

No. _____

In the Supreme Court of the United States

BRANDON KEITH THOMPSON,

Applicant,

v.

UNITED STATES OF AMERICA,

Respondents.

*ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT*

**APPLICATION FOR AN EXTENSION OF TIME
TO FILE A PETITION FOR WRIT OF CERTIORARI**

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**APPLICATION FOR EXTENSION OF TIME WITHIN WHICH TO FILE A
PETITION FOR WRIT OF CERTIORARI**

To the Honorable Neil M. Gorsuch, as Circuit Justice for the United States Court of Appeals for the Tenth Circuit:

Applicant Brandon Keith Thompson respectfully requests an extension of 60 days in which to file his petition for writ of certiorari, seeking review of the Tenth Circuit’s decision in *United States v. Thompson*, Case No. 24-4006, 133 F.4th 1094 (10th Cir. April 15, 2025), a copy of which is attached to this application.

In support of this application, Applicant states the following:

1. The Tenth Circuit denied Mr. Thompson’s appeal on April 15, 2025.

Accordingly, the petition for certiorari is currently due July 14, 2025. Granting this extension would make it due on September 12, 2025.

2. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

3. This case asks whether 18 U.S.C. § 922(g)(1) violates the Commerce Clause on its face and as applied to Petitioner. Although the text of § 922(g)(1) required proof that the gun was possessed “in or affecting [interstate] commerce,” the Tenth Circuit had interpreted this jurisdictional element to mean that a defendant could be convicted in federal court based on evidence that the “firearm has traveled across state lines,” even if “the gun traveled in interstate commerce at some earlier time” before the defendant possessed it. *United States v. Urbano*, 563 F.3d 1150, 1154 (10th Cir. 2009).

However, the Tenth Circuit just a few years earlier had held that this expansive interpretation of the jurisdictional element “does not fall within *any* of

the three categories the Court now recognizes for Commerce Clause authority.” *United States v. Patton*, 451 F.3d 615, 635 (10th Cir. 2006) (emphasis added). Nevertheless, despite finding *no authority* for Congress to regulate this conduct under the Commerce Clause, the Tenth Circuit relied on a 29-year old case from this court—one that didn’t even address the Commerce Clause—to hold that Congress, nevertheless, “may regulate any firearm that has *ever* traversed state lines.” *Id.* at 634 (emphasis added) (discussing *Scarborough v. United States*, 431 U.S. 563 (1977)). Relying on this precedent, the Tenth Circuit denied Petitioner’s Commerce Clause challenge. This petition will ask the Court to take up a constitutional issue it has never before addressed, despite repeated cries from federal judges at *all* levels, who can see that § 922(g)(1) cannot be sustained under this Court’s Commerce Clause precedents. *See, e.g., Alderman v. United States*, 562 U.S. 1163, 1168 (2011) (Thomas, Scalia, JJ., dissenting from the denial of certiorari); *United States v. Seekins*, 52 F.4th 988, 991 (5th Cir. 2022) (Ho, J., dissenting from denial of rehearing en banc) (citing other dissents that raise this issue); *United States v. Storey*, 571 F. Supp. 3d 1296, 1298 (M.D. Fla. 2021).

4. This application is not sought for purposes of delay. Undersigned counsel is the lead attorney on several pending appeals and more than 50 cases pending in federal district court. On June 25, 2025, he filed a substantive brief in *United States v. Aguayo-Montes*, 24-4073 (10th Cir.). Over the next 60 days, he has substantive briefs due in *State v. Mullins*, 20200149 (Utah) (due July 8, 2025); *State v. Patterson*, 20240021 (Utah App.) (due August 8, 2025); *United States v. al-*

Tamir, 25-5071 & 25-5073 (D.C. Cir.) (due August 22, 2025). These appellate filing deadlines are in addition to numerous hearings and filing deadlines already scheduled in federal district court over the next 60 days.

5. Undersigned counsel previously represented Mr. Thompson, and there are currently no other attorneys in the Federal Public Defender office who are familiar enough with the relevant record in Mr. Thompson's case to be capable of preparing a petition by the current due date.

For these reasons, Mr. Thompson requests a 60-day extension of time in which to file a petition for a writ of certiorari.

Respectfully submitted,

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