

IN THE  
**Supreme Court of the United States**

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GREGORY W. PHEASANT,  
*Applicant,*

v.

UNITED STATES OF AMERICA,  
*Respondent.*

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

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**APPLICATION TO THE HONORABLE JUSTICE  
ELENA KAGAN AS CIRCUIT JUSTICE**

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December 17, 2025

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## **APPLICATION FOR EXTENSION OF TIME**

Under this Court’s Rule 13.5, Applicant Gregory W. Pheasant respectfully requests a 30-day extension of time within which to file a petition for a writ of certiorari, to and including February 28, 2026.

## **JUDGMENT FOR WHICH REVIEW IS SOUGHT**

The judgment for which review is sought is *United States v. Pheasant*, 157 F.4th 1119 (9th Cir. 2025), attached as Exhibit 1. The Ninth Circuit’s order denying rehearing *en banc* and the dissents therefrom are attached as Exhibit 2.

## **JURISDICTION**

This Court will have jurisdiction over any timely petition under 28 U.S.C. § 1254(1). The Ninth Circuit issued its judgment on February 19, 2025 and denied a timely rehearing petition on October 31, 2025. In accordance with Rule 13.5, this application is being filed more than 10 days before the current due date of January 29, 2026.

## **REASONS JUSTIFYING AN EXTENSION OF TIME**

1. This case raises an important constitutional question: Whether only an “exceedingly modest limitation” restrains Congress from delegating authority to administrative agencies to write—and then enforce—their own criminal laws. Ex. 1 at 7. The Federal Land Policy and Management Act governs how the Secretary of Interior, through the Bureau of Land Management (“BLM”), manages federal land under its jurisdiction. 43 U.S.C. § 1731. The Act instructs the Secretary to “issue regulations necessary to implement the provisions of [the] Act with respect to the management, use, and protection of the public lands, including the property located

thereon.” *Id.* § 1733(a). Violations carry criminal penalties: “Any person who knowingly and willfully violates any such regulation which is lawfully issued pursuant to this Act shall be fined no more than \$1,000 or imprisoned no more than twelve months, or both.” *Id.* This vast delegation thus grants the Secretary “unfettered legislative authority” to criminalize conduct on huge swathes of federal land. See *United States v. Pheasant*, No. 3:21-CR-24, 2023 WL 3095959, at \*6 (D. Nev. Apr. 26, 2023), *rev’d*, 129 F.4th 576 (9th Cir. 2025).

BLM seized on this limitless authority to create—among a wide variety of other federal crimes—a criminal offense for riding an “off-road vehicle” at night without a taillight. 43 C.F.R. § 8341.1(f)(5). BLM officers then arrested Mr. Pheasant for allegedly violating the administrative crime that BLM created. Recognizing the dangers of this scheme, the district court held that Section 1733(a) violates the nondelegation doctrine because it “does nothing to cabin the Secretary of the Interior’s ability to choose what is a crime.” *Pheasant*, 2023 WL 3095959, at 7. But the Ninth Circuit reversed, holding that delegations of *criminal* lawmaking power are subject to the same intelligible-principle test as civil delegations, and that Section 1733(a) passes that test. See Ex. 1 at 9–14. The court of appeals then denied rehearing *en banc* over strong dissents by Judges Bumatay and VanDyke.

This decision raises important questions warranting the Court’s review. As Judge Bumatay explained, “[t]he Ninth Circuit should have demanded more before letting the Executive branch—rather than Congress—define the conduct made criminal” here. Ex. 2 at 3. “Given the deprivation of liberty at stake, Congress cannot simply leave it to the Executive branch to unilaterally declare what acts can subject

the people to criminal confinement.” *Id.* at 4. “Instead, to satisfy the non-delegation doctrine that our separation of powers demands, Congress must—at a minimum—define both the actus reus and the penalty for any criminal offense.” *Id.* As Judge VanDyke elaborated, “although the Supreme Court has explicitly declined to conclude one way or the other whether the deferential intelligible-principle test applies in the criminal context, Supreme Court precedent and first principles suggest that it does not.” *Id.* at 32.

This case is an ideal vehicle to address this long-simmering question. The standard for criminal delegations is the sole question presented, it was pressed and passed upon below, and it is dispositive here: Any standard stricter than the intelligible-principle test will require overturning Mr. Pheasant’s conviction.

2. An extension is warranted to allow counsel time to coordinate and prepare a petition that will aid the Court’s review of these important issues. Mr. Pheasant has asked the Carter G. Phillips/Sidley Austin LLP Supreme Court Clinic at Northwestern Pritzker School of Law to help prepare the petition. Because the semester ended in late November, the Clinic’s students are now preparing for and taking their final exams. An extension will provide the students time to both prepare for their exams and develop a cogent and well-researched petition, and to enjoy their holiday break.

An extension is also warranted because of the press of counsel’s other client business. Undersigned counsel is responsible for (i) merits briefing in *Abouammo v. United States*, No. 25-5146 (cert granted December 5; opening brief currently due January 20); (ii) ongoing briefing in *Maplebear Inc. v. City of New York*, No. 1:25-cv-

09979 (S.D.N.Y.) (preliminary-injunction reply due December 30; hearing on January 15); *Union Pacific Railroad v. Surface Transportation Board*, No. 25-2919 (8th Cir.) (opening brief due January 2); and *Redford v. Norfolk Southern Railway*, No. CL22911540-00 (Vir. Cir. Ct.) (post-trial reply briefs due January 2); and (iii) presenting oral argument in *State of Texas v. Union Pacific Railroad*, 1:25-cv-627 (W.D. Tex.) (dispositive-motion hearing set for January 22).

### CONCLUSION

For these reasons, Applicant respectfully requests a 30-day extension of time within which to file a petition for a writ of certiorari, to and including February 28, 2026.

Respectfully submitted,

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