

No. 18A - _____

IN THE
SUPREME COURT OF THE UNITED STATES

Miguel Cabrera-Rangel,

Applicant,

v.

United States,

Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

**APPLICATION FOR EXTENSION OF TIME WITHIN WHICH TO FILE
A PETITION FOR WRIT OF CERTIORARI**

Marjorie A. Meyers
FEDERAL PUBLIC DEFENDER
SOUTHERN DISTRICT OF TEXAS
Kathryn Shephard
ASSISTANT FEDERAL PUBLIC DEFENDER
440 Louisiana Street
Suite 1350
Houston, TX 77002

Jeffrey L. Fisher
Counsel of Record
STANFORD LAW SCHOOL
SUPREME COURT
LITIGATION CLINIC
559 Nathan Abbott Way
Stanford, CA 94305
(650) 724-7081
jlfisher@stanford.edu

**APPLICATION FOR EXTENSION OF TIME WITHIN WHICH TO FILE
A PETITION FOR WRIT OF CERTIORARI**

To: Justice Samuel A. Alito, Jr., Circuit Justice for the United States Court of Appeals for the Fifth Circuit:

Applicant Miguel Cabrera-Rangel respectfully requests an extension of thirty (30) days in which to file his petition for writ of certiorari, challenging the decision of the U.S. Court of Appeals for the Fifth Circuit in *United States v. Cabrera-Rangel*, 730 F. App'x 227 (5th Cir. 2018) (No. 17-41123), a copy of which is attached herewith. In support of this application, Applicant provides the following information:

1. The Fifth Circuit issued its decision in this case on July 9, 2018. App. 1. Consequently, the petition for certiorari is currently due on October 9, 2018. Granting this extension would make it due on November 8, 2018.

2. This case is a serious candidate for certiorari review. It raises two related questions: (a) whether a court violates the Sixth Amendment if it bases a criminal defendant's sentence in part on conduct for which he was tried and acquitted, and (b) whether the Sixth Amendment at least prevents a federal court from imposing a sentence that is substantively reasonable only because of the consideration of conduct for which the defendant was acquitted. Three of this Court's Justices recently called for the Court to address the latter question in an appropriate case. *See Jones v. United States*, 135 S. Ct. 8 (2014) (Scalia, J., joined by Thomas and Ginsburg, JJ., dissenting from denial of certiorari). And numerous federal appellate judges—including Judge Kavanaugh, who has since been nominated to this Court—have suggested that this Court consider the broader Sixth Amendment ramifications

of considering acquitted conduct at sentencing. See *United States v. Bell*, 808 F.3d 926, 927-28 (D.C. Cir. 2015) (Kavanaugh, J., concurring in the denial of rehearing en banc); *id.* at 928-32 (Millett, J., concurring in the denial of rehearing en banc); *United States v. Papakee*, 573 F.3d 569, 577-78 (8th Cir. 2009); *United States v. White*, 551 F.3d 381, 386-97 (6th Cir. 2008) (Merritt, J., dissenting); *United States v. Mercado*, 474 F.3d 654, 658-60 (9th Cir. 2007) (Fletcher, J., dissenting); *United States v. Faust*, 456 F.3d 1342, 1349-53 (11th Cir. 2006) (Barkett, J., concurring).

3. This case is an excellent vehicle for resolving these questions. The Government charged Applicant with two offenses: assault on a federal officer by physical contact causing physical injury, 18 U.S.C. §§ 111(a)(1) & (b), and the less serious offense of assault on a federal officer by physical contact, 18 U.S.C. § 111(a)(1). The jury convicted on the lesser offense but acquitted on the greater one. Yet at sentencing the district court set Applicant's base offense level according to the greater charge and accordingly imposed a sentence several years longer than the U.S. Sentencing Guidelines' recommended range for the offense of conviction.

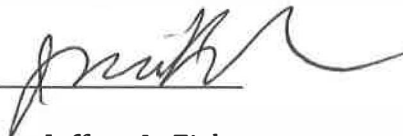
Applicant argued in the district court and on appeal that the court's reliance on his acquitted conduct violated the Sixth Amendment. But the courts rejected his contentions, finding them foreclosed by Fifth Circuit precedent and thus viable only for this Court. See App. 2-3 (citing *United States v. Hernandez*, 633 F.3d 370, 374 (5th Cir. 2011), *United States v. Jackson*, 596 F.3d 236, 243 n.4 (5th Cir. 2010), and *United States v. Farias*, 469 F.3d 393, 399 (5th Cir. 2006)).

4. This application is not filed for purposes of delay. Because of the importance of this case, Applicant has retained new lead counsel for Supreme Court

proceedings: Jeffrey L. Fisher of the Stanford Supreme Court Litigation Clinic. Yet Mr. Fisher is extremely busy with several other matters currently pending in this Court. Among other things, he is currently working on the reply brief on the merits in *Jam v. International Monetary Fund*, No. 17-1011, and will argue that case and two others—*Mt. Lemmon Fire Dist. v. Guido*, No. 17-587, and *United States v. Sims*, No. 17-766—during the month of October. Mr. Fisher also has secondary responsibility for several other matters in which Stanford Supreme Court Litigation Clinic is involved. Accordingly, the time sought here is necessary for new counsel to adequately familiarize himself with the record and relevant law in this case, and to produce the best possible work product.

5. For all of these reasons, Applicant respectfully requests the entry of an order extending his time to file their petition for a writ of certiorari until November 8, 2018.

RESPECTFULLY SUBMITTED this 12th day of September, 2018.

by 

Marjorie A. Meyers
FEDERAL PUBLIC DEFENDER
SOUTHERN DISTRICT OF TEXAS
Kathryn Shephard
ASSISTANT FEDERAL PUBLIC DEFENDER
440 Louisiana Street
Suite 1350
Houston, TX 77002

Jeffrey L. Fisher
Counsel of Record
STANFORD LAW SCHOOL
SUPREME COURT
LITIGATION CLINIC
559 Nathan Abbott Way
Stanford, CA 94305
(650) 724-7081
jlfisher@stanford.edu