

No. \_\_\_\_\_

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In the Supreme Court of the United States

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MILTON GREEN,

*Applicant,*

v.

CHRISTOPHER TANNER

*Respondent.*

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**APPLICATION TO THE HONORABLE BRETT M. KAVANAUGH  
REQUESTING AN EXTENSION OF TIME TO FILE A PETITION FOR A  
WRIT OF CERTIORARI**

**To the Hon. Brett M. Kavanaugh**

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To the Honorable Brett M. Kavanaugh, Associate Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Eighth Circuit:

Pursuant to Supreme Court Rule 13(5) and 28 U.S.C. § 2101(c), Petitioner Milton Green respectfully requests a 60-day extension of time, to and including August 7, 2025, within which to file a petition for a writ of certiorari. The final judgment of the Eighth Circuit was entered on April 8, 2025. A copy of the opinion is attached as Exhibit A. This Court's jurisdiction would be invoked under 28 U.S.C. § 1254(1).

Absent an extension, a petition for a writ of certiorari would be due July 8, 2025. This application is being filed more than 10 days before that date, and no prior application has been made in this case.

This case concerns Fourth Amendment excessive force allegations brought against a City of St. Louis police officer pursuant to 42 U.S.C § 1983. Officer Christopher Tanner shot off-duty police officer Milton Green. St. Louis Police were pursuing car theft suspects, and exchanged gunfire, which ceased when the suspects fled before Officer Tanner arrived on the scene. Officer Green was in his yard with his service weapon. Another officer, Detective Carlson, ordered Officer Green to drop his weapon. Officer Green complied and lay on the ground. When Detective Carlson recognized Officer Green, he alerted other officers to an off-duty officer's presence, to not shoot, and instructed Officer Green to come to him. Officer Green complied, picking up his firearm with his right hand with the muzzle pointed towards the

ground. At this same time, Officer Tanner and his partner approached from Officer Green's side. From his vantage, Officer Tanner could not see Detective Carlson. Presuming that Officer Green was a suspect, Officer Tanner commanded Officer Green to drop his firearm but simultaneously shot Officer Green, without allowing Green time to comply.

The Eighth Circuit granted Officer Tanner's motion for summary judgment on the basis that he was entitled to qualified immunity. *Green v. City of St. Louis*, 134 F.4th 516 (2025). The Eighth Circuit found that Officer Green's possession of a gun and, relying on Officer Tanner's assertion that he believed Officer Green was a suspect, posed an imminent threat against which the use of deadly force was objectively reasonable. *Id.* at 523. Instead of considering the totality of the circumstances, the Eighth Circuit did not examine to whom Officer Tanner could have conceived Officer Green to be an immediate threat, did not interrogate whether Officer Tanner was reasonable in presuming Officer Green was a suspect or if he was fleeing, and stated the position of Officer Green's gun was not a "material, outcome determinative fact." *Id.* at 524.

Here, the Eighth Circuit has departed from established precedent and created a circuit split by ruling that the possession of a gun poses an immediate threat that renders the other surrounding circumstances immaterial when considering the officer's reasonableness. The ruling allows court to conclude that the mere existence of a weapon, even when it is undisputed in the factual record that the possessor posed no immediate threat to others, is sufficient to allow deadly force. This circumvents

the test put forward by this Court in *Graham v. Connor*, 490 U.S. 386, 396 (1989), that courts must consider the totality of the circumstances. This case splits from those of other circuits and creates inconsistency and confusion in 4th Amendment Excessive force cases. The Eighth Circuit’s new rule directly conflicts with this Court’s precedential holding that when determining if qualified immunity applies, a court must look only at the specific information known to the officer at the time of the incident. *See Anderson v. Creighton*, 483 U.S. 635, 641, 107 S. Ct. 3034, 3040, 97 L. Ed. 2d 523 (1987). *See also Gladden v. Richbourg*, 759 F.3d 960, 964 (8th Cir. 2014) (“We thus evaluate the officers’ defense of qualified immunity from the perspective of a reasonable police officer based on facts available to the officer at the time of the alleged constitutional violation.”).

This case is uniquely concerning because it involves a homeowner possessing a lawfully owned firearm in his own driveway – a setting long understood to fall within the core protections of the Second Amendment. The Supreme Court has made clear that “the inherent right of self-defense has been central to the Second Amendment right. The home is where the need for defense of self, family, and property is most acute.” *District of Columbia v. Heller*, 554 U.S. 570, 628–29 (2008). This principle has been repeatedly emphasized by the Court in *Heller* and again in *McDonald v. City of Chicago*, 561 U.S. 742, 767 (2010) (holding that the Second Amendment right recognized in *Heller* is fully applicable to the states through the Fourteenth Amendment).

Applicant respectfully requests an extension of time to file a petition for a writ

of certiorari. Undersigned counsel is actively exploring the retention of Supreme Court counsel. A 60-day extension would allow counsel sufficient time to retain Supreme Court Counsel and fully examine the decision's consequences, research and analyze the issues, and prepare the petition for filing. Additionally, the undersigned counsel has a number of other pending matters that will interfere with counsel's ability to file the petition on or before July 8, 2025.

*Wherefore*, Applicant respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari to Saturday, September 8, 2025.

Dated: June 27, 2025

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John Campbell", written over a horizontal line.

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