

No. _____

In the Supreme Court of the United States

STATE OF NEW MEXICO,
Petitioner,

v.

SAMUEL NEAL,
Respondent.

APPLICATION FOR AN EXTENSION OF TIME TO PETITION FOR A WRIT
OF CERTIORARI TO THE NEW MEXICO SUPREME COURT

To the Honorable Neil M. Gorsuch,
Associate Justice of the Supreme Court of the United States and
Circuit Justice for the Tenth Circuit

RAÚL TORREZ
Attorney General

ALETHEIA V.P. ALLEN
Solicitor General
Counsel of Record

VAN SNOW
Deputy Solicitor General

New Mexico Department of Justice
201 Third Street NW
Suite 300
Albuquerque, NM 87102
vsnow@nmdoj.gov
505-717-3500

Counsel for Petitioner

To the Honorable Neil M. Gorsuch, Circuit Justice for the United States
Court of Appeals for the Tenth Circuit:

The State of New Mexico respectfully requests a 30-day extension of time,
until August 5, 2026, to file a petition for a writ of certiorari in this matter.

The New Mexico Supreme Court entered its judgment on April 6, 2026.
Without extension, the State's petition will be due on July 6, 2026. *See* S. Ct. R. 30.1
(providing that, when the last day of a period would fall on a weekend, the deadline
extends until the following ordinary Monday).

This Court has jurisdiction under 28 U.S.C. §1257(a).

BACKGROUND

Respondent, Samuel Neal, kidnapped, beat, and raped a woman he had just
met, M.A. A jury found him guilty of several crimes, including first-degree
kidnapping, criminal sexual penetration (CSP), and aggravated battery.

On appeal, the New Mexico Court of Appeals held that punishing Neal for
kidnapping, CSP, and aggravated battery placed him twice in jeopardy; it held that
the crimes were all the same offense. The State petitioned for certiorari, asking the
New Mexico Supreme Court to bring its multiple punishment analysis in line with
that used by federal courts and the large majority of sister states.

The New Mexico Supreme Court declined to change its approach and held that
the kidnapping and the CSP were the same offense for double jeopardy purposes. It
reached this conclusion after considering the evidence at trial, the prosecutor's closing
argument, the jury instructions, and the charging document. It examined some indica

of legislative intent, but only as an afterthought to see if the New Mexico Legislature had clearly authorized multiple punishment under the State's trial theory.

REASONS FOR GRANTING AN EXTENSION OF TIME

This case presents an unresolved question in a complex area of law. After this Court's decision in *United States v. Dixon*, 509 U.S. 688 (1993), courts agree that the same-elements test from *Blockburger v. United States*, 284 U.S. 299 (1932) is the primary tool used to identify when two crimes are the same offense in the multiple punishment context. But they have split over which elements the *Blockburger* test should consider: some courts look to the elements as alleged in the charging document while others only consider the involved statutes at their most abstract. The New Mexico Supreme Court's unique approach, looks to the evidence and argument at trial to determine whether one crime was subsumed within another. Deciding which approach is right will resolve the question which split the majority in *Dixon*.

In addition, counsel are simultaneously representing the State of New Mexico in various forums. For example, Ms. Allen is representing the State's interests in proceedings related to a proposed acquisition of a major state power utility. She also sets the strategy for litigation in courts around the country, including the Ninth and Tenth Circuit Courts of Appeals, and is actively involved in drafting. Mr. Snow will be filing an answer brief with the New Mexico Court of Appeals as well as a response to a petition for writ of certiorari in the New Mexico Supreme Court. He is also involved with a large number of state appellate and postconviction proceedings. Both counsel supervise many subordinates. Given these competing obligations, an

extension will permit counsel to thoroughly present the important question in this case for this Court's consideration. Counsel for Respondent opposes this application.

CONCLUSION

For the foregoing reasons, the State of New Mexico's application for a 30-day extension of time to and including August 5, 2026 for which to petition for certiorari in this matter should be GRANTED.

June 24, 2026



Van Snow
Deputy Solicitor General



Aletheia V.P. Allen
Solicitor General
Counsel of Record

New Mexico Department of Justice
201 Third Street NW, Suite 300
Albuquerque, NM 87102
vsnow@nmdoj.gov
505-717-3500