

No. A-\_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

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ALEXANDER ALIMANESTIANU, IOANA ALIMANESTIANU, INDIVIDUALLY  
AND AS EXECUTRIX OF THE ESTATE OF MIHAI ALIMANESTIANU, IRINA  
ALIMANESTIANU, JOANNA ALIMANESTIANU, KATHY ALIMANESTIANU,  
EXECUTRIX OF THE ESTATE OF SERBAN ALIMANESTIANU, NICHOLAS  
ALIMANESTIANU, PAULINE ALIMANESTIANU, EXECUTRIX OF THE  
ESTATE OF CONSTANTIN ALIMANESTIANU, SIMONE DESIDERIO,  
EXECUTRIX OF THE ESTATE OF CALIN ALIMANESTIANU,

*Petitioners,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

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ON APPLICATION FOR EXTENSION OF TIME TO FILE PETITION  
FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT  
OF APPEALS FOR THE FEDERAL CIRCUIT

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APPLICATION FOR EXTENSION OF TIME TO FILE PETITION  
FOR WRIT OF CERTIORARI

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Counsel for Petitioners

July 25, 2018

To the Honorable John G. Roberts, Jr., Chief Justice of the United States and Circuit Justice for the Federal Circuit:

1. Pursuant to Supreme Court Rule 13.5 and 28 U.S.C. § 2101(c), petitioners Alimanestianu *et al.* (“Petitioners”)<sup>1</sup> respectfully request a 30-day extension of time within which to file a petition for writ of certiorari, to and including September 5, 2018. The United States Court of Appeals for the Federal Circuit issued its opinion and entered judgment in this case on May 7, 2018. *See* Slip Op., Exhibit A (“App”). The time to petition for certiorari in this Court, if not extended, will expire on August 6, 2018. This application is filed more than ten days prior to that date. S. Ct. Rule 13.5. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

## BACKGROUND

2. The United States used its power of eminent domain to appropriate the property of its citizens, a judgment against The Socialist People’s Libyan Arab Jamahiriya (“Libya”), which was on appeal, and the underlying entitlement to relief. The United States then used that property as a bargaining chip to negotiate an agreement with Libya that, among other things, settled those

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<sup>1</sup> Petitioners are Alexander Alimanestianu (“Alex”), Irina Alimanestianu, Joanna Alimanestianu, Kathy Alimanestinu, executrix of the Estate of Serban Alimanestianu, Nicholas Alimanestianu, Pauline Alimanestianu, executrix of the Estate of Constantin Alimanestianu, Simone Desiderio, executrix of the Estate of Calin Alimanestianu, and Ioana Alimanestianu (“Ioana”), both in her personal capacity and as Executrix of the Estate of Mihai Alimanestianu (“Mihai”). Regrettably, Ioana passed away last month. Alex is the presumptive executor for the estates of both Mihai and Ioana. His application to be appointed executor of the Estate of Ioana is pending in New York Surrogates Court. His application to serve as the executor of the Estate of Mihai is expected to be filed soon. Pursuant to S. Ct. R. 35.1, Alex will be substituted as the representative of the Estate of Mihai and Ioana.

claims, an act typically referred to as “espousal.” This case asks whether the categorical rules that require just compensation be paid when the government takes possession of private property apply to such an appropriation. *See Horne v. Department of Agriculture*, 135 S.Ct. 2419 (2015).

3. Petitioners are all close relatives of Mihai Alimanestianu, an American and victim of Libyan state-sponsored terror. Mihai was killed in 1989 by agents of Libya when they downed UTA Flight 772 in southeastern Niger, killing all onboard. In 1996, Congress amended the Foreign Sovereign Immunities Act by removing the jurisdictional immunity of Libya and other state sponsors of terror to allow victims and their families to seek monetary damages in federal court. (Prior to 1996, the family had claims against Libya but no forum, either in the United States or abroad.) In 2002, the Petitioners filed a lawsuit against Libya in the United States District Court for the District of Columbia. *Pugh v. Socialist People’s Libyan Arab Jamahiriya*, No. 1:02-cv-02026 (D.D.C.). On August 8, 2008, after years of contested litigation, the district court awarded the Petitioners, collectively, a \$1.3 billion judgment. Libya appealed. Days later, the judgment was taken by the United States and compromised.

4. The taking occurred on August 14, 2008, when the United States entered a Claims Settlement Agreement with Libya. As part of that agreement, the United States acquired and settled the claims (including judgments on appeal) of U.S. nationals against Libya arising out of Libya’s decades-long campaign of terror. In Executive Order 13,477, dated October 31, 2008, President George W. Bush

explained that as a result the claims “are settled” and “no United States national may assert or maintain any claim . . . in any forum, domestic or foreign.” Exec. Order No. 13,477 §1(a), 3 C.F.R. 13477 (2008).

5. Despite the appropriation of private property, the Federal Circuit held that the categorical rules applicable to appropriations do not apply because the appropriation did not amount to a “physical invasion” and the property was “entangled with international considerations.” Exhibit A at 13. Instead, the Federal Circuit evaluated the appropriation using the *Penn Central* balancing factors and held that the Petitioners did not suffer a compensable taking. *Id.* at 14-16. At stake is the question of whether the Fifth Amendment’s core protection against the government’s appropriation of private property extends to claims and judgments of U.S. nationals against foreign states.

#### **REASONS JUSTIFYING AN EXTENSION OF TIME**

6. My co-counsel, Mr. Conan, who has had primary authorship responsibilities in the matter, had surgery this past May and his ability to work on the petition, as well as his other matters, was limited at the end of May and for much of June. In addition, Ioana Alimanestianu, Mihai’s wife, recently passed away. Her passing delayed coordination with the family. A short, 30-day extension will better enable counsel to prepare a petition for certiorari that fully addresses all pertinent issues.

7. Counsel for the United States consented to the 30-day extension.

## CONCLUSION

For the foregoing reasons, Petitioners respectfully request a 30-day extension of time, to and including September 5, 2018, within which to file a petition for certiorari in this case.



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