No. 25A-_____

IN THE
Supreme Court of the United States

STEPHEN K. BANNON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the D.C. Circuit

APPLICATION FOR AN EXTENSION OF TIME IN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI

To the Honorable John Roberts, Chief Justice of the United States and Circuit Justice for the United States Court of Appeals for the D.C. Circuit:

Pursuant to 28 U.S.C. § 2101(c) and Rules 13.5, 21, 22, and 30 of this Court, Petitioner respectfully requests a 30-day extension of time, to and including September 24, 2025, within which to file a Petition for a Writ of Certiorari to the U.S. Court of Appeals for the D.C. Circuit in this case. The D.C. Circuit issued its panel opinion on May 10, 2024, and denied rehearing *en banc* on May 27, 2025. A petition for a writ of certiorari is currently due on or before August 25, 2025. This application is being filed more than ten days before that date.

The D.C. Circuit's May 10, 2024, opinion is reported at 101 F.4th 16. The D.C. Circuit's June 20, 2024, order denying bail over Judge Walker's dissent is not reported but is available at 2024 WL 3082040. The D.C. Circuit's May 27, 2025, order denying rehearing *en banc* is not yet

reported but is available at 2025 WL 1503223. These decisions are attached. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254.

BACKGROUND

This case raises two important questions about the criminal contempt-of-Congress statute: *first*, whether this is the only criminal statute on the books where a "willful" *mens rea* requires merely "intentional" conduct; and *second*, whether the proper composition of a congressional committee bears on its authority to issue a subpoena.

In 2 U.S.C. § 192, Congress criminalized "willfully … default[ing]" on a lawfully authorized congressional subpoena. The D.C. Circuit interpreted "willfully" to require only intentional conduct. As Judges Rao, Henderson, and Walker argued in dissent below, that interpretation conflicts with 150 years of caselaw from this Court, is contrary to basic canons of construction, and will cause serious harm to the separation of powers.

This Court has long held that, in the criminal context, "[t]o prove 'willfulness,' the Government must demonstrate that an individual knew that his conduct was unlawful." *Bondi v. VanDerStok*, 145 S. Ct. 857, 877 (2025) (Kavanaugh, J., concurring) (collecting authorities). It appears that is the *uniform* practice of this Court when interpreting criminal statutes. And the text of § 192 confirms that rule should apply here because, in the very same sentence, Congress conspicuously *omitted* "willfully" when criminalizing a different set of actions. The use of two different *mens rea* requirements means that "willfully" imposes a heightened standard.

The proper *mens rea* was critical here because Petitioner relied in good faith on his attorney's advice to delay compliance with a subpoena issued by a House Select Committee *until* executive privilege disputes were first resolved, as they had been on three prior occasions involving Petitioner's testimony.

Even though Petitioner was advised that he was acting in accordance with the law, he was indicted under § 192, and the District Court (Hon. Carl Nichols) reluctantly concluded the D.C. Circuit's decision in *Licavoli v. United States*, 294 F.2d 207 (D.C. Cir. 1961), barred Petitioner from presenting evidence or argument to the jury regarding his reliance on his lawyer's advice or on executive privilege. App.7a. *Licavoli* had held that "willfully" in § 192 means only "intentionally." Under *Licavoli*, all that matters is whether a subpoena recipient chose not to fully comply with the subpoena—the reasons *why* are irrelevant.

On appeal, the D.C. Circuit panel likewise held itself bound by its decision in *Licavoli*, but eight judges later wrote or joined separate opinions in response to Petitioner's *en banc* petition calling for *Licavoli* to be overturned. All eight of those judges agreed that *Licavoli* does not follow this Court's usual definition of "willfully" in a criminal statute, and they also agreed that Petitioner's argument finds support in the plain text of § 192. *See* App.40a (Katsas, J., respecting the denial of rehearing *en banc*); App.42a, 44a (Garcia, J., joined by Pillard, Wilkins, & Pan, JJ., concurring in the denial of rehearing *en banc*) ("Bannon is right that in criminal statutes the word 'willful' is usually construed to require bad faith."); App.50a–56a (Rao, J., joined by Henderson & Walker, JJ., dissenting from the denial of rehearing *en banc*).

Judge Katsas noted serious concerns with prosecuting "former Executive Branch officials for good-faith but mistaken privilege assertions," App.40a (Katsas, J., respecting the denial of rehearing *en banc*), and Judges Rao, Henderson, and Walker dissented, arguing the decision below "cannot be reconciled with the text or structure of section 192" and also "runs counter to the overwhelming weight of Supreme Court precedent." App.54a (Rao, J., dissenting from the denial of rehearing *en banc*). Judges Rao and Henderson also separately argued this case "threatens the

separation of powers because it involves the criminal prosecution of a former Executive Branch official invoking executive privilege in the face of a congressional subpoena." App.63a.

Precedent, text, structure, and the separation of powers thus all point in the same direction: the D.C. Circuit's interpretation of "willfully" in § 192 is grievously wrong.

That issue will be eminently worthy of review and correction. Judges Katsas, Rao, Henderson, and Walker explained this question is "important, and likely to recur." App.40a (Katsas, J., respecting the denial of rehearing *en banc*); App.65a (Rao, J., dissenting from the denial of rehearing *en banc*). And this Court has long taken an interest in § 192, granting no fewer than *nineteen* cases on its interpretation over the years.

Also worthy of review will be the second question presented, on which Judges Rao and Henderson dissented. *See* App.58a–62a. Section 192 requires the relevant subpoena to have been issued pursuant to the House or Senate's "authority," but it is undisputed that the committee that issued the subpoena here was never properly constituted in accordance with the House Resolution creating the committee. That means there was no "clear chain of authority from the House to the [committee]," which defeats "an essential element" of § 192, i.e., the subpoena was not lawfully authorized. *Gojack v. United States*, 384 U.S. 702, 716 (1966).

The panel below declined to address this argument on the erroneous theory that it was a mere "procedural objection" that had to be raised before the committee itself, rather than an element the government had to prove. App.18a–21a. That was wrong. Section 192's elements include the requirement that the subpoena have been issued pursuant to lawful "authority," and "it is 'unthinkable' that a committee without authority 'can be the instrument of a criminal conviction.'" App.62a (Rao, J., dissenting from the denial of rehearing *en banc*) (quoting *Christoffel v. United States*, 338 U.S. 84, 90 (1949)) (cleaned up).

This second issue will be worthy of review because it raises serious separation-of-powers concerns, and this Court has repeatedly granted review to address committee authority and objection-preservation requirements under § 192.

REASONS JUSTIFYING AN EXTENSION OF TIME

Good cause exists for extending the time in which Petitioner can file his petition for a writ of certiorari.

First, as noted above, eight different D.C. Circuit judges wrote or joined statements at the *en banc* denial phase of this case, raising numerous arguments in favor of or in opposition to overruling the D.C. Circuit's precedent on § 192. Those arguments deserve careful treatment and development in Petitioner's forthcoming petition.

Second, counsel of record for Petitioner has numerous other deadlines in pending cases during the intervening period. He is preparing a reply brief in support of summary judgment due August 29, 2025, in *Dominion v. OAN*, a defamation case with an extensive record in the U.S. District Court for the District of Columbia. He has an amicus brief due in this Court on July 31, 2025, in *Noem v. Al Otro Lado*, No. 25-5. He has several confidential memoranda due to clients within the next fourteen days, and he is also in active confidential negotiations to resolve several pending cases—with a likelihood of dispositive briefing over the next month in the event no resolution is reached.

PRAYER

For these reasons, Petitioner respectfully requests that the Court extend the time to file his petition for a writ of certiorari by 30 days, to and including September 24, 2025.

Dated: July 31, 2025

/s/ R. Trent McCotter

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