No. A-_____

In the Supreme Court of the United States

Love Terminal Partners, L.P., Virginia Aerospace, LLC,
Applicants,
v.

United States,
Respondent.

APPLICATION TO EXTEND TIME TO FILE A PETITION FOR WRIT OF CERTIORARI

Directed to the Honorable John G. Roberts, Jr., Chief Justice of the United States and Circuit Justice for the United States Court of Appeals for the Federal Circuit

Roger J. Marzulla
Nancie G. Marzulla
Marzulla Law, LLC
1150 Connecticut Ave., NW
Suite 1050
Washington, DC 20036
(202) 822-6760 (telephone)
(202) 822-6774 (facsimile)
roger@marzulla.com
Counsel for Applicants Love Terminal Partners, L.P. and Virginia Aerospace, LLC

Paul D. Clement
Counsel of Record
Erin E. Murphy
Kirkland & Ellis LLP
655 Fifteenth St., NW
Washington, DC 20005
(202) 879-5000 (telephone)
(202) 879-5200 (facsimile)
paul.clement@kirkland.com
Counsel for Applicants Love Terminal Partners, L.P. and Virginia Aerospace, LLC

October 30, 2018

Rule 29.6 Disclosure Statement

Under Supreme Court Rule 29.6, applicants Love Terminal Partners, L.P. and Virginia Aerospace, LLC, state as follows:

Love Terminal Partners is a limited partnership organized under the laws of the state of Delaware. It has no parent corporation and no publicly held company owns 10% of more of its stock.

Virginia Aerospace, LLC, is a Virginia limited liability corporation. It has no parent corporation and no publicly held company owns 10% or more of its stock.

To the Honorable John G. Roberts, Jr., as Circuit Justice for the United States Court of Appeals for the Federal Circuit:

Under this Court's Rules 13.5, 22, and 30.3, Love Terminal Partners, L.P. and Virginia Aerospace, LLC (collectively, "LTP") respectfully request a 30-day extension of time to file its petition for writ of certiorari. This request, if granted, would extend the deadline from December 11, 2018, to January 10, 2019. LTP will be asking this Court to review a decision of the United States Court of Appeals for the Federal Circuit in *Love Terminal Partners, L.P. v. United States*, 889 F.3d 1331 (Fed. Cir. 2018) (App. A). That decision overturned a United States Court of Federal Claims ruling (App. B) that the enactment of the Wright Amendment Reform Act of 2006 ("Reform Act"), Pub. L. No. 109-352, 120 Stat. 2011, constituted a categorical taking of LTP's leasehold in Love Field Airport and a physical taking of the terminal itself, entitling LTP to $133.5 million in just compensation, plus interest and attorney's fees. The Federal Circuit denied a petition for panel rehearing and rehearing en banc on September 12, 2018 (App. C). This Court has jurisdiction to review the Federal Circuit's judgment under 28 U.S.C. § 1354(1).

LTP requests this extension of time to file a petition for writ of certiorari seeking review of the Federal Circuit's decision for the following reasons:

1. LTP's counsel, Paul D. Clement, who did not represent LTP below, has significant briefing and argument responsibility between now and the scheduled due date for the petition, including oral argument in *Ultra Petroleum Corp. v. Ad Hoc Committee of Unsecured Creditors*, No. 17-20793 (5th Cir.), oral argument in *United States v. Ashe*, No. 18-1725 (2d Cir.), a reply brief in *Rucho v. Common*

Cause, No. 18-422 (U.S.), a reply in support of certiorari in *Zappos.com, Inc. v. Stevens*, No. 18-225 (U.S.), and a brief in opposition in *Amgen Inc. v. Sanofi*, No. 18-127 (U.S.).

2. LTP's co-counsel, Roger J. Marzulla and Nancie G. Marzulla, who tried this case and defended it in the Federal Circuit, are currently engaged in a number of cases before the Federal Circuit, which have looming deadlines and upcoming events. Oral Argument in *Stockton East Water District v. United States*, No. 2017-2431 (Fed. Cir.), in which the Federal Circuit will consider whether the trial court erred in denying expectancy damages, is scheduled for December 5, 2018. Counsel also represents appellant in *Bassett, New Mexico LLC v. United States*, No. 2018-1726 (Fed. Cir.), in which the Federal Circuit will consider whether the trial court erred in holding that Bassett's claim was not ripe for review. Appellant's reply brief is due November 2, 2018.

In the Court of Federal Claims, Counsel is scheduled for expert witness depositions over the first two weeks of November 2018 in *Colonial Chevrolet Co., Inc. v. United States*, No. 10-647C (lead case). Counsel represents more than 150 former franchised-Chrysler dealers who claim that the Government-imposed termination of their dealerships during the Chrysler restructuring effected an uncompensated taking of their property rights. In *City of Fresno v. United States*, No. 16-1276L (Fed. Cl.), Counsel is actively engaged in fact discovery and must respond to discovery requests on November 16, 2018. And in *Hahnenkamm, LLC v.*

United States, No. 17-855C (Fed. Cl.), plaintiff's counsel is also engaged in discovery and must serve their expert report disclosures by December 6, 2018.

3. This case presents substantial and important constitutional and private property rights law issues and raises serious questions about the panel's adherence to the Court's seminal takings decisions. In *Lucas v. South Carolina Coastal Commission*, 505 U.S. 1003 (1992), this Court held that a regulation that denies all economically beneficial or productive use of land effects a categorical taking and requires compensation without a case-specific inquiry. The Federal Circuit's decision cannot be reconciled with that holding. Nor can it be reconciled with the fundamental rule that government destruction or occupation of private party constitutes a taking. *See, e.g.*, *Palazzolo v. Rhode Island*, 533 U.S. 606, 617 (2001). The Federal Circuit avoided the conclusion that both those things happened in the Reform Act only by viewing the leasehold interest as valueless both before and after the Reform Act's passage. But that ignored not only the trial court's findings, but the reality that the long-term leasehold was valuable precisely because the restrictions on the use of Love Field were unsustainable. Indeed, if the government had first lifted the regulatory restrictions on the use of Love Field and then later enacted legislation obliterating LTP's leasehold, it would be obvious that the second law worked a taking. The government cannot avoid that result by combining the value-enhancing regulatory fix with a value-destroying taking.

4. The forthcoming certiorari petition will present important and complex questions regarding constitutionally protected property rights and interpretation of

the Court's precedent. The panel's decision conflicts with this Court's decisions in *Lucas* and other cases, and improperly injected the *Penn Central Transportation Co. v. United States*, 438 U.S. 104 (1978), balancing test into a *Lucas*-categorical taking analysis. The panel's ruling that fair market value is not the measure of economic impact under either a *Lucas* or a *Penn Central* analysis is also contrary to the Court's holding in *Olson v. United States*, 292 U.S. 246, 255 (1934)

5. Applicants thus request a modest extension of time, to and including January 10, 2019, to allow counsel to research the extensive factual record and complex legal issues presented in this case, which will ensure that counsel can prepare a petition that fully addresses the important and far-reaching issues raised by the decision below and frames those issues in a manner that will be most helpful to the Court.

Dated: October 30, 2018

Respectfully submitted,

/s/ Paul D. Clement

Paul D. Clement
Counsel of Record
Erin E. Murphy
Kirkland & Ellis LLP
655 Fifteenth St., NW
Washington, DC 20005
(202) 879-5000 (telephone)
(202) 879-5200 (facsimile)
paul.clement@kirkland.com
erin.murphy@kirkland.com
Counsel for Applicants
Love Terminal Partners, L.P. and
Virginia Aerospace, LLC

Roger J. Marzulla
Nancie G. Marzulla
Marzulla Law, LLC
1150 Connecticut Ave., NW
Suite 1050
Washington, DC 20036
(202) 822-6760 (telephone)
(202) 822-6774 (facsimile)
roger@marzulla.com
nancie@marzulla.com
Counsel for Applicants
Love Terminal Partners, L.P. and
Virginia Aerospace, LLC