

No. \_\_\_\_\_

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**In the Supreme Court of the United States**

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KEITH L. CARNES,

*Petitioner,*

*v.*

UNITED STATES OF AMERICA,

*Respondent.*

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

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To the Honorable Brett M. Kavanaugh, Associate Justice of the United States Supreme Court and Circuit Justice for the United States Court of Appeals for the Eighth Circuit:

1. Pursuant to Supreme Court Rule 13.5, Petitioner Keith L. Carnes respectfully requests a 59-day extension of time, to and including Friday, July 22, 2022, within which to file a petition for a writ of certiorari. The United States Court of Appeals for the Eighth Circuit issued its opinion on January 3, 2022. A copy of the opinion is attached as Exhibit A. The Eighth Circuit denied Petitioner's timely rehearing petition in an order issued on February 23, 2022. A copy of the order is attached as Exhibit B. This Court's jurisdiction would be invoked under 28 U.S.C. § 1254(1).

2. Absent an extension, a petition for a writ of certiorari would be due on May 24, 2022. This application is being filed more than 10 days in advance of that date, and no prior application has been made in this case.

3. This case concerns the meaning of the term “unlawful user” in 18 U.S.C. § 922(g)(3), which prohibits “any person ... who is an unlawful user of or addicted to any controlled substance” from possessing a firearm. Consistent with the term’s plain meaning, every circuit to interpret the “unlawful user” element had previously required the Government to prove, *inter alia*, that the defendant used drugs “with regularity, over an extended period of time” to sustain a Section 922(g)(3) conviction. *United States v. Bowens*, 938 F.3d 790, 793 (6th Cir. 2019) (citation omitted); see, e.g., *United States v. Cook*, 970 F.3d 866, 874 (7th Cir. 2020); *United States v. Tanco-Baez*, 942 F.3d 7 (1st Cir. 2019); *United States v. McCowan*, 469 F.3d 386 (5th Cir. 2006); *United States v. Purdy*, 264 F.3d 809, 812-13 (9th Cir. 2001). Indeed, prior to this case, the Eighth Circuit had embraced the same rule. See *United States v. Turnbull*, 349 F.3d 558, 561 (8th Cir. 2003), vacated, 543 U.S. 1099 (2005), reinstated, 414 F.3d 942 (8th Cir. 2005) (per curiam) (government “must establish a pattern of use,” not merely use at a single point in time) (quotation marks omitted).

4. In this case, however, the Eighth Circuit broke with the prevailing interpretation and created a circuit split by affirming Petitioner’s conviction under 18 U.S.C. § 922(g)(3) based solely on evidence that he used marijuana on the day of his arrest, without any evidence of habitual use. See Exhibit A at 6 (“reject[ing] Carnes’s expansive interpretation of ‘regular drug use’ that would require evidence of use over an extended period of time,” even though other “circuits require [such] proof”).

5. Mr. Carnes timely sought rehearing or rehearing en banc, seeking reconsideration of the same question he raises here—namely, whether the “unlawful user” element in 18 U.S.C. § 922(g)(3) requires evidence of habitual (as opposed to one-time) use. The Eighth Circuit denied rehearing and rehearing en banc. See Exhibit B.

6. This case raises important concerns. The Eighth Circuit’s decision splits from every other circuit to address the issue and misinterprets the plain text of a federal statute, 18 U.S.C. § 922(g)(3). As a result, Petitioner has been sentenced to ten years in prison for a crime that, on the trial record, he did not legally commit.

7. Petitioner respectfully requests an extension of time to file a petition for a writ of certiorari. At the rehearing stage, Petitioner engaged undersigned counsel, who was not previously involved in the case. A 59-day extension would allow counsel sufficient time to fully examine the decision and case record, research and analyze the issues presented, and prepare the petition for filing. Additionally, undersigned counsel has a number of other pending matters with proximate due dates that will interfere with counsel’s ability to file the petition on or before May 24, 2022.

*Wherefore*, Petitioner respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari to and including Friday, July 22, 2022.

April 7, 2022

Respectfully submitted,

*/s/ Allon Kedem*

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Allon Kedem

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