

**No. 18A1342**

---

In The

SUPREME COURT OF THE UNITED STATES

---

JAVIER SANCHEZ, GREGORY CASORSO, and MICHAEL MARR,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

---

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

---

**Before the Honorable Elena Kagan**

---

DENNIS P. RIORDAN  
*Counsel of Record*  
RIORDAN & HORGAN  
1611 Telegraph Avenue  
Suite 806  
Oakland, CA 94612

*Attorney for Petitioners*  
SANCHEZ, CASORSO, and MARR

To the Honorable Elena Kagan, Associate Justice of the United States Supreme Court and Circuit Justice for the Ninth Circuit:

This Court previously granted petitioners Sanchez, Casorso and Marr a thirty-day extension of time, to and including August 1, to file their petition for a writ of certiorari in this matter. Pursuant to 28 U.S.C. § 2101(c) and Rule 13.5 of the Rules of this Court, petitioners hereby move for an additional twenty-nine day extension of time, to and including August 30, 2019, to file the petition. As set forth further below, this motion is founded primarily on petitioners' association of new counsel, Jeffrey Fisher, for purposes of preparing and presenting the petition to this Court.

### **Procedural History**

A three judge panel of the Ninth Circuit Court of Appeals filed its initial decision denying petitioners's consolidated appeals from their federal court convictions in this matter on January 25, 2019. (*See* Exhibit A [January 25<sup>th</sup> decision].) Petitioners timely filed a petition for rehearing en banc as to that decision.

On April 3, 2019, the same Ninth Circuit panel issued an order denying the petition for rehearing en banc. (*See* Exhibit B [April 3<sup>rd</sup> order].) Accordingly, petitioner's time to petition for certiorari in this Court was initially scheduled to

expire on July 2, 2019. More than 10 days prior to that date, petitioners moved this Court for a thirty-day extension of time, to and including August 1, 2019, to file the petition. On June 19, 2019, this Court granted the initial extension request. (See Exhibit C [Court's June 19<sup>th</sup> letter order].)

The present application is being filed more than 10 days before the present August 1, 2019 due date. See Supreme Court Rules 13.5 and 30.2.

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

### **The Decision Below**

The Ninth Circuit panel's decision affirms petitioners' convictions for conspiring to violate the Sherman Antitrust Act by means of bid-rigging at home foreclosure auctions, *United States v. Javier Sanchez, Gregory Casorso and Michael Marr*, Ninth Cir. Nos. 17-10519, 17-10528, and 18-10113. The case raises important issues concerning, among other things, the scope and interpretation of the Sherman Antitrust Act. Specifically, criminal liability for violating the Act requires a finding that the defendants' conduct constituted an unreasonable restraint of trade. The government secured petitioners' convictions at trial on the theory that their conduct was unreasonable *per se*, and without permitting factual inquiry into whether it was actually an unreasonable restraint. Petitioners contend that their convictions thus rested on application of a

conclusive presumption in violation of their Fifth and Sixth Amendment rights to due process and to a jury trial, as recognized and elucidated in relatively recent decisions of this Court. *See, e.g., Carella v. California*, 491 U.S. 263, 265-66 (1989); *United States v. Gaudin*, 515 U.S. 506, 514 (1995).

This Court has yet to address the doctrinal conflict between these recent decisions and its much older precedent that permitted application of the *per se* rule in a criminal Sherman Act prosecution. *See United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150 (1940). Petitioners believe that review of the panel's decision by means of certiorari is necessary to resolve this fundamental conflict.

**Basis for Application and Declaration of Counsel**

In support of this application, Dennis P. Riordan hereby declares under penalty of perjury as follows:

1. I am counsel of record for petitioners Sanchez, Casorso, and Marr.
2. I seek the twenty-nine day extension of time requested herein primarily because, since filing our previous request, we have associated Jeffrey Fisher as new counsel for petitioners. Mr. Fisher is a professor of law at Stanford University and is highly experienced in preparing and presenting legal briefing and oral argument in this Court.
3. This motion is also founded on the extraordinary press of business in this

office. Specifically, since submitting our previous extension request on June 17, 2019, we have been required to file, and have filed, a traverse and extensive related memorandum in support of a federal petition for a writ of habeas corpus challenging our client's state court convictions for second degree murder and related firearm enhancements resulting in a sentence of twenty-five years to life in prison, *People v. Moore*, No. Dist. of Cal. No. 3:18-cv- 03523-JCS. During this period, I have also been required to devote very substantial time to preparing a return to the state's denial of a writ petition challenging our client's state conviction for second degree murder and related gang and firearm enhancements resulting in a sentence of 50 years to life in state prison, *In the Matter of Marcos Reis-Campos*, San Francisco Superior Ct. Writ No. 7255 (due July 19, 2019); a reply in support of an appeal from a superior court order and judgment dismissing a complaint against the State of California seeking declaratory and injunctive relief in connection with a public school's application of a state statute to deny our client, a registered sex offender, all access to a public school attended by his child, *Doe v. California, et al.*, Second App. Dist. of Cal. No. B290587 (due July 24, 2019); and an opening brief in support of an appeal challenging our client's convictions and enhancement findings for sexual offenses involving minors resulting in a sentence of 270 years to life, *People v. Linh Nguyen*, Sixth App.

District of Cal. No. H046507 (due August 7, 2019).

4. For the foregoing reasons, I respectfully request that an order be entered extending the time to petition for certiorari in the above-captioned matter to and including August 29, 2019.

Executed this 15<sup>th</sup> day of July, 2019, at San Francisco, California.



---

Dennis P. Riordan

*Counsel of Record for  
Petitioners Sanchez, Casorso, and Marr*