NO. _____

In the

Supreme Court of the United States

ANTONIO ULISES BARRERA- MACKORTY,

Petitioner

v.

THE UNITED STATES OF AMERICA,

Respondent

Unopposed Motion for an Extension of Time to File Petition for Writ of Certiorari

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Attorney for Petitioner

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

Petitioner, Antonio Ulises Barrera-Mackorty, respectfully requests a 60-day extension to file a Petition for Writ of Certiorari in this matter. The Court of Appeals entered its unpublished opinion affirming the denial of his appeal on July 29, 2024. (App. 1). Without an extension of time, the writ would be due on Monday, October 28, 2024. Mr. Barrera-Mackorty is not filing this motion 10 days before the deadline, but requests that the Court find that the extraordinary circumstances in this case justify the filing of the unopposed motion at this time. (Supr. Ct. R. 13.5). This Court would have jurisdiction over the judgment pursuant to 28 U.S.C. § 1254.1.

Background

The Ninth Circuit Court of Appeals affirmed the district court's rulings on July 29, 2024. The issues raised on appeal were that 1) 18 U.S.C. § 1425(a) in conjunction with Question 15 of the Naturalization Application Form N-400 are unconstitutionally vague, 2) the district court erred in admitting evidence of Mr. Barrera-Mackorty's prior conviction, and 3) the district court erred in denying Mr. Barrera-Mackorty's motions for judgment of acquittal.

Extraordinary circumstances and good cause exist which justify the granting of counsel's motion.

The attached declaration demonstrates that extraordinary circumstances exist which warrant the filing of this motion four days before the deadline. Since July of 2024, counsel, a chief trial deputy, has had substantial additional duties in her office due to the unexpected resignation of her supervisor in July. She has been occupied supervising approximately 20 attorneys, training the attorneys, and addressing pressing administrative matters. In addition, due to a staffing shortage, she has been required to cover various courtrooms, including the arraignment courtroom, to ensure the proper representation of clients. Moreover, since July of 2024, counsel has been representing four clients on homicide cases, two of which are anticipated to proceed to trial.

There also is good cause to grant the motion for an extension of time. Counsel encountered several obstacles in the submission of her application for the Supreme Court Bar, which is pending. In addition, she needs additional

time to further discuss the petition with Mr. Barrera-Mackorty who speaks Spanish, has limited intellectual ability, and is incarcerated in state prison.

Respectfully Submitted,

Dated: October 24, 2024

CALLIE GLANTON STEELE

DECLARATION OF CALLIE GLANTON STEELE

I, Callie Glanton Steele, hereby declare and state:

1. I am an attorney licensed to practice law in the state of California. I am counsel of record for Antonio Ulises Barrera-Mackorty. I am submitting this declaration in support of his unopposed motion for a 60-day extension of time to file a petition for a writ of certiorari with this court, until December 27, 2024. No previous extensions have been granted.
2. The Court of Appeals entered its unpublished memorandum opinion on July 29, 2024. (App. 1). The petition is currently due on October 28, 2024.
3. I did not submit this request for an extension of time within the 10-day period for several reasons. First, I am a chief trial deputy of a public defender's office and I have had substantial additional duties in my office due to the unexpected resignation of my supervisor in July. Next, I have been occupied supervising approximately 20 attorneys, training the attorneys, and addressing pressing administrative matters. In addition, due to a staffing shortage, I have been required to cover various courtrooms, including the arraignment courtroom, to ensure the proper representation of our clients. Finally, since July of 2024, I have been

representing four clients on homicide cases, two of which are anticipated to proceed to trial.

4. I believed that I needed to be a member of the Supreme Court bar to file documents in this Court. I applied to be a member of the Supreme Court Bar, and my application is currently pending. However, I encountered many obstacles as I prepared to submit my application, including that I completed the application and mailed it to my second sponsor for her signature when I realized that my first sponsor was ineligible due to our familial relationship. As a result, I had to start the process again which caused a delay.
5. Once the petition is drafted, it will take time for me to explain it to my client, who is in state prison, speaks Spanish, and has limited intellectual capacity – he was unable to pass the 3rd grade in Guatemala.

6. On October 23, 2024, I e-mailed Assistant United States Attorneys Andrew M. Roach and Ali Maghaddas, who informed me that the United States Attorney's Office does not oppose my request for an extension.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 24th day of October February, 2024, at Santa Barbara, California.

Callie Glanton Steele

CALLIE GLANTON STEELE

APPENDIX 1

NOT FOR PUBLICATION

FILED

JUL 29 2024

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. ANTONIO ULISES BARRERA-MACKORTY, Defendant-Appellant.	No. 23-50031 D.C. No. 2:19-cr-00404-DMG-1 MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Dolly M. Gee, Chief District Judge, Presiding

Argued and Submitted July 12, 2024
Pasadena, California

Before: IKUTA and NGUYEN, Circuit Judges, and ANELLO,** District Judge.

Antonio Ulises Barrera-Mackorty ("Barrera-MacKorty") appeals his conviction under 18 U.S.C. § 1425(a) for procuring naturalization by means contrary to law. We review a challenge that a statute is unconstitutionally vague

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Michael M. Anello, United States District Judge for the Southern District of California, sitting by designation.

de novo, *United States v. Mincoff*, 574 F.3d 1186, 1192 (9th Cir. 2009), the admission of evidence for abuse of discretion, *United States v. Cox*, 963 F.3d 915, 924-25 (9th Cir. 2020), and a denial of a motion for a judgment of acquittal de novo, *United States v. Aubrey*, 800 F.3d 1115, 1124 (9th Cir. 2015). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

1. Barrera-Mackorty argues that the statute, 18 U.S.C. § 1425(a), together with Question 15[1] of the Application for Naturalization, Form N-400, are unconstitutionally void for vagueness. Specifically, Barrera-Mackorty argues that the statute did not give him notice that he was committing a crime when he answered "no" to Question 15. He contends that because the words "crime" and "offense" are not properly defined in the question, and the context of the other questions in the form imply law enforcement involvement, a person of ordinary intelligence would not realize that his "no" response to Question 15 would be illegal.

We ask whether a person of "ordinary intelligence" would have notice that "the conduct in question is prohibited." *United States v. Parker*, 761 F.3d 986, 991 (9th Cir. 2014); *United States v. Fitzgerald*, 882 F.2d 397, 398 (9th Cir. 1989). Using the "common understanding of the terms of [the] statute," we find that

[1] Question 15 asks: "Have you **ever** committed a crime or offense for which you were **not** arrested?"

§ 1425(a) is not vague. *Fitzgerald*, 882 F.2d at 398. Under these facts, there is no confusion that Barrera-Mackorty's answer to Question 15 should have been "yes." By his guilty plea, Barrera-Mackorty admitted that he committed child molestation, conduct that any person of ordinary intelligence would know is a crime. Additionally, Barrera-Mackorty filled out form N-400 under penalty of perjury. A person of ordinary intelligence would know that lying on Question 15 in order to obtain citizenship is illegal.

2. The district court did not abuse its discretion in admitting evidence of Barrera-Mackorty's prior conviction, despite his willingness to stipulate that he was convicted of a felony offense. When evidence addresses a "number of separate elements," including "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident," a stipulation does not have to be accepted by the government. *See Old Chief v. United States*, 519 U.S. 172, 187, 190 (1997).

Here, evidence of the prior conviction was relevant not only to show that Barrera-Mackorty was convicted of a crime, but also his knowledge and motive. A stipulation here would not be a "full admission of the element of the charged crime in issue" and thus the government need not accept it. *United States v. Allen*, 341 F.3d 870, 888 (9th Cir. 2003). Because the evidence was relevant, the district court did not allow any "potentially inflammatory details" to be admitted, and it

gave a limiting instruction, any prejudice did not substantially outweigh the probative value of such evidence here. *See United States v. Mende*, 43 F.3d 1298, 1302 (9th Cir. 1995).

3. Finally, the district court did not err in denying Barrera-Mackorty's motions for a judgment of acquittal based on insufficient. We "view[] the evidence in the light most favorable to the prosecution" then determine whether "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *United States v. Nevils*, 598 F.3d 1158, 1163-64 (9th Cir. 2010). We find that there was sufficient evidence that Barrera-Mackorty knowingly made a false statement in violation of § 1425(a). Barrera-Mackorty filled out the form at a law firm with assistance, and then it was reviewed by an attorney. Officer Exum also testified that in the interview, he went through form N-400 with Barrera-Mackorty, who did not request an accommodation, did not appear to have trouble understanding any questions, and who passed the English proficiency part of the interview. Further, his ex-wife and foster son both testified that they all spoke English in the home.

AFFIRMED.