

No. 19A

IN THE SUPREME COURT OF THE UNITED STATES

Jeffrey Alan Olson,
Applicant,

v.

Commonwealth of Pennsylvania,
Respondent.

**APPLICATION FOR AN EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI**

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January 16, 2020

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To the Honorable Samuel A. Alito, Jr., Associate Justice of the Supreme Court of the United States and Circuit Justice for the Third Circuit:

Pursuant to this Court's Rules 13.5, 22, and 30.3, Applicant Jeffrey Alan Olson requests a 30-day extension of time to file a petition for a writ of certiorari to review the judgment of the Pennsylvania Supreme Court in this case, to February 28, 2020.

As discussed herein, this case presents an acknowledged conflict over an exceptionally important question of federal law, concerning the retroactivity of this Court's decision in *Birchfield v. North Dakota*, 136 S. Ct. 2160 (2016). Applicant requests this extension because undersigned counsel only recently retained Supreme Court counsel to assist in the proceedings before this Court, and because undersigned counsel has several substantial court deadlines during the relevant period and needs additional time to provide the level of analysis that aids this Court in determining whether to grant certiorari.

In support of this request, Applicant states as follows:

1. The Pennsylvania Supreme Court issued its opinion on October 31, 2019. *See Commonwealth v. Olson*, 218 A.3d 863 (Pa. 2019) (attached hereto at Attachment

A). The time for filing a petition would thus expire on January 29, 2020, absent an extension. Consistent with Rule 13.5, this application has been filed at least 10 days before that date. This Court has jurisdiction over the case under 28 U.S.C. § 1257(a).

2. In *Birchfield v. North Dakota*, 136 S. Ct. 2160 (2016), this Court held that the Fourth Amendment prohibits the government from “impos[ing] criminal penalties on the refusal to submit” to a warrantless blood test. *Id.* at 2185. This case presents the exceptionally important issue of whether this holding “constitutes a new rule of law that applies retroactively on post-conviction collateral review.” *Olson*, 218 A.3d at 866. In a divided opinion, a majority of the Pennsylvania Supreme Court concluded that this Court’s rule—prohibiting the government from punishing people for refusing a warrantless blood draw— “set forth a ‘procedural’ rule for purposes of the *Teague* analysis, and, thus, does not apply retroactively.” *Id.*

3. The majority acknowledged that its decision creates a conflict of authority among state courts of last resort: Its conclusion that *Birchfield*’s prohibition on punishment is procedure required it to “disagree with the Supreme Courts of North Dakota, Minnesota, and New Mexico.” *Id.* at 873. Chief Justice Saylor and Justice Donahue each dissented, explaining that they “agree with the jurisdictions which have held that the rule set forth in *Birchfield* . . . is substantive in character.” *Id.* at 876 (Saylor J., dissenting); *id.* at 877 (Donohue, J., dissenting).

4. Applicant intends to file a petition for certiorari asking this Court to resolve this constitutional issue. Applicant requests additional time to file the petition because undersigned counsel only recently retained the assistance of Supreme Court counsel, Amir H. Ali, to assist with the proceedings before this Court. Counsel requires

additional time to undertake the research and analysis that aids this Court in determining whether to add a case to its merits docket.

5. During the period of the sought extension, undersigned counsel also has several substantial briefing deadlines. These include:

- An Appellate Brief in the Pennsylvania Superior Court in Commonwealth v. Eric Kennedy, No. 1564 WDA 2019, to be filed by February 12, 2019;
- An Appellate Brief in the Pennsylvania Superior Court in Commonwealth v. Kevin Lape, No. 1535 WDA 2019, to be filed by February 12, 2019;
- An Appellate Brief in the Pennsylvania Superior Court in Commonwealth v. Jeffrey Tarpley, No. 1531 WDA 2019, to be filed by February 18, 2019;

6. Applicant has not previously sought an extension of time from this Court.

7. For these reasons, Applicant respectfully requests that the time to file a petition for a writ of certiorari be extended to and including February 28, 2020.

Respectfully submitted,



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