

CASE NO. _____
SUPREME COURT OF THE UNITED STATES
October 2023 Term

ALLEN BROOKS, Jr.,)
)
 Petitioner,)
)
 v.)
)
 UNITED STATES OF AMERICA,)
)
 Respondent.)

APPLICATION DIRECTED TO JUSTICE KAVANAUGH FOR ADDITIONAL TIME TO
FILE PETITION FOR A WRIT OF CERTIORARI TO THE EIGHTH CIRCUIT COURT OF
APPEALS

Submitted on Behalf of Petitioner

Submitted By:

Amanda Lee Altman
Assistant Federal Public Defender
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ATTORNEY FOR PETITIONER

To Justice Brett M. Kavanaugh:

Petitioner Allen Brooks, Jr., through his attorney of record, Assistant Federal Public Defender Amanda Lee Altman, requests an additional 60 days in which to file a petition in this Court seeking certiorari to the Eighth Circuit Court of Appeals, up through March 16, 2024. Petitioner requests this extension under Supreme Court Rule 13.5.

JURISDICTION

Petitioner requests an extension to file a petition for writ of certiorari. Petitioner is preparing to request this Court's review of the judgment issued by the Eighth Circuit Court of Appeals on October 18, 2023, affirming the imposition of his 33-month prison term and 20-year term of supervised release for violating the Sex Offender Registration and Notification Act ("SORNA"), 18 U.S.C. §2250(a)(3). Prior to pleading guilty, Mr. Brooks moved to dismiss the indictment, arguing that (1) SORNA impermissibly delegates legislative authority to the Attorney General when it authorizing that Executive Branch officer to decide whether the statute applies to individuals (like Mr. Brooks) convicted of a sex offense prior to its enactment; and, (2) SORNA is an improper exercise of Congress' Commerce Clause powers. See U.S. Const. Art. I, § 1 (Legislative Power Vested in Congress); *id.* at § 8, cl. 3 (Regulation of Commerce). Petitioner based the first argument on the arguments noted in Justice Gorsuch's dissent from the decision in *Gundy v. United States*, 558 U.S. ___, 139 S. Ct. 2116 (2019).

The Court of Appeals affirmed Mr. Brooks' conviction and sentence by a *per curiam* opinion dated October 18, 2023. Appendix at 1-2. No motion for rehearing was filed. The deadline for filing a petition for a writ of certiorari in this case is January 16, 2024. Petitioner files this request for additional time at least 10 days before the date the petition is currently due, in compliance with Supreme Court Rule 13.5.

REASONS FOR APPLICATION FOR EXTENSION

1. Petitioner believes that this case raises issues of exceptional importance concerning the constitutionality of SORNA as a violation of this Court’s “non-delegation” jurisprudence, in that Congress assigned the legislative task of determining whether SORNA applied to persons convicted of sex offenses prior to its enactment to the United States Attorney General. Congress, in fact assigned the Attorney General the “authority to specify the applicability of the requirements [of SORNA] to sex offenders convicted before the enactment of this Act,” in 34 U.S.C. § 20913(d). By the DOJ’s own telling, SORNA did not require any Attorney General to impose registration requirements on pre-Act offenders “within a certain time frame or by a date certain; it does not require [the Attorney General] to act at all.” *Reynolds v. Washington*, S. Ct. No. 10-6549, Brief for the United States, p. 23, 2011 WL 2533008, *23 (filed June 23, 2011). A succession of Attorneys General issued differing orders that changed with succeeding administrations. *Gundy v. United States*, 139 S. Ct. 2116, 2132 (2019) (Gorsuch, J., dissenting). Justice Alito filed a brief concurrence in *Gundy*, suggesting the Court should revisit its “non-delegation” precedents. *Id.* 2130-31.

2. Petitioner’s counsel is an assistant public defender in the Eastern District of Missouri carrying a full load of appointed cases requiring consultation with clients in detention facilities in remote parts of Missouri and other states. Counsel makes this request with no dilatory purpose. Counsel seeks only to ensure proper presentation of the important questions raised in petitioner’s case while also providing effective representation in all cases to which counsel is assigned.

WHEREFORE, petitioner requests leave to file his Petition for Writ of Certiorari, up through and including March 16, 2024.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Amanda L. Altman', written over a horizontal line.

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