

No. \_\_\_\_\_

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**IN THE SUPREME COURT OF THE UNITED STATES**

DEREK J. PETTY,  
*Petitioner,*

v.

UNITED STATES OF AMERICA,  
*Respondent.*

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On Petition for a Writ of Certiorari to the  
United States Court of Appeals for the Eighth Circuit

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

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**PETITIONER'S APPLICATION FOR EXTENSION OF TIME TO FILE A  
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*To the Honorable Brett M. Kavanaugh, Associate Justice of the Supreme Court of the  
United States and Circuit Justice for the Eighth Circuit*

Petitioner, Derek J. Petty, respectfully applies to this Court for an order extending the time in which to file his petition for a writ of certiorari from May 8, 2023 until July 7, 2023, a period of 60 days. This Court has jurisdiction under 28 U.S.C. § 1254(1). In support of this Application, Mr. Petty respectfully states as follows:

1. Mr. Petty is incarcerated following a jury trial (4:19-cr-272) and a related supervised release revocation proceeding (4:15-cr-99) in the United States District Court for the Eastern District of Missouri.

2. On December 20, 2022, the United States Court of Appeals for the Eighth Circuit issued an opinion in Case Nos. 21-3286 and 21-3290 (attached), which were consolidated on appeal, wherein the court affirmed the judgments of the United States District Court for the Eastern District of Missouri.

3. On February 7, 2023, the United States Court of Appeals for the Eighth Circuit issued an order denying Mr. Petty's petition for rehearing *en banc* (attached).

4. On April 6, 2023, the United States Court of Appeals for the Eighth Circuit granted Mr. Petty's motion for appointment of counsel, and appointed undersigned counsel pursuant to the Criminal Justice Act for purposes of preparing and filing a petition for a writ of certiorari (attached).

5. Mr. Petty's case raises an important question concerning a criminal defendant's Fifth Amendment right to be charged by an indictment returned by a grand jury which alleges each element necessary to constitute the offense intended to be punished.

6. According to Supreme Court Rule 13.3, Mr. Petty’s petition for a writ of certiorari is presently due on or before May 8, 2023. *See* Supreme Court Rule 13.3 (“the time to file a petition for a writ of certiorari...runs from the date of the denial of rehearing”). However, the time granted by Supreme Court Rule 13 will be insufficient to allow Mr. Petty’s counsel to do justice to the issue at hand, which is of vast import.

7. Mr. Petty’s counsel was recently appointed to represent him for purposes of preparing and filing a petition for a writ of certiorari on April 6, 2023. Additionally, undersigned counsel is preparing for a 26-count federal white collar criminal jury trial beginning on May 8, 2023, the same day Mr. Petty’s petition for a writ of certiorari is presently due. *See United States v. Guetersloh*, 4:22-cr-338 (E.D. Mo.).

8. Therefore, Mr. Petty seeks an extension of 60 days in which to file his petition for a writ of certiorari. *See* Supreme Court Rule 13.5 (“For good cause, a Justice may extend the time to file a petition for a writ of certiorari for a period not exceeding 60 days”).

9. In accordance with Supreme Court Rule 13.5, this Application is submitted at least ten days prior to the present due date. Further, the requested extension is made in good faith and not for the purposes of delay. Indeed, the requested extension is made because of the vital importance associated with the issue at hand—the right to be charged by a valid indictment returned by a grand jury pursuant to the Fifth Amendment to the United States Constitution.

10. Undersigned counsel’s obligations to his client who is preparing for trial—coupled with his relatively recent appointment to represent Mr. Petty before this Court—have precluded counsel from being able to direct adequate time and attention to the preparation of a petition for a writ of certiorari on Mr. Petty’s behalf. Therefore, in light of undersigned counsel’s current obligations and the importance of the constitutional issue that will be presented in this case,

undersigned counsel respectfully submits that a 60-day extension is necessary and appropriate in order to effectively prepare the petition for a writ of certiorari on Mr. Petty's behalf.

Wherefore, in the interest of justice and for good cause shown, counsel for Mr. Petty respectfully requests that this Court extend the current May 8, 2023 deadline until July 7, 2023.

Respectfully submitted,

/s/ Justin K. Gelfand

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