

App. No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ERIC LEBRON BURNEY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**APPLICATION FOR EXTENSION OF TIME IN WHICH TO FILE
PETITION FOR A WRIT OF CERTIORARI**

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 Sixth Circuit:

Petitioner, Eric Lebron Burney, through counsel, respectfully requests a 60-day extension of time to file a petition for a writ of certiorari, up to and including Saturday, December 6, 2025, pursuant to Supreme Court Rules 13.5 and 22. On July 9, 2025, the United States Court of Appeals for the Sixth Circuit issued its Opinion affirming Mr. Burney's conviction. *See* Appendix at 2. Absent an extension, his petition for a writ of certiorari would be due October 7, 2025. This application is timely as it is filed at least ten days before that deadline.

Mr. Burney submits the following in support of his request:

1. Mr. Burney was charged under 21 U.S.C. § 841(a)(1) and (b)(1)(A) for possessing 50 grams or more of actual methamphetamine with an intent to distribute. The charge arose from a traffic stop for a window tint violation and for following too closely. The state trooper who stopped the vehicle searched it based on the smell of burnt cannabis and Mr. Burney's statement that he had smoked earlier. After pulling up the carpet, searching the internal framing of the door, and tearing out the framing around the gear shift, the trooper found methamphetamine. No cannabis was found.

2. Mr. Burney filed a motion to suppress. He argued that such an intrusive search was beyond the scope of any probable cause the trooper had. He argued that was particularly so, as the trooper testified that that there is no distinction in smell between legal and illegal versions of cannabis.

3. The Sixth Circuit disagreed. Relying on one of its own recent cases, it held that "the mere fact that [the defendant] *could* have possessed [legal] hemp did not negate the officers' reasonable ground for believing [the defendant] possessed [illegal] marijuana." Appendix at 5 (quoting *United States v. Santiago*, 139 F.4th 570, 575 (6th Cir. 2025)). It further held that probable cause to search the vehicle based on the odor of marijuana also gave the troopers the ability to search the interior framing of the vehicle. Appendix at 5-6.

4. Mr. Burney subsequently entered a conditional guilty plea under Federal Rule of Criminal Procedure 11(a)(2), preserving his ability to appeal the

district court's denial of his motion to suppress.

5. The question presented in Mr. Burney's petition for a writ of certiorari will concern whether the "plain smell doctrine" remains valid when applied to cannabis today, because the odor of cannabis no longer plainly identifies an illegal substance.

6. Good cause supports a 60-day extension. Since the Sixth Circuit issued its opinion, undersigned counsel has handled an unusually heavy caseload, leaving insufficient time to properly prepare the petition. Accordingly, petitioner respectfully requests an order extending the deadline to file the petition for a writ of certiorari.

Mr. Burney therefore asks this Court to extend the time to file a petition for a writ of certiorari in this appeal by 60 days, up to and including December 6, 2025.

Respectfully submitted,

FEDERAL DEFENDER SERVICES OF
EASTERN TENNESSEE, INC.

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