

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JULIO MARIO HARO-VERDUGO,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

APPLICATION TO CHIEF JUSTICE ROBERTS
TO EXTEND TIME TO FILE PETITION FOR CERTIORARI
(Supreme Court Rule 13.5)

Julio Mario Haro-Verdugo,
Petitioner pro se
Reg. No. 91139-008
Federal Correctional Institution
Terminal Island
1299 S. Seaside Avenue
San Pedro, California 90731

RELIEF SOUGHT

Julio Mario Haro-Verdugo, Petitioner pro se, indigent and without benefit of counsel (and requiring the assistance of fellow prisoners in preparing this Application due to Petitioner's language disability), requests that Chief Justice Roberts, Justice for the Ninth Circuit, extend time for filing a petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit in the matter of United States of America v. Julio Mario Haro-Verdugo, Case No. 12-16611, for a period of sixty (60) days, or from July 19, 2019, up to and including September 18, 2019.

GROUND FOR RELIEF

On August 31, 2018, Petitioner's appeal of the district court's denial of his motion under 28 U.S.C. § 2255 was denied (DktEntry: 128-1). See Exhibit "A", Ninth Circuit Memorandum dated August 31, 2018 attached to Petitioner's "Declaration."

On November 15, 2018, Petitioner timely submitted Appellant's Pro Se Petition for Rehearing/Rehearing En Banc requesting the panel to review an overlooked material point of fact concerning the romantic relationship/extra marital affair that existed between the prosecuting Assistant United States Attorney and the lead defense attorney during the district court proceedings, which compromised Petitioner's defense by the sharing of protected information with the prosecution.

On April 19, 2019, the Ninth Circuit denied in part Appellant's petition for rehearing/rehearing en banc (DktEntry 139), but did grant Appellant's motion to compel counsel to provide him his case file (DktEntry 140). See Exhibit "B", Ninth Circuit Order dated April 19, 2019, attached to Petitioner's

"Declaration."

On May 21, 2019, Petitioner Haro-Verdugo notified the Clerk of the Ninth Circuit that his former counsel, Daniel R. Drake, had not complied with the Court's DktEntry 140 order, thereby leaving him without the requisite case file/documents necessary to properly prepare and timely submit his petition for writ of certiorari. See Exhibit "C", Appellant Haro-Verdugo's letter to the Clerk of the Court of Appeals for the Ninth Circuit dated May 21, 2019, attached to Petitioner's "Declaration."

Jurisdiction

The Supreme Court will have jurisdiction over this matter because 28 U.S.C. § 1254(1) gives the Court jurisdiction over an appeal of a final judgment of a United States Court of Appeals.

Reasons Why Relief From Time Needed

Under Supreme Court Rule 13.1, time for filing of a writ of certiorari in this matter expires ninety days after the Ninth Circuit's order (DktEntry 139) on July 19, 2019.

Because Petitioner is without benefit of counsel and is not proficient in English, he relies on the assistance of other prisoners to translate, research and prepare all of his legal pleadings, including this Application. Further, Petitioner is unfamiliar with the use of the prison's electronic law library (LEXUS NEXUS). Spanish is his native language.

Petitioner has yet to receive a copy of his case file/documents from his former counsel, Daniel R. Drake, as ordered by the Ninth Circuit on April 19, 2019 (DktEntry 140). Without the return of the ordered files it will be impossible for those who are assisting Petitioner to properly research and prepare a

well organized and carefully thought out petition for certiorari.

In order to prepare a well organized petition it requires substantial time in the law library. Petitioner's (and those assisting him) access to the prison's law library is not unrestricted. The time required in the law library to prepare a petition for certiorari is limited by the library hours of operation, the hours Petitioner and those assisting him are required to work at their prison jobs, the numerous unscheduled closings of the Education Department (where the law library is located), and institution and weather related lockdowns. Further, the law library has only ten electric typewriters for approximately 1200 hundred prisoners to prepare their legal pleadings, which additionally hinders Petitioner's ability to timely submit his petition.

Need of Length of Extension Sought

Petitioner being unschooled in law, without counsel, and requiring the assistance of others will need the additional time requested (60 days) based on the above reasons.

The court's order denying a rehearing, but granting Appellant's motion to compel counsel to provide his case file/documents, a prerequisite to the filing of his petition for writ of certiorari, has not been complied with. Petitioner hopes to receive his case file from his previous counsel by June 19, 2019, sixty days since it was ordered returned, but this has not been confirmed.

Accordingly, the additional extension of sixty days sought to file Petitioner's writ of certiorari will allow him a full ninety days from receipt of his case file.

Persuasive Grounds for Certiorari in This Case

The Ninth Circuit's Memorandum (DktEntry 128-1) seemingly ignored a material point of fact raised during oral arguments that a romantic relationship/extra marital affair was transpiring between the lead prosecutor, AUSA David Kern, and lead defense counsel, Mrs Leslie Bowman, during the course of the proceedings in this case. This fact is critical because conflict-free representation is fundamental to a defendant's effective defense. Some violations, by their very nature, cast so much doubt on the fairness of the trial process that, as a matter of law, they can never be considered harmless; violation of the Constitution's Sixth Amendment that prevade the entire proceeding, such violations of the accused right to conflict-free representation, fall wihtin this category.

The court has, moreover, an independent interest in ensuing that criminal trials are conducted within ethical standards of the profession and that legal proceedings appear fair to all who observe them. The fact that the lead AUSA was sleeping with the lead defense counsel during the course of proceedings in this case was ignored by the Ninth Circuit in deciding whether Petitioner received conflict-free representation; and whether the ethical standards of their profession were so compromised during the course of this case through their extra marital affair that Petitioner was prejudiced.

The critical fact overlooked by the Ninth Circuit has so far departed from the accepted and usual course of judicial porceedings as to call for an exercise of this Court's supervisory power (Supreme Court Rule 10(a)).

Another compelling reason for certiorari in this case involves a question of exceptional importance that was misapprehended or erroneously decided by the Ninth Circuit that creates a circuit split. This question - whether defendant's right to effective assistance of counsel, as guaranteed by the Sixth Amendment (that extends to all critical stages of criminal proceedings), was so compromised when his counsel failed to show and was not present during the pretrial settlement conference/plea negotiations, thereby allowing the magistrate judge to improperly participate in the proceeding (a Rule 11 violation), that counsel was no longer effective. Prejudice in such cases is presumed and need not be proven.

CONCLUSION

Therefore, due to the fact that Petitioner has yet to receive his case file from his former counsel as ordered by the Ninth Circuit, and the reasons specified above, Petitioner respectfully requests this application to extend time to file his petition for certiorari by sixty days be granted allowing him to file it with the United States Supreme Court on or before September 18, 2019.

This application is supported by the appended Declaration of Julio Mario Haro-Verdugo and the attached exhibits. See Appendix "A".

Dated June 18, 2019.

Julio Mario Haro-Verdugo
Julio Mario Haro-Verdugo,
Petitioner pro se

DECLARATION JULIO MARIO HARO-VERDUGO

I, Julio Mario Haro-Verdugo, decalre:

1. My name is Julio Mario Haro-Verdugo. I am over 18 years of age. I am incarcerated at the Federal Correctional Institution Terminal Island located at 1299 S. Seaside Avenue in San Pedro, California. I am fully competent to make this Declaration and I have personal knowledge of the facts stated in this Declaration. To my knowledge, all of the facts stated in this Declaration are true and correct.

2. I am the defendant/appellant in the courts described below, which are the same as those listed in my application to extend time to file petition for certiorari.

3. I am the Petitioner, proceeding pro se, indigent and without benefit of counsel, in this matter. I make this Declaration in support of my Application to Chief Justice Roberts to Extend Time to File Petition for Certiorari.

4. On August 31, 2018, my appeal of the district court's denial of my motion under 28 U.S.C. § 2255 was denied (DktEntry 128-1). See Exhibit "A", Ninth Circuit Memorandum dated August 31, 2018, attached hereto.

5. On November 15, 2018, I timely submitted my Petition for Rehearing/Rehearing En Banc, requesting the panel to review an overlooked material fact concerning conflict of interest that compromised my defense.

6. On April 19, 2019, I received the Ninth Circuit's Order denying my petition for panel rehearing/rehearing en banc (DktEntry 139), but granting my motion to compel counsel to provide me my case file (DktEntry 140). See Exhibit "B", Ninth Circuit Order

dated April 19, 2019, attached hereto.

7. On November 14, 2018, I wrote a letter to my former counsel, Daniel R. Drake, and among other things discussed I notified him that I had not received my court files. See Exhibit "D". letter to counsel Drake dated November 14, 2018, attached hereto.

8. On May 21, 2019, I notified the Clerk of the Ninth Circuit that my former counsel had not complied with the Court's DktEntry 140 order, thereby leaving me without the requisite case file essential for the preparation of my petition for writ of certiorari. See Exhibit "C", letter to Clerk for the Ninth Circuit date May 21, 2019.

9. Due to the fact that I have not received my case file, which is necessary for those assisting me to properly research and prepare a well organized and carefully thought out petition for certiorari, the requested sixty day extension is required to adequately address the issues that will be presented to this Court and is not sought for purposes of delay.

10. Lengthening the time by sixty days for submission of my writ of certiorari is in the interest of justice and should not prejudice any other party in this case.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 18th, day of June, 2019, in San Pedro, California.

Julio Mario Haro-Verdugo
Julio Mario Haro-Verdugo,
Declarant