

No. _____

IN THE SUPREME COURT
OF THE UNITED STATES

JAMES DAVID ALLEN

PETITIONER

v.

UNITED STATES OF AMERICA

RESPONDENT

On Petition for Writ of Certiorari to
the United States Court of Appeals
for the Ninth Circuit, No. 23-3636

**APPLICATION FOR EXTENSION OF TIME TO FILE
PETITION FOR WRIT OF CERTIORARI**

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James David Allen

To the Honorable Elena Kagan, Associate Justice of the Supreme Court of the United States, and Circuit Justice for the United States Court of Appeals for the Ninth Circuit:

Petitioner James David Allen respectfully requests that the time to file his petition for writ of certiorari, in forma pauperis, be extended for 60 days to and including October 26, 2026. The Court of Appeals issued an order on May 29, 2026, summarily affirming petitioner's appeal. The petition for writ of certiorari is therefore currently due on August 27, 2026. This application for an extension of time is being filed more than 10 days before that date. *See* Supreme Court Rules 13, 30.

A copy of the Court of Appeals decision is attached to this application. Petitioner invokes the jurisdiction of this Court under 28 U.S.C. § 1254(1).

On August 7, 2026, counsel for respondent, Assistant United States Attorney Kelly Volkar, stated in an email, from her address Kelly.Volkar@usdoj.gov, that respondent does not oppose this request for an extension of time.

Petitioner's counsel respectfully requests the 60-day extension due to unanticipated, highly demanding professional and personal circumstances. First, petitioner plans to raise two complex questions of federal constitutional law in his petition: (1) whether the federal statute prohibiting possession of firearms by felons was an invalid exercise of Congress's Commerce Clause authority; and (2) whether, pursuant to this Court's decision in *Rehaif v. United States*, 588 U.S. 225 (2019), conviction under said statute requires that the defendant knew the firearm had previously traveled in interstate commerce. The Ninth Circuit summarily affirmed these claims because they are controlled by circuit precedent. However, there are compelling arguments for a different result. *See, e.g., United States v. Hemani*, 146 S. Ct. 1677, 1694–98 (2026) (Thomas, J., concurring) (finding that the Court should revisit the Commerce Clause question in the appropriate case). Proper preparation of this petition for writ of certiorari will require substantial additional research into legislative history, a comparison of the case law in each of the circuits, and a historical review of this Court's decisions.

Petitioner's counsel has been unable to conduct this extensive research and prepare the petition because of a backlog caused by an injury to the elbow of his dominant arm. It has limited his typing speed; he is not permitted to lift more than five pounds; there have been multiple doctor visits and scans; and all of this has slowed his work significantly. Counsel is a solo practitioner, handling court appointed appeals, and has no one else at his office to assist him.

Counsel is scheduled for surgical repair of the elbow on September 22, 2026. In addition to the slowed pace of work, counsel must also prepare his workload and personal life to be away from the office for at least three weeks while he recovers.

For these reasons, petitioner respectfully requests an extension of 60 days to file his petition for writ of certiorari.

Dated: August 11, 2026

Respectfully submitted,



DAVID L. ANNICCHIARICO
Counsel for Petitioner

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

MAY 29 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JAMES DAVID ALLEN,

Defendant - Appellant.

No. 23-3636

D.C. No.

4:20-cr-00300-HSG-1

Northern District of California,
Oakland

ORDER

Before: S.R. THOMAS, MILLER, and H.A. THOMAS, Circuit Judges.

The motion (Docket Entry No. 31) for summary affirmance is granted. *See*

United States v. Hooton, 693 F.2d 857, 858 (9th Cir. 1982) (stating standard).

Appellant's arguments are foreclosed. *See United States v. Duarte*, 137 F.4th 743,

761 (9th Cir. 2025) (en banc), *cert. denied*, ___ S. Ct. ___, 2026 WL 135692 (U.S.

Jan. 20, 2026); *United States v. Walker*, 68 F.4th 1227, 1230 (9th Cir. 2023);

United States v. Latu, 479 F.3d 1153, 1156-57 (9th Cir. 2007).

AFFIRMED.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within action. My business address is 584 Castro St., #654, San Francisco, CA 94131.

On August 11, 2026, I served the foregoing documents described as:

APPLICATION FOR EXTENSION OF TIME TO FILE PETITION FOR
WRIT OF CERTIORARI

on all interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Kelly Volkar
Assistant United States Attorney
Federal Courthouse
1301 Clay St.
Oakland, CA 94612

with first-class postage thereon fully prepaid to be placed in the United States mail at San Francisco, CA.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on August 11, 2026.



DAVID L. ANNICCHIARICO
Counsel for Petitioner