

**In The
Supreme Court of the United States**

The People of Guam,

Applicants,

v.

Richard Y. Ybanez, Jennifer Bader Cruz, Alejo C. Sablan, Kevin J.T.
Susuico and Anthony P. Chargualaf,

Respondents.

**Application to Extend Time to File Petition for
Writ of Certiorari from the Supreme Court of
Guam**

**Directed to the Honorable Elena Kagan,
Circuit Justice for the United States Court of Appeals for the
Ninth Circuit**

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To the Honorable Elena Kagan, as Circuit Justice for the United States Court of Appeals for the Ninth Circuit:

Applicants The People of Guam (“**The People**”), by and through the constitutional Office of the Attorney General of Guam (“**Attorney General**”), *see* 48 U.S.C. § 1421g(d) (Organic Act of Guam), and pursuant to this Court’s rules 13.5, 22, 30.2, and 30.3, request a 60-day extension of time to file its petition for writ of certiorari. This request, if granted, would extend the deadline from May 20, 2026 to July 17, 2026.

I.

Introduction

This case concerns the constitutional limits of state and territorial courts to disqualify prosecuting authorities with exclusive or concurrent enumerated and/or common law powers to prosecute corrupt public officials.

On February 19, 2026, the Supreme Court of Guam (“**Supreme Court**”) dismissed a timely-filed and statutorily-authorized government appeal¹ that sought review of a Final Judgment issued pursuant to a

¹ *The People of Guam v. Richard Y. Ybanez, Jennifer Badar Cruz, Alejo C. Sablan, Kevin J.T. Susuico, and Anthony P. Chargualaf*, Supreme Court of Guam Case No. CRA24-024. *See* 8 Guam Code Annotated (“**G.C.A.**”) (“[a]n order or judgment dismissing or otherwise terminating the action before the defendant has been placed in jeopardy ...”); *see also* 8 G.C.A. 130.40; *People v. Superior Court (Bruneman)*, 1998 Guam 24, ¶ 9, *People v. Pak*, 1998 Guam 27, ¶ 6.

Superior Court of Guam (“**Superior Court**”) Order dismissing² a multi-count criminal indictment³ against the Respondents with prejudice. *See* Supreme Ct. Guam Order (Feb. 19, 2026) (“**Exhibit A**”). It based its ruling upon an earlier Order disqualifying the entire Office of the Attorney General of Guam from further representation of the People on appeal and requiring that “conflict-free substitute” enter an appearance within thirty (30) days to avoid dismissal. *See* Supreme Ct. Guam Order (Jan. 15, 2026) (“**Exhibit B**”). The Order does not contain any language appointing or directing the Attorney General or any other agency to appoint such substitute counsel.

The Order provided no constitutional notice to the People of Guam.

² The Superior Court dismissed the entire case against the Respondents following its disqualification of the entire Office of the Attorney General of Guam from representing the People of Guam. *See* Superior Ct. Guam Order (Apr. 25, 2024).

³ On or about July 3, 2023, a grand jury duly empaneled within the Superior Court’s jurisdiction returned an indictment against the Respondents-Defendants: (a) Richard Y. Ybanez, then-interim Executive Manager of Guam Regional Transit Authority (“GRTA”), with two (2) felony counts (Theft by Deception and Conspiracy for Misapplication of Entrusted Funds) and two (2) misdemeanor counts (Misapplication of Entrusted Funds and Official Misconduct); (b) Jennifer Badar Cruz, then-Certifying Officer of GRTA, with three (3) felony counts (Theft by Deception, Tampering with Public Records, and Conspiracy for Misapplication of Entrusted Funds) and two (2) misdemeanor counts (Misapplication of Entrusted Funds and Official Misconduct); (c) Alejo C. Sablan, then-Chairman of the Board of Directors of GRTA, with two (2) felony counts (Theft by Complicity and Conspiracy for Misapplication of Entrusted Funds) and two (2) misdemeanor counts (Misapplication of Entrusted Funds and Official Misconduct); (d) Kevin J.T. Susuico, then-Director, Board of Directors of GRTA, with two (2) felony counts (Theft by Complicity and Conspiracy for Misapplication of Entrusted Funds) and two (2) misdemeanor counts (Misapplication of Entrusted Funds and Official Misconduct); and (e) Anthony P. Chargualaf, then-Vice Chairman, Board of Directors of GRTA, with two (2) felony counts (Theft by Complicity and Conspiracy for Misapplication of Entrusted Funds) and two (2) misdemeanor counts (Misapplication of Entrusted Funds and Official Misconduct).

The People of Guam⁴ are an artificial entity (in contrast to a natural person) who can only act through their democratically-elected Attorney General in the prosecution of criminals. See 5 G.C.A. §§ 30104⁵ and 30109(a).⁶ The Bill of Rights contained within the 1950 Organic Act of Guam (48 U.S.C. § 1421 *et. seq.*) expressly grants them the right “to petition the government for a redress of grievances.” See 48 U.S.C. § 1421b(a)⁷. Additionally, the due process and equal protection under the Fourteenth Amendment to the Constitution of the United States also protects them from governmental overreach. See U.S. Const. amend XIV § 1⁸; 48 U.S.C. § 1421b(u). The U.S. Constitution applies to Guam and the other four territories. See *Boumediene v. Bush*, 553 U.S. 723, 765 (2008) (“The Constitution grants Congress and the President the power to

⁴ The People are the most important political entity in Guam. See 4 G.C.A. § 400 (vested with ultimate “political authority.”). In recognition of that power, the Guam Legislature enacts laws on behalf of the People of Guam. See 2 G.C.A. § 2101.

⁵ “The Attorney General shall have cognizance of all matters pertaining to public prosecution, including the prosecution of any public officials.” (emphasis added by counsel).

⁶ “The Attorney General is the public prosecutor and, by himself, a deputy or assistant, shall: (a) conduct on behalf of the government of Guam the prosecution of all offenses against the laws of Guam which are prosecuted in any of the courts of Guam, the District Court of Guam, and any appeals therefrom...” (emphasis added by counsel).

⁷ “No law shall be enacted in Guam respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition the government for a redress of their grievances.”

⁸ “No state shall make or enforce any law which shall abridge the privileges and immunities of the 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.”

acquire, dispose of, and govern territory, not the power to decide when and where its terms apply.”). The Order failed to apprise them of the urgent need to replace counsel.

Here, the Supreme Court infringed the People’s constitutional due process rights when it failed to appoint or otherwise direct the appointment of substitute counsel. The court disqualified the only agency empowered to prosecute criminal offenses and then failed to give such notice to the “People,” a term this Court has defined as encompassing “all members of the political community, not an unspecified subset.” *See District of Columbia v. Heller*, 554 U.S. 570, 580 (2008); *see also* Nathaniel Persily & Josh Douglas, *The Meaning(s) of “the People” in the Constitution*, 126 Harv. L. Rev. 1072, 1990 (2013) (due process and equal protection clauses refer to “person”). The People have a vested interest in the prosecution of corrupt public officials.

It also unconstitutionally deprived the People of the statutory right to appeal the Superior Court’s Decision and Order. *See* U.S. Const. amend XIV § 1, *see also* 48 U.S.C. §§ 1421b(u) and 48 U.S.C. § 1421b(a). Where a statute “... grants [the constitutional right to appellate review], it becomes a matter of federal concern under the equal protection clause of the Fourteenth Amendment, requiring uniformity of opportunity to

appeal. [U.S. Supreme Court decisions omitted].” *Sierra Melendez v. Rivera Brenes*, 331 F. Supp. 898, 900-901 (D. Puerto Rico 1971). The People appealed pursuant to 8 G.C.A. §§ 130.20(a)(5) and 130.40 and that local statute must be interpreted consistent with the due process clause and the equal protection clause of the Fourteenth Amendment.

Further, the Supreme Court’s orders are in derogation of the Organic Act. If left unreviewed in a federal forum for patent constitutional infirmities, this precedent will undermine the People’s clear interest in the prosecution of corrupt public officials.

II.

The People Have Exhausted all Territorial Remedies

The People have exhausted all territorial remedies. Following the January 15, 2026 disqualification, the Attorney General took steps to mitigate any harm to the People’s interest:

First, it timely filed the People’s Motion for Extension of Time to File a Motion for Rehearing of the January 15, 2026 Order. The Supreme Court promptly struck it on the grounds the Attorney General had been disqualified. It further ruled that it would “not entertain further filings from disqualified counsel.” See Supreme Ct. Guam Order (Jan. 29, 2026) at 4 (“**Exhibit C**”).

Second, even though it was not directed to find or appoint substitute counsel, the Attorney General advertised the need for a “conflict-free substitute counsel.” He subsequently, and well before the dismissal of the appeal, filed (solely on behalf of his constitutional office) a Notice of Compliance with the Supreme Court of Guam, indicating that no attorney had stepped forward to serve as substitute counsel. (“**Exhibit D**”).

Third, left with no further territorial review, on March 25, 2026, the Attorney General filed a Verified Petition for Writ of Prohibition against the Supreme Court in the District Court of Guam seeking an alternative writ of prohibition requiring it to show cause why it should not be absolutely and forever restrained and prohibited from frustrating the People’s constitutional rights. *See Attorney General of Guam v. Supreme Court of Guam*, District Court of Guam Case No. 1:26-cv-00008. This collateral action is not an impermissible appeal from the Supreme Court but an effort to exhaust all possible remedies before seeking this Court’s intervention. To date, the District Court of Guam has entered no orders on the merits.

Fourth, this application and the forthcoming petition for certiorari exemplify the Attorney General’s continued effort to avert

having this serious disenfranchisement of the People take root by evading proper review. Pursuant to 48 U.S.C. § 1424-2, a petition for certiorari may be filed within 90 days of a final decision or inaction by the Supreme Court of Guam. That deadline is set to expire on May 20, 2026 unless the Court extends it.

III.

This Case Implicates the Constitutional Rights of the People to be Represented by their Elected Attorney General in Criminal Prosecutions

This case concerns the constitutional limits of state and territorial courts in the disqualification of prosecuting authorities with exclusive or concurrent enumerated and/or common law powers in criminal prosecutions brought on behalf of “the People.” The resolution of this question would have wide applicability to all states and territories. Three states and all five U.S. territories designate their Attorney General as the primary or sole prosecutor. See Bureau of Justice Statistics (May 2020). *Jurisdiction of State Attorneys General Offices over White-Collar Crime*, 2014. U.S. Department of Justice. <https://bjs.ojp.gov/content/pub/pdf/jsagowcc14.pdf>. (“Of the 46 [states] responding to questions about jurisdiction, 42 reported having original or shared criminal jurisdiction with local prosecutors over white-collar

crime [including public corruption] in 2014.”).

Here, the Supreme Court disenfranchised the People when it removed their elected public prosecutor, who under local law possesses the exclusive power to prosecute criminal offenses, and then neglected to address how a substitute would qualify or even be appointed under existing local law, the Organic Act, and the U.S. Constitution.

Attorney Generals in the U.S. possess common law (unless expressly abrogated or restricted) and enumerated powers, allowing for criminal prosecutions with a significant degree of autonomy. See *State of Florida ex. rel. Shevin v. Exxon Corp.*, 526 F.2d 266, 268-269 (5th Cir. 1976), *cert. den.*, *Standard Oil Co. v. Florida*, 429 U.S. 829, 97 S. Ct. 88, 50 L.Ed.2d 92 (1976).⁹ An attorney general elected by the People enjoys broader discretion still. See *State ex rel. Shevin v. Yarborough*, 257 So.2d 891, 895 (Fla. 1972) (Ervin, J., concurring).¹⁰

Douglas B. Moylan is the current democratically-elected Attorney

⁹ “Their duties and powers typically are not exhaustively defined by either constitution or statute but include all those exercised at common law. [citation omitted]. ... [H]e typically may exercise all such authority as the public interest requires. [citation omitted]. And the attorney general has wide discretion in making the determination as to the public interest. [citation omitted].”

¹⁰ “The Attorney General is elected by the people; he is entrusted by them with the common law power to legally represent them or some of them in matters deemed by him to affect the public interest... Regardless of the effectiveness of his efforts in particular public legal situations, at least the people have the continuing satisfaction of knowing that their elected Attorney General has the right to exercise his conscientious official discretion to enter into those legal matters deemed by him to involve the public interest, even though not expressly authorized by statute.”

General of Guam, a constitutional office created by the United States Congress. See 48 U.S.C. § 1421g(d) (“Chief Legal Officer of the Government of Guam.”). In 1998, Congress authorized via amendment the Legislature of Guam to make it an elected office. See 48 U.S.C. § 1421g(d)(2) (“Instead of an appointed Attorney General, the legislature may, by law, provide for the election of the Attorney General of Guam ...); see also 5 G.C.A. § 30101 (“The Office of the Attorney General of the government of Guam shall be administered by the Attorney General of Guam, who shall be elected by the people of Guam for a term of four (4) years.”) (emphasis added by counsel). As noted, *supra*, 5 G.C.A. §§ 30104 and 30109(a) designate the Attorney General as the entity exclusively¹¹ tasked with the prosecution of offenses and any appeals therefrom.

IV.

Good Cause Exists for Granting This Motion to Extend Time

Absent an extension of time, the petition for certiorari is due May 20, 2026. The jurisdiction of this Court rests upon 28 U.S.C. § 1257(a) and 48 U.S.C. § 1424-2. On information and belief, this request is opposed by the Respondents.

¹¹ On May 28, 1999, the Legislature of Guam unanimously passed Guam P.L. No. 25-44 rejecting the establishment of an Office of Public Prosecutor instead delegating the exclusive power and duty to prosecute all criminals to the Attorney General. On June 9, 1999 former Governor Carl T.C. Guterrez signed it into law.

Good cause exists for the requested extension.

First, primary responsibility for preparing the petition for certiorari has been assigned to undersigned counsel whose office (and home) has been adversely impacted by the aftermath of Super Typhoon Sinlaku which recently struck Guam and neighboring islands. Support staff also continue to be affected.

Second, undersigned counsel faces significant pre-existing professional obligations in federal court over the next several weeks, including briefing in other complex civil matters. The combination of those obligations, the lingering effects of Super Typhoon Sinlaku, and the assignment of the preparation of this writ combine to make it impracticable to prepare a high-quality petition by May 20, 2026.

Three, without this Court's intervention, the issues described above will evade review as the Supreme Court of Guam continues to prohibit the elected Attorney General's participation in this criminal appeal in territorial courts and perhaps in federal courts through potential disciplinary referrals to Guam's Regulatory Counsel as intimated in its January 29, 2026 Order. The Attorney General, acting on behalf of the People, has exhausted all territorial remedies and has even sought a writ of prohibition from the District Court of Guam which remains stalled. On

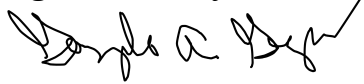
May 5, 2026, the Chief Judge recused herself. Again, without this Court's intervention, the rights of the People to be represented by their elected federal constitutional officer in criminal prosecutions will be erased without judicial review of any kind.

For these reasons, the Applicants respectfully request that the time to file a petition for a writ of certiorari be extended by 60 days, to and including July 17, 2026.

May 8, 2026

Respectfully submitted,

OFFICE OF THE ATTORNEY GENERAL
Douglas B. Moylan, Attorney General of Guam



GONZALO ALBERTO GAYOSO
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CERTIFICATE OF SERVICE

I certify that on May 8, 2026 a copy of this application was served by email and hand-delivery to the counsel listed below in accordance with Supreme Court Rule 22.2 and 29.3:

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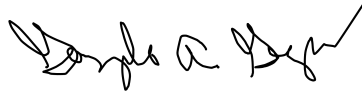
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