

IN THE SUPREME COURT OF THE UNITED STATES

STEVEN ANTONIUS, AKA SEALED DEFENDANT 1, SHERVINGTON
LOVELL, AKA SEALED DEFENDANT 1, ARGEMIRO ZAPATA-
CASTRO, AKA SEALED DEFENDANT 1, Petitioners,

v.

UNITED STATES OF AMERICA, Respondent.

**APPLICATION FOR EXTENSION OF TIME
TO FILE PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SECOND
CIRCUIT**

TO THE HONORABLE SONIA SOTOMAYOR, ASSOCIATE JUSTICE
OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT
JUSTICE FOR THE SECOND CIRCUIT:

Pursuant to Supreme Court Rules 13.5, 22.1–22.3, and 30.3,
petitioners Steven Antonius, AKA Sealed Defendant 1, Shervington
Lovell, AKA Sealed Defendant 1, and Argemiro Zapata-Castro, AKA
Sealed Defendant 1, pray for a 60-day extension of time to file their
petition for certiorari in this Court to and including Monday, March 11,
2024, as the 60th day would be Saturday, March 9, 2024.

1. Timeliness. The judgment of the United States Court of
Appeals for the Second Circuit affirming the applicants' convictions and
sentences was entered on July 10, 2023, accompanied by a precedential
opinion. Appx A. A timely petition for rehearing was denied on October

12, 2023. Appx. B. Pursuant to Rule 13.3 any petition for certiorari would therefore be due for filing within 90 days of October 12, that is, on or before January 9, 2024. This application is being filed on or before the tenth day prior to the due date, as required by this Court's Rule 30.2.

2. Opinions Below and Jurisdiction. The decision and order appealed from were filed and published on November 11, 2020, by the United States District Court for the Southern District of New York and denied applicants' motion to dismiss the indictment on grounds relevant to the questions to be presented in the petition. Appx. C. The jurisdiction of this Court is to be invoked under 28 U.S.C. § 1254(1).

3. Reasons for Granting the Extension.

a. The facts of this case are not in dispute. This case arose from an agreement by applicants and others including undercover informants from the Drug Enforcement Administration to ship approximately 1,200 kilograms of cocaine from Guyana to the Netherlands aboard a series of boats. There was no connection between the applicants' agreement and the United States. The cocaine was not destined for nor did the cocaine travel through United States territory. None of the applicants were United States citizens, entered the United States, or used any instrumentality connected to the United States. The United States Coast Guard intercepted one of applicants' boats in international waters.

The boat did not display any country's flag and the captain did not claim any nationality for the boat's registration. The Coast Guard arrested the boat's crew members. None of the applicants were on board.

b. Applicants were arrested outside the United States, extradited to the Southern District of New York, and each charged with one count of conspiracy to violate the Maritime Drug Law Enforcement Act ("MDLEA"), 46 U.S.C. §§ 70503 and 70506(b).

c. Applicants moved in the district court to dismiss the indictment on the grounds that (1) they were never on board a vessel that was subject to United States jurisdiction and (2) there was no nexus between their alleged criminal conduct and the United States. The district court denied applicants' motion. Applicants pleaded guilty pursuant to plea agreements which the United States agreed did not prevent applicants from appealing the district court's denial of their motion to dismiss. Applicants were sentenced principally to terms of incarceration ranging from 11 to 13 years.

d. Applicants appealed the denial of their motion to dismiss to the United States Court of Appeals for the Second Circuit on the grounds that their prosecution under the MDLEA denied them due process because their conduct lacked a nexus to the United States. Applicants also argued that Congress exceeded its authority under

Article I of the Constitution when it enacted the MDLEA. The Court of Appeals affirmed the decision of the District Court. Applicants filed a petition for panel rehearing, or in the alternative, for rehearing *en banc*. After consideration, the Court of Appeals denied the petition.

e. Among other authorities, applicants relied in the district court and the court of appeals on *United States v. Davila-Reyes*, 23 F.4th 153 (1st Cir. 2022), which held that as a matter of apparent first impression, Congress exceeded its constitutional authority to define and punish felonies committed on high seas by enacting provisions of the MDLEA relevant to the questions applicants will present to this Court. The First Circuit subsequently withdrew this opinion, and on October 5, 2023, upon rehearing held to the contrary. *See United States v. Davila-Reyes*, 84 F.4th 400 (1st Cir. 2023).

f. The Davila-Reyes defendants are preparing a petition for certiorari the deadline for which is January 5, 2024 – four days before the deadline for filing the instant petition. Counsel for applicants have communicated with counsel for the Davila-Reyes petitioners who intend to present questions to this Court that are closely related to the questions to be presented in the instant petition. Counsel are concerned that they will not be able to present a fulsome petition to this Court with only four days

to consider and respond as appropriate to the questions presented by the Davila-Reyes petitioners.

g. In light of the severity of the applicants' sentences, which they are presently serving, neither the applicants nor the government would be prejudiced by an extension of up to 60 days.

h. In counsel's professional opinion, the case presents one or more issues worthy of presentation to this Court in a petition for certiorari, and applicants cannot file a petition meeting counsels' own and this Court's high standards prior to the existing due date.

WHEREFORE, the Applicant-Petitioners pray that an Order be entered extending the time within which they may petition this Court for certiorari by sixty days, to and including Monday, March 11, 2024, as the 60th day would be Saturday, March 9.

Respectfully submitted,

Dated: December 30, 2023

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