

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

THOMAS THAYER,
Applicant,

v.

UNITED STATES OF AMERICA,
Respondent.

**APPLICATION FOR AN EXTENSION OF TIME
TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT**

**Application to the Honorable Amy Coney Barrett,
as Circuit Justice for the Seventh Circuit**

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APPLICATION FOR EXTENSION OF TIME

Pursuant to 28 U.S.C. § 2101(d) and Supreme Court Rules 13, 22, and 30, Applicant Thomas Thayer hereby requests a 60-day extension of time within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit. With that extension, the petition would be due on or before Friday, March 31, 2023.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The judgment for which review is sought is *United States v. Thomas Thayer*, No. 21-2385 (7th Cir. July 21, 2022). The judgment and opinion of the Seventh Circuit (reported at 40 F.4th 797 (7th Cir. 2022)) are attached to this application as Exhibit A. Also attached are the district court's order (reported at 546 F. Supp. 3d 808 (W.D. Wis. 2021)) and the Seventh Circuit's order denying rehearing en banc (unpublished).

JURISDICTION

The Seventh Circuit entered judgment on July 21, 2022, and denied rehearing *en banc* on October 31, 2022. This Court's jurisdiction will be invoked under 28 U.S.C. § 1254. Under Rules 13.1, 13.3, and 30.1 of this Court, a petition for a writ of certiorari is due to be filed on or before January 30, 2023. In accordance with Rules 13.5 and 30.2, Applicant has filed this request more than 10 days in advance of that deadline.

REASONS JUSTIFYING AN EXTENSION OF TIME

Applicant respectfully requests a 60-day extension of time, up to and including March 31, 2023, within which to file a petition for a writ of certiorari seeking review of the Seventh Circuit's decision in this case. An extension is warranted because of the importance of the issue presented and undersigned counsel's need for additional time to prepare a petition that will assist this Court in deciding whether to accept this case for review.

1. This case concerns whether the categorical approach or circumstance-specific approach governs when evaluating whether a defendant committed a "sex offense," as defined in 34 U.S.C. § 20911(5)(A)(ii), (7)(I), and had to register under the Sex Offender Registration and Notification Act ("SORNA"). Failure to register when required carries up to a ten-year penalty. 18 U.S.C. § 2250(a). This Court repeatedly has held that a categorical approach governs language similar to that found in § 20911(5)(A)(ii), (7)(I). In contravention of those precedents, and over Judge Jackson-Akiwumi's dissent, the Seventh Circuit held that a circumstance-specific approach governs.

This issue is one of national importance and worthy of this Court's review. Course correction is needed not only to ensure adherence to this Court's precedents but also to avoid lengthy trials and wrongful prosecutions of those who weren't required to register (and therefore *couldn't* have failed to register) under SORNA. Applying a circumstance-specific approach in order to determine the nature of the original charge will create a mini-trial within a failure-to-register trial. This creates

concerns not only of fair notice but also judicial economy. Trials will be more frequent, more cumbersome, and more arduous under the circumstance-specific approach. Most importantly, being wrongfully indicted for or convicted of failing to register as a “sex offender” is a unique badge of shame to which no person should be subjected.

2. Undersigned counsel has not yet had an opportunity to begin work on the petition for a writ of certiorari due to competing professional and personal obligations. In the time between when the Seventh Circuit denied rehearing *en banc* (October 31, 2022) and today, undersigned counsel has, *inter alia*, presented oral argument (*United States v. Mendoza-Cortez*, No. 22-1563 (7th Cir.) (held Nov. 18, 2022)), filed two opening appellate briefs (*United States v. Sorensen*, No. 22-1801 (7th Cir.) (filed Nov. 3, 2022); *Montour v. Jess*, No. 22-2393 (7th Cir.) (filed Dec. 14, 2022)); and filed multiple pretrial motions in a complex white-collar matter (*United States v. Lenz*, No. 22-cr-55 (W.D. Wis.) (filed Dec. 22, 2022)). In addition, undersigned counsel took personal leave near the Thanksgiving holiday.

An extension of time to March 31, 2023, is warranted in light of additional obligations in the coming weeks. Undersigned counsel is responsible for filing an opening appellate brief on January 9, 2023 (*United States v. Poore*, No. 22-3154 (7th Cir.)). Currently, she remains as standby counsel in *United States v. Beeks*, No. 21-cr-28-19 (D.D.C.), with a multi-week trial set to begin on February 1, 2023 (motion to withdraw pending substitution of other standby counsel). And, at present, in February 2023, she also is responsible for filing reply briefs in support of pretrial motions (*United States v. Lenz*, No. 22-cr-55 (W.D. Wis.) (due Feb. 13, 2023)); two

appellate reply briefs (*Montour v. Jess*, No. 22-2393 (7th Cir.) (due Feb. 15, 2023); *United States v. Sorensen*, No. 22-1801 (7th Cir.) (due Feb. 24, 2023)), and a reply brief in a habeas matter (*Kundilovski v. Buesgen*, No. 22-cv-166 (W.D. Wis.) (due Feb. 17, 2023)). Thus, an extension of time beyond the current January 30, 2023, deadline is needed. And, given the above-outlined schedule, a 60-day extension to March 31, 2023, is warranted.

CONCLUSION

For these reasons, Applicant respectfully requests an extension of 60 days, to and including March 31, 2022, within which to file a petition for a writ of certiorari.

Dated at Madison, Wisconsin this 27th day of December, 2022.

Respectfully submitted,

Thomas Thayer, *Applicant*



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