

No. _____

In the Supreme Court of the United States

ANTHONY WAYNE BETTCHER,

Applicant,

v.

UNITED STATES OF AMERICA,

Respondents.

*ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT*

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

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

To the Honorable Sonia Sotomayor, as Circuit Justice for the United States Court of Appeals for the Tenth Circuit:

Applicant Anthony Wayne Bettcher respectfully requests an extension of 60 days in which to file his petition for writ of certiorari, seeking review of the Tenth Circuit's decision in *United States v. Bettcher*, Case No. 16-4165 (10th Cir. July 25, 2018), a copy of which is attached to this application.

In support of this application, Applicant provides the following information:

1. The Tenth Circuit issued its decision on December 21, 2018, and it denied Mr. Bettcher's petition for rehearing on March 19, 2019.

Accordingly, the petition for certiorari is currently due June 17, 2019.

Granting this extension would make it due on August 16, 2019.

2. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

3. As the attached decision shows, this case focuses on the mens rea required to establish that a crime qualifies as a "crime of violence" under the "force clause" (or "elements clause") of USSG §4B1.2, which is identical to the force clause of 18 U.S.C. § 924(e) (the Armed Career Criminal Act), 18 U.S.C. § 16(a), and 18 U.S.C. § 924(c). The district court agreed with Mr. Bettcher that reckless offenses should not qualify, but the Tenth Circuit reversed, relying on this Court's decision in *Voisine v. United States*, 136 S.Ct. 2272 (2016). A three-way circuit split has emerged on this issue, and Mr. Bettcher would prevail under either of the other two standards that have been adopted. *See, e.g., Bennett v. United States*, 868 F.3d 1, 23 (1st Cir. 2017)

(holding that the force clause does not include crimes that can be committed recklessly); *United States v. Fields*, 863 F.3d 1012, 1015 (8th Cir. 2017) (holding that reckless driving offenses do not qualify categorically as a crime of violence under the force clause); *see also United States v. Harper*, 875 F.3d 329, 330-333 (6th Cir. 2017) (criticizing decisions that relied on *Voisine* to extend the force clause to reckless crimes).

Based on the ruling in his case, and the circuit split on this issue, Mr. Bettcher has determined he will seek review via a petition of certiorari.

4. This application is not sought for purposes of delay. Undersigned counsel is the lead attorney on more than 80 cases that range from pending appeals, original prosecutions, and post-conviction petitions. Within the next few weeks, counsel anticipates having several evidentiary hearings in the district court and briefing deadlines in the Tenth Circuit court of appeals. Undersigned counsel represented Mr. Bettcher before the Tenth Circuit, and there are currently no other attorneys in the Federal Public Defender office who are familiar enough with the record in Mr. Bettcher's case to be capable of preparing a petition by the current due date.

For the foregoing reasons, Mr. Bettcher requests a 60-day extension of time in which to file a petition for a writ of certiorari.

Respectfully submitted,

/S/ Benjamin C. McMurray

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Application for an Extension of Time to File a Petition for Writ of Certiorari was served via U.S. Mail, First-Class and post prepaid, upon the following counsel:

BENJAMIN C. McMURRAY
Assistant Federal Public Defender,
District of Utah