

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

FREDRICK JOHNSON,

Petitioner/Applicant,

v.

STATE OF OHIO,

Respondent.

**APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH
TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF OHIO**

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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 Sixth Circuit:

Applicant Fredrick Johnson respectfully requests, under Sup. Ct. R. 13.5, 22, 30.2, and 30.3, a sixty-day extension within which to file a petition for a writ of certiorari. Mr. Johnson's forthcoming petition will challenge the decision in *State v. Johnson*, 239 N.E.3d 475 (Ohio Ct. App.), *rev'w denied*, 250 N.E.3d 122 (Table) (Ohio) (2024) (copy attached as Exhibit A). In support of this application, Johnson provides the following information:

1. Johnson was named in a five-count indictment by the State of Ohio, including two counts under Ohio Rev. Code §§ 2923.13(A)(2) and (A)(3) for possessing firearms under disability. Johnson was convicted, and the Cuyahoga County Court of Common Pleas sentenced him to nine months of incarceration in June 2023. He appealed to the Ohio Court of Appeals for the Eighth Appellate District, challenging his conviction on Second Amendment and sufficiency grounds. The Ohio appellate court affirmed his conviction on March 28, 2024, and denied his application for rehearing en banc on September 27, 2024. The Supreme Court of Ohio declined to accept Johnson's timely discretionary appeal on January 28, 2025 (copy of order attached as Exhibit B). Without an extension, Johnson's petition for a writ of certiorari is due on April 28, 2025. With the requested extension, Johnson's petition would be due on June 27, 2025.

2. After Johnson’s Ohio appeal was decided—but before he petitioned for discretionary review in the Supreme Court of Ohio—this Court decided *United States v. Rahimi*, 144 S. Ct. 1889, 1901 (2024). Based on *Rahimi* and the Sixth Circuit’s post-*Rahimi* decision in *United States v. Williams* 113 F.4th 637 (6th Cir. 2024), Johnson urged the Supreme Court of Ohio to give him an opportunity to demonstrate that he does not fall within the class of dangerous individuals who may be constitutionally disarmed, effectively an as-applied challenge to his firearm-possession convictions that first became available under *Rahimi*. The Supreme Court of Ohio declined jurisdiction without explanation.

3. The firearm-possession offense underlying Johnson’s Ohio conviction was also the subject of a federal indictment under 18 U.S.C. §§ 922(g)(1) and 924(a)(2). Johnson was convicted by the United States District Court for the Northern District of Ohio and appealed to the United States Court of Appeals for the Sixth Circuit, again raising Second Amendment and sufficiency arguments. The Sixth Circuit affirmed the conviction and recently denied Johnson’s post-decision petition for an en banc hearing under Fed. R. App. P. 35. *See United States v. Johnson*, No. 23-3535, 2025 WL 720930 (6th Cir. Mar. 6, 2025), *en banc rev’w denied*, No. 23-3535, 2025 WL 720930 (6th Cir. Apr. 8, 2025). The Sixth Circuit declined to address Johnson’s as-applied challenge under *Rahimi* and *Williams* because Johnson had not raised it in his pre-*Rahimi* opening brief, *see id.* at *4 n.2, even though he raised the issue at the first opportunity (in his reply brief) and raised the Sixth Circuit’s fresh *Williams* decision in a supplemental letter under Fed. R. App. P. 28(j).

4. In short, Johnson has now been convicted twice for possessing the same firearms, and on neither occasion was he afforded the opportunity to argue that his convictions fail constitutional scrutiny under *Rahimi* and *Williams*. So these cases raise both a substantial constitutional question and an issue of public interest.

At the time the Ohio appellate court decided Johnson's state-court appeal, neither *Rahimi* nor *Williams* was on the books. But it is now clear that defendants charged with a firearm-possession offenses should have an opportunity to defend against the charges by demonstrating that they pose no "clear threat of physical violence to another." See *Rahimi*, 144 S. Ct. at 1901; see also *Williams*, 113 F.4th at 663 (firearm restrictions are constitutional only "as applied to dangerous people" and only "so long as each member of that disarmed group has an opportunity to make an individualized showing that he himself is not actually dangerous.").

Longstanding authority requires courts to apply the new Second Amendment framework to every defendant whose case was still in the pipeline when the Court decided *Rahimi*; "failure to apply a newly declared constitutional rule to criminal cases pending on direct review violates basic norms of constitutional adjudication." *Griffith v. Kentucky*, 479 U.S. 314, 322 (1987); see also *Joseph v. United States*, 574 U.S. 1038, 135 S. Ct. 705, 706 (2014) (Kagan, J., concurring in denial of certiorari) ("When a new claim is based on an intervening Supreme Court decision . . . the failure to raise the claim in an opening brief reflects not a lack of diligence, but merely a want of clairvoyance.").

This case and its federal counterpart were in the pipeline. But the Supreme Court of Ohio and the Sixth Circuit have rejected Johnson's effort to invoke *Rahimi* and *Williams* and disregarded the cases-in-the-pipeline doctrine of *Griffith* and its progeny. Further, Johnson is not dangerous, but no court has given him the opportunity to challenge the firearm charge against him on that basis.

5. Johnson does not file this application to delay. Rather, he wishes to file simultaneous petitions for writs of certiorari challenging both the Ohio and federal convictions under *Rahimi*. The petition in the federal case is due July 7, 2025; granting the extension here will afford Johnson the time necessary to prepare and file both petitions by June 27, 2025. The Court will then have the opportunity to consolidate the cases, because the state and federal case involve the same exact offense and, consequently, the same exact Second Amendment question.

6. Under Sup. Ct. R. 29.4(c), Johnson notifies the Court that the constitutionality of an Ohio statute is drawn into question, and 28 U. S. C. § 2403(b) may therefore apply. Johnson is serving a copy of this Application on the Attorney General of the State of Ohio concurrently with this filing. Additionally, it does not appear that the Supreme Court of Ohio, pursuant to 28 U.S.C. § 2403(b) and Sup. Ct. R. 29.4(c), certified to the Ohio Attorney General the fact that the constitutionality of a statute of Ohio was drawn into question.

7. For these reasons, Johnson respectfully requests that the Court extend the due date for its petition for a writ of certiorari to and including Friday, June 27, 2025.

Respectfully submitted this 16th day of April, 2025.

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