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IN THE SUPREME COURT OF THE UNITED STATES

October Term 2025

JUAN L. CALDERON NONBERA,
Applicant / Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

**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**

**APPLICATION TO THE HONORABLE
ELENA KAGAN AS CIRCUIT JUSTICE**

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December 23, 2025

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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 Ninth Circuit:

Pursuant to Rule 13.5 of the Rules of this Court and 28 U.S.C. § 2101(c), Applicant Juan L. Calderon Nonbera prays for a 45-day extension of time within which to file a petition for a writ of certiorari in this Court, to and including February 21, 2026.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The judgment for which review is sought is *United States v. Calderon Nonbera*, No. 22-50040 (9th Cir. Oct. 9, 2025), a copy of which is attached as Exhibit A.

JURISDICTION

The United States Court of Appeals for the Ninth Circuit entered judgment on October 9, 2025. This Court will have jurisdiction over any timely filed petition for certiorari in this case pursuant to 28 U.S.C. § 1254. Under Rules 13.1, 13.3, and 30.1 of this Court, Applicant's time to petition for a writ of certiorari expires on January 7, 2025.

In accordance with Rule 13.5, Applicant has filed 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 question presented and undersigned counsel's need for additional time to prepare a petition that will assist the Court in deciding whether to grant certiorari.

A. Background

1. Generally, it is unlawful for a noncitizen who has been removed from the United States to reenter the country without permission. 8 U.S.C. § 1326(a). As this Court has explained, though, “a collateral challenge to the use of a deportation proceeding as an element of a criminal offense must be permitted where the deportation proceeding effectively eliminates the right of the alien to obtain judicial review.” *United States v. Mendoza-Lopez*, 481 U.S. 828, 839 (1987).

Section 1326(d) permits defendants to bring such a collateral challenge. To do so, defendants must demonstrate that: (1) they “exhausted any administrative remedies that may have been available to seek relief against the [removal] order”; (2) the removal proceedings “improperly deprived [them] . . . of the opportunity for judicial review”; and (3) “the entry of the order was fundamentally unfair.” 8 U.S.C. § 1326(d). If each requirement is met, the challenged removal order cannot be used to establish any element of an illegal reentry offense. *United States v. Palomar-Santiago*, 593 U.S. 321, 326 (2021); see *Mendoza-Lopez*, 481 U.S. at 839–40.

2. Calderon was found in the United States in August 2019. A few months later, a grand jury in the Central District of California returned an indictment against him. He was charged with one count of being a noncitizen who, after removal, was found in the United States in violation of Section 1326(a).

Calderon moved to dismiss the indictment under Section 1326(d). He argued that his underlying removal proceeding violated due process, and that he satisfied Section 1326(d)’s administrative-exhaustion and deprivation-of-judicial-review

requirements because his appeal waiver was invalid. The government opposed, and the district court denied relief.

3. On appeal, Calderon argued that the district court erred in denying his motion to dismiss the indictment. As relevant here, Calderon maintained that, because his appeal waiver was invalid, any administrative remedies were “unavailable” for purposes of Section 1326(d)(1).

The Ninth Circuit affirmed. Before briefing was complete in Calderon’s case, the Ninth Circuit precedentially held that an invalid waiver of appeal does not render administrative remedies unavailable for purposes of Section 1326(d)(1). *United States v. Nunez Sanchez*, 140 F.4th 1157, 1162–65 (9th Cir. 2025). Instead, the defendant’s case must fit “within the exceedingly narrow set of circumstances in which a failure to exhaust may be excused” under *Ross v. Blake*, 578 U.S. 632 (2016). See *Nunez Sanchez*, 140 F.4th at 1165. For instance, as one “extreme example[],” a failure to exhaust administrative remedies may be excused when the defendant is “*actively misled* as to the rights available to him.” *Id.* (emphasis in original). Calderon acknowledged that *Nunez Sanchez* was binding on the three-judge panel in his case and reserved his right to seek further appellate review.

B. Importance of the Question Presented

Calderon’s certiorari petition will present an important legal question concerning Section 1326(d). This Court has long held that an invalid waiver of the right to appeal an immigration judge’s decision renders administrative remedies unavailable for purposes of Section 1326(d)(1)’s exhaustion requirement. See

Mendoza-Lopez, 481 U.S. at 840–41 (explaining that “[t]he Immigration Judge permitted waivers of the right to appeal that were not the result of considered judgments by respondents,” and that “[t]he fundamental procedural defects of the deportation hearing in this case rendered direct review of the Immigration Judge’s determination unavailable to respondents”). The Ninth Circuit now holds to the contrary: in *Nunez Sanchez*, it reasoned that the invalidity of a noncitizen’s waiver of appeal to the Board of Immigration Appeals was itself insufficient to satisfy Section 1326(d)(1). 140 F.4th at 1165 (concluding that whether defendant’s appeal waiver was “considered and intelligent” was “immaterial” for purposes of Section 1326(d)(1)). Indeed, the court of appeals concluded that, following this Court’s decision in *Palomar-Santiago*, only an “exceedingly narrow set of circumstances” would satisfy Section 1326(d)(1), namely the “three specific circumstances” listed in *Ross*. See *Nunez Sanchez*, 140 F.4th at 1165.

The Ninth Circuit’s rule—that an invalid appeal waiver does not render administrative remedies unavailable for purposes of Section 1326(d)(1)—conflicts not only with *Mendoza-Lopez*, but also with the rule in other circuits. See, e.g., *United States v. Castro-Aleman*, 141 F.4th 576, 580 n.2 (4th Cir. 2025); *Richardson v. United States*, 558 F.3d 216, 219–20 (3d Cir. 2009); *United States v. Sosa*, 387 F.3d 131, 136 (2d Cir. 2004); see *United States v. Chavez-Alonso*, 431 F.3d 726, 728 (10th Cir. 2025); *United States v. Tomayo-Baez*, 820 F.3d 308, 313 (8th Cir. 2016).

This issue is exceptionally important because it involves a legal defense to one of the most commonly charged federal criminal statutes. It also implicates critical

due process rights because individuals charged with a crime as a result of an “administrative determination,” such as a removal proceeding, are “entitled to have the factual and legal determinations upon which [their] convictions are based subjected to the scrutiny of an impartial judicial officer.” *Mendoza-Lopez*, 481 U.S. at 841. The Ninth Circuit’s rule precludes a large swath of defendants from obtaining such review. See *id.* at 841–42.

C. 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 legal question. These commitments warrant the requested extension of time, which seeks to accommodate counsel’s legitimate needs and is not sought for purposes of delay. Among other things, undersigned counsel currently has the following briefing deadlines: an opening brief in *United States v. Girardi*, No. 25-3577 (9th Cir.), currently due on December 26, 2025; an opening brief in *United States v. Bell*, No. 25-6719 (9th Cir.), currently due on January 15, 2026; and an answering brief in *United States v. Ramirez*, No. 25-957 (9th Cir.), currently due on January 16, 2026.

In addition, undersigned counsel is informed that the petitioner in *Nunez Sanchez v. United States*, No. 25A692 (U.S.), intends to seek a writ of certiorari in this Court. Under Rule 12.4 of this Court, “[w]hen two . . . judgments are sought to be reviewed on a writ of certiorari to the same court and involve identical or closely related questions, a single petition for a writ of certiorari covering all the judgments

suffices.” S. Ct. R. 12.4. Accordingly, rather than burden this Court with duplicative filings, Calderon intends to join in any certiorari petition filed in *Nunez Sanchez*, the deadline for which Justice Kagan recently extended to February 21, 2026. An extension of time in this case is therefore warranted for the purpose of allowing Calderon to coordinate the filing of any certiorari petition with counsel of record in *Nunez Sanchez*.

CONCLUSION

For the foregoing reasons, Applicant respectfully requests that an order be entered extending the time to file his petition for a writ of certiorari to and including February 21, 2026.

Respectfully submitted,

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December 23, 2025

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CERTIFICATE OF SERVICE

I certify that, on this 23rd day of December, 2025, I caused a copy of the foregoing Application for Extension of Time to be served by first-class mail, postage pre-paid, and by email on the following:

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