24A335

IN THE

Supreme Court of the United States

ADIS KOVAC, et al.,

Applicants,

v.

CHRISTOPHER WRAY, et al.

Respondents.

Second 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

LENA F. MASRI
GADEIR I. ABBAS*
JUSTIN SADOWSKY
CAIR LEGAL DEFENSE FUND
453 New Jersey Ave. SE
Washington, D.C. 20003
(202) 742-6420

**Gadeir I. Abbas licensed to practice in Virginia only. Practice limited to federal matters.*

TOBIAS S. LOSS-EATON
Counsel of Record
CODY L. REAVES
SUSAN WHALEY
SIDLEY AUSTIN LLP
Washington, D.C. 20005
(202) 736-8000
tlosseaton@sidley.com

JEFFREY T. GREEN
DANIELLE HAMILTON
THE CARTER G. PHILLIPS/
SIDLEY AUSTIN LLP
SUPREME COURT CLINIC
NORTHWESTERN PRITZKER
SCHOOL OF LAW
375 East Chicago Avenue
Chicago, IL 60611

Counsel for Applicants

November 1, 2024

SECOND APPLICATION FOR EXTENSION OF TIME

Under this Court's Rule 13.5, Applicants Adis Kovac et al. respectfully request an additional 30-day extension of time, to and including December 19, 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 was originally due on October 21, 2024. On October 9, 2024, Justice Alito extended the deadline to November 19, 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 W. 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, *W. Virginia*, 597 U.S. at 723, the court of appeals conducted ordinary statu-

tory 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 would not delegate "such a sweeping and consequential authority 'in so cryptic a fashion.'" *Id.* at 721–723 (quoting *Brown & Williamson*, 529 U.S. at 133, 159–160).

2. Good cause supports an additional 30-day extension. Applicants have asked the Carter G. Phillips/Sidley Austin LLP Supreme Court Clinic at Northwestern Pritzker School of Law to help prepare this petition. Due to greater-than-expected law school and professional commitments, the Clinic's students and counsel require additional time to prepare the petition. A 30-day extension will allow time for the students to draft a cogent and well-researched petition without interfering with their academic schedules.

An extension is also warranted because of the continued press of counsel's other client business. The Clinic and undersigned counsel are responsible for forthcoming petitions in *Chisesi* v. *Hunady*, No. 24A311, *Tucker* v. *United States*, No. 23-1781 (7th Cir.), and *Brannan* v. *United States*, No. 23-40098 (5th Cir.), and a reply in support of the petition in *Aquart* v. *United States*, No. 24-5754. Undersigned counsel is also presenting oral argument in *Wisconsin Central Ltd.* v. *STB*, No. 24-

1484 (7th Cir.), on November 15. Counsel are also responsible for a forthcoming petition in *Whitman* v. *Gray*, No. 24A211, a trial brief and other trial-related filings in *Oklahoma* v. *Tyson Foods*, No. 05-CV-329-GKF-SH (D. Okla.), and an upcoming trial in *United States* v. *Long*, No. 22-cr-00139-JAC-RJK (E.D. Va.).

CONCLUSION

For these reasons, Applicants respectfully request an additional extension of the time to file a petition for a writ of certiorari by 30 days, to and including December 19, 2024.

Respectfully submitted,

LENA F. MASRI
GADEIR I. ABBAS*
JUSTIN SADOWSKY
CAIR LEGAL DEFENSE FUND
453 New Jersey Ave. SE
Washington, D.C. 20003
(202) 742-6420

**Gadeir I. Abbas licensed to practice in Virginia only. Practice limited to federal matters.*

TOBIAS S. LOSS-EATON
Counsel of Record
CODY L. REAVES
SUSAN WHALEY
SIDLEY AUSTIN LLP
Washington, D.C. 20005
(202) 736-8000
tlosseaton@sidley.com

JEFFREY T. GREEN
DANIELLE HAMILTON
THE CARTER G. PHILLIPS/
SIDLEY AUSTIN LLP
SUPREME COURT CLINIC
NORTHWESTERN PRITZKER
SCHOOL OF LAW
375 East Chicago Avenue
Chicago, IL 60611

Counsel for Applicants

November 1, 2024