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IN THE SUPREME COURT OF THE UNITED STATES

JOSE PAZ MEDINA-CANTU,
Applicant,

v.

UNITED STATES OF AMERICA,
Respondent.

**Application for Extension of Time to
File a Petition for a Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit**

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

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APPLICATION FOR EXTENSION OF TIME

Under this Court's Rule 13.5, Applicant Jose Paz Medina-Cantu respectfully requests a 30-day extension of time, to and including January 29, 2025, to file a petition for a writ of certiorari.

JUDGMENT SOUGHT TO BE REVIEWED

The judgment sought to be reviewed is *United States v. Medina-Cantu*, 113 F.4th 537 (5th Cir. 2024) (attached as Exhibit 1), *reh'g denied*, No. 23-40336 (5th Cir. Sept. 30, 2024) (attached as Exhibit 2).

JURISDICTION

This Court will have jurisdiction over any timely petition under 28 U.S.C. § 1254(1). The Fifth Circuit issued its judgment on August 27, 2024, and denied Applicant's timely petition for rehearing en banc on September 30, 2024. The petition for a writ of certiorari is currently due on December 30, 2024. This application has been filed more than ten days before that date.

REASONS JUSTIFYING AN EXTENSION OF TIME

The application for extension of time should be granted because this case raises an important question that merits this Court's review and good cause supports a 30-day extension of time.

First, the question that will be presented in this case is one that merits this Court's review, namely, whether a prosecution under 18 U.S.C. § 922(g)(5)(A) for possession of a firearm by an alien unlawfully in the United States infringes on the Second Amendment

right to keep and bear arms. The United States Court of Appeals for the Fifth Circuit has decided this important federal question in a way that conflicts with this Court’s decisions in *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022), and *United States v. Rahimi*, 144 S. Ct. 1889 (2024), thus warranting this Court’s review. See S. Ct. R. 10(c).

More than a decade before *Bruen*, the Fifth Circuit upheld the constitutionality of 18 U.S.C. § 922(g)(5) in *United States v. Portillo-Munoz*, 643 F.3d 437 (5th Cir. 2011)—an opinion that is devoid of any historical analysis. But in both *Bruen* and *Rahimi*, this Court established a new framework for evaluating Second Amendment challenges, which requires courts to conduct a careful historical analysis. The Court in *Rahimi* explained that, “when a firearm regulation is challenged under the Second Amendment, the Government must show that the restriction ‘is consistent with the Nation’s historical tradition of firearm regulation.’” *Rahimi*, 144 S. Ct. at 1896 (quoting *Bruen*, 597 U.S. at 24). And the Court in *Rahimi* characterized *Bruen* as “direct[ing] courts to examine our ‘historical tradition of firearm regulation’ to help delineate the contours of the right.” *Rahimi*, 144 S. Ct. at 1897 (quoting *Bruen*, 597 U.S. at 17).

Despite these clear commands, the Fifth Circuit in Applicant’s case continued to adhere to *Portillo-Munoz* under that circuit’s “rule of orderliness,” holding that it was “bound to follow *Portillo-Munoz*.” *Medina-Cantu*, 113 F.4th at 539. The Fifth Circuit reached that conclusion based on its “agree[ment] with the Government . . . that the Supreme Court’s decisions in *Bruen* and *Rahimi* did not unequivocally abrogate *Portillo-Munoz*’s precedent.” *Id.*

The panel “acknowledge[d] that there are reasonable arguments as to why *Portillo-Munoz* should be reconsidered post-*Bruen* and *Rahimi*.” *Medina-Cantu*, 113 F.4th at 542. For example, *Portillo-Munoz* “notably did not include a historical analysis, relying instead on the Supreme Court’s language in [*District of Columbia v. Heller*, 554 U.S. 570 (2008)].” *Medina-Cantu*, 113 F.4th at 542. In addition, the Fifth Circuit acknowledged that *Portillo-Munoz* may have “overread *Heller*’s ‘law-abiding, responsible citizens’ language,” given *Rahimi*’s explanation that the term “responsible” in *Heller* and *Bruen* “was employed ‘to describe the class of ordinary citizens who undoubtedly may enjoy the Second amendment right.’” *Medina-Cantu*, 113 F.4th at 542 (quoting *Rahimi*, 144 S. Ct. at 1903). But the panel concluded that it remained bound to follow *Portillo-Munoz* because *Bruen* and *Rahimi* were “‘merely illuminating with respect to the case before [the court]’” and did not “unequivocally abrogate” the circuit’s prior precedent. *Medina-Cantu*, 113 F.4th at 539-41 (quoting *Tech. Automation Servs. Corp. v. Liberty Surplus Ins.*, 673 F.3d 399, 405 (5th Cir. 2012)).

The panel observed that “only the Supreme Court—or [the Fifth Circuit] sitting *en banc*—can overturn [the Fifth Circuit’s] precedent.” *Medina-Cantu*, 113 F.4th at 542. Yet the full Fifth Circuit declined the opportunity to conduct the historical analysis now required by this Court’s decisions in *Bruen* and *Rahimi*, denying Applicant’s petition for rehearing *en banc*. That means only this Court can resolve the conflict between its recent Second Amendment precedent and the Fifth Circuit’s decision.

Second, good cause supports a 30-day extension. Over the last two-and-a-half

months, from the date on which Applicant's petition for rehearing en banc was denied on September 30, 2024, to December 16, 2024, Ms. Shephard prepared for and presented oral argument before the United States Court of Appeals for the Fifth Circuit in *United States v. Keller*, 5th Cir. No. 23-40338; and solely drafted and filed eight briefs: *United States v. Torres-Perdomo*, 5th Cir. No. 24-40351; *United States v. Reyes-Salgado*, 5th Cir. No. 24-40496; *United States v. San Miguel-Limon*, 24-240408 (reply); *United States v. Dexiga-Carreras*, 5th Cir. No. 24-20351; *United States v. Taylor*, 5th Cir. No. 24-20303; *United States v. Garcia*, 5th Cir. 23-40705 (reply); *United States v. Torres-Perdomo*, 5th Cir. No. 24-40351 (reply); and *United States v. Follis*, 5th Cir. No. 24-20352. Furthermore, over the next two weeks or so, Ms. Shephard will be filing five more briefs to meet Fifth Circuit briefing deadlines: *United States v. Wasson*, 5th Cir. 24-20243; *United States v. Garcia-Perez*, 5th Cir. No. 24-40565; *United States v. Dexiga-Carreras*, 5th Cir. No. 24-20351 (reply); *United States v. Estrada-Hernandez*, 5th Cir. No. 24-20418; and *United States v. Salone*, 5th Cir. 23-40577 (reply).


CONCLUSION

For the foregoing reasons, Applicant respectfully requests an extension of time to file a petition for a writ of certiorari by 30 days, to and including January 29, 2025.

Date: December 16, 2024

Respectfully submitted,

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