IN THE SUPREME COURT OF THE UNITED STATES

No. A-_____

DERBY CLERFE, APPLICANT

v.

UNITED STATES OF AMERICA

APPLICATION FOR AN EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

To the Honorable Samuel A. Alito, Jr., Circuit Justice for the United States Court of Appeals for the Third Circuit:

Pursuant to Rules 13.5 and 30.2 of this Court, Derby Clerfe respectfully applies for a 30-day extension of time, to and including December 8, 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 Third Circuit in this case. The court of appeals issued its precedential opinion and entered judgment on August 10, 2026. App., *infra*, 1a-22a (opinion), 23a (judgment). No petition for rehearing was filed. Unless extended, the time for filing a petition for a writ of certiorari will expire on November 9, 2026. See Sup. Ct. R. 13.1, 30.1 (ninetieth day, November 8, 2026, falls on a Sunday). The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1).

1. Between December 2017 and February 2018, Mr. Clerfe lawfully purchased nine 9mm handguns from a sporting goods store in Monroeville, Pennsylvania, and arranged for them to be shipped to the Republic of Haiti. App., *infra*, 2a. The federal

government charged him with one count of conspiring to commit an offense against the United States, in violation of 18 U.S.C. § 371, and two counts of transferring firearms to an unlicensed out-of-state resident, in violation of 18 U.S.C. § 922(a)(5). *Ibid.* After the government identified in a bill of particulars the federal export laws underlying the conspiracy count, Mr. Clerfe moved to dismiss the indictment on Second Amendment, nondelegation, and vagueness grounds. *Ibid.* The district court denied the motion, and Mr. Clerfe entered a plea of guilty to the conspiracy count, reserving his right to appeal the denial of his motion to dismiss on Second Amendment and nondelegation grounds. *Id.* at 2a-3a.

2. On appeal, Mr. Clerfe argued that under this Court's decisions in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), and *United States v. Rahimi*, 602 U.S. 680 (2024), the laws prohibiting him from exporting handguns without filing export information violate the Second Amendment. That is, the export laws burden conduct covered by the plain text of the Second Amendment and are not consistent with this Nation's historical tradition of firearm regulation. He further argued that the Arms Export Control Act's delegation to the President of the authority to "designate those items which shall be considered as defense articles," 22 U.S.C. § 2778(a)(1), violates the nondelegation doctrine, particularly because the designation carries criminal consequences.

3. The court of appeals affirmed in a precedential opinion. App., *infra*, 1a-21a. The court held that the right to "keep and bear Arms" does not encompass exporting firearms abroad because doing so "involved dispossessing himself of firearms," *id.* at

7a, and it rejected Mr. Clerfe's argument that the export laws "infringe" the right by burdening conduct ancillary to its exercise, *id.* at 7a-11a. In doing so, the court acknowledged that the courts of appeals have adopted differing tests after *Bruen* for determining when a regulation of ancillary conduct implicates the Second Amendment's plain text. *Id.* at 8a n.5. The court alternatively held that founding-era export restrictions establish a historical tradition consistent with the challenged laws. *Id.* at 11a-14a. Turning to the nondelegation challenge, the court applied the intelligible-principle test while noting that four Justices have expressed doubts about that test, *id.* at 15a, 19a-20a (citing *Gundy v. United States*, 588 U.S. 128 (2019)), and it declined to decide whether a more demanding standard applies to delegations that contemplate criminal sanctions, a question this Court reserved in *Touby v. United States*, 500 U.S. 160, 165-166 (1991). App., *infra*, 19a. The court concluded that the delegation would survive even under a heightened standard. *Id.* at 20a-21a.

4. Counsel for Mr. Clerfe respectfully requests a 30-day extension of time, to and including December 8, 2026, within which to file a petition for a writ of certiorari. This case presents weighty and complex issues concerning the scope of the Second Amendment's text after *Bruen* and *Rahimi* and the limits on Congress's delegation of authority to define federal crimes, on which the court of appeals itself recognized disagreement among the circuits and unresolved questions in this Court's precedents.

Undersigned counsel is new to the case and has had proximate briefing deadlines in the Third Circuit, including the reply brief in *United States v. Byrd*, No. 25-1397 (filed October 14, 2026), and the reply brief in *Real v. Superintendent Benner*

Township SCI, No. 23-1543 (due October 26, 2026). Counsel also has an upcoming substantial briefing deadline in *Slutzker v. Capozza*, Case. No. 2:18-cv-157 (W.D.Pa.), due November 12, 2026. Undersigned counsel requires additional time to consult with Mr. Clerfe and to prepare the petition in this case. This is Mr. Clerfe's first request for an extension of time.

Respectfully submitted.

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/s/ Samantha L. Stern
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October 21, 2026

CERTIFICATE OF SERVICE

I, Renee D. Pietropaolo, a member of the Bar of this Court, certify that on October 21, 2026, I caused the foregoing Application for an Extension of Time Within Which to File a Petition for a Writ of Certiorari, with appendix, to be served by electronic mail and by first-class mail, postage prepaid, on the Solicitor General of the United States, Room 5616, Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, DC 20530-0001 (SupremeCtBriefs@usdoj.gov), counsel for respondent.

/s/ Renee D. Pietropaolo
Renee D. Pietropaolo