

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

CLIFFORD CHARLES TYLER,
Plaintiff-Appellant,

v.

HILLSDALE COUNTY SHERIFF'S
DEPARTMENT, et al.
Defendants-Appellees.

No. 13-1876

**UNOPPOSED MOTION FOR A 14-DAY EXTENSION OF TIME TO FILE
A PETITION FOR REHEARING OR REHEARING EN BANC**

Pursuant to Federal Rule of Appellate Procedure 26 and Sixth Circuit Rules 26 and 40, the federal government hereby respectfully moves for a 14-day extension of time, to and including February 16, 2015, within which to file any petition for rehearing and/or rehearing en banc. This motion is unopposed, and good cause exists for granting the extension for the reasons set forth below.

1. A petition for panel rehearing or rehearing en banc currently would be due on February 2, 2015. No previous extension of this time has been sought or granted.

2. The panel's divided decision raises a substantial question concerning the application of the Second Amendment to federal firearms prohibitions contained in 18 U.S.C. § 922(g) and the appropriate level of scrutiny to apply to such challenges. The panel majority applied strict scrutiny to § 922(g)(4), which prohibits any person who "has been committed to a mental institution" or been "adjudicated a mental

defective” from shipping, transporting, possessing, or receiving firearms and ammunition. 18 U.S.C. § 922(g)(4). The majority reversed the district court’s decision upholding § 922(g)(4), and remanded, holding that “the government may, if it chooses, file an answer to Tyler’s complaint to contest his factual allegations. If it declines to do so, the district court should enter a declaration of unconstitutionality as to § 922(g)(4)’s application to Tyler.” Slip Opinion 46. This decision thus marks the first time that a court of appeals has suggested that a provision of § 922(g) is unconstitutional.

3. The Solicitor General is responsible for determining whether the government should seek rehearing en banc. The requested 14-day extension of time is required to permit adequate consultation among the components of the government directly affected by the Court’s decision, to permit the Solicitor General to complete his review, and to permit Department attorneys to prepare a petition along the lines the Solicitor General deems appropriate.

4. Counsel for the plaintiff-appellant, Lucas McCarthy, informed us by voicemail on January 25, 2015, that plaintiff-appellant does not oppose the requested extension.

For the foregoing reasons, the Court should grant the federal appellees a 14-day extension, to and including February 16, 2015, within which to file a petition for rehearing and/or rehearing en banc.

Respectfully submitted,

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s/ Abby C. Wright

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JANUARY 2015

CERTIFICATE OF SERVICE

I hereby certify that on January 26, 2015, I filed and served the foregoing with the Clerk of the Court by causing a copy to be electronically filed via the appellate CM/ECF system. I also hereby certify that the participants in the case are registered CM/ECF users and will be served via the CM/ECF system.

s/ Abby C. Wright

Abby C. Wright

Counsel for Federal Appellees