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**In The
SUPREME COURT OF THE UNITED STATES
October Term 2023**

**Melynda Vincent,
*Appellant/Petitioner,***

v.

**Merrick Garland, et al.,
*Appellees/Respondents.***

**Application for an Extension of Time in
Which to File a Petition for a Writ of Certiorari
to the Court of Appeals for the Tenth Circuit**

**APPLICATION TO THE HONORABLE
NEIL M. GORSUCH, ASSOCIATE JUSTICE,
AS CIRCUIT JUSTICE**

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December 1, 2023

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APPLICATION FOR EXTENSION OF TIME

Under this Court's Rule 13.5, Applicant Melynda Vincent requests a 7-day extension of time within which to file a petition for a writ of certiorari, up to and including Thursday, December 21, 2023.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The judgment for which review is sought is *Vincent v. Garland*, 80 F.4th 1197 (10th Cir. 2023), decided on September 15, 2023. A copy is attached as Exhibit A.

JURISDICTION

This Court will have jurisdiction over a timely filed petition under 28 U.S.C. § 1254(1). Under this Court's Rule 13.1, the petition is currently due by December 14, 2023. In accordance with Rule 13.5, Ms. Vincent has filed this application at least 10 days in advance of that due date.

REASONS JUSTIFYING AN EXTENSION OF TIME

Applicant respectfully requests a 7-day extension of time within which to file a petition for a writ of certiorari in this case, up to and including December 21, 2023. This brief extension of the time to complete and file the petition will enable the Court to consider this petition together with the Solicitor General's pending petition in *Garland v. Range*, No. 23-374, which raises the same question presented but is an inferior vehicle to this case.

1. An extension is warranted because the question presented involves an acknowledged circuit split on a vitally important issue. The Court of Appeals concluded that the federal ban on felons' possession of a firearm is consistent with the Second Amendment, even as applied to non-violent felons like Ms. Vincent.

Vincent v. Garland, 80 F.4th 1197, 1199 (10th Cir. 2023). In doing so, the Court of Appeals failed to examine this Nation’s history and tradition of firearm possession by felons, even though this Court’s decision in *New York State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111, 2129–30 (2022), requires just such an inquiry. It did not matter, according to the Court of Appeals, that Ms. Vincent was convicted of a single non-violent felony over a decade ago, or that the United States could point to no Founding-era support for permanent disarmament of non-violent felons.

As this Court is aware, the Courts of Appeals openly disagree about § 922(g)(1) is consistent with the Second Amendment as applied to non-violent felons. *See* Pet. for Certiorari at 23–25, *Garland v. Range*, No. 23-374 (Oct. 5, 2023). The Third Circuit has held that 18 U.S.C. § 922(g)(1) “cannot constitutionally strip” an individual convicted of a non-violent offense of his right to possess a firearm. *Range v. Att’y Gen. of U.S.*, 69 F.4th 96, 106 (3d Cir. 2023) (en banc). The Eighth Circuit, by contrast, has held that “there is no need for felony-by-felony litigation regarding the constitutionality of § 922(g)(1),” because the statute as a whole is “within the historical tradition” of firearms regulation. *United States v. Jackson*, 69 F.4th 495, 502, 506 (8th Cir. 2023). The Tenth Circuit took the same tack here: The court held that it had “no basis to draw constitutional distinctions based on the type of felony involved” because “the federal ban for *any* convicted felon’s possession of a firearm” was constitutional. *Vincent*, 80 F.4th at 1202. This entrenched split is sure to deepen soon, as the Second, Fifth, and Seventh Circuits are poised to decide cases presenting the same question. *See Zherka v. Garland*, No. 22-1108 (2d Cir., May 8, 2023);

Atkinson v. Garland, 70 F.4th 1018, 1023 (7th Cir. 2023); *United States v. Bullock*, No. 3:18-CR-165, 2023 WL 4232309, at *2 (S.D. Miss. 2023).

The constitutionality of § 922(g)(1) as applied to non-violent felons arises frequently. In 2021 alone, over 55,000 individuals were convicted of a federal felony, but the overwhelming majority—96.3%—were non-violent offenses. U.S. Dep’t of Justice, *Federal Justice Statistics, 2021* at 12 tbl. 7 (Dec. 2022). The figures are similar state felony convictions. *See Jackson*, 69 F.4th at 502 n.2. In short, whether the Second Amendment allows the federal government to deprive non-violent felons of their right to possess a firearm is a question affecting hundreds of thousands of Americans each year.

2. A short extension to complete the petition is also warranted because counsel, who are representing Ms. Vincent on a *pro bono* basis, have multiple other obligations that coincide with the current deadline.

Mr. Green presented oral argument to this Court in *Brown v. United States*, No. 22-6389, on November 27. His preparations occupied much of his time in the preceding weeks. Mr. Green and Mr. Loss-Eaton are also responsible for preparing multiple petitions for writs of certiorari currently due in December.

Mr. Loss-Eaton is additionally responsible for briefing issues remanded by this Court to the Pennsylvania state courts in *Mallory v. Norfolk Southern Railway*, 600 U.S. 122, 127 n.3 (2023), and is preparing to present oral argument before the Sixth Circuit in *Norfolk Southern Railway v. Dille Road Recycling, LLC*, No. 22-4037, on December 6.

Finally, students from the Northwestern Supreme Court Practicum will assist with the preparation of this petition, and an extension is warranted to allow them to complete the draft petition with minimal interference with their fall semester exams.

CONCLUSION

For these reasons, Applicant respectfully requests an extension of 7 days, to and including December 21, 2023, within which to file a petition for a writ of certiorari in this case.

Respectfully submitted,

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