
No. ____

In the
Supreme Court of the United States

Francisco Ortiz Colón,
Petitioner,
v.
United States of America,
Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
For the First Circuit

Application for Extension of Time
to File Petition for a Writ of Certiorari

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Application for Extension of Time
to File Petition for a Writ of Certiorari
(28 U.S.C. §2101(c): Supreme Court Rules 13.5, 22, 30.3)

To the Honorable, Ketanji Brown Jackson, Associate Justice of the Supreme Court of the United States and Circuit Justice for the First Circuit.

Petitioner, by his counsel, respectfully makes an application pursuant to 28 U.S.C. § 2101(c), and Supreme Court Rules 13.5 and 22, to extend the time in which to file a petition for writ of certiorari from the judgment entered by the United States Court of Appeals for the First Circuit from August 6, 2022, to and including September 6, 2026. A copy of this Application was sent by email to : SupremeCtBriefs@usdoj.gov on July 23, 2026 who responded that there was no objection to the request for extension.

Basis for Jurisdiction

On May 6, 2026, the First Circuit affirmed the petitioner's conviction and the sentence pertinent to this Application in n *United States v. Ortiz-Colón*, 178 F.4th 1, 2026 WL (1st Cir. May 6, 2026), . No petition for panel rehearing and/or rehearing en banc was filed.¹ This Court has jurisdiction pursuant to 28 U.S.C. §1254(1).

Judgment Sought to be Reviewed

¹ The Court of Appeals found that sentences on two counts charging offenses not the subject of this appeal (that is, Counts 12 and 13, charging violation of 18 U.S.C. §2252(A)(a)(2) and 2252A(5)(B), violated the Fifth Amendment prohibition of Double Jeopardy and remanded to the District Court which, on May 29, 2026, entered an Amended Judgment, merging Count 13.

Mr. Ortiz Colón was charged in a nineteen-count indictment, in part pertinent to this Application, sixteen of those counts charged him with one count of violation of 18 U.S.C. §2242(b) and one of 18 U.S.C. §2251, for each of eight minors from whom the jury found he demanded sexually explicit photographs or videos.

18 U.S.C. § 2422(b) prohibits attempting to persuade a minor “to engage in . . . any sexual activity for which any person can be charged with a criminal offense.” For each of those minors, the count charging a violation of 18 U.S.C. §2422(b) incorporated the operative language of 18 U.S.C. 2251(a). That is, “to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct”. App. 59-73. Each of those §2242 counts was followed by a separate count charging violation of §2251 during the same period alleged with respect to that minor in the §2242 count.

Following a seven-day trial, the jury convicted Mr. Ortiz Colón on all nineteen counts of the indictment, including the duplicative counts of §§2422(b) and 2251(a). On May 23, 2023, he was sentenced, pertinent part, to 30 years in prison on each of those charges, to be served concurrently.

On May 6, 2026, a panel of the First Circuit rejected the argument that §2251 served as a lesser included offense of §2422(b) and thus violated Double Jeopardy. The First Circuit found that even when the counts charging violation of 18 U.S.C. §2422(b) specifically included enticement of the same minor, during the same period, in the operative language of §2251(a), conviction and sentence for both counts did not violate the Fifth Amendment protection against Double Jeopardy.

“His conduct can establish the required elements of the production of child pornography offense *while also serving as an element* in proving the coercion or enticement of a minor.” 178 F.4th 1, *32. Emphasis supplied. It nonetheless distinguished the elements of the two statutes, citing *Blockburger v. United States*, 284 U.S. 299, 304 (1932) and *Barrett v. United States*, 146 S. Ct. 482, 491 (2026). It found the “visual depiction” element missing from 18 U.S.C. §2242(b) and “any sexual activity for which any person can be charged with a criminal offense” a fact “immaterial to proving the elements of the production offense.” *Id.* at 23-1508 at *52-53.

It reached the same result as three other circuits: the Sixth, in *United States v. Hart*, 635 F.3d 850 (2011), the Tenth, in *United States v. Isabella*, 918 F.3d 816 (2019) and the Eleventh, in *United States v. Sanchez*, 30 F.4th 1063 (2022). But those cases identify different non-congruent elements, and in other procedural contexts, other circuits define the elements of the offenses differently, resulting in an intolerable degree of uncertainty and conflict among the lower courts regarding the elements of these frequently used statutes, each with mandatory minimum sentences of a decade or more.

The disagreement about the relation between these two frequently used statutes is long-standing. It involves fundamental questions about the elements of each statute. This includes whether the underlying “sexual activity for which any person can be charged with a criminal offense” is an incorporated element, or merely

a means of violating §2242(b), and whether the additional verbs “employs” and “uses” in §2251(a) are separate elements, making it broader than §2422(b)(with which it shares “persuades, induces, entices, or coerces”), or merely alternative means of violating it.²

Reasons to Justify a 30-Day Extension

Mr. Ortiz Colón seeks a 30-day extension of time to file his petition for writ of certiorari for the following reasons:

Thorough research and concise analysis of the different Circuit’s approaches and conclusions regarding what, exactly are the elements of each of these statutes, have been extremely time-consuming, and are continuing.

During the period allowed for the filing of the Petition in this case, in addition to routine matters in pending civil and criminal cases, counsel Backiel, a sole practitioner who represented Mr. Ortiz Cintrón on appeal, fully litigated two

² See, e.g., *United States v. Berk*, 652 F.3d 132, 139, n. 7 (1st Cir. 2011)(noting circuit division but declining to resolve the issue); *United States v. Hart*, *supra* (underlying state law a mere means of violating §2422), distinguishing *United States v. Mannava*, 565 F.3d 412 (2009)(holding that offense of which defendant “could be charged” is incorporated in that element of §2422)(raised as jury unanimity issue); *United States v. Isabella*, 918 F.3d 816 (2019)(finding five elements for each statute; §2251 is broader because it includes verbs “use, employ” while §2242(b) does not; *United States v. López*, 7 F.4th 706, 426 (9th Cir. 2021), r (underlying offense is not an essential element of §2422 because it is “its own offense” relying upon local standards), but noting that its Manual of Model Criminal Jury Instructions requires identification of the underlying offense. Over the dissent of Judge Bennett from the panel opinion, and from denial of the *en banc* petition, the *Lopez* majority disagreed with *Mannava* but noting that the Eighth and Second have not addressed the question.

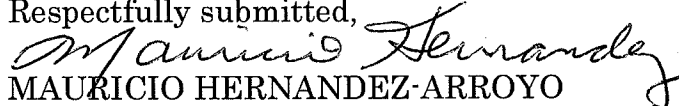
petitions for certiorari to judgment in Puerto Rico's Court of Appeals, opposed a summary judgment motion in an adversary proceeding in bankruptcy,³ prepared a Rule 33 motion based upon this Court's decision in *United States v. Olewasegun Baiyewu*, 21-cr-395 (RAM)(sentencing scheduled for August 7, 2026) as well preparing as post-conviction motions in two cases involving (a) a life without release sentence (*United States v. Lorenzo Catalán*, 02-cr-117 (PAD) and (b) a sentence of fifty-five years (*United States v. José Manual Zavala Marti*, 07-318(2)(FAB).

For the foregoing reasons, a 30-day extension to September 3 is respectfully requested.

This motion is brought pursuant to Rule 39.1 of the Rules of the Supreme Court of the United States.

DATED: July 23, 2026,

Respectfully submitted,


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³ *JNMV et al v. Estado Libre Asociado de Puerto Rico, et al.*, TA2026CE00263, *Piero Pandolfi Rinaldis v. ABB Installation Products, Inc.*, TA 2026CE00546, *In Re: Daniel Lopez Del Valle, Fernando Aponte Aviles V. Daniel Lopez Del Valle; Roberto Roman Valentin, Chapter -7-Trustee*, No. 24-4580 (Adversary Proceeding).

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