

No. _____

IN THE
Supreme Court of the United States

STEVEN CUELLAR,

Applicant,

v.

RANDY GROUNDS, WARDEN,

Respondent.

On Application for an Extension of Time to File Applicant's Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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

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**Counsel of Record*

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

In accordance with this Court's Rules 13.5, 22, 29, 30.2, 30.3, and 33.2, Applicant Steven Cuellar respectfully requests a sixty-day extension of time, through and including September 16, 2024, to file his petition for a writ of certiorari with this Court. The Court of Appeals issued its opinion on April 19, 2024 (Exhibit A). Absent an extension of time, the petition would be due on July 18, 2024. The jurisdiction of this Court is based on 28 U.S.C. § 1254(1). This application is unopposed.

Undersigned counsel understands that under Rules 13.5 and 30.3 of this Court's Rules, extensions of time to file a petition for writ of certiorari must, absent extraordinary circumstances, be submitted at least 10 days before the specified final filing date for the petition. Counsel apologizes to the Court for failing to submit this extension request 10 days in advance of the specified filing date pursuant to Rules 13.5 and 30.3. Counsel accepts full responsibility for the error and apologizes for the lapse. As set forth below, the lapse was caused by an inadvertent calendaring error that was not identified earlier because of unusual circumstances in the weeks preceding the final filing date—namely, the illness of counsel's mother and counsel's unusually heavy case obligations during the week of July 8. Counsel

respectfully requests that this Court grant the extension request in light of these extraordinary circumstances.

Background

This is a non-capital habeas proceeding. This case presents the important question of whether Cuellar’s state criminal trial court violated his federal due process rights when it found without sufficient evidence that he committed the crime at issue (i.e. first-degree murder) under a “special circumstance” identified by California criminal law. Specifically, the trial court found Cuellar, while a juvenile, committed the crime while he “was an active participant in a criminal street gang” in order to “further the activities of the criminal street gang.” *See* Cal. Penal Code § 190.2(a)(22). The finding had serious legal consequences under California law: the finding at minimum required a sentence of life in prison without the possibility of parole and, had Cuellar been an adult, would have rendered him eligible for the death penalty. *See id.*

The trial court’s finding was not supported by sufficient evidence. The evidence presented to the court showed Cuellar was not a gang member. And even the prosecution’s own gang expert—long assigned to the gang to which Cuellar was allegedly a member—had never heard of Cuellar and provided testimony showing Cuellar was *not* a gang member.

Cuellar raised his challenge to the sufficiency of the evidence in a federal habeas petition on July 13, 2012, which the District Court denied on January 6, 2023. The District Court also denied a certificate of appealability on January 6, 2023. Cuellar filed a request for a certificate of appealability with the U.S. Court of Appeals for the Ninth Circuit on May 11, 2023. The Ninth Circuit denied a certificate of appealability on April 19, 2024. Memorandum at 1, *Cuellar v. Grounds*, 9th Cir. No. 23-55118 (Apr. 19, 2024), ECF No. 7.

This application for an extension of time to file a petition for a writ of certiorari now follows.

Reasons for Granting an Extension of Time

Undersigned counsel (“Counsel”) is unable to file Cuellar’s petition for a writ of certiorari by the current deadline of July 18, 2024, or before the requested deadline of September 16, 2024, due to the following competing obligations:

- a. From the time of the Ninth Circuit’s denial of a certificate of appealability in April 2024 to the present day, counsel has spent significant amounts of time preparing for a lengthy and complicated evidentiary hearing in a non-capital habeas matter currently scheduled to take place during the weeks of July 29 and August 5 in California state court. Counsel had no prior

involvement in the case, no prior knowledge of the facts or issues of law, and no prior contact with any anticipated witness.

Counsel has required substantial time to familiarize himself with the sizeable record in that case.

- b. On April 15, counsel was assigned to draft a proposed amicus brief in the Ninth Circuit, on behalf of the federal defender organizations and offices of the Ninth Circuit. After two months of extensive consultation with these other organizations and offices, counsel drafted this brief. On June 13, counsel filed the amicus brief.
- c. On May 2, counsel filed a reply brief on behalf of another client in the Ninth Circuit.
- d. On May 6, after extensively studying the record in another non-capital habeas matter, counsel filed a brief in the Ninth Circuit pursuant to *Anders v. California*, 386 U.S. 738 (1967), summarizing the record and potential arguments in favor of the appellant.
- e. On May 16, counsel filed a motion for stay in the Ninth Circuit for another client's case.
- f. On June 26, counsel filed an opposition to a motion to dismiss for another client in U.S. District Court.

- g. On July 15, counsel presented oral argument in another case before the Ninth Circuit, and spent the preceding week preparing for that argument.
- h. That same day, July 15, counsel compiled and presented his exhibits, exhibit list, and witness list to opposing counsel in preparation for the aforementioned July 29 state court evidentiary hearing. Counsel spent significant amounts of time in the preceding week preparing these exhibits, which required consultation with numerous lay and expert witnesses.

Undersigned counsel acknowledges that this extension request has not been submitted 10 days in advance of the specified filing date, as required by Rules 13.5 and 30.3 of this Court's Rules. The reason for the delay arises from a calendaring error that was not identified earlier because of extraordinary circumstances in the weeks preceding the filing date. The circumstances are as follows:

- a. On April 19, 2024, upon receiving the Ninth Circuit's order denying a certificate of appealability in this matter, counsel mistakenly calculated that the deadline for submitting a petition for writ of certiorari was July 29, 2024 (when in fact, the deadline under this Court's Rules was July 18). Working backward from this incorrect deadline, counsel erroneously calculated that,

under Rules 13.5 and 30.3, any extension request would be due to this Court on July 19 (i.e. 10 days before July 29).

- b. In the succeeding months, because of the case obligations set forth above, counsel was unable to turn to this matter and work on drafting the petition.
- c. Counsel anticipated that his other obligations would allow him a brief window of time during the week of July 1 (including the July 4 holiday), to work on and complete the petition in this matter. But on June 30, counsel's mother was hospitalized and required counsel's care and attention. Counsel was unable to work on this matter during that week.
- d. The following week, the week of July 8, counsel had unusually heavy obligations on two other case matters. Counsel had to both prepare for oral argument in the Ninth Circuit on another case (set for July 15) and prepare witness and exhibit disclosures (due July 15) for his upcoming state court evidentiary hearing. As a result of these other obligations, counsel was unable to prepare the petition in this matter.
- e. On July 8, anticipating that he would require additional time to prepare and file the petition in this matter, counsel contacted Respondent's counsel for Respondent's position on an extension

request. Respondent's counsel represented Respondent had no opposition to an extension request. Hence, counsel planned to submit an extension request after discharging his other case obligations. At this point, counsel still incorrectly believed that the petition was due on July 29 and that any extension request for the petition would be due in this Court on July 19.

- f. On July 17, after addressing his other case obligations, counsel was finally able to turn back to this matter and began drafting a request for an extension of time to file the petition in this Court. But as counsel was preparing the extension request, counsel realized he had erroneously calculated the deadline for submitting a petition in this Court, and that the petition was in fact due on July 18.

Counsel apologizes to the Court for failing to submit this extension request 10 days in advance of the specified filing date pursuant to Rules 13.5 and 30.3. As set forth above, the lapse was caused by an inadvertent calendaring error that was not identified earlier because of unusual circumstances in the weeks preceding the final filing date—namely, the illness of counsel's mother and counsel's unusually heavy case obligations during the week of July 8. Counsel respectfully requests that this Court grant the extension request in light of these extraordinary circumstances.

As noted, Respondent's counsel has informed undersigned Counsel that Respondent is not opposed to this application.

For all for the foregoing reasons, Cuellar respectfully requests a sixty-day extension of time, from July 18, 2024, through and including September 16, 2024, to file a petition for a writ of certiorari with this Court.

Respectfully submitted,

CUAUHTEMOC ORTEGA
Federal Public Defender

DATED: July 18, 2024

By: /s/ Raj N. Shah
Raj N. Shah*
Deputy Federal Public Defender
Attorneys for Applicant
**Counsel of Record*

EXHIBITS

INDEX TO EXHIBITS

Ninth Circuit Order Denying Certificate of Appealability,
April 19, 2024.....Exhibit A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

APR 19 2024

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

STEVEN CUELLAR,

Petitioner-Appellant,

v.

RANDY GROUNDS, Warden,

Respondent-Appellee.

No. 23-55118

D.C. No.

2:12-cv-06036-JFW-KS

Central District of California,

Los Angeles

ORDER

Before: MILLER and LEE, Circuit Judges.

The request for a certificate of appealability (Docket Entry No. 6) is denied because appellant has not made a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *see also Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Any pending motions are denied as moot.

DENIED.