

No. A-__

IN THE
Supreme Court of the United States

CHARLES CHAVEZ,

Applicant,

v.

UNITED STATES OF AMERICA,

Respondent.

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

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

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

To: Justice Neil M. Gorsuch, Circuit Justice for the Tenth Circuit:

Pursuant to this Court's Rules 13.5 and 22, Applicant Charles Chavez requests an extension of thirty (30) days to file a petition for a writ of certiorari in this case. His forthcoming petition will seek review of the Tenth Circuit's decision in *United States v. Chavez*, 29 F.4th 1223 (10th Cir. 2022), in which the court of appeals reversed the district court's grant of Applicant's motion to dismiss two counts of his indictment. A copy of the Tenth Circuit's decision is attached. *See* App. 1-16. This application is supported by the following reasons:

1. The Tenth Circuit issued its decision in this case on March 29, 2022. Without an extension, the petition for a writ of certiorari would be due on June 27, 2022. With the requested extension, the petition would be due on July 27, 2022. This Court's jurisdiction will be invoked under 28 U.S.C. § 1254(1).

2. This case involves an interpretative issue under the federal bank robbery statute on which the circuits are openly divided. The issue is whether a person who coerces a bank customer to withdraw the customer's money from an ATM in order to take the money from the customer may be found to have committed bank robbery in violation of 18 U.S.C. § 2113(a). That statute subjects to a term of imprisonment up to 20 years "[w]hoever, by force and violence, or by intimidation, takes, or attempts to take, from the person or presence of another ... any property or money or any other thing of value *belonging to, or in the care,*

custody, control, management, or possession of, any bank.” Id. (emphasis added).

3. A square circuit conflict exists over the question presented. The Seventh and Tenth Circuits have held that “directly forcing a bank customer to withdraw money from an ATM qualifies as federal bank robbery.” App. 12; *United States v. McCarter*, 406 F.3d 460, 462 (7th Cir. 2005). The Fifth Circuit has held the opposite, reasoning that in these circumstances the money is “not in the ‘care, custody, control, management, or possession’ of the bank,” but rather of the customer. *United States v. Burton*, 425 F.3d 1008, 1010 (5th Cir. 2005); see *id.* at 1011 (“declin[ing] ... to follow” the Seventh Circuit’s decision in *McCarter*). In its decision below, the Tenth Circuit expressly acknowledged the conflict between the Fifth and Seventh Circuits and “side[d] with the Seventh Circuit.” App. 12. Only this Court can resolve this division of authority over the scope of an important and frequently used federal criminal statute.

4. The Court regularly grants certiorari to resolve circuit conflicts over the scope of a federal criminal statute. See, e.g., *Wooden v. United States*, 142 S. Ct. 1063 (2022); *United States v. Taylor*, No. 20-1459 (argued Dec. 7, 2021); *Ruan v. United States*, No. 20-1410 (argued Mar. 1, 2022). And this case arises from a frequently recurring factual allegation: a defendant coercing a bank customer to withdraw the customer’s money from an ATM. See, e.g., *United States v. Rose*, 891 F.3d 82 (2d Cir. 2018); *United States v. Smith*, 670 F. Supp. 2d 1316 (M.D. Fla. 2009). Especially given the serious sentences for bank-robbery offenses, this petition presents the type of issue that merits the Court’s intervention.

5. This application for a 30-day extension is necessary because Applicant has only recently affiliated undersigned counsel at O'Melveny & Myers. The extension is needed for new counsel to fully familiarize themselves with the record, decision below, and relevant case law, and to allow counsel adequate time to prepare the petition for certiorari. The press of other business and deadlines means these tasks will take several weeks.

6. For these reasons, Applicant requests that the due date for his petition for a writ of certiorari be extended to July 27, 2022.

Respectfully submitted,

By: /s/ Michael R. Dreeben

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Dated: June 10, 2022