

No. _____

In the United States Supreme Court
Of The United States

JEFFRI DAVILA-REYES,
Petitioner

,

Appellee,

v.

UNITED STATES,

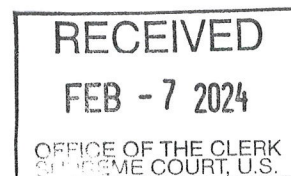
Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIRST CIRCUIT

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

Raymond L. Sanchez-Maceira
Court of Appeals Bar No.: #34191
PO BOX 191972
SAN JUAN, PR 00919
Tel.:(787) 721-3370

Counsel for Petitioner



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

To the Honorable Supreme Court

Petitioner, Jeffri Davila-Reyes, respectfully applies to this Court for an order extending the time in which to file his petition for writ of certiorari from February 5, 2024, until March 5, 2024, a period of thirty (30) days. This Court has jurisdiction under 28 U.S.C. §1257. In support of this Application, Mr. Davila-Reyes states as follows:

1. On October 5, 2023, the United States Court of Appeals for the First Circuit issued an opinion in Case No. 16-2089, wherein the *en banc* Court affirmed the judgment of the United States District Court for the District of Puerto Rico in Case No. 3:15-cr-00721.
2. Mr. Davila requested an extension of time within to file a petition for a writ of certiorari, until February 5, 2024. On December 28, 2023, Honorable Supreme Court Justice Jackson granted the extension of time to file the writ of certiorari.
3. On December 27, 2023, Mr. Jeffri Dávila-Reyes filed a motion asking the Court of Appeals for the First Circuit to Appoint the Federal Public Defender of the District of Puerto Rico as co-counsel to help me and my client in further proceedings before the Court of Appeals in all proceedings, to petition for certiorari before this Honorable Court.

3. On December 29, 2023, the United States opposed Davila's request for appointment of FPD co-counsel.

4. On January 3, 2024, the Court of Appeals ordered The Federal Public Defender for the District of Puerto Rico (FPD) to file a response to Davila's motion and the government's response in opposition on or by Wednesday, January 10, 2024.

5. On January 10, 2024, the FPD filed its response, reiterating Davila's request for FPD co-counsel.

6. Today the First Circuit issued a decision on the matter of representation and has allowed the FPD to help me in the preparation of the petition for certiorari. (Attachment #1)

6. Counsel needs additional assistance from FPD, as my motion has requested. *Davila-Reyes* raises important questions regarding clearly established federal law that creates a circuit split that must be resolved by the Supreme Court. Mr. Davila-Reyes contends that his unconditional guilty plea did not waive his challenge to the jurisdiction of the district court because the challenge concerns whether his vessel was "subject to the jurisdiction of the United States" under the MDLEA. This requirement in the MDLEA places a limit on a federal court's subject matter jurisdiction and thus a federal court's jurisdiction under Article III of the United States Constitution. In consequence, Mr. Davila-Reyes contends, his challenges take aim at the Article III jurisdiction of the District Court and so are not waivable by an unconditional guilty plea and subject to de novo (rather than plain error) review whether his challenge was

raised below or not.

7. Mr. Davila-Reyes challenges the First Circuit opinion in *United States v. González*, 311 F.3d 440 (1st Cir. 2002), where it held that the the Maritime Drug Law Enforcement Act ("MDLEA")46 U.S.C.§ 70503(e)(1) does not establish a limitation on a court's subject matter jurisdiction, *contrary* to what other circuits have also concluded. (See *United States v. Miranda*, 780 F.3d 1185, 1191-97 (D.C. Cir. 2015) and *United States v. Tinoco*, 304 F.3d 1088, 1106 (11th Cir. 2002); *United States v. Bustos-Useche*, 273 F.3d 622, 626 (5th Cir. 2001) The First Circuit sided with the Second Circuit citing *United States v. Prado*, 933 F.3d 121, 132-51 (2nd Cir. 2019).

8. Mr. Davila-Reyes now seeks a writ of certiorari for the United States Court of Appeals for the First Circuit with respect to its *en banc* decision. This Court's jurisdiction to grant the same arises pursuant to 28 U.S. C. § 1254 (1).

9. According to Supreme Court Rule 13.3, a petition for writ of certiorari was initially originally due on or before January 5, 2024. See Supreme Court Rule 13.3 ("the time to file the petition for a writ of certiorari . . . runs from the date of the denial of rehearing or, if rehearing is granted, the subsequent entry of judgment"). One of extension, has been granted and the maximum time period extension is 60 days. Therefore, the Petitioner seeks a second extension of thirty (30) days in which to file his petition for a writ of certiorari. See Supreme Court Rule 13.5 ("[A] Justice may extend the time to file a petition for writ of certiorari for a period not exceeding 60 days").

10. In accordance with Supreme Court Rule 13.5, this Application is submitted at

least ten (10) days prior to the present due date. The requested extension is made in good faith and not for the purposes of delay. Indeed, the requested extension is made because of the vital importance associated with the issues at hand – whether the United States had the power to criminalize, prosecute, and convict the subject acts on the High Seas. It is respectfully submitted that counsel’s duty to present this claim of constitutional error with care. This issue is not only important for Davila-Reyes’s liberty; it is a critically important question for the United States Courts and the Department of Justice, to settle whether MDLEA cases can be prosecuted at all. The Ninth Circuit’s recent decision in *Marin* demonstrates the ongoing importance of the present issue in pointing to numerous pending cases in the Eleventh Circuit, the government’s preferred forum for bringing MDLEA cases. *See United States v. Marin*, --- F.4th ----, 2024 WL 174063, (9th Cir. Jan. 17, 2024) (citing *United States v. Pierre*, No. 21-CR-20450, 2022 WL 3042244, at *10 (S.D. Fla. Aug. 1, 2022) (collecting cases). *See also United States v. Alfonso, et. al.*, 11th Cir. No. 22-10576. Thus, it is important that counsel be granted additional time to prepare Mr. Davila-Reyes’ petition with the care demanded of such cases.

11. Therefore, in light of counsel’s current obligations and the importance of the constitutional issues that will be presented in this case, counsel submits that a thirty (30) day extension is necessary and appropriate in order to effectively prepare the petition for certiorari on Mr. Davila-Reyes’ behalf.

Wherefore, in the interest of justice and for good cause shown, counsel for Mr.

Davila-Reyes respectfully requests that this Court extend the current January 5, 2024, deadline until February 5, 2024.

In San Juan, Puerto Rico, on January 24, 2023.

Respectfully submitted,

S/RAYMOND L. SANCHEZ-MACEIRA
PO BOX 191972
SAN JUAN, PR 00919
Tel.:(787) 721-3370
Sanchezlaw264@gmail.com
ATTORNEY FOR PETITIONER,
JEFFRI DAVILA-REYES

No. _____

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JEFFRI DAVILA-REYES,
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,

Appellee,

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITIONER'S CERTIFICATE OF SERVICE

I, Raymond Sanchez-Maceira, Esq., do hereby declare that on this date, December 21, 2023, as required by Supreme Court Rule 29, I have served the enclosed Second Application for Extension of time to File a Petition for a Writ of Certiorari and Appendix on each party to the above proceeding or that party's counsel, and on every other person required to be served, by delivering a properly addressed envelope containing the above documents to the U.S. Postal Service. The names and addresses of those served are as follows:

Elizabeth B. Prelogar
Solicitor General of the United States
Department of Justice, Room 5616
950 Pennsylvania Ave, N.W.
Washington, D.C. 20530

I also emailed copies of the above documents to the Solicitor General of the United States at the following address: SupremeCtBriefs@usdoj.gov

In addition, I electronically filed a copy of these documents on the Court's website today and am sending a paper copy by U.S. Mail to the Court on this January 25, 2024.

I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted.

Executed on January 25, 2024, in San Juan, Puerto Rico.

s/Raymond L. Sanchez-Maceira
PO BOX 191972
SAN JUAN, PR 00919
Tel.:(787) 721-3370
Sanchezlaw264@gmail.com
ATTORNEY FOR PETITIONER,
JEFFRI DAVILA-REYES

United States Court of Appeals For the First Circuit

No. 16-2089

UNITED STATES,

Appellee,

v.

JEFFRI DÁVILA-REYES,

Defendant - Appellant.

ORDER OF COURT

Entered: January 25, 2024

Upon consideration of appellant Jeffri Dávila-Reyes' motion to appoint co-counsel, the motion is resolved as follows: the motion is granted, and the Federal Public Defender's Office for the District of Puerto Rico is appointed as counsel for appellant Jeffri Dávila-Reyes.

By the Court:

Maria R. Hamilton, Clerk

cc:

Thomas F. Klumper
Mariana E. Bauzá Almonte
John M. Pellettieri
Nicholas G. Smith
David Christian Bornstein
Raymond Luis Sánchez-Maceira
Franco L. Pérez-Redondo
Rachel Brill
Jeffri Dávila-Reyes



Raymond Sanchez <sanchezlaw264@gmail.com>

Your Electronic Filing record has been submitted.

no-reply@sc-us.gov <no-reply@sc-us.gov>
To: sanchezlaw264@gmail.com

Thu, Jan 25, 2024 at 4:45 PM

Your Extension of Time to file a Petition for Writ of Certiorari has been submitted. It will be reviewed once the hard copy is received. If you are not expecting this email, please contact the Supreme Court Electronic Filing Support Group at eFilingSupport@supremecourt.gov.