

No.

IN THE
Supreme Court of the United States

NORMAN F. THORNTON,
Petitioner,

v.

DENIS MCDONOUGH, Secretary of Veterans Affairs,
Respondent.

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

Application to the Honorable John G. Roberts, Jr.,
as Circuit Justice for the Federal Circuit

Pursuant to Supreme Court Rule 13.5, Applicant Norman F. Thornton hereby requests a 56-day extension of time, to and including January 2, 2024, within which to file a petition for a writ of certiorari.

1. The decision below is *Thornton v. McDonough*, No. 21-2329 (Fed. Cir. 2023). The Federal Circuit issued its opinion on August 9, 2023, *see* App. A. Unless extended, Applicant's time to seek certiorari in this Court expires November 7, 2023. Applicant is filing this application at least ten days before that date. *See* S. Ct. R. 13.5. This Court's jurisdiction would be invoked under 28 U.S.C. § 1254(1). Respondent does not object to this extension request.

2. This case concerns the interpretation of an important statute governing review in the United States Court of Appeals for Veterans Claims (the “Veterans Court”) of veterans’ benefits appeals, 38 U.S.C. § 7261(b)(1). That provision requires the Veterans Court to “take due account” of the Secretary of Veterans’ Affairs’ application of the benefit-of-the-doubt rule, which dictates that “[w]hen there is an approximate balance of positive and negative evidence regarding any issue material to the determination” of a veterans’ benefits claim, “the Secretary shall give the benefit of the doubt to the claimant.” 38 U.S.C. § 5107(b).¹

In 2015, Mr. Thornton submitted a claim to the Department of Veterans Affairs for a rating above 50% for his service-connected disability from post-traumatic stress disorder. VA denied the claim. Mr. Thornton appealed to the Board of Veterans Appeals (the “Board”), arguing that the benefit-of-the-doubt rule required that his claim be approved. The Board denied relief. Mr. Thornton then appealed to the Veterans Court, which affirmed the Board’s decision and concluded that the benefit-of-the-doubt rule did not apply because “no clear error was shown in the Board’s assessment of the balance of the factual evidence concerning the severity of Mr. Thornton’s PTSD.” App. A at 3.

Appealing to the Federal Circuit, Mr. Thornton argued that § 7261(b)(1) requires the Veterans Court to conduct a de novo and, if appropriate, sua sponte review

¹ The Federal Circuit decided a closely related case involving the same statutory interpretation issues on August 3, 2023, *Bufkin v. McDonough*, No. 22-1089 (Fed. Cir. 2023). Undersigned counsel for Mr. Thornton has also been recently retained to represent the claimant in seeking Supreme Court review of that decision. Counsel is concurrently moving for a similar extension of time in *Bufkin*. If the motions are granted, counsel intends to file a joint cert petition seeking review of both decisions.

of the record underlying VA’s denial of benefits to assure that the veteran has not improperly been denied the benefit of the doubt. App. A at 3. The Federal Circuit denied relief, explaining that “[t]he same interpretation questions ... recently were presented to and decided” in *Bufkin v. McDonough*, No. 22-1089 (Fed. Cir. 2023), which rejected Mr. Thornton’s interpretation of § 7261(b)(1). App. A at 4.

The issues presented are of exceptional importance to veterans and the veterans court system, because proper application of the benefit-of-the-doubt rule affects a huge volume of veterans claims. And only this Court can review the Federal Circuit’s interpretation of the statute in question, because of the Federal Circuit’s exclusive subject matter jurisdiction in this area.

3. A 56-day extension within which to file a certiorari petition is reasonable and necessary.

a. Undersigned counsel and her firm have only recently been retained to represent the Applicant in this matter. Additional time is necessary for counsel to become fully familiar with the issues, the decision below, the record, and relevant case law, and to best present the issues for this Court’s review.

b. As noted above, Applicant intends to file a joint petition for a writ of certiorari in connection with *Bufkin v. McDonough*, No. 22-1089 (Fed. Cir. 2023). Additional time is thus also needed to coordinate the presentation of the two cases.

c. The request is further justified by undersigned counsel’s press of business on other pending matters. Among other things, counsel has a petition for certiorari due in this Court on December 4, regarding *Forsythe v. McDonough*, No. 22-1610

(Fed. Cir.) (extension request forthcoming); a reply brief in *In re Canon Inc.*, No. 24-102 (Fed. Cir.), due on October 16; a response brief in *Gesture Technology Partners, LLC v. Apple Inc.*, No. 23-1463 (Fed. Cir.), due on October 27; a reply brief in *Apple Inc. v. Gesture Technology Partners, LLC*, No. 23-1494 (Fed. Cir.), due on November 2; a response and reply brief in *Apple Inc v. Gesture Technology Partners, LLC*, No. 23-1475 (Fed. Cir.), due on December 5; a response and reply brief in *Apple Inc. v. Gesture Technology Partners, LLC*, Nos. 23-1501, 23-1554 (Fed. Cir.), due on December 18; and an answering brief in *Fintiv, Inc. v. Apple Inc.*, No. 23-2208 (Fed. Cir.), due on December 19.

The requested 56-day extension would cause no prejudice to Respondent, who has advised that he has no objection to the extension.

Respectfully submitted,

/s/ *Melanie L. Bostwick*

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