government was reasonably diligent in apprehending the person under indictment, appellate courts are improperly ceding to trial courts the ultimate determination “whether a given course of conduct falls on the near or far side of the line of constitutional protection.” *Hurley*, 515 U.S. at 567.

Counsel’s need for additional time. Undersigned counsel has substantial professional commitments that have prevented him from working exclusively on preparing a petition that fully and concisely addresses this important issue of constitutional law. These commitments warrant the

requested extension of time and include an oral argument in *United States v. Hosseinian*, No. 24-5821 (9th Cir.), scheduled for December 1, 2025, as well as the following briefing deadlines: an opening brief in *United States v. Wallin*, No. 25-3178 (9th Cir.), currently due on November 24, 2025; an opening brief in *United States v. Villegas*, No. 25-1749 (9th Cir.), currently due on December 3, 2025; an opening brief in *United States v. Nava*, No. 25-4116 (9th Cir.), currently due on December 8, 2025; an opening brief in *United States v. Middleton*, No. 25-5838 (9th Cir.), currently due on December 9, 2025; an answering brief in *United States v. Skinner*, No. 25-5357 (9th Cir.), currently due on December 15, 2025; and an answering brief in *Cholico v. Warden of FCC Lompoc*, No. 25-5648 (9th Cir.), currently due on December 29, 2025.

In light of the current government shutdown, the Ninth Circuit has stayed all filing deadlines (but not oral arguments) that occur during the shutdown for federally-funded attorneys. Because the Ninth Circuit administrative order stays only those deadlines that occur during the shutdown, many or most of the deadlines listed above may not be stayed if the shutdown ends before those deadlines come to pass. Additionally, undersigned counsel's Federal Public Defender has declared every employee in the Federal Public Defender's Office for the Central District of California an essential employee performing work required by the Sixth Amendment.

Undersigned counsel is therefore required to continue working during the shutdown and will continue to work on our clients' appeals in order to vindicate their statutory and constitutional rights.

CONCLUSION

Mr. Diaz Gonzalez respectfully requests a 30-day extension, up to and including December 12, 2025, within which to file a petition for a writ of certiorari.

Respectfully submitted,

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OCTOBER 29, 2025