

No.

In the Supreme Court of the United States

KERMON WILLIAMS, JHAPHRE HIGGS, AND JAMES HIGGS, JR.,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

**On Application for Extension of Time to File
Petition for a Writ of Certiorari to the United
States Court of Appeals for the Eleventh Circuit**

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

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

On behalf of Petitioners, Kermon Williams, Jhaphre Higgs, and James Higgs, Jr., and pursuant to Supreme Court Rules 13.5 and 30, Anne F. Borghetti and I respectfully apply to Associate Justice Thomas as Circuit Justice for the United States Court of Appeals for the Eleventh Circuit and request a 30-day extension of time from November 4, 2026 until December 4, 2026, to file the petition for a writ of certiorari.

The grounds are our workloads, the extensive record, and the fact that the petition will seek review of two issues. The first is a Commerce Clause issue that has split the circuits. *Compare United States v. Bryan*, 159 F.4th 1274, 1295 (11th Cir. 2025), *with United States v. Chavarria*, 140 F.4th 1257, 1265 (10th Cir. 2025). Notably, after the October 16, 2026 conference, this Court appears to have already held the petition in *Brown v. United States*, No. 25-1342, which raises the same circuit split. (Separately, the Court has already denied the petition in *McMichael v. United States*, No. 25-7371, which also raised the same circuit split, but perhaps due to its unique vehicle problems.) And the second is whether the Second Amendment allows bullet possession as a convicted felon to be criminalized.

1. Petitioners were indicted for a murder-for-hire scheme. In the district court, the defendants challenged the jurisdictional nexus for the charge. The district court rejected that challenge in an eight-page written order. *See* Order of June 21, 2022 (attached hereto as Ex. A). Specifically, ruling on only one jurisdictional theory, the district court held the defendants' intrastate use of an automobile to drive to and from the murder scene satisfied the jurisdictional nexus.

2. On direct appeal, Petitioners again challenged their convictions on jurisdictional nexus grounds. The appellate briefing was extensive. *See, e.g.*, James Higgs, Jr. Br. (C.A. Doc. 73); U.S. Br. (C.A. Doc. 78); James Higgs, Jr. Reply Br. (C.A. Doc. 96). Two major points of contention involved the scope of the murder-for-hire statute’s jurisdictional nexus and the extent to which the government’s construction of the statute might exceed Commerce Clause limits.

3. After briefing concluded, and while the appeal was still pending, the court of appeals decided *United States v. Bryan*, 159 F.4th 1274 (11th Cir. 2025). There, over dissent, the court of appeals held that automobiles “are *per se* instrumentalities of interstate commerce.” *Id.* at 1295. In response, the dissent noted that the “majority’s holding raises constitutional concerns about the balance between state and federal prosecution and does not align with the purpose and text of § 1201.” *Id.* at 1299 (Calvert, J., dissenting).

4. Shortly thereafter, the court of appeals directed Petitioners and the government to file supplemental briefs about *Bryan*’s significance. *See* Order of December 1, 2025 (C.A. Doc. 108). As before, that appellate briefing was once again extensive. *See, e.g.*, James Higgs, Jr. Supp. Br. (C.A. Doc. 111); U.S. Supp. Br. (C.A. Doc. 112); Joint Reply Br. (C.A. Doc. 115). Notably, during this supplemental briefing, the government took the position that *Bryan* was a full-blown constitutional holding, not merely a statutory one. C.A. Doc. 112 at 4–8. And it took that position even though the prosecutor in *Bryan* had expressly disavowed the need to rule on a constitutional basis. *See* C.A. Doc. 115 at 15–17 (written reproduction of oral argument audio).

5. Ultimately, the court of appeals affirmed. *See* Opinion of January 21, 2026 (attached hereto as Ex. B). Without explanation or considering the canon of constitutional avoidance, it held that Petitioners had raised only a statutory argument, not a constitutional argument, about the scope of the murder-for-hire statute’s jurisdictional nexus. Then, it held that Petitioners’ argument about the jurisdictional nexus didn’t establish an error that was plain under this Court’s or circuit precedent—notwithstanding the Tenth Circuit’s decision in *Chavarria*.

6. Petitioners timely sought rehearing *en banc* and panel rehearing. *See* C.A. Docs. 118–22. As they had already done in their appellate briefs, they challenged both the error-preservation ruling and the jurisdictional nexus itself. *See United States v. Wells*, 519 U.S. 482, 488 (1997) (this Court can consider any question “pressed [in] or passed on” upon by court of appeals (quoting *United States v. Williams*, 504 U.S. 36, 42 (1992))).

7. Four months later, the court of appeals denied rehearing. *See* Order of August 6, 2026 (attached hereto as Ex. C). So the upshot is that Petitioners’ petition for a writ of certiorari is currently due filed on November 4, 2026.

8. Ms. Borghetti and I require additional time to prepare the petition for a writ of certiorari due to our workloads, the extensive record, and the nature of the circuit split. Also, the bullet-possession issue was preserved in the court of appeals, but not extensively briefed, so it would have to be briefed from scratch.

9. I’m a board-certified appellate lawyer who operates a solo practice with a heavy caseload. Aside from this case, my caseload includes nine appellate briefs due

between now and Christmas with the following deadlines (as they currently exist or may be extended): Oct. 26, 2026, *Mitchell v. State*, No. 26-AP-9 (Fla. 6th Cir. Ct.) (fatal commercial truck accident); Oct. 27, 2026, *United States v. Jackson*, No. 25-11642 (11th Cir.) (drugs); Oct. 30, 2026, *United States v. James*, No. 26-10031 (11th Cir.) (wire fraud); Nov. 9, 2026, *Yonye v. SP Oaks, LLC*, No. 2D25-2987 (Fla. 2d DCA) (wrongful death); Nov. 18, 2026, *Vision Biobanc Holdings, LLC v. DSRS, LLC*, No. 2D26-536 (Fla. 2d DCA) (breach of fiduciary duty); Nov. 20, 2026, *United States v. Hurtado-Candelo*, No. 25-13963 (11th Cir.) (drugs); Nov. 20, 2026, *United States v. Mendoza-Perez*, No. 25-12334 (11th Cir.) (drugs); Dec. 4, 2026, *CME v. Selig*, No. 1:26-cv-2157 (D.D.C.) (securities regulation); Dec. 14, 2026, *United States v. Sychowski*, No. 25-10864 (11th Cir.) (bullet possession).

10. Likewise, Ms. Borghetti is a senior and seasoned criminal defense lawyer. Her caseload is similarly heavy; it includes multiple hearings, trials, motions, and appellate briefs in the near future. In particular, she has an oral argument coming up in a federal appeal in Jacksonville, Florida on November 19, 2026.

11. Finally, and most importantly, the petition will seek review of a square circuit split between *Bryan* and *Chavarria*. Indeed, it appears that this Court has held *Brown*, which raises the same circuit split, perhaps for future distribution to the November 6 conference. Petitioners' case could be a suitable companion for *Brown*.

WHEREFORE, the Court should grant Petitioners a 30-day extension of time from November 4, 2026 until December 4, 2026 to file their petition for a writ of certiorari.

October 22, 2026

/s/ Anne Borghetti

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Respectfully submitted,

/s/ Thomas Burns

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date, October 22, 2026, as required by Supreme Court Rule 29, I have served the enclosed Application For Extension Of Time To File Petition For A Writ Of Certiorari on each party to the above proceeding or that party's counsel, and on every other person required to be served, via email and by depositing an envelope containing the above document in the U.S. mail properly addressed to each of them and with first-class postage prepaid. The names and addresses of those served are as follows:

Solicitor General of the United States
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October 22, 2026

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