

No. 19A__

In the Supreme Court of the United States

STEPHEN GUSTUS,

Petitioner,

v.

UNITED STATES,

Respondent.

APPLICATION TO EXTEND TIME TO FILE A PETITION FOR A WRIT OF
CERTIORARI FROM DECEMBER 8, 2019 TO FEBRUARY 6, 2020

To the Honorable Neil M. Gorsuch, as Circuit Justice for the United States Court
of Appeals for the Eighth Circuit:

Petitioner Stephen Gustus respectfully requests that the time to file a Petition
for a Writ of Certiorari be extended 60 days from December 8, 2019, to and including
February 6, 2020. The U.S. Court of Appeals for the Eighth Circuit denied a petition
for rehearing en banc on September 9, 2019, App. B, *infra*, after issuing its opinion
and judgment on June 14, 2019, App. A, *infra*. Absent an extension, the petition
therefore would be due on December 8, 2019. This application is being filed at least
10 days before that date. *See* Sup. Ct. R. 13.5. The jurisdiction of this Court would
be invoked under 28 U.S.C. § 1254 to review this case.

Background

On December 21, 2016, Stephen Gustus was very intoxicated. While “wearing
nothing but a pair of shoes and a bed comforter,” he inexplicably ended up in a

physical altercation with a U.S. Postal Service employee. App. A at 2. According to his presentence investigation report, Gustus presented at that time “smelling of intoxicants, using slurred speech, and having blood-shot eyes and unstable footing.” *Id.* at 3 n.2. At the hospital where he was taken after his arrest, he said he had been drinking alcohol and “tested positive for amphetamines, methamphetamines, and marijuana.” *Id.*

Thereafter, Gustus was eventually “charged with ‘voluntarily and intentionally forcibly assaulting, impeding and interfering with an employee of the United States while the employee was engaged in and on account of the performance of official duties,’ a violation of 18 U.S.C. § 111(a)(1).” App. A at 3 (brackets omitted). Gustus pled not guilty and prepared to defend himself on the ground that he was voluntarily intoxicated at the time of the offense. But the district court prohibited Gustus from presenting that defense on the ground that the Eighth Circuit declared 18 U.S.C. §111(a)(1) a general-intent crime in *United States v. Hanson*, 618 F.2d 1261 (8th Cir. 1980), and voluntary intoxication is only available as a defense to crimes requiring specific intent. Gustus was consequently convicted without being allowed to present his compelling intoxication defense.

Gustus appealed, and the Eighth Circuit affirmed the conviction on the ground that Gustus’s intoxication defense was validly foreclosed. The panel recognized that there were conflicting precedents in the Eighth Circuit on the question whether Section 111(a)(1) requires specific or general intent. *See* App. A at 5-6. The panel resolved the tension on the sole ground that “the earliest of the conflicting opinions ...

should have controlled the subsequent panels.” *Id.* at 5-6 (internal quotation marks omitted). The panel therefore found that it was proper to prevent Gustus from presenting a voluntary intoxication defense, as such a defense is not permitted on general-intent crimes.

Judge Kelly concurred, explaining that the conflicting precedents on this difficult question recommended in favor of rehearing en banc. *See* App. A at 7. Judge Kelly also outlined a deep disagreement among the other courts of appeal on the question presented. *Id.* at 9 & n.5. Five circuits have characterized a Section 111 violation as one of general intent. *United States v. Brown*, 592 F. App’x 164, 166 (4th Cir. 2014) (per curiam); *United States v. Kimes*, 246 F.3d 800, 808 (6th Cir. 2001); *United States v. Ricketts*, 146 F.3d 492, 497 (7th Cir. 1998); *United States v. Kleinbart*, 27 F.3d 586, 592 (D.C. Cir. 1994); *United States v. Jim*, 865 F.2d 211, 214-15 (9th Cir. 1989). Three circuits have characterized it as a specific-intent crime. *United States v. Simmonds*, 931 F.2d 685, 687 (10th Cir. 1991); *United States v. Taylor*, 680 F.2d 378, 381 (5th Cir. 1982); *United States v. Caruana*, 652 F.2d 220, 222-23 (1st Cir. 1981) (per curiam).

The Eighth Circuit denied Gustus’s timely petition for rehearing en banc. *See* App. B. The opinion below thus resolves the Eighth Circuit’s internal tension by joining the shorter end of this deep and persistent circuit split, leaving the courts of appeals now divided 5-4 on the precise question presented.

Reasons for Granting an Extension of Time

The time to file a Petition for a Writ of Certiorari should be extended for 60 days for at least three reasons:

1. The press of other matters before this and other courts makes the existing deadline on December 8, 2019, difficult to meet. In addition to this petition, counsel for petitioner is currently preparing for oral argument in *Georgia v. Public.Resource.Org, Inc.*, No. 18-1150, on Dec. 2, 2019; drafting an opening brief in the Second Circuit (*FrontPoint Asian Event Driven Fund, Ltd. v. Citibank, N.A.*, No. 19-2719, due Nov. 22, 2019); and drafting a reply brief in the Ninth Circuit (*Federal Trade Commission v. Qualcomm Inc.*, No. 19-16122, due Dec. 13, 2019). The additional time will assist counsel in preparing a concise and well-researched petition that will be of maximum benefit to this Court.

2. Whether or not the extension is granted, the petition will be considered during this Term—and, if the petition were granted, it will necessarily be argued in the next Term. The extension is thus unlikely to substantially delay the resolution of this case.

3. Finally, the Court is likely to grant the petition. This case involves an important question of criminal law that has now divided the courts of appeals five-to-four: whether 18 U.S.C. §111(a)(1)—which criminalizes “assaulting, resisting, or impeding certain officers or employees”—is a specific-intent or general-intent crime. The rule the Eighth Circuit adopted here tends to subject people who are merely intoxicated to unnecessarily harsh federal felony sentences for assaulting federal

officers, without allowing them to defend their conduct before the jury as the product of intoxication and not criminal intent. The common law definition of assault already characterized it as a general intent offense, and modern trends in the interpretation of criminal laws only confirm that the more lenient reading should be adopted. This Court is thus likely to grant the petition and reverse the decision below.

Conclusion

For the foregoing reasons, the time to file a Petition for a Writ of Certiorari in this matter should be extended for 60 days to and including February 6, 2020.

Respectfully submitted,



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