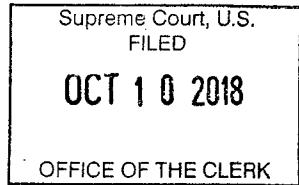


IN THE  
Supreme Court of the United States



LOUIS ANTHONY HARDISON

**Petitioner**

v

UNITED STATES OF AMERICA

**Respondent**

LOUIS A HARDISON APPLICATION TO THE HONORABLE SUPREME COURT  
JUSTICE NEIL M. GORSUCH TO EXTEND TIME TO FILE A PETITION FOR A

WRIT OF CERTIORARI

REVIEW JUDGMENT OF THE UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT COURT

Louis A. Hardison  
P.O. Box 595  
Joplin, Missouri 64901-0595

Solicitor General of the United States,  
Room 5614, Department of Justice  
950 Pennsylvania Ave., N. W.,  
Washington, DC 20530-0001

October 10, 2018

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

Petitioner Louis A. Hardison respectfully request that the time to file a Petition for Writ of Certiorari in this matter be extended for sixty days to and including December 14, 2018. The Eighth Circuit Court of Appeals issued it's opinion on July 16, 2018 to deny petitioner Certificate of Appealability. (See App. A).

Absent an extension of time the Petition would therefore be due on October 14, 2018. Petitioner is filing this application under the ten days which would be a violation of S.Ct. R. 13.5 but in petitioner case there is extraordinary circumstances that prevent petitioner to seek from the court an earlier request.

This Court would have jurisdiction over the judgment under 28 USC 1254(1).

## **Background**

This case involves petitioner Constitutional rights under the Fifth, Sixth, and Fourteenth Amendments to the US Constitution. Trial counsel was assigned on May 26, 2015 with a trial date of June 15, 2015. Trial counsel did not ask for a continuance and “guarantee” petitioner that he would assist in getting the evidence to prove his innocence. Though the Eighth Circuit has decline whether the Justification defense is available in a 922(g) case under the Public Authority Defense and the Confidential Informant Procedure Act (CIPA) and other court of appeals decision this defense is obtainable.

Trial counsel admitted that he is unfamiliar with Missouri CAFA laws as well with Civil Asset Forfeiture Reform Act (CAFRA). Trial counsel lack of investigation into the matters of the case which had he pursued them petitioner would had been found not guilty. American Bar Association Defense Function 4.4.1 Duty to Investigate. Had trial counsel subpoena Neosho Police Officer Austin Fohey who police report clearly states petitioner was not in his home and did not consent to a search. The police report should been allow Fed.R.Evid. 803(8) had counsel been aware of any federal rules. (FBI reports fall under the public record exception to the hearsay rule and are admissible against the government). Trial counsel for 10 years has used the services CJA appointment as a “Piggy Bank”. Trial counsel does

pleas deals and as many as he can.

State of Missouri:

On July 13, 1993, Missouri General Assembly enacted CAFA. This was enacted due to overzealous local and state law enforcement. RSMO 513.607 place on the local prosecutor and Missouri Attorney General to file CAFA proceeding in 10 days. RSMO 513.617(4) places an additional restriction on state or local government's that: No state or local government agency may hold property seized for forfeiture unless a petition for forfeiture has been filed within the time limits by section 513.607.

Missouri Revised Statutes Title XXXV. Civil Procedure and Limitations § 513.649. Peace officers or reserve officers working with federal agency subject to law. Any property seized by state or local peace or reserve officers who are detached to, deputized or commissioned by or working in conjunction with the federal agency shall remain subject to the provisions of this section and sections 513.647 and 513.651 .

RSMO 513.647.1 Transfer of Seized Property seized by the state to a federal agency. No state or local law enforcement agency may transfer any property seized by the state or local agency to any federal agency for forfeiture under federal law until the prosecuting attorney and the circuit judge of the county in which the

property was seized first review the seizure and approve the transfer to a federal agency, regardless of the identity of the seizing agency. The prosecuting attorney and the circuit judge shall not approve any transfer unless it reasonably appears the activity giving rise to the investigation or seizure involves more than one state or unless it is reasonably likely to result in federal criminal charges being filed, based upon a written statement of intent to prosecute from the United States attorney with jurisdiction. No transfer shall be made to a federal agency unless the violation would be a felony under Missouri law or federal law.

2. Prior to transfer, in an ex parte proceeding, the prosecuting attorney shall file with the court a statement setting forth the facts and circumstances of the event or occurrence which led to the seizure of the property and the parties involved, if known. The court shall certify the filing, and notify by mailing to the last known address of the property owner that his property is subject to being transferred to the federal government and further notify the property owner of his right to file a petition stating legitimate grounds for challenging the transfer. If within ninety-six hours after the filing of the statement by the prosecuting attorney, the property owner by petition shows by a preponderance of the evidence that the property should not be transferred to the federal government for forfeiture, the court shall delay such transfer until a hearing may be held. If the court orders a delay in transfer, no later than ten days after the filing of a petition under this section and

sections 513.649 and 513.651, a hearing shall be held unless the court deems, for good cause shown, that a continuance should be granted. At the hearing, if the prosecutor has proved by a preponderance of the evidence that the investigation or seizure involved more than one state or that the nature of the investigation or seizure would be better pursued under the federal forfeiture statutes, the court shall order that the transfer shall be made.

### CAFRA

CAFRA was enacted on April 23, 2000, and became effective on August 23, 2000.

Pursuant to CAFRA the Government must commence either a non-judicial forfeiture (Administrative) or a judicial forfeiture after the seizure of the property

18 USC 983 (a)(1)(A). The Government shall file a complaint for forfeiture in the manner set forth in the Supplemental Rules for Certain Admiralty and Maritimes Claims. The US Attorney Manual Section 9-112.220 Policy on The Deadline for Filing a Civil Forfeiture Action in Cases That Do Not Begin As Administrative Forfeiture Proceedings: In Cases where Administrative Forfeiture is possible under 19 USC 1607 but the Government has elected for whatever reason to bypass the administrative process, the US Attorney should file a civil or criminal action for forfeiture of the property within 150 days of the seizure of the property.

### Asset Forfeiture Policy Manual

## Asset Forfeiture Policy Manual Chapter 14 Seizures by State and Local Law

### Enforcement Section B.1

Federal Adoption request: All state and local seizures that qualify for adoption under the Attorney General's order and are presented for adoption to either a Department of Justice or Department of Treasury federal agency must be completed on a form entitled Request for Adoption form states as a general rule if state or local agency has seized property as part of an ongoing state criminal investigation and if the criminal defendants are being prosecuted in state court then the forfeiture action should also be pursued in state court.

B.3 30 day rule for presentation for federal adoption: A federal law enforcement agency may be required to commence administrative forfeiture proceedings by sending written notice not more than 90 days after the date of seizure by the state or local law enforcement agency. 18 USC 983(a)(1)(A)(iv). In order to allow ample time for federal agencies to process adoptive seizures, state and local agencies must request federal adoption within 30 calendar days of seizure. Any waiver of the 30-day rule must be approved in writing by a supervisory-level official of the adopting agency where the state or local agency requesting adoption demonstrates the existence of circumstances justifying the delay.

B.4 Direct Adoption by the US Attorney: If no federal agency will adopt a seizure of property that qualifies for adoption under the Attorney General's order and the US Attorney wants to include the property in a judicial forfeiture the US Attorney

must request that the Asset Forfeiture and Money Laundering Section (AFMLS) authorize direct adoption of the seizure.

**Section III Seizures by State and Local Law Enforcement Law Enforcement With Sufficient Federal Involvement:**

A.1 Seizures by a federal task force officer. This category of seizure generally occurs when an asset is seized by a sworn law enforcement officer employed by a state or local law enforcement agency but assigned either part time or full time to a federal law enforcement agency as a task force officer (TFO). In order for a seizure to qualify as a TFO seizure, the following criteria must be met:

The TFO's actions and authorizations for those actions at the time of seizure were

related to his/her task force duties and were not conducted solely pursuant to his/her duties authorizations as a state or local law enforcement agent.

On the morning on November 27, 2013 the seizure was made solely by Neosho Police Department. No MSHP nor federal task force officers.

In re US Currency \$844,520.00 136 F.3d 581 (8<sup>th</sup> Cir. 1998) the Court stated:

In July 1993, the Missouri Legislature took strong action to assert state judicial control over this process. See Von Kaenel, Missouri Ups the Ante in the Drug Forfeiture "Race to the Res," 72 WASH. U.L.Q. 1469 (Fall 1994). Among many

amendments to the Criminal Activity Forfeiture Act, the Legislature enacted § 513.647, which provides in relevant part:

1. No state or local law enforcement agency may transfer any property seized by the state or local agency to any federal agency for forfeiture under federal law until the prosecuting attorney and the circuit judge of the county in which the property was seized first review the seizure and approve the transfer to a federal agency....
2. Prior to transfer, in an ex parte proceeding, the prosecuting attorney shall file with the court a statement setting forth the facts and circumstances of the event or occurrence which led to the seizure of the property and the parties involved, if known. The court shall certify the filing, and notify by mailing to the last known address of the property owner that his property is subject to being transferred to the federal government and further notify the property owner of his right to file a petition stating legitimate grounds for challenging the transfer....

With that background, let us examine what apparently happened in this case. Cole's car was stopped by a state patrol officer for speeding. He consented to a search of the car, and a concealed compartment was found. The officer arrested Cole, took him to the Highway Department, and called a member of the Highway Patrol Drug and Crime Control Unit, who in turn called a DEA Special Agent. They found the currency in question when the secret compartment was opened. Federal forfeiture proceedings were begun without an adoption, no doubt on the theory that the DEA

agent had seized the currency. But that is pure fallacy. Cole, his vehicle, and everything in it were seized by the Missouri Highway Patrol when its officer made the initial traffic stop. By summoning a DEA agent and then pretending DEA made the seizure, the DEA and Highway Patrol officers successfully conspired to violate the Missouri Constitution, § 513.647 of the Missouri Revised Code, and a Missouri Supreme Court decision. Such action by federal law enforcers is contrary to the spirit, if not the letter, of the Department of Justice January 15, 1993, Adoption Policy and Procedure, issued by the Executive Office for Asset Forfeiture as Directive No. 93-1. See 1 David B. Smith, PROSECUTION AND DEFENSE OF FORFEITURE CASES, App. 7C (1997). This Directive 584\*584 urges deference to the kind of state court proceedings that § 513.647 requires state and local law enforcers in Missouri to commence.

In my view, when potentially forfeitable property has been seized entirely by the efforts of state or local law enforcement officials, it is bad policy for federal law enforcers to use their broad forfeiture powers to frustrate state forfeiture law. More narrowly, it is beyond DEA's jurisdiction to administratively forfeit property that, by reason of Mo. REV. STAT. § 513.647, is within the jurisdiction of a state court, unless the state court has yielded its jurisdiction over the res to federal authority. While I agree that Cole may not collaterally attack the forfeiture in this case, I would void any such federal forfeiture that is timely presented for direct judicial

review.

In Madewell v Downs 68 F.3d 1030, 1042( 8<sup>th</sup> Cir. 1995):

Although Missouri now has a statute specifically requiring a turnover order from the court before transfer of property to federal control,[15] it did not have such a statute 1043\*1043 at the time of the events in question here. That it assuredly does do, but requiring a court order for forfeiture pursuant to state law is a far cry from requiring an order for transfer of seized property to federal control for forfeiture pursuant to federal law. Here no state forfeiture, or "CAFA procedure," pursuant to MO.REV. STAT. § 513.607 was ever commenced.

Since the State actors knowingly and intentionally failed to start forfeiture proceeding which are mandatory ( State v Ebernez 805 SW 2d 359,360( Mo. Ct. App. ED 1991),State v Hampton 817 SW 2d 470, 471-473 ( Mo. Ct. App. WD 1991) does the state court lose in rem jurisdiction or has the Eighth Circuit allowed

a "safe passage" to transfer seize property. When state actors are violating the law is it the court duty to encourage these illegal acts.

#### **REASON FOR GRANTING AN EXTENSION OF TIME**

The time to file a Petition for Writ of Certiorari should be extended for Sixty days for these reasons:

1. This case presents extraordinary important issues warranting a carefully prepared petition. The decision by the Eighth Circuit Court goes against prior precedent of that court. The issues involves fundamental questions of law.

2. There is a minium a substantial prospect that this Court will grant certiorari and indeed a substantial prospect of reversal. In addition to involving extraordinarily important issues the decision of the Court of Appeals is in admitted conflict with the majority of other federal court of appeals and with Missouri highest court. The decision also conflicts squarely within decisions of district court within the boundaries of the Eighth Circuit Court of Appeals thereby subjecting the Court to conflicting judgments on the constitutionality of important issues regarding various laws.

3. Petitioner suffers from chronic pain due to injuries sustains in an accident. These injuries were noted by the AUSA Mr. McGull during sentencing. Petitioner lower back(L-4, S-1,S-2), (L-5, S-1), total left knee replacement and right hip

replacement. To relieve the pain the doctors prescribe the following pain medicines:

1. Hydrocodone

2. Tramadol

3. Butrans 10 Patch

4. Gabepentin

5. Metopol

6. Bacloten

These medicines makes petitioner "loopy" and can not focus. Petitioner must if the Court grant this Motion to "wing" himself off the pain meds to complete this petition. The Sixty day extension will allow accomplish this goal.

5. No meanful prejudice would arise from the extension.

**Conclusion**

For the foregoing reasons the and the extraordinary health issues the time to file a Petition for Writ of Certiorari in this matter should be extended Sixty days to including December 14, 2018.

Respectfully Submitted

Louis A. Hardison

Petitioner- Pro Se

**PROOF OF SERVICE**

14  
15 exhibits  
dit

I Louis A. Hardison do swear that on this date October 10, 2018 as required by Supreme Court 29. I have served enclosed Application For Extension of Time With

Honorable Justice Neil M. Gorsuch. Each party to above proceeding or that party  
counsel party counsel and every other person by depositing a Two Day Priority  
Mail containing the above documents in the US Mail properly addressed to each of  
them.

The names and addressees of those served are as follows:

Solicitor General of the United States, Room 5614, Department of Justice, 950  
Pennsylvania Ave., N. W., Washington, DC 20530-0001

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on this 10th day of October 2018

*Louis Hardison*