

No. _____

In the Supreme Court of the United States

TOMMY GURULE,

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 Tommy Gurule 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. Gurule*, Case No. 18-4039 (10th Cir. July 11, 2019). The Court denied a petition for rehearing *en banc*, but *sua sponte* granted panel rehearing to amend one page of the previous opinion. A copy of the amended opinion is attached to this application (10th Cir. Aug. 30, 2019).

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

1. The Tenth Circuit issued its decision on July 11, 2019, and denied Mr. Gurule's petition for rehearing on August 30, 2019. Accordingly, the petition for certiorari is currently due November 28, 2019. Granting this extension would make it due on January 27, 2020.

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

3. As the attached decision shows, this case authorizes the indeterminate detention of one person based on the consent of another. Two other circuits have extended third-party consent analysis from the search of property to the seizure of people; the Tenth Circuit's decision creates a circuit split with those courts in two different ways. First, both *United States v. Woodrum*, 202 F.3d 1 (1st Cir. 2000), and *United States v. Hernandez-Zuniga*, 215 F.3d 483 (5th Cir. 2000), consider the nature of the relationship between the person giving consent and the

person bound by it in deciding whether to extend third-party doctrine to cover the seizure at issue. *See also Florida v. Jardines*, 569 U.S. 1, 133 S. Ct. 1409, 185 L. Ed. 2d 495 (2013); *Georgia v. Randolph*, 547 U.S. 103, 126 S. Ct. 1515, 164 L. Ed. 2d 208 (2006) (considering shared social expectations in Fourth Amendment analysis). The Tenth Circuit’s decision extends third-party consent doctrine to new facts without any such consideration, breaking with the precedent of two other circuits and this Court.

The Tenth Circuit decision also gives police unfettered discretion to detain passengers for hours based solely on the general consent of a third party. The First and Fifth Circuits treat third-party consent to a seizure as valid against a passenger only when the authority to search is narrowly circumscribed from the outset. *See Woodrum*, 202 F.3d at 11–12 (holding third-party consent justified seizure that was narrow in scope and purpose and part of publicly-advertised safety program that did not give police unfettered discretion); *Hernandez-Zuniga*, 215 F.3d at 488–89 (approving brief detention that was narrow in scope and purpose and did not give border patrol agents unfettered discretion). The Tenth Circuit decision places no such limitations on officer discretion or the seizure itself.

Based on the ruling in his case, and the circuit split on these issues, Mr. Gurule has determined he will seek review via a petition for certiorari.

4. This application is not sought for purposes of delay. Undersigned counsel is the lead attorney on several appeals pending before the Tenth Circuit and is assisting in a complex extradition proceeding. There are currently no other

attorneys in the Utah Federal Public Defender Office who are familiar enough with the record in Mr. Gurule's case to be capable of preparing a petition by the current due date.

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

Respectfully submitted,

/S/ Bretta Pirie

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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 UPS and post prepaid, upon the following counsel:

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/S/ Bretta Pirie

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