

IN THE

Supreme Court of the United States

CORRIGAN CLAY,

Applicant,

v.

UNITED STATES OF AMERICA,

Respondent.

**Application for Extension of Time Within
Which to File a Petition for a Writ of Certiorari to
the U.S. Court of Appeals for the Third Circuit**

**APPLICATION TO THE HONORABLE JUSTICE
SAMUEL A. ALITO, JR. AS CIRCUIT JUSTICE**

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May 19, 2025

APPLICATION FOR EXTENSION OF TIME

Under this Court’s Rule 13.5, Applicant Corrigan Clay respectfully requests a 30-day extension of time within which to file a petition for a writ of certiorari, to and including July 17, 2025.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The judgment for which review is sought is *United States v. Clay*, 128 F.4th 163 (3d Cir. 2025) (attached as Exhibit 1).

JURISDICTION

This Court will have jurisdiction over any timely petition under 28 U.S.C. § 1254(1). The Third Circuit issued its judgment on February 3, 2025, and denied a timely rehearing petition on March 19. Thus, a petition to this Court is currently due by June 17. In accordance with Rule 13.5, this application is being filed more than 10 days before that date.

REASONS JUSTIFYING AN EXTENSION OF TIME

1. This case presents “difficult constitutional questions” “of grave significance” about the reach of Congress’s authority under the Foreign Commerce Clause and the treaty power. Ex. 1 at 7, 38.

18 U.S.C. § 2423(c) imposes criminal penalties on any U.S. citizen or permanent resident “who travels in foreign commerce or resides, either temporarily or permanently, in a foreign country, and engages in any illicit sexual conduct with another person” there. Mr. Clay pleaded guilty to violating § 2423(c) by sexually abusing a minor while lawfully residing in Haiti, but preserved his argument that

this statute exceeds Congress’s authority, both facially and as applied. Ex. 1 at 5. He argued that “neither the Foreign Commerce Clause nor the Necessary and Proper Clause authorize” Congress to criminalize entirely extraterritorial, non-commercial sexual abuse just because it was committed by a U.S. resident. *Id.* at 7.

The Third Circuit affirmed, though with serious reservations explained in two concurrences. Judge Hardiman’s lead opinion acknowledged the “difficult” question presented, but ultimately concluded that circuit precedent—namely, *United States v. Pendleton*, 658 F.3d 299 (3d Cir. 2011)—required upholding § 2423(c). See Ex. 1 at 20–22. *Pendleton* held that “because the jurisdictional element in § 2423(c) has an express connection to the channels of foreign commerce,” the statute is valid. *Id.* at 22 (citation omitted). The lead opinion acknowledged that “some colleagues on our sister courts disagree,” noting concerns that the Third Circuit’s view “would ‘permit Congress to subject an American to federal prosecution for *any* offense committed abroad.’” *Id.* at 23 (quoting *United States v. Durham*, 902 F.3d 1180, 1194 (10th Cir. 2018) (Hartz, J., dissenting)). In Judge Hardiman’s view, however, Mr. Clay’s “movement abroad maintain[ed] some nexus with the United States,” so those concerns were misplaced. *Id.* at 23–24.

The lead opinion also concluded that “§ 2423(c) regulates activities that, taken in the aggregate, substantially affect foreign commerce.” *Id.* at 24 (cleaned up). And it held that, under *Missouri v. Holland*, 252 U.S. 416 (1920), this statute is a valid exercise the treaty power, via the Necessary and Proper Clause, because it

implements a U.N. optional protocol addressing the sale of children, child prostitution, and child pornography. *Id.* at 33.

Judge Porter concurred. He explained that, while Mr. Clay’s conviction is valid under *Pendleton* and *Holland*, “those precedents are flawed.” *Id.* at 39. “*Pendleton* wrongly adopted the Supreme Court’s framework for the Interstate Commerce Clause ... as a floor to Congress’s power under the Foreign Commerce Clause,” and then “misapplied” that framework. *Id.* Absent this circuit precedent, Judge Porter “would join the Sixth Circuit and several other judges in holding that § 2423(c) exceeds Congress’s power under the Foreign Commerce Clause.” *Id.* (collecting cases). And “*Holland* undermined the Constitution’s structure of enumerated and limited legislative powers, requiring us to enforce laws like § 2423(c) that are not valid under any enumerated power.” *Id.* at 39–40. Judge Porter thus joined with “other judges who have urged the Supreme Court to clarify the scope of that case.” *Id.* at 40 (citing cases).

Judge Ambro also concurred because “*Pendleton* and *Holland* bind us.” *Id.* at 65. But he, too, expressed strong “reservations” about those precedents. “Under *Pendleton*’s logic,” he warned, “Congress’s authority to regulate the conduct of American residents abroad is seemingly boundless.” *Id.* And he, too, “urge[d] the Supreme Court to clarify the scope of *Holland* and its place in our constitutional design.” *Id.*

As Judges Porter and Ambro explained in detail, the decision below conflicts with opinions from other courts of appeals; misconstrues the scope of Congress’s

foreign-commerce power, with potentially sweeping implications; and rests on precedent that itself stands in “deep tension” with the Constitution. *Id.* at 61 (quoting Nicholas Quinn Rosenkranz, *Executing the Treaty Power*, 118 Harv. L. Rev. 1867, 1868 (2005)). Mr. Clay’s petition will thus raise substantial issues, which warrant added time to ensure the most helpful presentation.

2. An extension is also warranted to allow counsel time to coordinate and prepare a petition that will aid the Court’s review of these issues. Applicant has asked the Carter G. Phillips/Sidley Austin LLP Supreme Court Clinic at Northwestern Pritzker School of Law to help prepare the petition. Because the academic year has ended, the Clinic has no enrolled students and is thus short-staffed. An extension will thus help the Clinic faculty work with co-counsel to complete a cogent and well-researched petition.

An extension is also warranted because of the press of counsel’s other client business. The Clinic is also responsible for forthcoming petitions for writs of certiorari in *Jerald v. Arizona*, No. 2 CA-CR 2021-0105 (Ariz. App.) (currently due June 3), and *Zielinski v. United States*, No. 23-3575 (8th Cir.) (currently due July 8), and a forthcoming petition for rehearing *en banc* in *United States v. Pheasant*, No. 23-991 (9th Cir.) (currently due on June 3). In addition, Ms. Miller and Mr. Misour are currently preparing pretrial motions in a capital criminal prosecution that is currently scheduled for trial in October, *Commonwealth v. Virzi*, No. CR 4996-2024 (Allegheny Cnty. Ct. Com. Pl.).

CONCLUSION

For these reasons, Applicant respectfully requests a 30-day extension of time within which to file a petition for a writ of certiorari, to and including July 17, 2025.

Respectfully submitted,

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