

No. _____

In the Supreme Court of the United States

SAMUEL LEE MORRISON,
PETITIONER,

v.

UNITED STATES OF AMERICA,
RESPONDENT.

PETITIONER'S APPLICATION FOR EXTENSION OF TIME
TO FILE PETITION FOR WRIT OF CERTIORARI

To: The Honorable Samuel A. Alito, Jr., Associate Justice of the Supreme Court
and Circuit Justice for the Fifth Circuit

Pursuant to Title 28, United States Code, Section 2101(c) and Supreme Court
Rule 13.5, Petitioner Samuel Lee Morrison respectfully requests that the time to file
a Petition for a Writ of Certiorari in this case be extended for 60 days, to and
including, August 4, 2023.

Basis for Jurisdiction

The district court had original jurisdiction over this criminal action pursuant
to 18 U.S.C. § 3231. Mr. Morrison pleaded guilty to receipt of a firearm while under
felony indictment, in violation of 18 U.S.C. § 922(n). The Fifth Circuit affirmed the
conviction and sentence in an unpublished opinion filed on March 6, 2023. App. 1a–
2a. This Court has the power to grant or deny this motion pursuant to 28 U.S.C.
§ 2101(c), and it will have jurisdiction to review the Fifth Circuit's judgment under
28 U.S.C. § 1254(1).

Judgment to be Reviewed and Opinion Below

The Fifth Circuit’s panel opinion is unpublished but available at *United States v. Morrison*, No. 22-10570, 2023 WL 2366985 (5th Cir. Mar. 6, 2023), reprinted on pages 1a–2a of the appendix.

Reasons for Granting an Extension

This case presents the important and recurring question of whether 18 U.S.C. § 922(n), which prohibits a person under felony indictment from receiving a firearm, is constitutional under this Court’s analysis in *New York State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111 (2022). On appeal, Applicant argued that, under *Bruen*’s Second Amendment analysis, § 922(n) is unconstitutional. The court of appeals held that *Bruen* did not make any Second Amendment error “plain” because the issue is subject to reasonable dispute, so Applicant could not demonstrate clear or obvious error. App. 2a. The court pointed to its recent holding in *United States v. Avila*, No. 22-50088, 2022 WL 17832287, at *2 (5th Cir. Dec. 21, 2022), which held that a challenge to § 922(n) could not survive plain error review because applying *Bruen* would have required the court of appeals to “(a) survey the historical pedigree of similar laws and (b) adopt the defendant’s interpretation of that history.” The Fifth Circuit’s holding is contrary to the Second Amendment and the Court’s decisions in *Bruen* and *Henderson v. United States*, 568 U.S. 266 (2013).

Good cause exists for this requested extension. The Fifth Circuit is considering the same question—on *de novo*, rather than plain error, review—in *United States v. Quiroz*, No. 22-50834, which the court has expedited. The court heard oral argument

on February 8, 2023. After argument, the panel requested supplemental briefing from the U.S. Solicitor General to address at least five issues, including whether there are colonial, state, federal, or common law analogues to 18 U.S.C. § 922 or 18 U.S.C. § 3142(c)(1)(B)(viii) (part of the Bail Reform Act); whether there was an actual practice by colonial, state, or federal courts imposing restrictions on the receipt or possession of firearms after a defendant was accused; whether there were conditions or qualifications on the sale or transfer of a firearm to a defendant accused of a felony or serious crime while he or she was released pending trial or adjudication; and whether these questions, and the historical record compiled by the parties, present questions of law or fact. Letter Request, *United States v. Quiroz*, No. 22-50834 (Feb. 15, 2023). The Solicitor General filed her supplemental brief on April 10, 2023, and Quiroz filed his supplemental brief on May 1, 2023.

In addition, the United States has sought review in this Court of the Fifth Circuit's decision in *United States v. Rahimi*, 59 F.4th 163, 169 (5th Cir. 2023), which held that, under *Bruen*, 18 U.S.C. § 922(g)(8) (prohibiting possession of firearms by persons subject to domestic violence restraining orders) is unconstitutional. *United States v. Rahimi*, No. 21-11001 (petition for writ of certiorari filed Mar. 17, 2023). The Response in opposition is currently due May 30, 2023.

Given the progress of these cases and the common issues they present, granting the requested extension will enable Applicant to focus the issues for this Court to consider, possibly with the benefit of a decision in *Quiroz* and parties' arguments in *Rahimi*.

In addition, Applicant's counsel has had other pressing deadlines. Since the Fifth Circuit handed down its decision in this case on March 6, 2023, undersigned counsel has filed two briefs in the Fifth Circuit, one brief in the Seventh Court of Appeals in Texas, one petition for a writ of certiorari in this Court, and one reply in support of a petition for a writ of certiorari in this Court. Counsel has an additional two merits briefs due between now and the current June 5, 2023 deadline, as well as oral argument scheduled before the Fifth Circuit Court of Appeals on June 5, 2023.

For these reasons, Applicant respectfully requests that an order be entered extending his time to file the petition for certiorari to and including August 4, 2023.

Respectfully submitted on May 18, 2023,

/s/ Jessica Graf
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