

No. _____

In the Supreme Court of the United States

JOSUE ANAHUN MARQUEZ-OSEGUERA,
PETITIONER,

v.

UNITED STATES OF AMERICA,
RESPONDENT,

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

Pursuant to Rule 39 and 18 U.S.C. § 3006A(d)(7), Petitioner asks leave to file the accompanying Application to Extend the Deadline to File a Petition for Certiorari without prepayment of costs and to proceed *in forma pauperis*. Petitioner was represented by counsel appointed under the Criminal Justice Act, 18 U.S.C. § 3006A (b) and (c), both in the United States District Court for the Southern District of Texas and in the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted on December 13, 2022.

/s/ Jessica Graf
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UNITED STATES OF AMERICA,
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PETITIONER'S APPLICATION FOR EXTENSION OF TIME
TO FILE PETITION FOR WRIT OF CERTIORARI

To: The Honorable Samuel A. Alito, Jr., Associate Justice of the Supreme Court and Circuit Justice for the Fifth Circuit.

Pursuant to Title 28, United States Code, Section 2101(c) and Supreme Court Rule 13.5, Petitioner Josue Anahun Marquez-Oseguera respectfully requests that the time to file a Petition for a Writ of Certiorari in this case be extended for 30 days, to and including, February 8, 2022.

Basis for Jurisdiction

The district court had original jurisdiction over this criminal action pursuant to 18 U.S.C. § 3231. Mr. Marquez pleaded guilty to illegal reentry after removal and was convicted by jury of conspiracy to interfere with commerce by robbery, conspiracy to possess with intent to distribute a controlled substance, aiding and abetting possession with intent to distribute a controlled substance and counterfeit controlled substance, and aiding and abetting attempted possession with intent to distribute a controlled substance. The Fifth Circuit affirmed the conviction and sentence in an

unpublished opinion filed on October 10, 2022. App. 1a–11a. This Court has the power to grant or deny this motion pursuant to 28 U.S.C. § 2101(c), and it will have jurisdiction to review the Fifth Circuit’s judgment under 28 U.S.C. § 1254(1).

Judgment to be Reviewed and Opinion Below

The Fifth Circuit’s panel opinion is unpublished but available at *United States v. Martinez-Brilia*, No. 21-20386, 2022 WL 6316523 (5th Cir. Oct. 10, 2022), reprinted on pages 1a–11a of the appendix.

Reasons for Granting an Extension

Following a two-week trial, a jury convicted Petitioner on four counts arising out of a sting operation in Houston, Texas. App.1. The jury also acquitted Petitioner on two counts. App.3. Petitioner raised a sole issue on appeal: whether the government violated *Batson v. Kentucky*, 476 U.S. 79 (1986), when it struck two prospective Hispanic female jurors. App.4. Holding that the district court did not clearly err in finding the government’s rationale for the strikes race-neutral, the Fifth Circuit affirmed Petitioner’s conviction. App.7.

After the Fifth Circuit issued its opinion, Petitioner’s counsel withdrew from the case. Forty-two days later, on November 21, 2022, Petitioner filed a pro se motion requesting appointment of counsel for purposes of filing a petition for a writ of certiorari. The following day, the Fifth Circuit appointed undersigned counsel.

The appointment of new counsel at this stage has delayed work on the Petition for Certiorari. First, it requires undersigned counsel to relearn the material in the depth of the original lead counsel. Undersigned counsel has obtained a copy of the

Record on Appeal, which is over 6,000 pages long. It will require significant time to digest the record and prepare an appropriate petition. Undersigned counsel also has a number of pressing deadlines around the time of the Petition's current deadline, including the petitions for a writ of certiorari in *Robert Keith Kinsey v. United States*, 5th Cir. Case No. 22-10418, due January 4, 2022, and *Brandon Williams v. United States*, 5th Cir. Case No. 21-11263, due January 10, 2022. Accordingly, appropriate attention to review of the record will require an additional 30 days to prepare the Petition. Petitioner, by and through counsel, requests a new deadline of February 8, 2022.

CONCLUSION

For all these reasons, Petitioner and undersigned counsel respectfully request that the Court extend the deadline to file a petition for certiorari to February 8, 2022.

Respectfully submitted,

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