

No. _____

In the Supreme Court of the United States

HENRI PIETTE, PETITIONER

v.

UNITED STATES OF AMERICA

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

To the Honorable Neil Gorsuch, Associate Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Tenth Circuit:

1. Pursuant to Supreme Court Rule 13.5, petitioner Henri Piette respectfully requests a 60-day extension of time, until Friday, March 24, 2023, within which to file a petition for a writ of certiorari. The United States Court of Appeals for the Tenth Circuit issued its opinion on August 18, 2022. A copy of the opinion is attached at Appendix A. Petitioner filed a petition for rehearing or rehearing en banc on September 15, 2022. The Tenth Circuit denied the petition on October 24, 2022. A copy of the denial is attached at Appendix 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 January 23, 2023. This application is being filed at least 10 days in advance of that date, and no prior application has been made in this case.

3. The question presented in this case is whether and under what circumstances the enactment of an extended criminal statute of limitations applies to an offense committed before the extended statute of limitations was enacted.

4. As relevant here, a jury convicted Mr. Piette of an offense under 18 U.S.C. § 2423(b), which criminalizes traveling in interstate commerce “with a motivating purpose of engaging in any illicit sexual conduct [defined as certain sexual acts with a person under 18 years of age].” 18 U.S.C. § 2423(b). The statute of limitations began to run on this charge no later than May 14, 2000. *See* 18 U.S.C. § 2243(a). At that time, the statute of limitations for offenses committed under § 2423 expired on the victim’s 25th birthday (in this case, May 14, 2009), and the offense carried a maximum sentence of no more than 15 years. Protection of Children from Sexual Predators Act of 1998, Public Law 105–314, Oct. 30, 1998, 112 Stat. 2974, § 103(2), *codified at* 18 U.S.C. § 2423(b) (West 1998). Mr. Piette was charged with this offense long after this limitations period had run.

5. Three years after the statute of limitations started running, Congress enacted the Protect Act, Public Law 108–21, Apr. 30, 2003, 117 Stat. 650. As relevant here, the Protect Act modified two aspects of Title 18. First, it extended the statute of limitations for sex crimes involving children to the “life of the child.” *Id.* § 202, *codified at* 18 U.S.C. § 3283 (West 2003). Second, it increased the maximum prison

sentence for offenses under § 2423(b) from 15 years to 30. *Id.* § 105(a), *codified at* 18 U.S.C. § 2423(b) (West 2003).

6. Addressing what it considered to be “a question of first impression,” the Tenth Circuit held that applying the extended statute of limitations to Mr. Piette’s pre-enactment § 2423(b) offense was not “impermissibly retroactive.” *United States v. Piette*, 45 F.4th 1142, 1160 (10th Cir. 2022). This is an issue on which different circuit courts have offered different opinions. *See United States v. Miller*, 911 F.3d 638, 642–46 (1st Cir. 2018); *Weingarten v. United States*, 865 F.3d 48, 54–58 (2d Cir. 2017). For its part, this Court has not directly addressed how retroactivity principles apply when Congress extends statutes of limitation on criminal offenses, especially when applying the new statute of limitations to the defendant’s past offense doubles the penalty to which the defendant is exposed. *Cf. Fernandez-Vargas v. Gonzales*, 548 U.S. 30, 37 (2006); *Stogner v. California*, 539 U.S. 607, 611 (2003); *Landgraf v. USI Film Prods.*, 511 U.S. 244, 280 (1994).

7. This case presents a clean vehicle to address this issue. It was preserved at the district court. The Tenth Circuit directly addressed it. And there are no other impediments to this Court’s review.

6. Petitioner respectfully requests an extension of time to file a petition for certiorari. The press of other matters has interfered with counsel’s ability to submit a petition in a timely fashion. In addition to this petition, counsel is dealing with numerous recent and upcoming deadlines, including:

- November 16, 2022: oral argument in *United States v. Veneno*, No. 21-2101 (10th Cir.), a case involving a criminal defendant’s public-trial rights;
- November 21, 2022: submission of the opening brief in *Glass America Midwest LLC v. Connect Auto Glass America LLC*, No. 20220642-CA (Utah Ct. App.), a case involving the fraudulent-inducement exception to the economic-loss doctrine under Utah law;
- December 16, 2022: submission of the opening brief in *Asphalt Trader Ltd. v. Beall et al.*, No. 22-4085 (10th Cir.), a case involving the alter-ego doctrine;
- December 23 and 30, 2022: various filings in emergency litigation in *Phibro Biodigester, LLC v. Murphy-Brown, LLC*, No. 4:22-cv-00050-RJS (D. Utah), and in *Phibro Biodigester, LLC v. Murphy-Brown, LLC*, No. 22-4117 (10th Cir.), a case involving a requirements contract and equitable relief;
- January 17, 2023: opening brief due in *United States v. Gutierrez*, No. 22-8045 (10th Cir.), an appeal from a criminal jury trial;
- January 30, 2023: opening brief due in *Hillam v. Hillam v. Hancock, Trustee*, No. 20220488-CA (Utah Ct. App.), a case addressing whether a spouse may transfer marital assets out of the marital estate to an asset protection trust without the other spouse’s consent.

No prejudice would result from the requested extension. The petition can be considered this term and, if granted, argued and decided next term. Respondents have graciously consented to the requested relief.

Wherefore, petitioner respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari to Friday, March 24, 2023.

January 13, 2023

Respectfully submitted,



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