

In the
Supreme Court of the United States

Nicholas Pagliuca,

Petitioner,

v.

United States of America,

Respondent.

**APPLICATION TO EXTEND THE TIME TO FILE A PETITION FOR A
WRIT OF A CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT**

*To the Honorable Ruth Bader Ginsburg, Associate Justice of the Supreme
Court of the United States and Circuit Justice for the United States Court of
Appeals for the Second Circuit:*

Petitioner Nicholas Pagliuca respectfully requests an extension of time of thirty days, until August 14, 2019, to file a petition for a writ of certiorari. The decision of the Second Circuit Court of Appeals was filed on April 16, 2019. Accordingly, a certiorari petition is currently due on or before July 15, 2019. This application is being filed more than 10 days before the due date. No prior extensions of time to file the petition have been sought.

I attach to this application a copy of the decision of the Second Circuit in this case. This Court will have jurisdiction over a certiorari petition under 28 U.S.C. § 1254(1).

The certiorari petition is likely to present the following question: whether the substantial-rights, plain error, formulation of United States v. Dominguez Benitez, 542 U.S. 74 (2004) applies in the appellate waiver context -- where the judge fails to advise a defendant of the “terms of [a] plea-agreement provision waiving the right to appeal,” during the guilty plea, as required by Fed.R.Crim.P. 11(b)(1)(N), and the defendant seeks to appeal a sentencing error. In Dominguez Benitez, this Court held “that a defendant who seeks reversal of his conviction after a guilty plea, on the ground that the district court committed plain error under Rule 11, must show a reasonable probability that, but for the error, he would not have entered the plea.” Id. at 83. As the Second Circuit’s decision in this case recognizes, “[t]here is a circuit split” about whether “the substantial rights formulation of Dominguez Benitez” applies “in the appellate waiver context” where the defendant seeks only to appeal a sentencing error, not to vacate the guilty plea: i.e., the defendant “seeks only to vacate his sentence, not to appeal or otherwise attack his underlying conviction.” United States v. Pagliuca, 767 Fed. App’x 93, 2019 WL 1715940 at *2 and n. 2 (2d Cir. Apr. 16, 2019) (setting out the split). In the Second Circuit, Dominguez-Benitez applies to defendants

seeking “to void appellate waivers to attack elements of their sentence,” and the defendant must “show a reasonable probability that, but for the error, he would not have entered the plea.” Pagliuca, 2019 WL 1715940 at *2 (citation and internal quotation marks omitted).

I request this extension of time because of the press of my other commitments before the Second Circuit. I have a brief due in the Second Circuit on July 8, 2019, in United States v. Khalupsky, Docket Nos. 19-197(L), 19-780 (con), a case involving an extensive record, including a trial transcript of more than 3,300 pages and a voluminous record of trial exhibits.

I respectfully request, therefore, that the Court grant this application for an extension of time from July 15, 2019, to and including August 14, 2019.

Respectfully submitted,

/s/

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