

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

WHEELER K. NEFF,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**APPLICATION TO THE HONORABLE SAMUEL A. ALITO, JR. FOR
EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF
CERTIORARI TO THE COURT OF APPEALS FOR THE THIRD
CIRCUIT**

Pursuant to 28 U.S.C. § 2101(d) and Supreme Court Rule 13.5, Applicant Wheeler K. Neff hereby moves for an extension of time of 59 days, up to and including April 1, 2020, for the filing of a petition for writ of certiorari. In support of this request, Applicant offers the following:

1. This Court has jurisdiction to grant this application under 28 U.S.C. § 1254(1).

2. The Petitioner will seek review of the decision of the Court of Appeals for the Third Circuit in *United States v. Neff*, No. 18-2282, which was issued on September 6, 2019. A copy of the court's non-precedential opinion is attached hereto as Exhibit A. The Third Circuit denied Applicant's petition

for rehearing on November 5, 2019. A copy of the court's order is attached hereto as Exhibit B.

3. Absent an extension, Applicant's petition for writ of certiorari would be due on February 3, 2020. This application is being filed more than ten days before that date.

4. Applicant was convicted of conspiring to collect unlawful debt in violation of the Racketeer Influenced and Corrupt Organizations Act (RICO) and conspiracy to commit mail and wire fraud. The Government invoked two theories of prosecution: (1) Wheeler Neff conspired with his co-defendant, Charles Hallinan, to collect high interest payday loans that exceeded state usury laws and his agreements with Native American Tribes under the Tribes' sovereign immunity did not insulate him from those state laws; and (2) Wheeler Neff conspired to commit mail and wire fraud by devising a scheme to cause the plaintiffs in a state civil class action lawsuit to settle the case for a lower amount than they were otherwise entitled to recover and thereby defrauded plaintiffs out of their cause of action. Applicant, a nearly 71 year-old man, was convicted on November 27, 2017, and sentenced to 96 months imprisonment.

5. Applicant filed a timely appeal to the Third Circuit and raised two issues relevant to his expected Petition: (1) whether Tribal Sovereign Immunity preempted contrary state regulatory laws such as usury; and (2) whether the Government's mail/wire fraud theory was deficient because an

unvested cause of action is not money or property under Title 18, U.S.C. § 1341 and/or 1343.

6. A petition for writ of certiorari is essential in this case because the Applicant's will present substantial, important, and recurring questions of federal constitutional law for which there are conflicting opinions in the Court of Appeals and confusion in the District Courts. Notably, contrary to the Third Circuit's holding that Tribal Sovereign Immunity does not preempt state usury laws, the Fourth Circuit held in *Williams v. Big Picture Loans*, 929 F.3d 170 (4th Cir. 2019) that Tribal Sovereign Immunity preempts the need to comply with state requirements such as licensing and usury rates. Moreover, contrary to the Third Circuit's decision upholding the government's novel wire fraud theory that an unvested cause of action is traditionally recognized as property, the Ninth and D.C. Circuits have held that traditionally recognized property rights do not vest until a judgment is issued, which would defeat the government's theory of prosecution and is compelled by this Court's decision in *Cleveland v. United States*, 531 U.S. 12 (2000). Applicant also notes that oral argument is currently scheduled to be held before this Court in *Kelly v. United States*, No. 18-1059, which also considers the breadth of the criminal wire fraud statute and will likely bear on Applicant's petition.

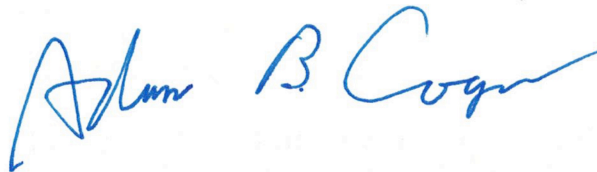
7. Undersigned counsel respectfully seeks this extension of time because of the importance of the issues in this case and the difficulty in communicating with Petitioner in prison.

8. An extension of time will not prejudice Respondent.

9. It should be additionally noted that the Applicant's co-appellant, Charles Hallinan, has similarly filed for an extension of time.

Because good cause exists, Applicant respectfully requests that an extension of time, up to and including April 1, 2020, be granted within which Applicant may file a petition for writ of certiorari.

RESPECTFULLY SUBMITTED,



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