

No. _____

In the Supreme Court of the United States

AMY GONZALEZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

DAVID MATUSIEWICZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

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TO THE HONORABLE SAMUEL A. ALITO, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE THIRD CIRCUIT:

Pursuant to Supreme Court Rules 13.5, 22, and 30, Petitioners respectfully request a 60-day extension of time, up to and including June 7, 2019, to file a petition for writ of certiorari to the United States Court of Appeals for the Third Circuit to review that court's decision in *United States v. Gonzalez and United States v. Matusiewicz*, 905 F.3d 165 (3d Cir. 2018).

1. The Third Circuit consolidated petitioners' appeals and issued its opinion and judgment on September 7, 2018. (Exhibit A). The court denied Mr. Matusiewicz's petition for rehearing on January 7, 2019, and Ms. Gonzalez's petition for rehearing on January 8, 2019 (Exhibit B). This Court's jurisdiction will be invoked under 28 U.S.C. § 1541(1).

2. Absent an extension, a petition for writ of certiorari would be due on April 8, 2019.¹ This application is timely because it is being filed more than 10 days in advance of that deadline. Petitioners jointly file this application because their appeals were consolidated by the Third Circuit. No prior application has been made in this case.

3. This petition involves a first in the nation prosecution for conspiracy to commit interstate stalking and cyberstalking, interstate stalking resulting in death,

¹ Ninety calendar days after January 7, 2019 is Sunday, April 7, 2019. Pursuant to Supreme Court Rule 30, the period extends until the end of the next day that is not a Saturday, Sunday, or federal legal holiday, or day on which the Court building is closed.

and cyberstalking resulting in death. Petitioners were indicted, along with their mother, after their father shot and killed Mr. Matusiewicz's ex-wife, her friend, and himself in the lobby of a local courthouse before a family court hearing. The government prosecuted petitioners on the theory that they engaged in a years-long conspiracy to stalk and harass Mr. Matusiewicz's ex-wife, which resulted in her death, because petitioners wanted to obtain sole custody of Mr. Matusiewicz's children after his parental rights were terminated.

4. Petitioners' cases were designated complex by the district court, and presented facts and issues not present in prior federal stalking cases. For example, petitioners did not threaten the victim or express a desire to harm the victim. Instead, the government's stalking evidence largely consisted of: private emails and letters between petitioners, or petitioners and third parties, in which they expressed their personal feelings and beliefs about the victim and whether the victim abused the minor children; and petitioners' public statements and publications about the abuse allegations as part of petitioners' efforts to obtain custody of the children. The government used some private communications, such as Mr. Matusiewicz's email references to Bible verses, to establish a stalking intent.

5. The multi-week trial involved a significant amount of witnesses and hundreds of exhibits. The government did not present evidence of intent to kill, but argued the jury could find intent to harass, the "easiest" intent to reach under the stalking statutes. A jury convicted petitioners. The district court sentenced

Petitioners to life in prison after finding they engaged in stalking with the intent to commit first-degree murder.

6. The Third Circuit noted that petitioners' case was complicated and involved numerous issues of first impression for the district court. *United States v. Gonzalez*, 905 F.3d at 174. The issues in petitioners' appeals included: an as-applied challenge to the cyberstalking statute, 18 U.S.C. § 2261A(2), because petitioners' conduct constituted protected speech under the First Amendment, and vagueness and overbreadth challenges to the statute as a whole; whether the federal cyberstalking statutes require a specific unanimity jury instruction, and whether petitioners' Sixth Amendment right to a unanimous jury verdict was violated because the jury was not required to be unanimous on the facts supporting the *actus reus* element of the stalking offenses; how to define for the jury the proof required to establish petitioners' conduct caused the victim's death, triggering the "death results" enhancement under 18 U.S.C. § 2261(b)(1), after this Court's decisions in *Burrage v. United States*, 571 U.S. 204 (2014) and *Paroline v. United States*, 572 U.S. 434 (2014); and whether the use of facts from a judicial opinion unfairly prejudices a defendant under Rule 403 of the Rules of Evidence when the opinion contains derogatory assessments of a defendant's character that go to the heart of the jury's role, and whether cautionary instructions can cure this prejudice. The issues, among others, present substantial and important questions of federal law, particularly in an emerging area of prosecution.

7. Petitioners plan to file a joint petition for writ of certiorari pursuant to Supreme Court Rule 12.4, which requires significant coordination because of the case's complexity, consolidation, and the important issues presented. Additionally, counsels' trial and appellate caseloads impact their ability to coordinate and properly prepare a joint petition for a writ of certiorari by the filing deadline.

8. Accordingly, petitioners respectfully request that an order be entered extending the time to file a petition for writ of certiorari for 60 days, up to and including June 7, 2019.

Respectfully Submitted,



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Dated: March 28, 2019