

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

MARK A. BECKHAM,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

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**TO THE HONORABLE NEIL M. GORSUCH, ASSOCIATE JUSTICE OF THE
SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR
THE EIGHTH CIRCUIT:**

Pursuant to Supreme Court Rules 13.5, 22, and 30, Petitioner respectfully requests a 30-day extension of time, up to and including August 14, 2019, to file a petition for a writ of certiorari to the United States Court of Appeals for the Eighth Circuit to review that court's decision in *United States v. Mark A. Beckham*, 917 F.3d 1059 (8th Cir. 2019) (attached as Exhibit A). The Eighth Circuit issued its judgment on March 8, 2019. Petitioner filed a petition for rehearing en banc on March 22, 2019. The Eighth Circuit issued its order denying the petition for rehearing en banc on April 15, 2019 (attached as Exhibit B).

Petitioner intends to file a petition seeking review of the Eighth Circuit's judgment. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1), and the time to file a petition for a writ of certiorari will expire without an extension on July 15, 2019. This application is timely because it has been filed more than ten days prior to the date on which the time for filing the petition is to expire.

1. This case presents two substantial and important questions of federal law and raises a question on which there is a circuit split. Petitioner was acquitted of all but one count and the sole count of conviction was for an alleged violation of 26 U.S.C. § 7212(a). The conviction was obtained before this Court issued its decision in *United States v. Marinello*, 138 S.Ct. 1101 (2018). It is undisputed that Petitioner requested that the jury be instructed consistent with what this Court ultimately decided in *Marinello* and that the jury was not so instructed. It is also undisputed

that the jury has never made a finding beyond a reasonable doubt of all the elements required to convict Petitioner of violating Section 7212(a). Applying *Neder v. United States*, 527 U.S. 1 (1999), the Eighth Circuit concluded the district court's instructional error was harmless beyond a reasonable doubt based on the Eighth Circuit's independent review of the evidence presented at trial. In so doing, the Eighth Circuit created a circuit split. See, e.g., *United States v. Stanford*, 823 F.3d 814 (5th Cir. 2016) ("We ordinarily presume that jurors 'follow the instructions they are given.' Conversely, absent an appropriate instruction, we cannot presume that the jurors applied the correct standard of proof. Yet, a defendant is 'indisputably entitle[d]' to 'a jury determination that [he] is guilty of every element of the crime with which he is charged, beyond a reasonable doubt'") (citations omitted).

2. This week, this Court decided two cases which directly impact Petitioner's petition for a writ of certiorari. See *United States v. Haymond*, No. 17-1672 (decided June 26, 2019) ("Only a jury, acting on proof beyond a reasonable doubt, may take a person's liberty"); *Knick v. Twp. of Scott, Pennsylvania*, No. 17-647 (decided June 21, 2019) ("We have identified several factors to consider in deciding whether to overrule a past decision, including 'the quality of [its] reasoning, the workability of the rule it established, its consistency with other related decisions, ... and reliance on the decision'"). Pursuant to the factors identified in *Knick*, the viability of *Neder* is in question.

3. Undersigned counsel has several upcoming trials, both as retained counsel and as court-appointed CJA counsel, and other matters involving complicated

legal issues requiring substantial in-court litigation. *See, e.g., United States v. Crangle* (E.D.Mo. Case No. 4:17-CR-612), *United States v. Johnson* (E.D.Mo. Case No. 4:18-CR-565) and, *United States v. Jaber* (E.D.Mo. Case No. 4:18-CR-1018). All of these commitments will limit undersigned counsel's availability to work on this matter between today and July 15, 2019.

Accordingly, Petitioner respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari for 30 days, up to and including August 14, 2019.

Dated: June 28, 2019

Respectfully submitted,

/s/ Justin K. Gelfand

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