

No. _____

In the Supreme Court of the United States

CHAD EUGENE CALDWELL,

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**

SCOTT KEITH WILSON
Federal Public Defender,
District of Utah

BENJAMIN C. McMURRAY
Assistant Federal Public Defender,
46 W. Broadway, Suite 110
Salt Lake City, Utah 84101
(801) 524-4010
Benji_McMurray@fd.org

*Counsel for Applicant
Chad Eugene Caldwell*

**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 Chad Eugene Caldwell 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. Caldwell*, Case No. 21-4026 (10th Cir. October 21, 2021), a copy of which is attached to this application.

In support of this application, Applicant states the following:

1. The Tenth Circuit issued its denial of the Certificate of Appealability on October 21, 2021. Accordingly, the petition for certiorari is currently due January 19, 2022. Granting this extension would make it due on March 20, 2022.
2. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).
3. As the attached decision shows, this case asks whether a person can be innocent of a non-capital, mandatory sentencing enhancement. There is a circuit split on this question. (Slip Op. at 4, n.2 (citing *Jones v. Arkansas*, 929 F.2d 375, 381 & n.16 (8th Cir. 1991).) Based on the ruling in his case, and the circuit split on this issue, Mr. Caldwell 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. The recent surge of COVID cases has again made it difficult to meet with clients and resolve cases,

creating delay in this and many other cases.

5. In addition to a heavy caseload, Counsel's wife is scheduled for a caesarian section on January 11, 2022, which comes at the end of a high-risk pregnancy that has required counsel to provide additional care for her during the pregnancy. The due date was originally anticipated to be January 28, 2022 (a week after this petition was originally due), but the c-section has now been scheduled for January 11 (a week before the petition is currently due). Following the surgery, counsel's wife anticipates a lengthy recovery, during which time he will need to attend to her and their children. An extension of 60 days will allow time for counsel to complete the petition without compromising his ability to attend to his wife and children.

5. Undersigned counsel represented Mr. Caldwell 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. Caldwell's case to be capable of preparing a petition by the current due date.

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

Respectfully submitted,

/S/ Benjamin C. McMurray

BENJAMIN C. McMURRAY
Assistant Federal Public Defender,
District of Utah
46 W. Broadway, Suite 110
Salt Lake City, Utah 84101
(801) 524-4010
Benji_McMurray@fd.org

*Counsel for Applicant
Chad Eugene Caldwell*

No. _____

In the Supreme Court of the United States

CHAD EUGENE CALDWELL,

Applicant,

v.

UNITED STATES OF AMERICA,

Respondents.

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:

Elizabeth Prelogar
Solicitor General of the United States
Room 5614
Department of Justice
950 Pennsylvania Ave, N.W.
Washington, D.C. 20530-001

/S/ Benjamin C. McMurray

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