

CASE NO. _____
SUPREME COURT OF THE UNITED STATES
October 2022 Term

STEVEN HUFFMAN,)
)
) Petitioner,)
)
 v.)
)
 UNITED STATES OF AMERICA,)
)
) Respondent.)

APPLICATION DIRECTED TO JUSTICE KAVANAUGH FOR ADDITIONAL TIME TO
FILE PETITION FOR A WRIT OF CERTIORARI TO THE EIGHTH CIRCUIT COURT OF
APPEALS

Submitted on Behalf of Petitioner

Submitted By:

Melissa K. Goymerac
Assistant Federal Public Defender
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ATTORNEY FOR PETITIONER

To Justice Brett M. Kavanaugh:

Petitioner Steven Huffman, through his attorney of record, Assistant Federal Public Defender Melissa K. Goymerac, requests an additional 60 days in which to file a petition in this Court seeking certiorari to the Eighth Circuit Court of Appeals, up through August 21, 2023. Petitioner requests this extension under Supreme Court Rule 13.5.

JURISDICTION

Petitioner requests an extension to file a petition for writ of certiorari. Petitioner is preparing to request this Court's review of the judgment issued by the Eighth Circuit Court of Appeals on February 13, 2023, summarily affirming a mandatory minimum 15 year sentence for possessing a firearm based on the Armed Career Criminal Act, 18 U.S.C. §924(e)(2)(B)(i) premised. Petitioner preserved an argument that this Court's decision in *Borden v. United States*, 141 S. Ct. 1817 (2021), abrogated Eighth Circuit previously controlling 2009 precedent declaring that, "[i]t goes without saying" that a Missouri offense of exhibiting a firearm in the presence of another in a way that could be objectively viewed to be angry or threatening satisfied the "element of force" clause in Section 924(e)(2)(B)(i).

The Court of Appeals denied Mr. Huffman's timely motion for rehearing on March 24, 2023. Appendix at 2. The deadline for filing a petition for a writ of certiorari in this case is June 22, 2023. Petitioner files this request for additional time at least 10 days before the date the petition is currently due, in compliance with Supreme Court Rule 13.5.

REASONS FOR APPLICATION FOR EXTENSION

1. Petitioner believes that this case raises a recurrent issue of exceptional importance concerning the construction and application of the Armed Career Criminal Act and the precedential scope of the ruling in *Borden*, which the Eighth Circuit has elsewhere limited to "reckless"

crimes. The question has generated conflicting rulings in lower courts, and incongruous results as applied to statutes even within the Eighth Circuit which are not defined to encompass “reckless conduct.”

2. Petitioner’s counsel is an assistant federal public defender in the Eastern District of Missouri shouldering a full case load of appointed cases requiring consultation with clients in detention facilities in remote parts of Missouri and other states. Counsel makes this request with no dilatory purpose. Counsel seeks only to ensure proper presentation of the important federal questions raised in petitioner’s case while also providing effective representation in all cases to which counsel is assigned.

WHEREFORE, petitioner requests leave to file his Petition for Writ of Certiorari, up through and including August 21, 2023.

Respectfully submitted,



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ATTORNEY FOR PETITIONER

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Appendix to Petitioner’s Motion for More Time to File Petition for a Writ of Certiorari

Contents

1. *United States v. Steven Huffman*, No. 22-2463 (8th Cir., Feb. 11, 2022) 1 – 2
2. *United States v. Steven Huffman*, No. 22-2463,
Order denying rehearing (8th Cir., March 24, 2023) 3

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 22-2463

United States of America

Plaintiff - Appellee

v.

Steven Huffman

Defendant - Appellant

Appeal from U.S. District Court for the Eastern District of Missouri - St. Louis
(4:20-cr-00750-AGF-1)

JUDGMENT

Before LOKEN, COLLOTON, and ERICKSON, Circuit Judges.

The government's motion for summary disposition has been considered by the court and is granted. The judgment of the district court is affirmed on the authority of *United States v. Larry*, 51 F.4th 290, 292 (8th Cir. 2022).

February 13, 2023

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

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Adopted April 15, 2015
Effective August 1, 2015

Revision of Part V of the Eighth Circuit Plan to Implement the Criminal Justice Act of 1964.

V. Duty of Counsel as to Panel Rehearing, Rehearing En Banc, and Certiorari

Where the decision of the court of appeals is adverse to the defendant in whole or in part, the duty of counsel on appeal extends to (1) advising the defendant of the right to file a petition for panel rehearing and a petition for rehearing en banc in the court of appeals and a petition for writ of certiorari in the Supreme Court of the United States, and (2) informing the defendant of counsel's opinion as to the merit and likelihood of the success of those petitions. If the defendant requests that counsel file any of those petitions, counsel must file the petition if counsel determines that there are reasonable grounds to believe that the petition would satisfy the standards of Federal Rule of Appellate Procedure 40, Federal Rule of Appellate Procedure 35(a) or Supreme Court Rule 10, as applicable. *See Austin v. United States*, 513 U.S. 5 (1994) (per curiam); 8th Cir. R. 35A.

If counsel declines to file a petition for panel rehearing or rehearing en banc requested by the defendant based upon counsel's determination that there are not reasonable grounds to do so, counsel must so inform the court and must file a written motion to withdraw. The motion to withdraw must be filed on or before the due date for a petition for rehearing, must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for rehearing, and must request an extension of time of 28 days within which to file *pro se* a petition for rehearing. The motion also must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for writ of certiorari.

If counsel declines to file a petition for writ of certiorari requested by the defendant based on counsel's determination that there are not reasonable grounds to do so, counsel must so inform the court and must file a written motion to withdraw. The motion must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for writ of certiorari.

A motion to withdraw must be accompanied by counsel's certification that a copy of the motion was furnished to the defendant and to the United States.

Where counsel is granted leave to withdraw pursuant to the procedures of *Anders v. California*, 386 U.S. 738 (1967), and *Penon v. Ohio*, 488 U.S. 75 (1988), counsel's duty of representation is completed, and the clerk's letter transmitting the decision of the court will notify the defendant of the procedures for filing *pro se* a timely petition for panel rehearing, a timely petition for rehearing en banc, and a timely petition for writ of certiorari.

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 22-2463

United States of America

Appellee

v.

Steven Huffman

Appellant

Appeal from U.S. District Court for the Eastern District of Missouri - St. Louis
(4:20-cr-00750-AGF-1)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

March 24, 2023

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

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