

No. 19A266

In The
SUPREME COURT OF THE UNITED STATES

MICHAEL BAKER,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

**SECOND 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 Alito

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Attorney for Petitioner
MICHAEL BAKER

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

This Court previously granted petitioner a thirty-day extension of time, to and including October 25, to file his petition for a writ of certiorari in this matter. Pursuant to 28 U.S.C. § 2101(c) and Rule 13.5 of the Rules of this Court, petitioner hereby moves for an additional twenty-eight day extension of time, to and including November 22, 2019, to file the petition. As set forth further below, this motion is founded primarily on petitioner's association of new counsel, Alexandra Shapiro, for purposes of preparing and presenting the petition to this Court.

Procedural History

A three judge panel of the Fifth Circuit Court of Appeals filed its amended decision denying petitioner's appeal from his convictions in this matter on April 26, 2019. (*See* Exhibit A [April 26 decision].) Petitioner timely filed a petition for rehearing en banc as to that decision.

On June 27, 2019, the same Fifth Circuit panel issued an order denying the petition for rehearing en banc. (*See* Exhibit B [June order].) Accordingly, petitioner's time to petition for certiorari in this Court was initially scheduled to expire on September 25, 2019. More than 10 days prior to that date, petitioner

moved this Court for a thirty-day extension of time, to and including October 25, 2019, to file the petition. On September 6, this Court granted the initial extension request. (*See* Exhibit C [Court’s Sept 6 letter order].)

The present application is being filed more than 10 days before the present October 25, 2019 due date. *See* Supreme Court Rules 13.5 and 30.2.

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

The Decision Below

The Fifth Circuit panel affirmed petitioner’s conviction for wire fraud and securities fraud. Petitioner’s claim on appeal centers on the meaning of the phrase “obtain property,” as it is used in the wire and securities fraud statutes.

This Court has held that when common-law terms appear in federal statutes, they should ordinarily be interpreted and applied in accordance with their common-law meanings. *See Neder v. United States*, 527 U.S. 1, 23 (1999). In other federal criminal statutes, this Court has held that the phrase “obtain property” has a clear common-law meaning. *Honeycutt v. United States*, 137 S. Ct. 1626, 1632 (2017); *Sekhar v. United States*, 570 U.S. 729, 734 (2013). It requires that the defendant seeks to acquire something that the victim gives up.

At his trial, petitioner requested that the jury be instructed accordingly. The district court rejected the request, and the Fifth Circuit affirmed that ruling. It held

that this Court’s decisions in *Honeycutt*, *Sekhar*, and other cases do not apply to the federal fraud statutes. It held, in other words, that the phrase “obtain property” has a different and broader meaning in the fraud statutes—and it declined to apply the common-law meaning.

This Court has yet to address whether the ordinary presumption in favor of common-law meanings applies to the wire and securities fraud statutes. Given the centrality of the wire and securities fraud statutes in federal criminal practice, this is an important issue meriting consideration by this Court.

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 twenty-eight day extension of time requested herein primarily because, since filing our previous request, we have associated Alexandra Shapiro as new counsel for petitioners. Ms. Shapiro is a leading criminal appellate attorney, with extensive experience presenting legal briefing and argument both in the federal circuits and in this Court.
3. Ms. Shapiro has prior commitments that will make it impractical for her to devote sufficient time to this case prior to the current filing deadline. She has a

reply brief in the Second Circuit due on October 4 (*United States v. Joseph Percoco, et al.*, No. 18-2990); she has a petition for rehearing en banc due in the Second Circuit on October 25 (*United States v. Mark Johnson*, No. 18-1503); and she has an oral argument in the Second Circuit on October 30 (*United States v. Edward Kosinski*, No. 18-3065). All three cases are large, complex white collar appeals presenting questions of first impression.

4. This office also faces an unusual number of briefing deadlines in the next few weeks. This includes a petition for rehearing due in the Ninth Circuit on October 3 (*United States v. Joseph Shayota*, No. 17-10270); a petition for review due in the California Supreme Court on October 7 (*People v. Richard Lamphere*, No. A152773); Rule 29 and 33 motions due in the Northern District of California on October 15 (*United States v. Brian Federico*, No. CR-12-00862); an opening brief due in the California Court of Appeal, Third Appellate District on October 25 (*People v. Harpreet Singh*, No. C088997) and an oral argument in the Ninth Circuit scheduled for October 25 (*Poonja v. Shah*, No. 18-15629).

5. 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 November 22, 2019.

Executed this 1st day of October, 2019, at San Francisco, California.



Dennis P. Riordan

*Counsel of Record for
Petitioner Michael Baker*