

**IN THE
SUPREME COURT OF THE UNITED STATES**

No. _____

Curtis Neville, Applicant

v.

United States of America, Respondent

**APPLICATION TO THE HONORABLE SAMUEL A. ALITO, JR. FOR AN
EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A
WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT**

Pursuant to Supreme Court Rule 13(5), Applicant Curtis Neville applies for a 50-day extension of time—to and including November 30, 2022—within which to file a petition for the filing of a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case. The Fifth Circuit entered a judgment on May 12, 2022. (Exhibit 1). The court then entered a judgment on July 13, 2022, denying Petitioners’ (including Neville) petition for a rehearing en banc. (Exhibit 2). Unless extended, the time for petitioning for a writ of certiorari will expire on October 11, 2022. The jurisdiction

of this court is based upon 28 U.S.C. 1254(1). In support, Applicant submits the following:

1. Applicant was one of ten (10) defendants charged in 47-count superseding indictment for an array of crimes including a RICO conspiracy (18 U.S.C. § 1962(d)), a drug trafficking conspiracy (21 U.S.C. § 841(a)(1), (b)(1)(A); § 846) and violations of VICAR (18 U.S.C. § 1959(a)).
2. Applicant was convicted by a jury after a trial which lasted roughly one month. On appeal, defendants, including Applicant, raised numerous assignments of error including the denial of new trial motions concerning the Government's suppression of favorable evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). The Fifth Circuit acknowledged the issue was "a close one," but nonetheless dismissed the impact of the suppressed evidence.
- 3 Applicant additionally assigned as error a Confrontation Clause violation concerning the introduction of the confessions of Applicant's non-testifying codefendants into evidence at trial. The Fifth Circuit found that while Applicant did demonstrate a violation of the doctrine of *Bruton v. United States*, 391 U.S. 123 (1968), the court further concluded that the error was nonetheless harmless.
4. Finally, Applicant assigned as error that there was insufficient evidence presented at trial concerning the *mens rea* element of a VICAR violation—that the defendant committed the violent crime to gain entrance to, or maintain or increase

his position in, a racketeering enterprise. Despite there being a dearth of evidence to support the requisite VICAR motivation (and the overwhelming evidence of a non-enterprise related motivation for the violent crime) the Fifth Circuit's finding of sufficiency here serves to dilute the VICAR purpose element, thus converting VICAR "into a gang-status crime, punishing any and all violent crimes by gang members, no matter their relation to a racketeering enterprise." *United States v. Ledbetter*, 929 F.3d 338, 356 (6th Cir. 2019).

5. Applicant petitioned the Fifth Circuit for a rehearing en banc concerning the panel's "materiality" analysis on the *Brady* claim, as well as the panel's harmless error analysis on the *Bruton* claim. The Fifth Circuit denied *en banc* review on each of these issues. Applicant avers that this case presents significant questions bearing on how a reviewing court should analyze the materiality of *Brady* evidence, how it should conduct harmless error analysis of a Confrontation Clause violation, and the limitations of VICAR's reach.

6. Counsel for Applicant is appointed under the Criminal Justice Act. The undersigned counsel requests this 50-day extension of time to and including November 30, 2022 due to the fact that counsel is one member of a small, two-lawyer firm with a fairly robust caseload. Many of the undersigned's cases are currently scheduled for jury trials in 2022 and thus require the undersigned's

immediate attention. As such, the undersigned requests additional time to prepare Applicant's petition for a writ of certiorari in this case.

7. For the foregoing reasons, Applicant submits that the requested 50-day extension is supported by good cause.

Respectfully submitted:



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Criminal Justice Act
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