

No. _____

In The

SUPREME COURT OF THE UNITED STATES

MICHAEL MARR, JAVIER SANCHEZ, AND GREGORY CASORSO,

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 NINTH CIRCUIT**

Before the Honorable Elena Kagan

DENNIS P. RIORDAN
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Attorney for Petitioners
MARR, SANCHEZ, AND CASORSO

To the Honorable Elena Kagan, Associate Justice of the United States
Supreme Court and Circuit Justice for the Ninth Circuit:

Pursuant to 28 U.S.C. § 2101(c) and Rule 13.5 of the Rules of this Court, Petitioners Michael Marr, Javier Sanchez, and Gregory Casorso hereby move for a 30-day extension of time to file their petition for certiorari in this Court, to and including August 1, 2019.

A three judge panel of the Ninth Circuit Court of Appeals filed its initial decision denying petitioners's consolidated appeals from their federal court convictions in this matter on January 25, 2019. (*See* Exhibit A [January 25th decision].) Petitioners timely filed a petition for rehearing en banc as to that decision.

On April 3, 2019, the same Ninth Circuit panel issued an order denying the petition for rehearing en banc. (*See* Exhibit B [April 3rd order].) Accordingly, petitioner's time to petition for certiorari in this Court expires July 2, 2019. This application is being filed more than 10 days before that date.

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

The Ninth Circuit panel's decision affirms petitioners' convictions for conspiring to violate the Sherman Antitrust Act by means of bid-rigging at home foreclosure auctions, *United States v. Marr, Sanchez, and Casorso*, Ninth Cir.

Nos. 18-10113, 17-10519, and 17-10528. The case raises important issues concerning, among other things, the scope and interpretation of the Sherman Antitrust Act. Specifically, criminal liability for violating the Act requires a finding that the defendants' conduct constituted an unreasonable restraint of trade. The government secured petitioners' convictions at trial on the theory that their conduct was unreasonable *per se*, and without permitting factual inquiry into whether it was actually an unreasonable restraint. Petitioners contend that their convictions thus rested on application of a conclusive presumption in violation of their Fifth and Sixth Amendment rights to due process and to a jury trial, as recognized and elucidated in relatively recent decisions of this Court. *See, e.g., Carella v. California*, 491 U.S. 263, 265-66 (1989); *United States v. Gaudin*, 515 U.S. 506, 514 (1995).

This Court has yet to address the doctrinal conflict between these recent decisions and its much older precedent that permitted application of the *per se* rule in a criminal Sherman Act prosecution. *See United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150 (1940). Petitioners believe that review of the panel's decision by means of certiorari is necessary to resolve this fundamental conflict.

BASED FOR APPLICATION AND DECLARATION OF COUNSEL

In support of this application, Dennis P. Riordan hereby declares under

penalty of perjury as follows:

1. I am counsel of record for petitioners Marr, Sanchez, and Casorso.
2. I seek the 30-day extension of time requested herein due to the extraordinary press of business in this office that will prevent our filing the petition for certiorari by its July 2, 2019 due date. Specifically, since the date that our rehearing petition in the Ninth Circuit was denied on April 3, 2019, we have been required to file, and have filed, a 53-page response to the government's objections to a Magistrate Judge's Findings and Recommendation that relief be granted to our client in connection with his federal district court convictions for offering material support to terrorists and making false statements, *United States v. Hayat*, East. Dist. No. CR S-05-0240 GEB DB; supplemental briefing in support of a petition for a writ of mandate to the First District Court of Appeal challenging the San Francisco Superior Court's denial of a motion to dismiss an amended complaint alleging the filing of a false document with a public agency by a San Francisco police officer, *People v. Aslam*, San Francisco Sup. Ct. No. 16008164; a 60-page opening brief on appeal from our client's state court conviction for violation of a restraining order, *People v. Salvino*, Alameda Co. Sup. Ct. No. 18-CR-008423; a reply to the People's return to the First District Court of Appeal's Order to Show Cause issued in response to our petition for a writ of mandate in the


Aslam matter, *supra*; a reply in support of an appeal challenging our client's state court convictions for grand theft, securities fraud, and related offenses, *People v. Lamphere*, First App. Dist. No. A152773; and a petition for rehearing in connection with a Fifth Circuit decision affirming our client's federal court convictions for conspiracy to commit wire and securities fraud, wire fraud, securities fraud, and false statements, *United States v. Baker*, Fifth Cir. No. 17-51034.

3. Furthermore, during the next thirty days, we will be required to file a traverse and related memorandum in support of a federal petition for a writ of habeas corpus challenging our client's state court convictions for second degree murder and related firearm enhancements resulting in a sentence of twenty-five years to life in prison, *Moore v. Frauenheim*, No. Dist. No. 3:18-cv- 03523-JCS; a return to the state's denial of a writ petition challenging our client's state conviction for second degree murder and related gang and firearm enhancements resulting in a sentence of 50 years to life in state prison, *In the Matter of Marcos Reis-Campos*, San Francisco Sup. Ct. Writ No. 7255; and a reply in support of an appeal from a superior court order and judgment dismissing a complaint against the State of California seeking declaratory and injunctive relief in connection with a public school's application of a state statute to deny our client, a registered sex

offender, all access to a public school attended by his child, *Doe v. California, et al.*, Second App. Dist. No. B290587.

4. For the foregoing reasons, I respectfully request that an order be entered extending the time to petition for certiorari in the above-captioned matter to and including August 1, 2019.

Executed this 17th day of June, 2019, at San Francisco, California.



Dennis P. Riordan

*Counsel of Record for
Petitioners Marr, Sanchez, and Casorso*