

NO.
IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2018

NOE MACHADO-ERAZO,
JOSE MARTINEZ-AMAYA,
Petitioners,

v.
UNITED STATES OF AMERICA,
Respondent.

**APPLICATION FOR AN EXTENSION OF TIME WITHIN
WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO
REVIEW THE JUDGMENT OF THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT**

**TO THE HONORABLE JOHN ROBERTS, CHIEF JUSTICE OF THE
SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

Pursuant to Supreme Court Rules 13.5, 22, and 30.3, Noe Machado-Erazo and Jose Martinez-Amaya (“Petitioners”), through their undersigned appointed counsel, request a thirty-day extension of time, to and including March 29, 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 District of Columbia Circuit. Petitioners have not previously sought an extension of time from this Court.

Petitioners are filing this Application at least ten days before the filing date, which is February 27, 2019. See S.Ct. R. 13.5. The jurisdiction of this Court will be invoked under 28 U.S.C. §1254(1).

In June 2011, a federal grand jury indicted Petitioners and several other individuals on various charges. The charges were based on Petitioners' alleged involvement in *La Mara Salvatrucha* or MS-13 gang activities. The indictment charged Petitioners with engaging in a RICO Conspiracy in violation of 18 U.S.C. §1962(d) (Count 1) and Murder in Aid of Racketeering in violation of 18 U.S.C. §1959(a)(1)(Count 8). Finally, Petitioners were charged with Possession of a Firearm in Relation to a Crime of Violence, 18 U.S.C. §924(c)(1)(A) and (2) (Count 9).

On August 6, 2013, the jury found both Petitioners guilty of all three offenses (*i.e.*, counts 1, 8 and 9). On June 23, 2015, Petitioners were sentenced to concurrent life terms on the RICO and murder counts and 10 years to be served consecutively on the firearms offense. Petitioners timely appealed.

The United States Court of Appeals for the District of Columbia Circuit affirmed on August 17, 2018 in two opinions. The published opinion is attached as

Appendix A and is reported at 901 F.3d 326. The second, unpublished, opinion is attached as Appendix B. The Court denied a petition for rehearing and a petition for rehearing *en banc* on November 29, 2018. The two orders are attached as Appendices C and D. The Court rejected two of Petitioners' arguments which may be at issue on a petition for certiorari.

First, although the Court found that admission of expert testimony concerning cell phone and cell site location was error, the Court found the error was harmless. The issue presented is what constitutes harmless error, an issue as to which there are numerous court interpretations. A detailed analysis of the error is set out in a nine page concurring opinion of Judge Rogers (see Appendix A, pp. 22-30). Petitioners, based on the record, disagree with the conclusion.

Second, the Court rejected Petitioners' argument that an act of omission cannot constitute a crime of violence in violation of 18 U.S.C. §924(c)(1)(A) and 2 given this Court's decision in *Johnson v. United States*, 559 U.S. 133, 140 (2010). There is a circuit split on this issue. This Court, on January 15, 2019, in *Stokeling v. United States*, No. 17-554, ruled that slight force provided the violent force necessary for purposes of the Armed Career Criminal Act, 18 U.S.C. §924(e)(2)(B)(i). Whether an act of omission constitutes the necessary violent force is logically the next issue to be resolved.

Undersigned counsel will not have sufficient time to file the petition for writ of certiorari for Petitioners by February 27, 2019. Undersigned attorney Kira Anne West, counsel for Petitioner Machado-Erazo, is currently in trial and will be in a two week trial starting February 19, 2019. Undersigned attorney Thomas G. Corcoran, Jr., co-counsel for Machado-Erazo, will be out of the country on a trip committed to a year ago for two weeks at the beginning of February, 2019. Undersigned attorney Christine Pembroke, counsel for Petitioner Martinez-Amaya, was not responsible for developing the arguments presented in the briefs below that will be the subject of the petition and she could not prepare the petition without the support of Attorneys Corcoran and West. None of the three counsel is an experienced Supreme Court practitioner.

Accordingly, additional time will be necessary for the careful preparation of the petition for certiorari in Petitioners' case.

No party will be prejudiced by the granting of a thirty-day extension.

Since the time within which to file a petition for a writ of certiorari in this case will expire on February 27, 2019 unless extended, Petitioners respectfully request that an order be entered extending their time to file a petition for writ of certiorari by thirty days, to an including March 29, 2019.

Respectfully submitted,

/s/ Thomas G. Corcoran Jr.

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January 23, 2019