

CASE NO. \_\_\_\_\_  
SUPREME COURT OF THE UNITED STATES

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|---------------------------|---|
| Kyle Syphax,              | ) |
|                           | ) |
| Petitioner,               | ) |
|                           | ) |
| v.                        | ) |
|                           | ) |
| United States of America, | ) |
|                           | ) |
| Respondent.               | ) |

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Application to Justice Kavanaugh for Additional Time to File a  
Petition for a Writ of Certiorari to the Eighth Circuit Court of Appeals

Submitted on Behalf of Petitioner

Submitted By:

Rachel Korenblat  
Assistant Federal Public Defender  
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Attorney for Petitioner

To Justice Brett M. Kavanaugh:

Petitioner Kyle Syphax, through Assistant Federal Public Defender Rachel Korenblat, requests an additional 60 days in which to file a petition in this Court seeking certiorari to the Eighth Circuit Court of Appeals. Specifically, he seeks an extension through August 25, 2025.

Petitioner makes this request under Supreme Court Rule 13.5.

### **Jurisdiction**

Petitioner is preparing to request this Court's review of the judgment issued by the Eighth Circuit Court of Appeals on February 5, 2025, affirming his sentence following his guilty plea to one count of unlawfully possessing a firearm under 18 U.S.C. § 922(g)(1). App. 1 – App. 6 (COA Opinion). Mr. Syphax filed a timely petition for rehearing or rehearing en banc, which the Eighth Circuit denied on March 27, 2025. App. 7 (COA Order).

The deadline for filing a petition in this case is June 25, 2025. Petitioner files his request at least 10 days before the date the petition is currently due. *See* Supreme Court Rule 13.5.

### **Reasons for Application**

Before the Eighth Circuit, Mr. Syphax argued the District Court miscalculated the Sentencing Guidelines range by misapplying Application Note 11 to Guideline § 4A1.2. COA Appellant's Br., at 14-33. He noted a Circuit split over how to read that Note and urged the Eighth Circuit to adopt the Sixth and Ninth Circuit's textual reading over the Tenth Circuit's contrary interpretation. *Id.* While Petitioner averred that he should prevail based on the Note's "plain text," *id.* at 19, he submitted that if the text was ambiguous, the rule of lenity compelled the Eighth Circuit to adopt his approach, COA Reply Br., at 8.

The Eighth Circuit ruled against Mr. Syphax and affirmed his sentence based on the Note's "plain and unambiguous language[.]" App. 4. It acknowledged that the Sixth and

Ninth Circuits reached a “contrary” interpretation of that same plain language. *Id.* at 5. It did not address the rule of lenity.

Petitioner will fully address the Circuit split in his petition. However, he does not intend to simply ask the Court to resolve that split, as he is cognizant of the Court’s traditional stance toward Guideline disputes. *See Braxton v. United States*, 500 U.S. 344, 348-49 (1991). He will instead ask the Court to weigh in on the more fundamental question of whether courts must consult the rule of lenity in circumstances like these.

Existing law provides that “a statute is not ambiguous for purposes of lenity merely because there is a division of judicial authority over its proper construction.” *Reno v. Koray*, 515 U.S. 50, 64-65 (1995) (cleaned up). However, not every “division of judicial authority” is the same. Here, four Circuits have split into two camps over a penal provision’s meaning. Those camps did not struggle to arrive at their competing interpretations; each concluded, with relative ease, that the provision’s plain text compelled its reading. But one camp must be wrong: the provision’s plain text cannot mean two different things. Such a situation signals inherent ambiguity, and Petitioner will make his case to the Court that it triggers the rule of lenity.

Undersigned counsel is responsible for a significant criminal caseload in the Eastern District of Missouri and has been required to meet several other deadlines between the Eighth Circuit’s decision and the current due date. These further demands on counsel’s time may prevent counsel from preparing a competent and concise petition by the current deadline.

Wherefore, Petitioner requests additional time to file a Petition for a Writ of Certiorari, up to and including August 25, 2025.

Dated: June 5, 2025

Respectfully submitted,

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