

**IN THE SUPREME COURT
UNITED STATES OF AMERICA**

DAVID LEROY EARLS,)
)
Petitioner,)
)
v.)
)
UNITED STATES OF)
AMERICA,)
)
Respondent.)

**APPLICATION FOR EXTENSION OF TIME TO FILE PETITION
FOR WRIT OF CERTIORARI TO THE TENTH CIRCUIT COURT OF
APPEALS**

To the Honorable Neil Gorsuch, Associate Justice of the Supreme Court of the United States and Circuit Judge for the Tenth Circuit Court of Appeals:

Petitioner David Leroy Earls prays for a sixty-day extension of time to file his petition for certiorari to this Court up to and including September 8, 2025, pursuant to Sup. Ct. R. 13.5. This Court has jurisdiction under 28 U.S.C. § 1254(1). The Tenth Circuit Court of Appeals adversely decided Petitioner’s direct appeal on February 21, 2025. Mr. Earls’ convictions for three counts of sexual abuse under 18 U.S.C. § 2242(2)(A) were affirmed, although the case was remanded to the Eastern District of

Oklahoma for resentencing.¹ Prior to resentencing, Mr. Earls filed a timely petition for rehearing and rehearing en banc in the Tenth Circuit. An order denying rehearing and rehearing en banc was entered and filed on April 7, 2025. Both the decision on direct appeal and the order denying rehearing are attached. The order denying rehearing represents the final order from the Tenth Circuit on the issue of guilt. Presently, the time to petition for certiorari in the Court expires on July 7, 2025. This application was filed more than ten days before that date.

FACTUAL BACKGROUND

A copy of the published decision on direct appeal is attached hereto, along with the order denying rehearing and rehearing en banc. The decision contains a factual summary. Petitioner Earls was convicted of having consensual sex with an adult woman alleged to be incapable of appraising the nature of the conduct in violation of 18 U.S.C. § 2242(2)(A). The alleged victim suffered from a moderate to mild intellectual disability. She can read and write, perform household chores, and enjoys shopping. She does not cook, but can prepare food in a microwave. The evidence at

¹ There has been no date set for resentencing.

trial was that she understands what sex is, as well as the immediate consequences of having sex.

LEGAL ISSUES PRESENTED

The question for the jury – and the Tenth Circuit on direct appeal – in Petitioner Earl’s case was whether the government had proven that the alleged victim was “unable to appraise the nature of the [sexual] conduct” under the language of 18 U.S.C. § 2242(2)(A). There are multiple ways to interpret this language. While prior to *Earls* there was no federal authority interpreting key language in the federal statute, most states have similar statutes criminalizing sex with intellectually disabled persons who lack the intellectual capacity to consent to sex. The decisions interpreting state statutes place the sexual abuse victims in three general classes:

- (a) those who cannot understand what sexual conduct is;
- (b) those who cannot understand the immediate consequences of sexual conduct, such as pregnancy or venereal disease; and
- (c) those who do not understand the long term personal, societal, or moral implications of sexual conduct.

The Tenth Circuit chose a definition closest to the third option and affirmed Mr. Earls’ convictions. The alleged victim in *Earls* would not have been included in either of the first two classes as defined above. Defining the class of victims under 18

U.S.C. § 2242(2)(A) too broadly runs to risk of unfairly or unconstitutionally impairing the rights of intellectually disabled persons to engage in consensual sexual relations.

This case therefore has implications that reach beyond those which have an immediate effect on the Petitioner.

Petitioner intends to raise the following issues in his Certiorari application relating to the Tenth Circuit's incorrect interpretation of a federal statute:

1. The statute defining the offense of conviction, 18 U.S.C. § 2242(2)(A), which criminalizes having sex with a person unable to “appraise the nature of the conduct,” contains ambiguous language. The Rule of Lenity requires an interpretation of 18 U.S.C. § 2242(2)(A) that favors the Petitioner when a criminal statute is ambiguous. The interpretation adopted by the Tenth Circuit was not a favorable interpretation of the statute, is unconstitutionally vague, and violates the due process provisions of the Fifth Amendment.
2. Whether the Tenth Circuit incorrectly interpreted 18 U.S.C. § 2242(2)(A) by finding the evidence sufficient to convict Petitioner of sexual abuse. The Tenth Circuit found the evidence sufficient that the alleged victim was “incapable of appraising the consequences and disruptive impact to her family and community of having sex” when the statute only requires the alleged victim to

be “incapable of appraising the nature of the conduct.” *United States v. Earls*, 129 F.4th 850, 860 (10th Cir. 2025).

Defense counsel raised the issue of the application of the Rule of Lenity and the sufficiency of the evidence on direct appeal.

REASONS FOR EXTENSION REQUEST

Recognizing that extensions are not favored, Petitioner would advise the Court that defense counsel has had an unusually busy schedule this spring that includes both jury trial settings and pending appeals in the Tenth Circuit. For example, the undersigned represents Robert Bird, who been indicted for second degree murder. The case is set for jury trial the first week of July in *United States v. Bird*, 25-CR-043-JFH. Upon completion of the *Bird* trial, the undersigned represents two appellants who have an oral argument scheduled in Denver on July 15, 2025. *See United States v. Peavler*, 24-7062 and *United States v Reilly*, 24-7047. Counsel requested an extension to file a brief in *United States v. Brown*, 25-7026, because he would have otherwise been unable to compete a brief by the due date of June 23, 2025. In addition to these cases, the undersigned has been involved in the representation of others at both the district court and appellate level that contribute to his busy schedule.

For these reasons, the undersigned would advise this Court that it will be impossible to submit an adequate Petition for Writ of Certiorari in this case by the present due date.

WHEREFORE, Petitioner respectfully requests that an order be entered extending the time for filing a petition for certiorari to an including September 8, 2025.

Respectfully submitted,

OFFICE OF THE FEDERAL PUBLIC DEFENDER
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CERTIFICATE OF SERVICE

I certify that on June 20, 2025, I sent a physical copy of this pleading to the United States Attorney's Office for the Eastern District of Oklahoma, the office that represented the United States Government both at trial and on appeal in this case, by United States mail to:

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