

No. _____

In the Supreme Court of the United States

UNITED STATES OF AMERICA,

Plaintiff/Appellee,

v.

MARCO ANTONIO CORTES-GOMEZ,

Defendant/Appellant.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

DEFENDANT/APPELLANT'S APPLICATION FOR EXTENSION OF TIME
TO FILE PETITION FOR A WRIT OF CERTIORARI

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Dated: August 29, 2019

**DEFENDANT/APPELLANT'S APPLICATION FOR EXTENSION OF
TIME TO FILE PETITION FOR A WRIT OF CERTIORARI**

To the Honorable Sonia M. Sotomayor, Associate Justice of the United States Supreme Court and Circuit Justice for the Tenth Circuit:

In accordance with Rules 13.5, 30.2, and 30.3 of the Rules of the Supreme Court of the United States, and for the reasons set forth herein, the undersigned counsel, on behalf of Defendant/Appellant, Marco Antonio Cortes-Gomez, respectfully applies to this Court for an order extending the time in which to file a petition for a writ of certiorari from September 10, 2019, until Monday, November 11, 2019, a period of sixty (60) days.¹ In support of this Application, counsel for the Defendant/Appellant would show the Court as follows:

BACKGROUND

Mr. Cortes-Gomez is incarcerated by the United States Bureau of Prisons under the convictions and sentences at issue in the lower-court proceedings. He is serving a sentence of two hundred ninety-four (294) months.

The undersigned counsel was appointed to represent Mr. Cortes-Gomez on appeal by the United States Court of Appeals for the Tenth Circuit, as a

¹ Technically, the sixtieth day is November 9. But that date is a Saturday. So the sixtieth day is extended to Monday, November 11, 2019 by virtue of Supreme Court Rule 30.1.

member of its Criminal Justice Act Panel. The undersigned briefed Mr. Cortes-Gomez's appeal and argued orally it to the Court. The undersigned raised speedy trial (statutory and constitutional) and sentencing issues on appeal. The Tenth Circuit entered its Opinion on June 12, 2019, and affirmed Mr. Cortes-Gomez's conviction and sentence in its entirety, rejecting all of the arguments raised by counsel in a seventeen-page published decision. A copy of the Tenth Circuit's Opinion is appended to this Application as Attachment A.

The Court's findings were consistent with existing precedent, and largely based upon the facts of this case. In June, 2019, the undersigned counsel communicated with Mr. Cortes-Gomez via a court-certified interpreter (Mr. Cortes-Gomez speaks only Spanish). During two separate calls, Mr. Cortes-Gomez explained that the sole issue that he wished to litigate further—to the express exclusion of any other issues—was a claim that his being convicted of a conspiracy count (and in particular, being held accountable for the conduct of other co-conspirators under the doctrine of *Pinkerton v. United States*, 328 U.S. 640 (1946)) violated the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution.²

² Mr. Cortes-Gomez himself mentioned both clauses by name.

The undersigned repeatedly explained that this was not a viable claim for many reasons. Mr. Cortes-Gomez continued to demand that the undersigned file a petition for rehearing (and a petition for certiorari before this Court if rehearing was denied) on the sole issue identified above, and indicated that pursuit of any other issue was against his wishes.

Section VII of the Tenth Circuit's CJA Plan states "[i]f counsel determines that there are no reasonable grounds for filing a petition and declines the person's request to file a petition, counsel shall inform the person and, after entry of judgment, shall move to withdraw under 10th Cir. R. 46.4." <https://www.ca10.uscourts.gov/sites/default/files/2019RevisedandCurrent10thCirCJAPlan.pdf>. Since counsel made such determinations in this case, counsel filed such a motion on July 3, 2019 and also wrote a letter to Mr. Cortes-Gomez (which was translated into the Spanish language) which provided the information required by the Tenth Circuit Rules (and more). A copy of the July 3, 2019 Motion is appended to this Application as Attachment B.

As of the filing of this Application, counsel's July 3 Motion remains pending before the Tenth Circuit.

ARGUMENT AND AUTHORITIES

Mr. Cortes-Gomez has expressed his desire to seek certiorari of the United States Court of Appeals for the Tenth Circuit's decision in this case, though on grounds that are non-viable. This Court's jurisdiction to consider

the same arises in accordance with 28 U.S.C. § 1254(1). According to Supreme Court Rule 13.3, a petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit is due on or before September 10, 2019. *See* Supreme Court Rule 13.3 (“the time to file the petition for a writ of certiorari . . . runs from the date of the denial of rehearing . . .”). But in this case, due to the unresolved motion to withdraw and status of the matter, additional time beyond that granted by Supreme Court Rule 13 is needed. Thus, counsel seeks for Mr. Cortes-Gomez an extension of sixty (60) days in which to file his petition for a writ of certiorari. *See* Supreme Court Rule 13.5 (“[A] Justice may extend the time to file a petition for writ of certiorari for a period not exceeding 60 days”).

In accordance with Supreme Court Rule 13.5, this Application is submitted at least ten (10) days prior to the present due date. Further, the requested extension is made in good faith and not for the purpose of delay. The requested extension is made because of the unique status of the issues presented, as explained herein and in the attached still-pending motion.

Counsel submits that a sixty (60) day extension is necessary and appropriate in order to allow the pending issues to be resolved, and Mr. Cortes-Gomez to potentially file a *pro se* petition if he wished.

WHEREFORE, in the interest of justice and for good cause shown, counsel submits that a reasonable extension of time should be granted within which to

file a petition for certiorari on behalf of Mr. Cortes-Gomez. Counsel respectfully requests, pursuant to Supreme Court Rule 13.5, this Court extend the current September 10, 2019 deadline until Monday November 11, 2019.

Respectfully submitted,

/s/ Ryan A. Ray

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