

No. _____

In the Supreme Court of the United States

DAVID HOUSTON VARGAS,

Applicant,

v.

UNITED STATES OF AMERICA,

Respondents.

*ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT*

**APPLICATION FOR AN EXTENSION OF TIME
TO FILE A PETITION FOR WRIT OF CERTIORARI**

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David Houston Vargas*

**APPLICATION FOR EXTENSION OF TIME WITHIN WHICH TO FILE A
PETITION FOR WRIT OF CERTIORARI**

To the Honorable Neil M. Gorsuch, as Circuit Justice for the United States Court of Appeals for the Tenth Circuit:

Applicant David Houston Vargas respectfully requests an extension of 60 days in which to file his petition for writ of certiorari, seeking review of the Tenth Circuit's decision in *United States v. Vargas*, Case No. 22-1400 (10th Cir. Feb. 21, 2024), a copy of which is attached to this application.

In support of this application, Applicant states the following:

1. The Tenth Circuit issued denied Mr. Vargas' appeal on February 21, 2024. Mr. Vargas filed a petition for rehearing en banc on March 20, 2024. The Tenth Circuit denied Mr. Vargas' petition on April 30, 2024. Accordingly, the petition for certiorari is currently due July 29, 2024. Granting this extension would make it due on September 27, 2024.
2. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).
3. As the attached decision shows, this case focuses on the lack of definitional consistency for the phrase "physical restraint" of USSG § 2B3.1(b)(4)(B). Relying on precedent, the Tenth Circuit affirmed the district court's boundless definition of "physical restraint" that included psychological restraint and upheld the imposition of the enhancement. A clear circuit split exists on the issue and Mr. Vargas would prevail in any other circuit. *See, e.g., United States v. Herman*, 930 F.3d 872, 876 (7th Cir. 2019) (en banc) ("the psychological coercion of gunpoint is not enough on its own"); *United States v. Anglin*, 169 F.3d 154, 163-64

(2d Cir. 1999) (pointing a gun at someone and commanding them to not move *is not* physical restraint).

Based on the ruling in his case, the Tenth Circuit’s refusal to consider the matter en banc, and the clear circuit split on the matter, Mr. Vargas has determined to seek review via petition for certiorari.

4. This application is not sought for purposes of delay. Undersigned counsel is the lead attorney on several pending appeals. Undersigned counsel represented Mr. Vargas before the Tenth Circuit, and there are currently no other attorneys in the Federal Public Defender office who are familiar enough with the record in Mr. Vargas’ case to be capable of preparing a petition by the current due date.

For these reasons, Mr. Vargas requests a 60-day extension of time in which to file a petition for a writ of certiorari.

Respectfully submitted,

/s/ Jessica Stengel

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Application for an Extension of Time to File a Petition for Writ of Certiorari was served via First Class Mail, postage prepaid, upon the following counsel:

Elizabeth Prelogar
Solicitor General of the United States
Room 5614
Department of Justice
950 Pennsylvania Ave, N.W.
Washington, D.C. 20530-001

/s/ Jessica Stengel _____

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