

No. _____

In the
Supreme Court of the United States

ROBERT NIETO and DARRICK R. VALLODOLID,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

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

**APPLICATION FOR AN EXTENSION OF
TIME TO FILE A PETITION FOR A WRIT OF
CERTIORARI**

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June 16, 2022

To the Honorable Elena Kagan, as Circuit Justice for the United States Court of Appeals for the Seventh Circuit:

Appellants/Petitioners Robert Nieto and Darrick Vallodolid (“Petitioners”) respectfully apply to the Supreme Court for an extension of forty-five (45) days to file their Petition for Writ of Certiorari. Jurisdiction before this Supreme Court is proper under 28 U.S.C. § 1254.

Petitioners were convicted after a jury trial of Conspiracy to Violate the Racketeering Influence and Corrupt Organizations Act, in violation of Title 18 U.S.C. Section 1962(d), and Conspiracy to Distribute a Controlled Substance, in violation of Title 21 United States Code Section 846. Both petitioners were sentenced to life imprisonment. Final judgment being entered on June 17, 2019, Petitioners filed a direct appeal with the Seventh Circuit Court of Appeals pursuant to 18 U.S.C. §3231. Petitioners’ appeal was denied and judgment was entered on March 28, 2022. The Petition for Writ of Certiorari is due to be filed on June 27, 2022.

Petitioners challenged their convictions for several reasons. *First*, defendant’s statutory mandatory maximum sentence was increased from twenty years to life imprisonment based upon Title 18 United States Code Section 1963(a) which relied upon Indiana Code Section 35-42-1-1, 35-50-2-3(a) and 35-50-2-9(d). A life sentence under the Indiana Code requires a bifurcated proceeding and finding by the jury before a life sentence may be imposed. The defendants in this case never received this bifurcated proceeding before the jury. The Seventh Circuit held that Indiana’s state sentencing procedures do not extend 18 U.S.C. §1963(a), relying upon holdings

that declined to extend state procedural rules to reverse convictions based upon state law predicates charged under Title 18 U.S.C. §1961(d). Expanding the scope of 18 U.S.C. §1963(a) in this way permits the federal government to increase a defendant's mandatory maximum sentence beyond that permitted by state law, contravening Congress' purpose for amending 18 U.S.C. §1963(a) to include a potential life sentence. Congress added the parenthetical related to an increase in the statutory maximum from twenty years to life so that when a state law predicate was the basis for the racketeering conviction, the federal racketeering sentence comported with the state law sentence relative to that predicate. 134 Cong. Rec. 32703 (1988).

Second, Petitioners' convictions should be reversed because the Government's peremptory striking of qualified Hispanic prospective jurors violated the Equal Protection Clause. The Seventh Circuit cursorily dismissed Mr. Nieto's *Batson* arguments in holding that the prosecution had come forward with sufficiently ethnicity-neutral reasons and Defendants had not shown the prosecution disparately struck Hispanic jurors. The Government's reasons were not ethnically neutral and its use of peremptory strikes disparately impacted Hispanic prospective jurors. While it is true that a person of any race or ethnicity can have negative experiences with the police of the immigration system, it is no secret that members of the Hispanic community are uniquely affected in a way that non-Hispanic persons are not. The decision below has effects outside of just Mr. Nieto—the prosecutor's stated "neutral"

reasons could easily have been in a case in which a black prospective juror stated they had had negative experiences with the police or were supporters of the Black Lives Matter movement. Yet if every person affected by policies or practices of the government is irreparably biased and unable to serve on a jury, despite their stating they can remain fair and unbiased, then *Batson* effectively no longer provides protection. This kind of “covert” discriminatory use of peremptory challenges is precisely what *Batson* protects against. *Flowers v. Mississippi*, 139 S. Ct. 2228, 2240 (2019).

Counsel for the petitioners respectfully request a forty-five (45) day extension by which to file a Petition for Writ of Certiorari. Both Petitioners are incarcerated. This has made it difficult for counsel to have regular and prompt communications with the petitioners to explain the issues selected, review the Petition and explain the process. Counsel for Petitioner Nieto has attempted communications through Mr. Nieto’s case manager at the prison, but he has declined to make Mr. Nieto available for any phone calls. In addition, Mr. Nieto’s email access was removed, and it will not be restored until July. Mr. Nieto has been able to call his attorney once but is only able to do so when the prison phone becomes available, meaning such calls are difficult to schedule. Similarly, Counsel for Petitioner Vallodolid has contacted Mr. Vallodolid’s counselor to schedule legal calls without success. Petitioner Vallodolid is able to call his attorney but calls are limited to 15 minute increments. Counsel for

both Petitioners will continue to work to arrange communications with the petitioners.

WHEREFORE, for the foregoing reasons, Petitioners respectfully request an extension of the current deadline for filing a Petition for Writ of Certiorari from June 27, 2022 to August 10, 2022.

RESPECTFULLY SUBMITTED,

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