No. _____

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IN THE SUPREME COURT OF THE UNITED STATES

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GREGORY ROGERS,
Petitioner

v.

UNITED STATES OF AMERICA

_____

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

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

Pursuant to 28 U.S.C. § 2101(c) and Rules 13.5, 22, and 30.2 of this Court, Gregory Rogers respectfully requests a 33-day extension of the time, to and including Tuesday, October 15, 2024, in which to file a petition for a writ of certiorari in this Court. The U.S. Court of Appeals for the Sixth Circuit entered judgment on April 10, 2024. A copy of the Sixth Circuit's opinion is attached as Exhibit 1. *United States* v. *Rogers*, Nos. 22-1432/1433, 97 F.4th 1038 (6th Cir. 2024). A copy of the Sixth Circuit's April 10, 2024, judgment is attached as Exhibit 2. On June 14, 2024, the Sixth Circuit denied Mr. Rogers's timely petition for rehearing en banc. See Exhibit 3. This Court's

jurisdiction would be invoked under 28 U.S.C. § 1254(1). Without an extension, the time for Mr. Rogers to petition for a writ of certiorari would expire on Thursday, September 12, 2024. This application is being filed more than 10 days before that date.

A jury convicted Mr. Rogers of certain drug and firearm related offenses, and he challenged his convictions on the ground that key evidence collected from his girlfriend's car violated his Fourth Amendment rights. The Fourth Amendment claims arose from a warrantless search conducted in January 2020, when police found Rogers sitting in the passenger seat of his girlfriend's car, while lawfully and safely parked on a residential street. Slip Op. 2. Police approached him to ask about an unrelated incident elsewhere on the block. Rogers rolled down his window "a few inches" to respond to an officer's initial questions, and told police the car belonged to his girlfriend, and that he did not have identification with him. D.Ct. R.41, Opinion, pgID.215-216. After officers determined that Rogers had an outstanding warrant and wanted to "check" him, Rogers "asked to get out of the car" so they could do so. *Ibid*. Police promptly handcuffed and secured Rogers in the back of a police cruiser. Apparently confused about the basis for his detention, Rogers "complained that he had not been driving." *Id*. at pgID.216. The officers took the keys from Rogers and searched the car, where they found marijuana and a gun. *Id*. at pgID.217.

Before trial, Rogers moved to suppress the results of the search. The district court denied the motion, reasoning that Rogers was "neither the owner . . . nor the driver" of the car, and stated (incorrectly) that there was "no evidence" that Rogers

had "permission from the owner to use the vehicle or be present in it." *Id.* at pgID.219-220. "Wrongful" presence, the district court reasoned, does not allow a defendant to challenge a search. *Ibid.* After a trial where the government relied on the fruits of the search, a jury convicted Rogers on several counts stemming from the drugs and firearm. Slip Op. 3.

On appeal, the government ultimately conceded that record evidence showed Rogers had his girlfriend's permission to use her car at the time of the search, as he "often" did. Slip Op. 6; *id.* at 10 (Stranch, J., dissenting); *accord* C.A. ECF 64 (6th Cir. Dec. 4, 2023) (quoting D.Ct. R.22-1, Suppression Mot. Exhibits, PageID.79). A divided panel of the Sixth Circuit, however, held that that Rogers "never exhibited a subjective expectation of privacy" in the car, because he "was neither [the] owner nor driver," could not produce a license at the time of the search, and did not show "dominion and control." Slip Op. 4. The majority concluded that Rogers had "disclaimed" any privacy interest by "accurately inform[ing] the police" that his girlfriend owned the car, and that he "wasn't even driving," and failing to produce identification. *Id.* at 5. In so doing, the majority appeared to suggest that because Rogers was not *driving*, he lacked "complete dominion and control" over the car. *Ibid.*

Judge Stranch dissented, emphasizing longstanding precedent holding that "one who borrows a vehicle and stores personal belongings in it has a legitimate expectation of privacy in the car and its contents," even if the person is not driving. Slip Op. 9 (Stranch, J., dissenting) (cleaned up). Given that Rogers used his girlfriend's car "often," rolled down his tinted window only a few inches when first

approached, and closed the window before stepping out of the car, it was "unclear . . . how Rogers could have done more to exhibit an expectation of privacy in the vehicle." *Id.* at 10, 12. In Judge Stranch's view, Rogers' statements that he did not own the car and had not been driving did not abandon his privacy interest. *Id.* at 13. After surveying decisions from circuit courts and this Court, Judge Stranch explained that the majority's holding is "incompatible with controlling precedent." *Ibid.* Judge Stranch would have found Fourth Amendment "standing" and rejected the government's proffered "community caretaking" justification for the warrantless search.

Rogers timely sought rehearing en banc, explaining that the panel decision could not be reconciled with decisions of other Circuits and state courts of last resort, and departed from *Byrd* v. *United States*, 584 U.S. 395 (2018). On June 14, 2024, the Sixth Circuit denied rehearing. Judge Stranch indicated that she "would grant rehearing for the reasons stated in her dissent [from the panel decision]." Exh. 3 at 1.

Undersigned counsel respectfully submits that the additional time requested is necessary to allow further coordination with Mr. Rogers and, if Mr. Rogers authorizes a certiorari petition to be filed, to complete preparation of the petition. Undersigned counsel was appointed to represent Mr. Rogers in the Sixth Circuit under the Criminal Justice Act, 18 U.S.C. § 3006A, and is representing Rogers on a pro bono basis. The attorney with lead responsibility for the case, formerly associated with Vinson & Elkins, L.L.P., departed the firm after presenting oral argument in

the Sixth Circuit, but prior to issuance of the Sixth Circuit's decision. Due to the nature of that attorney's current employment with the federal government, he is not available to consult or assist in the preparation of any petition for writ of certiorari in this case.

Undersigned counsel has been proceeding diligently, but respectfully submits that additional time is needed to complete review of the record and conclude research regarding, among other things, how the panel opinion here relates to Fourth Amendment precedent from other circuits and state courts of last resort. Counsel is also continuing to confer with Mr. Rogers. Due to Mr. Rogers' incarceration, communication involves delays associated with sending mail to, and arranging privileged telephone conversations with, an individual who remains in federal custody.

Undersigned counsel has also faced overlapping deadlines in other matters during the time for preparation of a petition for writ of certiorari in this case. Among other things, undersigned counsel will be presenting oral argument on September 3, 2024, in the U.S. Court of Appeals for the Fifth Circuit (case 23-40555); has principal responsibility for an amicus brief to be filed in the Colorado Supreme Court on September 9, 2024, in *Public Service Company of Colorado d/b/a Xcel Energy v. Outdoor Design Landscaping LLC*, case 2023-SC-659; and is counsel of record preparing a petition for rehearing en banc currently due on September 20, 2024, in the U.S. Court of Appeals for the D.C. Circuit.

Wherefore, Petitioner respectfully requests that an order be entered extending the time to file a petition for writ of certiorari up to and including Tuesday, October 15, 2024.

Respectfully submitted,

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