

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL BONIN,
Applicant,

v.

UNITED STATES,
Respondent.

APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE
A PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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To the Honorable Brett M. Kavanaugh, Associate Justice of the United States Supreme Court and Circuit Justice for the Seventh Circuit:

Pursuant to Supreme Court Rules 13.5, 22, and 30.2, applicant Michael Bonin respectfully requests an extension of time of sixty days, up to and including December 23, 2019, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case. Mr. Bonin has not previously sought an extension of time from this Court.

The court of appeals entered its judgment on July 26, 2019. App. 1. Without extension, the time to file a petition for a writ of certiorari in this Court would expire on October 24, 2019. *See* S. Ct. R. 13.1, 30.1. Consistent with Rule 13.5, this application is being filed more than 10 days before that date.

A copy of the Seventh Circuit's opinion is attached. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1).

1. Applicant was charged with impersonating a United States Marshal and acting as such under 18 U.S.C. § 912. App. 2. Before trial, the United States District Court for the Northern District of Illinois denied applicant's motion to dismiss the indictment. App. 5–6. Applicant had argued that the statute was facially unconstitutional under the First and Fifth Amendments in that it violated Applicant's right to free speech, and the statute was unconstitutionally vague. App. *Id.* The district court also rejected applicant's proposed related jury instructions, concluding that applicant's concerns may apply to a different part of Section 912 but

not the part under which applicant was charged. App. 6–7. Applicant was then convicted after trial. App. 9. The government conceded partial error on appeal, but the court of appeals nonetheless affirmed the conviction and the district court’s rulings. App. 19, 30.

2. This case presents an important question on which the courts are divided: What does the 18 U.S.C. § 912’s ban on impersonating a federal agent and “act[ing] as such,” prohibit? The circuit courts have split on three issues: First, some courts conclude that the offense requires specific intent, whereas others require the government to prove only general intent. *Compare United States v. Randolph*, 460 F.2d 367, 370 (5th Cir. 1972) (“We now hold that ‘fraudulent intent[]’ . . . is an essential element in a prosecution under . . . § 912.”) *with United States v. Parker*, 699 F.2d 177, 179 (4th Cir. 1983) (affirming conviction “despite the apparent absence of fraudulent intent.”) Second, some circuits interpret the acting “as such” requirement robustly to require an assertion of federal authority “that the impersonator claims to have by virtue of the office he pretends to hold.” *See, e.g., United States v. Rosser*, 528 F.2d 652, 656 (D.C. Cir. 1976). By contrast, other circuits treat the “acts as such” requirement as “mere surplusage,” allowing conviction upon a showing of the impersonation itself. *United States v. Neidlinger*, 354 Fed. App’x 357, 361 (10th Cir. 2009) (unpublished) (criticizing same); *see United States v. Tomsha-Miguel*, 766 F.3d 1041, 1046 (9th Cir. 2014) (allowing conviction upon proof of act “in keeping with” the “assumed character”); *United States v. Bonin*, 932 F.3d 523, 539 (7th Cir. 2019). Third, members of this Court

have suggested, and some lower courts have agreed, that conviction under Section 912 requires showing that the offender changed a third party's behavior. *See United States v. Alvarez*, 567 U.S. 709, 735 (2012) ("Statutes forbidding impersonation of a public official typically focus on *acts* of impersonation, not mere speech, and may require a showing that, for example, someone was deceived into following a 'course [of action] he would not have pursued but for the deceitful conduct.'" (quoting *United States v. Lepowitch*, 318 U.S. 702, 704 (1943); citing 18 U.S.C. § 912)) (alteration in original) (concurring op.); *Neidlinger*, 354 Fed. App'x at 361. Other courts, including the Seventh Circuit in this case, have rejected the third party requirement "because the text of § 912 does not mention causation." *Bonin*, 932 F.3d at 539.

3. This case also invokes important First Amendment concerns. In *United States v. Alvarez*, this Court concluded that prosecutions for lying risk violating the First Amendment except when restricted to traditional common law crimes such as fraud or when the lie is accompanied by other elements focusing the statute more narrowly on a specific harm. *Alvarez*, 567 U.S. at 717–22 (plurality op.); *id.* at 734–36 (concurring op.) Like the Stolen Valor Act at issue in *Alvarez*, Section 912 indisputably criminalizes misrepresenting oneself. Other circuits have interpreted the statute to restrict the context in which Section 912's impersonations constitute a crime. But the Seventh Circuit in this case rejects those restrictions. The resulting interpretation of Section 912 accordingly risks violating the First

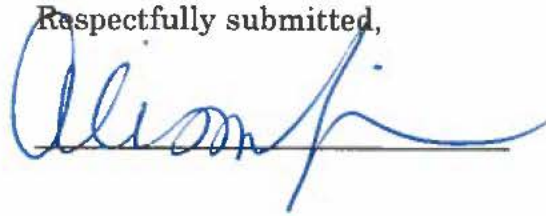
Amendment by failing to restrict Section 912 to a common law crime or narrow the offense to the applicable harm.

4. The multiple unresolved questions about the statutory text also raise the important question of whether the statute is unconstitutionally vague, in violation of the First and Fifth Amendments. This vagueness question is exacerbated by ambiguity and breadth of the statutory text itself—a prohibition on impersonation and “act[ing] as such.” 18 U.S.C. § 912.

5. Applicant is represented pro bono by the Federal Criminal Justice Clinic at the University of Chicago Law School. The Federal Criminal Justice Clinic is a non-profit legal clinic that represents indigent criminal defendants in the federal courts. Counsel represents clients alongside law students in this clinical setting. The Seventh Circuit’s opinion in this case was issued over the summer, when counsel had no students available to assist with the case. In addition, during that same time period, the clinic had heavy pre-existing commitments including a long-scheduled federal criminal trial and serving as a lead instructor in a daily “intensive” trial practice course. The autumn quarter began on October 2, 2019, and ends on December 10, 2019. Counsel accordingly respectfully requests the additional time to work with co-counsel and students to prepare an appropriate petition for consideration by this Court.

6. Neither party will be prejudiced by the extension of time. Mr. Bonin received a sentence of probation and remains out of custody.

Respectfully submitted,



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