No. A-_____

In the Supreme Court of the United States

ZENAIDO RENTERIA, JR.,

Applicant,

V.

UNITED STATES OF AMERICA,

Respondent.

APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Pursuant to 28 U.S.C. § 2101(c) and Rule 13.5 of the Rules of this Court, applicant Zenaido Renteria, Jr. respectfully requests a 60-day extension of time, to and including February 8, 2019, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in this case.

The Third Circuit issued its decision on September 11, 2018. Unless extended, the time to file a petition for a writ of certiorari will expire on December 10, 2018. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1). A copy of the Third Circuit's opinion is attached.

1. A federal agent posed as a narcotics trafficker in southeastern Pennsylvania; two individuals (who were never charged with an offense) shipped him narcotics there. Slip op. 3. At the direction of those individuals, the agent subsequently traveled to Los Angeles, where he asserts that applicant attempted to sell him narcotics. *Id*. at 4. The

government does not contend that applicant was involved with, or in any way aware of, the earlier shipment of narcotics to southeastern Pennsylvania. See *id.* at 5, 8.

The government charged applicant with conspiracy to distribute narcotics in violation of 21 U.S.C. § 846; the government brought charges in the Eastern District of Pennsylvania. Slip op. 2-3. Applicant moved to transfer venue or to dismiss the action for improper venue. *Id.* at 5. Applicant explained that he "did not act in the Eastern District of Pennsylvania or direct any of his actions there." *Id.* at 12-13. Indeed, applicant was a resident of California, where all of the relevant events pertaining to applicant's conviction occurred. See *id.* at 4-5, 8. The district court nonetheless found venue proper because applicant's alleged co-conspirators had previously sent narcotics and made phone calls to Pennsylvania. *Id.* at 5. Applicant was convicted and sentenced to 153 months' imprisonment, as well as five years of supervised release. *Id.* at 2-3.

2. Applicant appealed, renewing his contention that the Eastern District of Pennsylvania was an improper venue. Slip op. 3. The Third Circuit recognized that the legality of applicant's conviction turns on whether venue is limited by statute or the Constitution to only those venues that are "reasonably foreseeable" to a defendant. *Id.* at 6-13.

As the court below acknowledged, the lower courts are divided as to "[w]hether to adopt a reasonable foreseeability test to determine if venue has been laid properly in a conspiracy case under [Section] 3237(a)." Slip op. 8. "[T]he Second Circuit has concluded that a reasonable foreseeability test is required to establish venue" under Section 3237(a). *Id.* at 8 (citing *United States* v. *Svoboda*, 347 F.3d 471, 483 (2d Cir.

2003)). Meanwhile, "the Ninth Circuit has rejected the test in the context of [Section] 3237(a), and the Fourth Circuit has rejected it in the context of a similar venue statute, 15 U.S.C. § 78aa." *Id.* at 8-9 (citing *United States* v. *Gonzalez*, 683 F.3d 1221, 1226 (9th Cir. 2012), and *United States* v. *Johnson*, 510 F.3d 521, 527 (4th Cir. 2007)).

Here, the Third Circuit added to the circuit split, explicitly rejecting the Second Circuit's reasonable foreseeability requirement. "[T]he fact that the Second Circuit has adopted a reasonable foreseeability requirement to establish venue d[id] not persuade" the court below to do so. Slip op. 10. In rejecting the reasonable foreseeability test, the lower court concluded that neither the Constitution nor Section 3237(a) provides for such a requirement. *Id.* at 9-12.

3. Applicant will demonstrate that certiorari is warranted, both because of the acknowledged conflict in the courts of appeals and because the decision below eviscerates an essential protection that was critical to the ratification of the Constitution. The Sixth Amendment's Vicinage Clause guarantees a jury "of the State and district wherein the crime shall have been committed." U.S. Const. amend. VI.

The Vicinage Clause derives from English common law, which had for centuries recognized the right of criminal defendants to be tried in the vicinity, or county, in which the facts of a crime occurred. See 3 William Blackstone, *Commentaries* *359-60. Colonial governments considered it to be one of the great "Privilege[s]" of the common law. *Journals of the House of Burgesses, 1766-1769*, at 214 (Kennedy ed., 1906). See Charter or Fundamental Laws of West New Jersey, ch. XXII (1676).

But the onset of tensions between the colonists and the Crown in the late 1760s prompted Parliament to drastically reduce the vicinage right by statute. Between 1769 and 1774, Parliament, in response to unrest in Massachusetts, provided for American defendants to be tried overseas in Britain in various situations. See, *e.g.*, 12 Geo. 3 c. 24; 14 Geo. 3 c. 39.

Colonial legislatures and the First Continental Congress fiercely protested Parliament's acts as "highly derogatory" of the colonists' longstanding and traditional rights. *Journals of the House of Burgesses*, *supra*, at 214; *Documents of American History* 83-84 (2d Commager ed. 1940). The colonists' outrage was so great that it featured prominently in the Declaration of Independence, where the Second Continental Congress censured the Crown and Parliament for "transporting us beyond Seas to be tried for pretended offences." The Declaration of Independence para. 21 (U.S. 1776).

When the Philadelphia Convention met to draft the Constitution in 1787, the Framers included explicit language limiting the national government's ability to lay venue in Article III. This provision reads: "The Trial of all Crimes * * * shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed." U.S. Const. art. III, § 2, cl. 3.

But not all were satisfied with Article III's venue clause. Many in the state ratifying conventions argued that the clause did not sufficiently protect defendants from the national government's venue powers. Patrick Henry argued that the lack of such a protection necessitated a bill of rights: "Under this extensive provision, [the

national government] may proceed in a manner extremely dangerous to liberty: a person accused may be carried from one extremity of the state to another." Patrick Henry, Speech Before the Virginia Ratifying Convention (June 14, 1788), in 3 *The Debates of the Several State Conventions, on the Adoption of the Federal Constitution, As Recommended by the General Convention at Philadelphia in 1787*, at 447 (Elliot ed., 1827) [hereinafter *Elliot's Debates*]. Another convention delegate, William Grayson, also couched his opposition to Article III's venue clause in personal-liberty, anti-tyranny terms: "The jury may come from any part of the state. [The national government] possess[es] an absolute, uncontrollable power over the venue. The conclusion, then, is[] that they can hang any one they please, by having a jury to suit their purpose." William Grayson, Speech Before the Virginia Ratifying Convention (June 21, 1788), in 3 *Elliot's Debates* at 569.

Complaints about the insufficiency of Article III's venue protections for criminal defendants also played a role in the North Carolina ratifying convention's initial *rejection* of the Constitution. Multiple speakers at the North Carolina convention decried what they saw as the Constitution's inadequate protection of a criminal defendant's right to be tried near his place of residence and near the site of his alleged crimes. One delegate argued that defendants could still be hauled away at great distances within one state and therefore concluded that "the trial ought to be limited to a district or certain part of the state." Joseph M'Dowall, Speech Before the North Carolina Ratifying Convention (July 28, 1788), in 4 *Elliot's Debates* at 150. Another argued that stricter limits on the national government's venue power were necessitated

by the Crown's pre-revolutionary abuses of such power. Samuel Spencer, Speech Before the North Carolina Ratifying Convention (July 29, 1788), in 4 *Elliot's Debates* at 154.

In response to these challenges and others, the Bill of Rights contained the Vicinage Clause. The petition will demonstrate that the decision below has nullified the essential protections of that constitutional right.

4. Applicant requests this extension of time to file a petition for a writ of certiorari because undersigned counsel of record recently agreed to represent applicant, who is indigent, on a pro bono basis. Pro bono counsel had no involvement in the proceedings before the district court or the Third Circuit. Pro bono counsel accordingly seeks additional time to review and familiarize himself with the record and the issues presented.

Pro bono counsel also has responsibility for a number of other matters with proximate due dates, including a reply brief due in *Guandong Alison Hi-Tech Co., Ltd.* v. *International Trade Commission*, No. 18-2042 (Fed. Cir.) (due December 4, 2018), a comment letter in response to the Department of Homeland Security's proposed rule, *Inadmissibility on Public Charge Grounds*, 83 Fed. Reg. 51,114 (due December 10, 2018); a merits brief in *Smith* v. *Berryhill*, No. 17-1606 (S. Ct.) (due December 17, 2018); and a petition for a writ of certiorari in *Shabo* v. *Whitaker* (S. Ct.) (due December 28, 2018). Accordingly, an extension of time is warranted.

For the foregoing reasons, the application for a 60-day extension of time, to and including February 8, 2019, within which to file a petition for a writ of certiorari in this case should be granted.

November 28, 2018

Respectfully submitted.

PAUL W. HUGHES
Counsel of Record
Mayer Brown LLP
1999 K Street, N.W.
Washington, D.C. 20006
(202) 263-3000
phughes@mayerbrown.com

SUSAN M. LIN
Kairys, Rudovsky, Messing, Feinberg & Lin LLP
718 Arch Street, Suite 501 South
Philadelphia, PA 19106
215-925-4400
slin@krlawphila.com