

No. _____

In the Supreme Court of the United States

FEUU FAGATELE,

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 Feuu Fagatele 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. Fagatele*, Case No. 18-4004 (10th Cir. November 5, 2019, published on December 13, 2019), 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 November 5, 2019, and Mr. Fagatele did not seek rehearing. Accordingly, the petition for certiorari is currently due February 3, 2020. Granting this extension would make it due on April 3, 2020.

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 whether a prior conviction for Utah third-degree aggravated assault qualifies as a crime of violence under United States Sentencing Guidelines § 4B1.2. The Tenth Circuit held that under the categorical approach, Utah third-degree aggravated assault criminalizes the risk of injury and therefore has as an element at least the threatened use of violent physical force. This decision reinforces the circuit split as to whether risk of injury is synonymous with use of force for purposes of crime of violence determinations. *See, e.g., United*

States v. Mayo, 901 F.3d 218 (3d Cir. 2018); *United States v. Middleton*, 883 F.3d 485 (4th Cir. 2018).

The Circuit’s decision rested on its inaccurate characterization of Utah black-letter law. Despite the plain language of the statute requiring proof of “other means *or* force”, clearly more than proof of force alone, to sustain a conviction, the Circuit held that proof of violent physical force was essential and the statute fell within the elements clause of USSG § 4B1.2. The decision of the Tenth Circuit in Mr. Fagatele’s case adds to the existing circuit split on this issue.

Based on the ruling in his case and the circuit split, Mr. Fagatele 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 cases including pending appeals and original prosecutions. Undersigned counsel represented Mr. Fagatele before the Tenth Circuit, and there are currently no other attorneys in the Utah Federal Public Defender Office who are sufficiently familiar with the record in Mr. Fagatele’s case to prepare a petition by the current due date.

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

Respectfully submitted,

/S/ Jessica Stengel

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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, upon the following counsel:

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/S/ Jessica Stengel

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