

No. _____

In the
Supreme Court of the United States

JOHN THOMAS FENCL,

Applicant,

v.

UNITED STATES OF AMERICA,

Respondent.

**ON APPLICATION FOR AN EXTENSION OF TIME
TO FILE A PETITION FOR A WRIT OF CERTIORARI**

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

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

Pursuant to Title 28, United States Code, Section 2101(c), and Supreme Court Rule 13, John Thomas Fencl applies for a 60-day extension of time within which to file a petition for a writ of certiorari, from October 29, 2026, to and including December 28, 2026.

I. JURISDICTION

The Ninth Circuit entered its judgment on April 22, 2026, and denied rehearing on July 31, 2026. Absent an extension, the deadline for filing the petition will be October 29, 2026. This application is being filed on October 15, 2026, more than ten days before the petition is due. *See* S. Ct. R. 13.5. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1).

II. JUDGMENT AND FINAL ORDER TO BE REVIEWED

The memorandum disposition of the court of appeals is unpublished but is available at *United States v. Fencl*, 2026 WL 1091100 (9th Cir. Apr. 22, 2026), and is attached. *See* App. A. The court's order denying rehearing is unreported and is attached. *See* App. B.

III. REASONS JUSTIFYING REQUEST FOR EXTENSION OF TIME

1. This case concerns whether a person may be convicted of possessing an unregistered short-barreled rifle or silencer under the National Firearms Act

without proof that he intended the item to be used as one. A “rifle” is a weapon “designed or redesigned, made or remade, and intended to be fired from the shoulder.” 26 U.S.C. § 5845(c). A “silencer” is a device “for silencing, muffling, or diminishing the report of a portable firearm,” including parts “intended” for use in making one. 18 U.S.C. § 921(a)(25). Below, the Ninth Circuit held that “[n]either the definition of a rifle nor the definition of a silencer requires proof of subjective intent.” App. A at 4. That holding conflicts with the First Circuit’s decision in *United States v. Crooker*, 608 F.3d 94, 97–99 (1st Cir. 2010), which requires proof of the defendant’s purpose when a device was not made as a silencer. The Fourth Circuit has taken a position similar to the Ninth Circuit’s. *United States v. Speed*, 175 F.4th 272, 279 (4th Cir. 2026).

2. Additional time is needed because recent developments may bear on this case and on how the question presented should be framed. First, Congress reduced the National Firearms Act’s making and transfer taxes on short-barreled rifles and silencers to zero, effective January 1, 2026. Pub. L. No. 119-21, § 70436 (2025) (amending 26 U.S.C. §§ 5811(a), 5821(a)). Second, on August 5, 2026, the Northern District of Texas held that, without the tax, the Act’s registration and approval provisions, including the prohibition on possessing an unregistered firearm in 26 U.S.C. § 5861(d), exceed Congress’s powers as to those items. That court limited relief to the parties before it. *Silencer Shop Found. v. ATF*, No. 6:25-cv-056-H, 2026 WL 2255460 (N.D. Tex. Aug. 5, 2026). Third, the government did not appeal. Fourth, On October 9, 2026, the Bureau of Alcohol, Tobacco, Firearms and

Explosives issued an open letter and guidance stating that, as a matter of enforcement discretion, it will no longer enforce the Act's registration requirements and related prohibitions, including the prohibition on possessing unregistered short-barreled rifles and silencers, against anyone. *See ATF, Update to NFA Transfer Guidance* (Oct. 9, 2026), <https://www.atf.gov/firearms/update-to-nfa-transfer-guidance>; Press Release, Bureau of Alcohol, Tobacco, Firearms & Explosives, *ATF Issues Guidance on National Firearms Act Transfers of Short-Barreled Rifles, Short-Barreled Shotguns, Suppressors, and Certain Other Firearms* (Oct. 9, 2026), <https://www.atf.gov/news/press-releases/atf-issues-guidance-national-firearms-act-transfers-short-barreled-rifles-short-barreled-shotguns-suppressors-and-certain-other-firearms>. Mr. Fencel's convictions all rest on § 5861(d) and involve short-barreled rifles and silencers.

These developments came after the Ninth Circuit ruled here. The most recent development came less than three weeks before the petition is due. Counsel needs time to evaluate what effect they may have on Mr. Fencel's convictions and on the presentation of the question in his petition.

3. Additional time is also needed so that counsel can adequately prepare the petition. Counsel is an appellate attorney at Federal Defenders of San Diego, Inc., a community defender organization. Counsel has a number of other time-sensitive obligations, including three opening briefs due in the Ninth Circuit within the next two months, and other matters, including supporting a death penalty case set for trial in the Central District of California. The requested extension will also

allow counsel to coordinate with Chief Appellate Attorney Vincent J. Brunkow, who directly supervises nine appellate attorneys, sits on the management team for Federal Defenders of San Diego, and maintains appeals of his own.

4. For these reasons, Applicant John Thomas Fencil requests that the Court grant this application and extend the time to file a petition for a writ of certiorari by 60 days, to and including December 28, 2026.

Respectfully submitted,



Date: October 15, 2026

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