

No. _____

In the Supreme Court of the United States

JEREMIAH F. WOODEN,

Applicant,

v.

COMMONWEALTH OF MASSACHUSETTS,

Respondent.

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

To the Honorable Ketanji Brown Jackson, Associate Justice of the United States Supreme Court and Circuit Justice for the United States Court of Appeals for the First Circuit:

Pursuant to Supreme Court Rule 13.5, applicant Jeremiah F. Wooden respectfully requests a 58-day extension of time, until August 9, 2024, within which to file a petition for a writ of certiorari. The opinion of the Massachusetts Appeals Court (Exhibit A) is available at 103 Mass. App. Ct. 677, 226 N.E.3d 877 (2024). The order of the Massachusetts Supreme Judicial Court denying discretionary review (Exhibit B) is reported at 493 Mass. 1108 (2024). The Superior Court's oral orders denying the defendant's motion for a required finding of not guilty at the close of the Commonwealth's case and motion for a required finding of not guilty at the close of all evidence, along with the Jury Charge, were

not recorded. In the absence of a transcript, the parties reconstructed the missing portions of the record by stipulation, pursuant to Mass. R. App. P. 8(e)(1). (Exhibit C). This Court's jurisdiction would be invoked under 28 U.S.C. § 1257.

Absent an extension, a petition for a writ of certiorari would be due June 12, 2024. This application is being filed more than 10 days in advance of that date, and no prior application has been made in this case.

1. The question to be presented in this case is of important constitutional dimension and divides the courts of appeals and state supreme courts: If there is a change in law during the appeal of a criminal conviction, and the evidence at trial is insufficient to support a finding of guilt under the correct understanding of the law, does the Double Jeopardy Clause permit a second trial in which the government can attempt to supply the missing evidence? Compare, e.g., *United States v. Miller*, 84 F.3d 1244, 1258 (10th Cir. 1996) (“[W]e will remand for a new trial only if the jury could have returned a guilty verdict if properly instructed.”), with *United States v. Ford*, 703 F.3d 708, 711 (4th Cir. 2013) (“[W]here a reviewing court determines that the evidence presented at trial has been rendered insufficient only by a post-trial change in law, double jeopardy concerns do not preclude the government from retrying the defendant”).

2. Massachusetts law makes it a crime to “possess[] ... a firearm ... without ... having in effect a license to carry firearms.” Mass. Gen. Laws ch. 269, § 10(a). At the time of applicant Jeremiah F. Wooden’s trial, the Supreme Judicial Court of Massachusetts (SJC) interpreted this provision as a “general prohibition

against carrying a firearm” and licensure was an exception to be raised by the defendant as an “affirmative defense.” *Commonwealth v. Jones*, 361 N.E.2d 1308, 1311 (Mass. 1977). Thus, Mr. Wooden was convicted of unlawful possession of a firearm without the jury being instructed and deliberating upon whether he was so licensed and the Commonwealth introduced no evidence to prove that he lacked a license.

3. While Mr. Wooden’s case was on appeal, the SJC held, in *Commonwealth v. Guardado*, 206 N.E.3d 512 (Mass. 2023)(“*Guardado I*”), that treating licensure as an affirmative defense violates the Due Process Clause and is an element required to be proven by the prosecution beyond a reasonable doubt, relying upon this Court’s decision in *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022). The SJC initially ordered that, since Mr. Guardado’s trial record contained no evidence regarding an essential element of unlawful possession of a firearm, that “the matter is remanded to the Superior Court for entry of judgments of not guilty[,]” *Id.*, which was aligned with longstanding precedent that double jeopardy bars a retrial if “the evidence the Commonwealth introduced was insufficient” to support a conviction “if the judge had instructed the jury properly[,]” *Commonwealth v. Beal*, 52 N.E.3d 998, 1010 & n.12 (Mass. 2016). But after the Commonwealth sought reconsideration on the double jeopardy issue, the SJC reversed, holding that, because the law changed after trial, the Double Jeopardy Clause will no longer protect Mr. Guardado, and others similarly situated, like Mr. Wooden, from retrial. *Commonwealth v. Guardado*, 220 N.E.3d 102 (Mass.

2023)(“*Guardado II*”). Thereafter, Mr. Guardado petitioned this Court for a writ of certiorari to review that judgment, which is docketed as No. 23-886. A response was requested and filed by the Commonwealth on May 28, 2024.

4. Mr. Wooden shall also petition for a writ of certiorari because his case is on the same footing as that of Mr. Guardado where the Mass. Appeals Court, following *Guardado II*, rejected his claim to be free from double jeopardy, vacated his firearm conviction, and ordered retrial. This decision, like that of the SJC, is in error under the Fifth Amendment. See *Burks v. United States*, 437 U.S. 1, 11 (1978) (“[t]he Double Jeopardy Clause forbids a second trial for the purpose of affording the prosecution another opportunity to supply evidence which it failed to muster in the first proceeding”); see also *Musacchio v. United States*, 577 U.S. 237 (2016)(the “legal” question a court considers on sufficiency review compares the evidence at trial to the “essential elements of the crime” rather than rest upon how the jury was instructed).

5. Mr. Guardado respectfully requests a 58-day extension of time to file his petition for a writ of certiorari from the Appeals Court’s decision holding that he can be subjected to a retrial on his vacated firearm conviction. Counsel needs additional time to conduct multi-jurisdictional research to properly present this issue for this Court’s consideration, to meet with his client and to draft the writ, which presents a complex issue of constitutional law. Currently, undersigned counsel has a number of other pending matters and personal obligations that would make it difficult to complete and file a petition for a writ of certiorari in this case

by the current deadline, including three pending life sentence (first-degree murder) parole proceedings, a parole proceeding in a second-degree murder case, completion of a lengthy commutation petition in a first-degree murder case, an appellate brief to be drafted for the Mass. Appeals Court reviewing several postconviction orders of the Superior Court, appellate brief and motion review obligations as a mentor for new attorneys on our state's indigent defense panel, and a jury trial in the Middlesex County Superior Court in July 2024. In addition, undersigned counsel has other familial obligations that will restrict his time in office and will be out of the office for approximately one week for a personal matter in June. Lastly, undersigned counsel and the prosecutor are currently exploring the possibility of a resolution of Mr. Wooden's claim that would render a cert petition moot.

Wherefore, the applicant respectfully requests that the Court extend the time to file a petition for a writ of certiorari by 58 days to August 9, 2024.

Respectfully submitted



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