

NO:

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER 2019

DANIEL OCHOA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit

APPLICATION FOR EXTENSION OF TIME WITHIN WHICH TO FILE
A PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

TO THE HONORABLE CLARENCE THOMAS, ASSOCIATE JUSTICE
OF THE SUPREME COURT OF THE UNITED STATES
AND CIRCUIT JUSTICE FOR THE ELEVENTH CIRCUIT

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INTERESTED PARTIES

There are no parties to the proceeding other than those named in the caption of the case.

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**PETITIONER'S APPLICATION FOR EXTENSION OF TIME
TO FILE PETITION FOR WRIT OF CERTIORARI**

Pursuant to Rule 13.5 of the Rules of the Supreme Court of the United States, Petitioner, Daniel Ochoa, respectfully requests that the time to file a Petition for a Writ of Certiorari in this case be extended for sixty days to and including Monday March 23, 2020.

Basis for Jurisdiction

Applicant Daniel Ochoa was charged by indictment with Hobbs Act Robbery, in violation of 18 U.S.C. § 1951(a), knowingly carrying a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. § 924(c)(1)(A) and knowingly possessing a firearm and ammunition as a convicted felon, in violation of 18 U.S.C. § 922(g)(1). The United States District Court for the Southern District of Florida

had original jurisdiction over this criminal action pursuant to 18 U.S.C. § 3231. Mr. Ochoa was found guilty after two jury trials. On December 14, 2016, the district court sentenced Mr. Ochoa to a total sentence of 360 months imprisonment, 240 months as to the robbery and a consecutive 120 months as to the § 924(c) charge. After a second trial, regarding the felon-in-possession charge, Mr. Ochoa was found guilty and Mr. Ochoa was sentenced to 120 months imprisonment. The district court ruled that all but 30 months would run concurrently with Mr. Ochoa's 360-month sentence.

An appeal from that Court's two final judgments proceeded for review by the United States Court of Appeals for the Eleventh Circuit, in accordance with 18 U.S.C. § 3742 and 28 U.S.C. § 1291. On October 25, 2019, the Eleventh Circuit affirmed the judgments entered by the District Court. Jurisdiction to entertain this appeal may be invoked by the timely filing of this petition within the prescribed 90 days after the opinion was issued. See 28 U.S.C. § 1254(1); S. Ct. R. 13.3.

Judgment to be Reviewed/Opinion Below

On October 25, 2019, the Eleventh Circuit affirmed Mr. Ochoa's convictions and sentence. *See United States v. Ochoa*, 941 F.3d 1074 (11th Cir. 2019). A copy of the Eleventh Circuit's opinion is attached as Appendix A.

Reasons for Granting an Extension

Mr. Ochoa filed a motion to suppress statements he made to a S.W.A.T. team member outside of his home when he was being arrested. He argued that he was

questioned after he was arrested but before he was given his Miranda warnings. The district court denied the motion, finding that Mr. Ochoa's Fifth Amendment right against self-incrimination was not violated based on the "public safety exception." Two Judges in the Eleventh Circuit Court of Appeals upheld the finding, but one Judge filed a lengthy dissent finding that the public safety exception to the Fifth Amendment did not apply in this case. In light of the dissent and the length of Mr. Ochoa's sentence, this case presents compelling grounds for a certiorari petition challenging the constitutionality of Mr. Ochoa's conviction.

The undersigned counsel is respectfully requesting an additional 60 days in which to file Mr. Ochoa's certiorari petition. The undersigned is working on an initial brief in Case No. 19-12272-D, *United States v. Diego Estepa Vasquez* and consolidated Cases No. 19-11972-E, *United States v. Alston Williams* and No. 19-13019-E, *United States v. Altson Williams*, both of which resulted from lengthy trials. Both cases are cold record appeals from jury trials and involve multiple appellate issues and voluminous records. The undersigned is also working on an initial brief in Case No. 19-10606-DD, *United States v. Nevia Abraham*. Undersigned has been out of the office recovering from the flu.

Mr. Ochoa's certiorari petition is currently due on January 23, 2020. A 60-day continuance would make the certiorari petition due on Monday, March 23, 2020. S. Ct. R. 30.1.

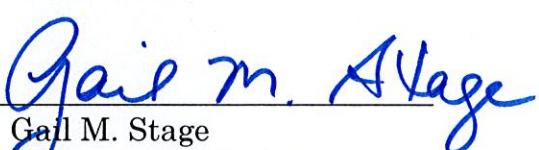
Extraordinary circumstances exist in this case in that the undersigned is currently working on several cases involving thousands of pages of trial transcripts, hundreds of pages of trial exhibits and complex legal issues. Along with several other work-related unanticipated emergencies, the undersigned has been unable to complete the Petition for a Writ of Certiorari.

Wherefore, the undersigned counsel respectfully asks this Honorable Court to grant a 60-day extension of time in which to file a Petition for a Writ of Certiorari.

Respectfully submitted,

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Fort Lauderdale, Florida
January 16, 2020