

IN THE SUPREME COURT OF THE UNITED STATES

No. 23A_____

DAVID LESH, 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 U.S. COURT OF APPEALS FOR THE TENTH CIRCUIT**

**TO: The Honorable Associate Justice Neil M. Gorsuch,
Circuit Justice for the Tenth Circuit:**

Pursuant to Rules 13.5 and 30.2 of the Rules of this Court, Applicant David Lesh respectfully requests a 30-day extension of time, to and including November 13, 2024, within which to file a petition for a writ of certiorari.

JUDGMENT FROM WHICH REVIEW IS SOUGHT

Applicant anticipates seeking review of the attached judgment and opinion of the United States Court of Appeals for the Tenth Circuit in *United States of America v. David Lesh*, 23-1074. App. 2a–24a. The court entered judgment on July 16, 2024. App. 1a.

JURISDICTION

This Court has jurisdiction to review the Tenth Circuit’s judgment and opinion under 28 U.S.C. § 1254(1). Unless extended, the deadline for filing a petition for a writ of certiorari expires on October 14, 2024. This application is being filed more than 10 days before the expiration date. Applicant has not requested any prior extensions of the

deadline.

BACKGROUND

Mr. Lesh, a former professional skier and founder of an outdoor apparel brand was charged and convicted of two offenses “based on National Forest Service (NFS) regulations: (1) using an oversnow vehicle on NFS land off a designated route, and (2) conducting unauthorized work activity on NFS land.” App. 3a. Both counts carried a maximum penalty of “a fine of not more than \$500 or imprisonment for not more than six months, or both.” 7 U.S.C. § 1011(f); 16 U.S.C. § 551; *see also* App. 24a (quoting 16 U.S.C. § 551). Mr. Lesh appealed both convictions, arguing among other things that he was deprived of his constitutional right to a trial by jury. App. 6a, 22a–23a.

The Tenth Circuit panel affirmed Mr. Lesh’s “convict[ion for] essentially trespassing under NFS regulations” pursuant to 36 C.F.R. § 261.14 and reversed “his conviction for unauthorized work activity pursuant to 36 C.F.R. § 261.10(c)[.]” App. 3a. As to Mr. Lesh’s jury trial claim, the panel determined that it was bound by this Court’s precedent in *Blanton v. City of North Las Vegas, Nev.*, 489 U.S. 538, 542 (1989), which “limit[s] the jury trial right to ‘serious’ infractions punishable by six or more months of imprisonment.” App. 24a. The panel concluded that “unless and until the Supreme Court reexamines the scope of the Sixth Amendment right to a jury trial ... Mr. Lesh was not deprived of his Sixth Amendment right.” *Id.*

In a concurring opinion, Judge Tymkovich, joined by Judge Rossman, noted that “[u]nder prevailing precedent, Mr. Lesh was not deprived of his Sixth Amendment right. But the correct scope of the Constitution’s right to a trial by jury may warrant a closer examination by the Supreme Court.” App. 25a. The concurrence suggests that under

this Court’s current doctrine “the judicial imperative of interpreting the fundamental-to-liberty jury right has been abdicated to the legislative branch, or in this case even the executive branch. But such discretion ‘in regard to criminal causes is abridged by the express injunction of trial by jury in all such cases.’” App. 29a (quoting *The Federalist* No. 83, at 467 (Alexander Hamilton) (Clinton Rossiter ed., 1961)).

REASONS JUSTIFYING EXTENSION OF TIME

In recent decisions, this Court has consistently upheld the right to a jury trial in both criminal and civil contexts. *See, e.g., SEC v. Jarkesy*, 144 S. Ct. 2117 (2024); *Erlinger v. United States*, 144 S. Ct. 1840 (2024); *Ramos v. Louisiana*, 590 U.S. 83 (2020). This case raises the important issue of whether the Constitution’s plain text and dual guarantee of the right to a jury trial in “all Crimes, except in Cases of Impeachment,” U.S. Const. art. III, § 2, and “[i]n all criminal prosecutions,” U.S. Const. amend. VI, applies to petty offenses, those carrying terms of imprisonment of six months or less.

Additional time is needed because the United States sought, Applicant consented to, and the Court of Appeals granted two 30-day extensions of time to file a petition for rehearing or rehearing en banc. The current deadline for the United States to file is September 30, 2024, only 14 days before the time for petitioning runs. On August 23, 2024, consistent with 28 U.S.C. § 530D, the Solicitor General reported to Congress “that the Department of Justice has decided not to seek further review” in this matter. Letter from Solicitor General Elizabeth B. Prelogar to Speaker of the U.S. House of Representatives Mike Johnson (Aug. 23, 2024), <https://www.justice.gov/d9/2024-08/US%20v.%20Lesh%20%288.23.24.%29.pdf>. The additional time sought in this

application is needed for Applicant to continue consulting with his attorneys to assess the legal and practical impact of the court of appeals' ruling so he can determine whether and how to petition for a writ of certiorari.

Additional time is also needed because the attorneys who have principal responsibility for preparation of the Applicant's petition have been heavily engaged with the press of other matters including:

- a temporary restraining order filed on August 19, 2024 and responsive briefing in *John C. Ponte v. Federal Deposit Insurance Corp.*, 1:24-cv-02379-APM (D.D.C.);
- supplemental briefing on remand from this Court in *Relentless Inc. v. U.S. Dep't of Commerce*, 1:20-cv-00108-WES-PAS (D.R.I.), due on September 27, 2024;
- a reply brief in *Powell v. SEC*, 24-1899 (9th Cir.), due on or before October 7, 2024;
- court-ordered briefing regarding additional discovery after remand from this Court in *Missouri v. Biden*, 3:22-cv-012130TAD-KDM (W.D. La.), due on September 17, 2024
- a response to a motion to dismiss in *Daily Wire v. State Department*, 6:23-cv-00609 (E.D. Tex. 2023), due on September 20, 2024.

Finally, both Ms. Rollins and Ms. Younes also had pre-planned family-related travel during late-August.

Mr. Lesh is not in custody.

September 10, 2024

Respectfully submitted,

/s/ Kara M. Rollins

Kara M. Rollins

Counsel of Record

Jenin Younes

New Civil Liberties Alliance

4250 N. Fairfax Drive

Suite 300

Arlington, VA 22203

(202) 869-5210

kara.rollins@ncla.legal

Counsel for Applicant