

Application No. \_\_\_\_\_

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In the Supreme Court of the United States

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MAXIMO DIAZLEAL-DIAZLEAL,

Petitioner,

JAMES KEY,

Respondent.

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On Application for Extension of Time to File a Petition for Writ of  
Certiorari to the United States Court of Appeal for the Ninth Circuit

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PETITIONER'S APPLICATION FOR EXTENSION OF TIME  
TO FILE PETITION FOR WRIT OF CERTIORARI

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Maximo DiazLeal-DiazLeal,  
Petitioner Pro Se, DOC No: 392405  
Airway Heights Corrections Center  
P.O. box 2049 / L-A-41U  
Airway Heights, WA 99001-2049

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

Petitioner Maximo Diazleal-DiazLeal, Now pro se, respectfully requests that the time to file a petition for writ of certiorari in this matter be extended for 30 or 60 days up to and including May 30, 2024. The Ninth Circuit issued its opinion denying appellant's 28 U.S.C. § 2254 habeas petition and subsequent Federal Rule of Civil Procedure 59(e) Motion for Consideration on March 1, 2024. See APPENDIX-A. This request is made pursuant to Rules 13.5 and 30.2 of this Court. Mr. DiazLeal-DiazLeal and the Respondent were the only two parties in this direct appeal, and Mr. DiazLeal-DiazLeal is the only party requesting an extension of time. The petition is presently due May 30, 2024. In support of his Motion, petitioner DiazLeal states as follows:

1. The Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).
2. The Order of the Ninth Circuit Court of Appeals in Maximo DiazLeal-DiazLeal v. James Key, COA No. 23-35472, denying request for a Certificate of Appealability and Motion for recommendation on March 1, 2024, is attached as App. A.
3. Mr. DiazLeal-DiazLeal seeks a 30 or 60 day extension of time in which to file his petition for writ of certiorari, from July 30, 2024, up to and including May 30, 2024.
4. As good cause for his application, Mr. DiazLeal-DiazLeal cites the following factors as support for his requested extension:

- a. While the attached Order is short, the underlying trial was lengthy, the appellate record and briefing in the Western District Court of Washington, Seattle, was voluminous, and the matter presents complicated issues concerning Sufficiency of Evidence as a matter of federal law. *Coleman v. Johnson*, 566 U.S. 650, 655 (2012); *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). Preparations of the petition for writ

of Certiorari requires Mr. DiazLeal-DiazLeal to find a prison inmate knowledgeable in the legal process, who also speaks spanish, and willing to assist petitioner in the preparation of the writ of certiorari, as Mr. DiazLeal-DiazLeal's court appointed attorney, Ann K. Wagner, Assistant Federal Public Defender abandoned Mr. DiazLeal on April 26, 2024, despite Mr. DiazLeal repeatedly requesting to proceed to this Honorable U.S. Supreme Court via a writ of certiorari. Federal Public Defender Wagner, in a letter containing sample legal pleadings, advised petitioner to Plagiarize the sample Cert. Petition and Motion to Extend the Time to file a Certiorari Petition, with a departing "Good Luck." <sup>1</sup>.

Preparation of the petition for writ of certiorari will also require additional time and analysis concerning the framing of the issues and construction of an effective presentation by a pro se litigant. It is expected that the petition for certiorari will present the following issues:

1. Sufficiency of the Evidence claims are inherently a matter of Federal Law.
2. Vouching for a witness is a Sixth Amendment violation, and an unreasonable determination of the facts.

Reasons offered to grant the Writ will include: (a). That the federal District Court Judge made a manifest error of law by failing to conduct de novo review of the Magistrate's Report and Recommendation (R & R) to which

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1. **Criminal Justice Act**, 18 U.S.C. §§ 3006A (a)(2)(B), 18 U.S.C. § 3599 (a)(2). (formally codified at 21 U.S.C. § 848 (q)(5-8))("when a district court appoints counsel, the appointment 'extends throughout any proceedings in the Supreme Court.'" (quoting FHCPP)). "Unless replaced by similarly qualified counsel upon the attorney's own motion or upon motion of the defendant, each attorney so appointed shall represent the defendant throughout every subsequent stage of available judicial proceedings, including....'applications for writ of certiorari to the Supreme Court of the United States'...." 21 U.S.C. § 848 (q)(8).

petitioner objected, as required by 28 U.S.C. § 636 (b)(1). The Court further manifestly erred by basing much of its reasoning on Federal Rule of Civil Procedure 72 (b). See DKT. 44 at 2. ("A party properly objects by timely filing "specific written objections" to the magistrate judge's R & R as required under Federal Rule of Civil Procedure 72(b)(2).") The advisory notes to FRCP 72(b) specifically state,

Subdivision (b). This subdivision governs court-ordered referrals of dispositive pretrial matters and prisoner petitions challenging, conditions of confinement, pursuant to statutory authorizations in 28 U.S.C. § 636(b)(1)(B). This rule does not extend to habeas corpus petitions, which are covered by specific rules relating to proceedings under Sections 2254 and 2255 of Title 28.

**Rule 72 advisory committee's note to 1983 addition. (emphasis added).**

Relying on a rule that facially inapplicable to the case according to binding Ninth Circuit precedent is a manifest error of law. Cavanaugh v. Kincheloe, 877 F.2d 1443, 1449 (9th Cir. 1989)("Rule 72(b) does not apply to habeas corpus petitions filed under 28 U.S.C. § 2254); Nara v. Frank, 488 F.3d 187, 195 (3rd Cir. 2007)("The relevant civil procedure rule, however, is inapplicable to habeas corpus cases. Fed R. Civ. P. 72(b) advisory committee's note (2007)"). The District Court Judge therefore declined to perform "a de novo review of the portions of the R & R to which a party objects." (quoting 28 U.S.C. § 636 (b)(1)). Notably, neither party had addressed the "merits of [DiazLeal-DiazLeal's Sufficiency] claim" before the R & R was issued, so the related legal arguments were never "previously presented." (b). **The denial of a Certificate of Appealability (COA) by the District Court and the Ninth Circuit Court of Appeals denied Diazleal-Diazleal's due process rights and should have granted a certificate of appealability under the proper legal standard. In**

order to obtain a certificate of appealability, the petitioner must make a "substantial showing of the denial of a Constitutional right." 28 U.S.C. § 2253(C)(2). As explained by the Ninth Circuit precedent in Jennings v. Woodford, 290 F.3d 1006 (9th Cir. 2002), the Substantial Showing is "relatively low." Id at 1011. Moreover, "[t]he court must resolve doubts about the propriety of a COA in the petitioner's favor." Id. (citing Lambright v. Stewart, 220 F.3d 1022, 1025 (9th Cir. 2000)(en banc)).

Accordingly, Mr. Diazleal-Diazleal need not have shown that he would have prevailed don the merits. Lambright, 220 F.3d at 1025. Rather, resolving any doubts in his favor, the Court of Appeals should have simply asked whether Mr. Diazleal-Diazleal met the "Modest Standard," id. at 1024, that the issue was debatable amongst jurist of reason" or deserved "encouragement to proceed further." Miller-El v. Cockrell, 537 U.S. 322, 326 (2003). Because petitioner Diazleal-Diazleal has made a substantial showing of the denial of his Due Process rights, the District Court and the Ninth Circuit Court of Appeals should have granted a Certificate of Appealability.

5. This Motion is made in the interest of justice and not for the purpose of delay. The combination of the complexity of the issues in this case, the Abandonment of Court Appointment of Counsel, the search for a prison inmate willing to help petitioner in preparing the petition, who speaks spanish establishes good cause for a 30-60 day extension of time.

WHEREFORE, petitioner Diazleal-Diazleal requests this Court grant him an extension of time up to July 30, 2024, and including May 30, 2024, in which to file his petition for writ of certiorari.

Respectfully Submitted

Maximo Diazleal Diazleal

MAY, 28, 2024.

A P P E N D I X - A

1. Order denying Certificate of Appealability March 1, 2024

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

FILED

MAR 1 2024

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

MAXIMO DIAZLEAL-DIAZLEAL,

Petitioner-Appellant,

v.

JAMES KEY, Superintendent,

Respondent-Appellee.

No. 23-35472

D.C. No. 2:21-cv-00068-JCC  
Western District of Washington,  
Seattle

ORDER

Before: OWENS and COLLINS, Circuit Judges.

This appeal is from the denial of appellant's 28 U.S.C. § 2254 petition and subsequent Federal Rule of Civil Procedure 59(e) motion.

Appellant's unopposed motion to file under seal the unredacted request for a certificate of appealability (COA) (Docket Entry No. 2) is granted. The Clerk will file publicly the motion to seal (Docket Entry No. 2-1). The Clerk will file under seal the unredacted request for a COA (Docket Entry No. 2-2). The redacted request has been filed at Docket Entry No. 3.

The request for a COA (Docket Entry Nos. 2-2 & 3) is denied because appellant has not shown that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also* 28

U.S.C. § 2253(c)(2); *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012); *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003); *Martinez v. Shinn*, 33 F.4th 1254, 1261 (9th Cir. 2022), *cert. denied*, 143 S. Ct. 584 (2023).

Any remaining motions are denied as moot.

**DENIED.**



A P P E N D I X - B

1. Letter of abandonment by Federal Court Appointed Attorney, asking this Petitioner to plagiarize sample of motion to extend time and writ of certiorari to the United States Supreme Court.

**FEDERAL PUBLIC DEFENDER**  
**Western District of Washington**

April 26, 2024

**SPECIAL MAIL**  
**ATTORNEY/CLIENT CORRESPONDENCE**  
**OPEN ONLY IN THE PRESENCE OF THE PRISONER**

Maximo Diazleal-Diazleal  
DOC No.: 392405  
Airway Heights Correction Center (AHCC)  
P.O Box 2049  
Airway Heights, WA 99001-2049

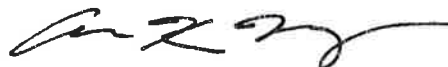
Dear Mr. Diazleal-Diazleal:

As I stated in our call today, the deadline to file a cert petition is May 30, 2024. Enclosed is an example of a cert petition from a case called *Group v. Robinson*. It was from a death penalty case so don't use the phrase "capital case" on the cover, but in other respects it is similar to yours (it was also a petition from the denial of a "certificate of appealability").

I am also including a motion to extend the time to file a cert petition from a case called *Cox v. United States* and the 9th Circuit and district court briefs I wrote in your case.

Good luck.

Sincerely,



Ann K. Wagner

IN THE SUPREME COURT OF THE UNITED STATES

MAXIMO DIAZLEAL-DIAZLEAL,  
Petitioner,

vs.

JAMES KEY,  
Respondent.

Case No: \_\_\_\_\_  
U.S.C.A. No. 23-35472  
U.S.D.C. No. 2:21-cv-00068-JCC

PROOF OF SERVICE

I, the undersigned, say:

1) I am over the age of eighteen years of age, an incarcerated inmate, and a party in the within action, and my address is: Airway Heights Corrections Center, 11919 W. Sprague Avenue, P.O. Box 2049, Airway Heights, WA 99001-2049:

2) I mailed an original copy of the petitioner's pro se Application for Extension of Time to File Petition for Writ of Certiorari to the United States Court of Appeal for the Ninth Circuit;

3) I served the within on the Clerk for the United States Supreme Court by placing the manila envelope containing said Application in this prison's internal legal mail system to:

THE CLERK,  
The Supreme Court of the United States  
1 First Street, N.E.  
Washington, DC 20543

4) I Maximo Diazleal-Diazleal caused to be delivered to the same Clerk of the United States Supreme Court, and the same were delivered and deposited in the prison's internal legal mail system, first class posatage, at Airway Heights, Washington, on May 28, 2024.

I certify that the foregoing is true and correct.  
Executed on May 28, 2024 at Airway Heights Corrections Center, Airway Heights, Washington.

*Maximo Diazleal-Diazleal*  
Maximo Diazleal-Diazleal,