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IN THE

Supreme Court of the United States

ADIS KOVAC, et al.,

Applicants,

v.

CHRISTOPHER WRAY, et al.

Respondents.

**Application for Extension of Time Within Which
to File a Petition for a Writ of Certiorari to the
U.S. Court of Appeals for the Fifth Circuit**

**APPLICATION TO THE HONORABLE JUSTICE
SAMUEL A. ALITO AS CIRCUIT JUSTICE**

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October 4, 2024

APPLICATION FOR EXTENSION OF TIME

Under this Court's Rule 13.5, Applicants Adis Kovac, et al. respectfully request a 30-day extension of time, to and including November 20, 2024, to file a petition for a writ of certiorari.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The judgment for which review is sought is *Kovac v. Wray*, 109 F.4th 331 (5th Cir. 2024) (attached as Exhibit A).

JURISDICTION

This Court will have jurisdiction over any timely petition under 28 U.S.C. § 1254(1). The Fifth Circuit issued its judgment on July 22, 2024. The petition is currently due on October 21, 2024. This application has been filed more than ten days before that date.

REASONS JUSTIFYING AN EXTENSION OF TIME

1. In the decision below, the Fifth Circuit misapplied the major-questions doctrine, concluding that a web of vaguely related provisions, cross-references, and subsequent congressional actions clearly authorized the government to maintain a vast, standardless watchlist that affects the basic civil liberties of millions of people.

Applicants are law-abiding American citizens who allege that they have been placed on the federal Terrorist Watchlist. The consequences of being placed on the Watchlist reach into every aspect of a person's life. Applicants were either (i) subjected to additional and humiliating security screenings at airports or (ii) placed on the 'No Fly List' and barred from travelling by plane in U.S. airspace. In addition, the FBI shares an individual's watchlist status with countless entities, state and

local, public and private. A person’s watchlist designation thus may impact them during traffic stops, municipal permitting processes, firearm purchases, and numerous other everyday interactions.

Applicants sued federal officials who administer the Watchlist in district court, alleging (among other things) that the Watchlist’s existence is a major question and that Congress has not clearly authorized this extraordinary assertion of government power. See *West Virginia v. EPA*, 597 U.S. 697, 723 (2022). The district court determined that the major-questions doctrine applied because of the Watchlist’s “vast political significance” but concluded that Congress clearly authorized it. *Kovac v. Wray*, 660 F. Supp. 3d 555, 563–69 (N.D. Tex. 2023).

The Fifth Circuit did not dispute that this case poses a major question. But it concluded that “the Government’s statutory authority in this case is clearly authorized by Congress.” Ex. A at 19. The court did not, however, identify any specific statutory provision that expressly authorizes the Watchlist, let alone its full extent and all its applications. Rather, it rummaged through four different acts of Congress to cobble together a supposedly “clear statement” of authorization.

The Fifth Circuit’s approach conflicts with this Court’s guidance about the major-questions doctrine, and with other circuits’ applications of the doctrine. Far from looking for the “clear congressional authorization” this Court’s precedents demand, *West Virginia*, 597 U.S. at 723 (citation omitted), the court of appeals conducted ordinary statutory interpretation, treating a series of cross-references and

vague, passing mentions as sufficient authority. That is the opposite of a clear statement.

And the Court conducted this whole analysis without ever considering the broader context—the Watchlist’s vast political and legal significance. See *Biden v. Nebraska*, 143 S. Ct. 2355, 2376 (2023) (Barrett, J., concurring). In these circumstances, it is not enough that a “regulatory assertion[] ha[s] a colorable textual basis” because “common sense” dictates that “Congress could not have intended to delegate’ such a sweeping and consequential authority ‘in so cryptic a fashion.” *West Virginia*, 597 U.S. at 721-22 (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 160 (2000)).

2. Good cause supports a 30-day extension. Applicants have asked the Northwestern Supreme Court Practicum to help prepare this petition. The Practicum’s students and undersigned counsel require time to familiarize themselves with the case, and a 30-day extension will allow time for the Practicum’s students to draft a cogent and well-researched petition.

An extension is also warranted because of the press of counsel’s other client business. The Practicum and undersigned counsel are also responsible for forthcoming petitions in *Aquart v. United States*, No. 24A122, *Chisesi v. Hunady*, No. 24A311, *Tucker v. United States*, No. 23-1781 (7th Cir.), and *Brannan v. United States*, No. 23-40098 (5th Cir.). Counsel are also responsible for a reply brief in support of the petition in *John Doe v. The Trustees of Indiana University*, No. 24-88, and a hearing on motions to dismiss and suppress in *United States v. Long*, No. 22-

cr-00139-JAC-RJK (E.D. Va.). And undersigned counsel is responsible for ongoing briefing in *Ass'n of Am. R.R. v. Hudson*, No. 24-1399 (4th Cir.), and pending district court litigation in *United States v. Norfolk Southern Corp.*, No. 1:24-cv-02226-ABJ (D.D.C.), and *Village of Minooka v. Wisc. Cent. Ltd.*, No. 1:24-cv-5200 (N.D. Ill.).

CONCLUSION

For these reasons, Applicants respectfully request an extension of the time to file a petition for a writ of certiorari by 30 days, to and including November 20, 2024.

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Respectfully submitted,

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