

IN THE
Supreme Court of the United States

CODY DEWAYNE KING,

Applicant,

v.

UNITED STATES,

Respondent.

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

JENNIFER NILES COFFIN
FEDERAL DEFENDER SERVICES OF
EASTERN TENNESSEE, INC.
605 Chestnut St.
Suite 1310
Chattanooga, Tennessee 37450

JO-ANN TAMILA SAGAR
Counsel of Record
REEDY C. SWANSON
HOGAN LOVELLS CADWALADER US LLP
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-5600
jo-ann.sagar@hlc.com

Counsel for Applicant

October 14, 2026

APPLICATION

To the Honorable Brett M. Kavanaugh, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Sixth Circuit:

Pursuant to Rule 13.5 of the Rules of this Court and 28 U.S.C. § 2101(c), Applicant Cody King respectfully requests a 30-day extension of time, to and including November 25, 2026, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

1. The Sixth Circuit entered judgment on July 28, 2026. *See United States v. King*, 184 F.4th 511 (2026); App. 2a. Unless extended, the deadline to file a petition for a writ of certiorari is October 26, 2026. This application is being filed more than ten days before a petition is currently due. *See* Sup. Ct. R. 13.5. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1).

2. In the decision below, a panel of the Sixth Circuit erroneously resolved an important issue about the scope of the U.S. Sentencing Commission's statutory authority to impose draconian career offender sentencing enhancements based on prior state law convictions.

3. In 28 U.S.C. § 994(h), Congress instructed that the Commission "shall assure that the guidelines specify a sentence * * * at or near the maximum term authorized" where the defendant has previously been convicted of "an offense described in section 401 of the Controlled Substances Act."

4. Despite the clear cross-reference to the *federal* Controlled Substances Act in § 994(h), in the relevant provision of the Guidelines the Sentencing Commission has provided enhanced penalties for “controlled substance offense[s]” under both “federal *or state* law.” U.S.S.G. § 4B1.2(b) (emphasis added); *see id.* § 4B1.1(a) & application note 1.

5. Before this Court’s decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), the Sixth Circuit and other courts had concluded that the Sentencing Commission’s interpretation of Section 994(h) to include state-law drug offenses was entitled to deference. *See, e.g., United States v. Najjar*, 225 F.3d 660, at *3 (6th Cir. 2000) (unpublished table decision); *United States v. Consuegra*, 22 F.3d 788, 790 (9th Cir. 1994).

6. Despite recognizing that the Sentencing Commission’s interpretation is no longer entitled to a deferential review after *Loper Bright*, the Sixth Circuit nevertheless affirmed the application of the enhancement to Applicant based on prior state law drug convictions. App. 6a-7a. The court recognized Section 994(h) “doesn’t explicitly mention state offenses” and that Congress generally “says so explicitly” when it wants “a federal statute to reach comparable state offenses.” *See* App. 9a n.2. Nevertheless, relying heavily on “context,” the Sixth Circuit concluded that Congress intended to reach state law offenses in addition to federal ones. *See* App. 5a-9a.

7. Good cause exists for a 30-day extension of the time to file a certiorari petition. Counsel have a number additional commitments during the briefing period, including: (1) preparation for a hearing in *SEC v. Institutional Shareholder Services*,

No. 2:26-mc-78 (E.D. Pa.), scheduled for October 29, 2026; (2) an amicus curiae brief in *In re OpenAI, Inc. Copyright Infringement Litig.*, No. 1:25-md-3143 (S.D.N.Y.), due October 30, 2026; (3) an opening brief in *State of Kansas v. Snap Inc.*, No. 26-3181 (10th Cir.), due on November 9, 2026; (4) preparation for oral argument in *Flynn-Murphy v. Jaguar Land Rover N. Am. LLC*, No. 26-1195 (3d Cir.), scheduled for November 17, 2026; (5) a motion to dismiss in *In re Wilmer Cutler Pickering Hale & Dorr LLP, Data Breach Litig.*, No. 26-cv-2470 (D.D.C.), due on November 18, 2026; (6) a petition for a writ of certiorari in *United States v. Arthur*, No. 24-4306 (4th Cir.), due on November 19, 2026. The requested extension will ensure that counsel have time to fully brief the important issues in this case.

8. For the foregoing reasons, Applicant respectfully requests that the Court extend the time to file a certiorari petition to and including November 25, 2026.

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EASTERN TENNESSEE, INC.
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Respectfully Submitted,

JO-ANN TAMILA SAGAR
Counsel of Record
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