

No. \_\_A-\_\_\_\_

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**In the Supreme Court of the United States**

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**BRANDON PHILLIPS,**  
*Applicant,*

v.

**UNITED STATES,**  
*Respondent.*

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**APPLICATION FOR AN EXTENSION OF TIME IN WHICH  
TO FILE A PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT**

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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 28 U.S.C. § 2101(c) and Rule 13.5 of the Rules of this Court, Applicant Brandon Phillips respectfully requests that the time to file a petition for writ of certiorari in this matter be extended by 30 days, to and including May 28, 2025.

The Eighth Circuit entered its judgment and issued an opinion in support of the judgment on December 23, 2024. Mr. Phillips timely petitioned for rehearing or rehearing en banc on January 6, 2025. The Eighth Circuit denied the petition on January 28, 2025. Unless extended, the time for filing a petition for writ of certiorari will expire on April 28, 2025. This Application is filed more than ten days prior to that date.

The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1). Attached are copies of the Eighth Circuit's panel opinion (Exhibit 1) and its Order denying Mr. Phillips's petition for rehearing or rehearing en banc (Exhibit 2).

## **BACKGROUND**

Mr. Phillips pleaded guilty to a charge of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). The district court sentenced him to ten years of imprisonment, three years of supervised release, and a lifetime ban on federal benefits based on five prior convictions, four of which involved possession of

marijuana, including one conviction that belonged to a different individual also named Brandon Phillips.

An amendment to the Missouri Constitution, which was in effect at the time of sentencing, legalized the use of limited amounts of marijuana and mandated the retroactive expungement of most prior marijuana-related convictions in Missouri. The district court failed to consider the effects of the Missouri Constitution on Mr. Phillips's sentence. The primary issue presented is whether Mr. Phillips's prior state marijuana-related convictions, which have been expunged pursuant to the Missouri Constitution, constitute predicate offenses under §§ 2K2.1 and 4A1.1 of the federal Sentencing Guidelines.

On appeal, the US Court of Appeals for the Eighth Circuit vacated the ban on federal benefits and affirmed the prison sentence without ruling on the issue of the Missouri Constitution's provision mandating the expungement of Mr. Phillips's marijuana-related convictions. Taking Mr. Phillips's expunged convictions into account would lower his Criminal-History Category by four levels to Category II, which corresponds to a Guidelines range of 41–51 months, rather than the 120 months he received.

#### **REASONS FOR GRANTING AN EXTENSION OF TIME**

A 30-day extension of time is needed for the undersigned counsel to consult with Mr. Phillips and to prepare and file a petition for writ of certiorari.

1. Counsel for Mr. Phillips anticipates that the petition for certiorari will present important questions concerning the interplay between the federal Sentencing

Guidelines and the legalization of marijuana under a State Constitution, namely, whether a marijuana conviction that has been set aside and vacated pursuant to a State Constitutional Amendment is an “expunged” conviction under USSG § 4A1.2(j)—which expressly states that “[s]entences for expunged convictions are not counted”—and, therefore, should not be included in determining a defendant’s criminal history. The circuit courts are split on the issue of whether expunged convictions should count under the Sentencing Guidelines. The First, Eighth, and Tenth circuits’ expungement analysis focuses on whether the conviction was set aside because of innocence or errors of law. *See United States v. Townsend*, 408 F.3d 1020, 1025 (8th Cir. 2005); *United States v. Dobovsky*, 279 F.3d 5, 10 (1st Cir. 2002); *United States v. Hines*, 133 F.3d 1360, 1366 (10th Cir. 1998). In contrast, the Second, Third, and Ninth Circuits focus on the statutory purpose and whether the legislature intended to eliminate any trace of the past proceeding such that the vacated conviction is treated as if it never occurred. *See United States v. Beaulieu*, 959 F.2d 375, 380 (2d Cir. 1992); *United States v. Doe*, 980 F.2d 876, 882 (3d Cir. 1992); *United States v. Hidalgo*, 932 F.2d 805, 807 (9th Cir. 1991). The circuit split is clear and has become entrenched in the case law. The issue is of particular importance because a majority of States have decriminalized the use of marijuana and multiple States have enacted laws mandating expungement of marijuana-related convictions.

2. Mr. Phillips currently resides at a Federal Correctional Institution in Manchester, Kentucky (FCI Manchester). The undersigned counsel have been unable to communicate with Mr. Phillips since January despite multiple requests for legal

calls. The undersigned counsel have been informed that FCI Manchester has been under “lockdown” for several weeks, which may explain the lack of communication by prison staff.<sup>1</sup> In light of the difficulties in communicating with Mr. Phillips, which have extended over many weeks, an extension is necessary to afford sufficient time for counsel to communicate with Mr. Phillips and to prepare and file the petition.

3. The requested 30-day extension would impose no additional burden or prejudice on the parties.

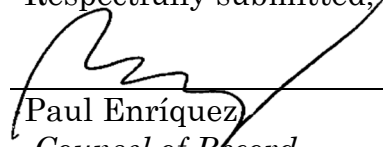
### **CONCLUSION**

Accordingly, Mr. Phillips respectfully requests that the time within which he may file a petition for a writ of certiorari be extended by 30 days to, and including, May 28, 2025.

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<sup>1</sup> The Bureau of Prison’s website for FCI Manchester includes a warning that “[v]isiting at the prison camp has been suspended until further notice.” *See* Federal Bureau of Prisons, FCI Manchester Home Page (last visited April 10, 2025), <https://www.bop.gov/locations/institutions/man/> [<https://perma.cc/39G6-FLX2>]. In addition, Mr. Phillips’s mother informed counsel that she understands the “lockdown” has been in place for several weeks.

Respectfully submitted,



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