

No. _____

In the
Supreme Court of the United States

JORGE AVALOS,

Applicant,

v.

UNITED STATES OF AMERICA,

Respondent.

**ON APPLICATION FOR AN EXTENSION OF TIME
TO FILE A PETITION FOR A WRIT OF CERTIORARI**

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**APPLICATION FOR EXTENSION OF TIME TO FILE
PETITION FOR WRIT OF CERTIORARI**

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

Pursuant to Title 28, United States Code, Section 2101(c), and Supreme Court Rule 13, this application is hereby made by Jorge Avalos for a 30-day extension of time within which to file a petition for a writ of certiorari, from August 4, 2026, to and including September 3, 2026.

I. JURISDICTION

The court of appeals entered its judgment on December 17, 2025, and denied rehearing en banc on May 6, 2026. Absent an extension, the deadline for filing this petition will be August 4, 2026. This application is being filed on July 17, 2026, more than ten days before the petition is due. *See* S. Ct. R. 13.5. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1).

II. JUDGMENT AND FINAL ORDER TO BE REVIEWED

The opinion of the court of appeals is reported at *United States v. Avalos*, 162 F.4th 948 (9th Cir. 2025), and attached, *see* App. A at 1. The court's order denying rehearing is unreported and attached. *See* App. B at 25.

III. REASONS JUSTIFYING REQUEST FOR EXTENSION OF TIME

1. This case concerns whether non-immigration-judge officials making the final decision about a person's removal are inferior officers subject to the Appointments Clause. It addresses the role of a "deciding Service officer," 8 C.F.R.

§ 238.1(a), who makes “the Executive’s *final* determination on the question of removal” within expedited immigration proceedings, *Riley v. Bondi*, 606 U.S. 259, 267 (2025) (emphasis in original). In a published opinion, the Ninth Circuit held that deciding officers “neither occupy a continuing position nor exercise significant authority.” App. A at 17. It thus held that they were not subject to the constraints of the Appointments Clause.

In its opinion, the Ninth Circuit adopted an Appointments Clause rule regarding temporary and part-time officers that conflicts with that of the Second Circuit and the D.C. Circuit. The Ninth Circuit held that “a position is not continuing and permanent where, like the position of special master, the responsibilities of the position are temporary, episodic, and periodic rather than continuous.” App. A at 14. By contrast, all other circuits to address the issue have held that “[t]emporary [p]ositions [c]an [b]e [o]ffices” under the Appointments Clause.” *United States v. Donziger*, 38 F.4th 290, 296 (2d Cir. 2022); *accord Ass’n of Am. Railroads v. U.S. Dep’t of Transp.*, 821 F.3d 19, 36–39 (D.C. Cir. 2016); *The Test for Determining “Officer” Status Under the Appointments Clause*, 49 Op. O.L.C. ___, slip op. at 6 (Jan. 16, 2025).

The opinion also held that a bureaucrat’s final decision that a person should be removed does not involve the Executive’s function of “significant authority.” App. A at 24. It reasoned that a deportation decision is not an act of “significant authority” because the determination that a person is not a citizen, and that the person’s conviction meets the definition of an aggravated felony, is

“straightforward.” App. A at 23. This holding now applies to all expedited immigration proceedings that are, by design, subject to infrequent and limited judicial review—within a circuit that handles two-thirds of all immigration appeals nationwide. *See* Administrative Office of the U.S. Courts, Judicial Business 2025 Table B-3, at 1, 9.

2. Additional time is needed so that counsel can adequately prepare the petition for certiorari. Counsel is an appellate attorney at the Federal Defenders of San Diego, Inc., a community defender organization. Counsel has a number of other time-sensitive obligations, including the drafting and filing of four opening briefs in the Ninth Circuit within the next two months. Counsel also has over a dozen pending 28 U.S.C. § 2241 habeas cases in the Southern District of California. Since the start of the 2026 calendar year, counsel has been assigned approximately ninety § 2241 habeas cases on top of her existing appellate case load.

3. Additional time is also needed so that counsel can coordinate with her supervisor, Chief Appellate Attorney Vincent J. Brunkow, to prepare an effective petition. Mr. Brunkow directly supervises seven appellate attorneys, sits on the management team for Federal Defenders of San Diego, and maintains appeals of his own. The requested extension will ensure that Mr. Brunkow has sufficient time to assist in preparing the petition.

For these reasons, Applicant Jorge Avalos requests this Court grant this application to extend the time to file a petition for a writ of certiorari, by 30 days, to and including September 3, 2026.

Respectfully submitted,

Date: July 17, 2026



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