

No. _____

In The

SUPREME COURT OF THE UNITED STATES

MICHAEL BAKER,

Petitioner,

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 FIFTH CIRCUIT**

Before the Honorable Samuel A. Alito, Jr.

DENNIS P. RIORDAN
Counsel of Record
RIORDAN & HORGAN
1611 Telegraph Avenue
Suite 806
Oakland, CA 94612

Attorney for Petitioner
MICHAEL BAKER

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

Pursuant to 28 U.S.C. § 2101(c) and Rule 13.5 of the Rules of this Court, Petitioner Michael Baker hereby moves for a 30-day extension of time to file his petition for certiorari in this Court, to and including October 25, 2019.

A three judge panel of the Fifth Circuit Court of Appeals filed its initial published decision denying petitioner's appeal from his federal court convictions in this matter on January 7, 2019. Petitioner timely filed a petition for rehearing en banc as to that decision.

On April 26, 2019, the same Fifth Circuit panel issued an order denying the petition for rehearing en banc. On the same date, the panel also issued an order withdrawing its previous, January 7th opinion and substituted a new opinion in its place. (*See* Exh. A [published April 26, 2019 opinion].) Petitioner timely filed a petition for rehearing en banc as to the panel's April 26th opinion. On June 27, 2019, the panel issued an order denying the petition for rehearing en banc. (*See* Exh. B [June 27th order].) Accordingly, petitioner's time to petition for certiorari in this Court expires September 25, 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 Fifth Circuit's decision affirms petitioner's convictions following a jury trial for conspiracy to commit wire and securities fraud, wire fraud, securities fraud, and false statements. *United States v. Baker*, Fifth Cir. No. 17-51034. The decision raises important issues concerning, among other things, the meaning and scope of this Court's decision in *Griffin v. United States*, 502 U.S. 46 (1991). In that case, this Court held that a conviction must be reversed when disjunctive legal theories, one of which is legally insufficient, are submitted to the jury, the jury renders a general verdict of guilty and it is impossible to tell which ground the jury selected. Petitioner maintains that the panel's published decision decides an important question of federal law in a way that squarely conflicts with *Griffin*. See Supreme Court Rule 10(c).

BASIS 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 petitioner Michael Baker.
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 present September 25, 2019 due date. Specifically, since the date that the Fifth Circuit denied our rehearing petition on June 27, 2019,

we have been required to file, and have filed, a petition for a writ of certiorari in this Court challenging the Ninth Circuit Court of Appeals's decision affirming our clients' convictions for conspiring to violate the Sherman Antitrust Act by means of bid-rigging at home foreclosure auctions, *United States v. Sanchez, et al.*, Supreme Court No. 18A1342; 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, *People v. Moore*, No. Dist. No. 3:18-cv- 03523-JCS; a traverse and related memorandum in support of a habeas 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; an 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 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; a memorandum concerning the burden of proof at an evidentiary hearing ordered by the federal district court in response to our client's petition for a federal writ of habeas corpus challenging his state court murder conviction, *Stevens v. Beard*, Northern Dist. of Cal. No. 5:13-cv-03877-EJD; and pre-trial briefing relating to potential defenses in a prosecution alleging conspiracy to defraud the United States, false statements, and related offenses, *United States v. Turner, et al.*, 17-cr-0175-CRB.

3. Furthermore, prior to October 25, 2019 — the due date requested in this matter — we will be required to file an opening brief in support of an appeal challenging our client's convictions and enhancement findings for sexual offenses involving minors resulting in a sentence of 270 years to life, *People v. Linh Nguyen*, Sixth Appellate District No. H046507; an opening brief in support of an appeal challenging our client's state court convictions for sexual assault, conspiracy, dissuading a witness, and aggravated kidnaping, *People v. Singh*, Third App. Dist. No. C088997 resulting in a sentence of 34 years to life; and a petition for panel rehearing and/or rehearing en banc as to a published Ninth Circuit decision affirming our client's federal court convictions, following a jury trial, for conspiracy to traffic in counterfeit goods and related offenses, *United States v. Shayota, et al.*, Ninth Cir. No.17-10270.

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 October 25, 2019.

Executed this 3rd day of September, 2019, at Oakland, California.



Dennis P. Riordan

*Counsel of Record for
Petitioner Michael Baker*