

No. 19A\_\_\_\_\_

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In The  
SUPREME COURT OF THE UNITED STATES  
October Term 2019

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AIRBUS HELICOPTERS, INC.,  
*Applicant,*

v.

MARY RIGGS, ET AL.,  
*Respondents.*

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**Application for an Extension of Time Within Which  
to File a Petition for a Writ of Certiorari to the  
United States Court of Appeals for the Ninth Circuit**

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**APPLICATION TO THE HONORABLE  
ELENA KAGAN, AS CIRCUIT JUSTICE**

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February 6, 2020

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## **PARTIES TO THE PROCEEDING**

Petitioner (defendant-appellant below) is Airbus Helicopters, Inc.

Respondents are Mary Riggs, in her capacity as Personal Representative of the Estate of Jonathan Neal Udall, Philip Udall, and Marlene Udall (plaintiffs-appellees below), as well as Matthew Hecker, Daniel Friedman, Brenda Halvorson, Geoffrey Edlund, Elling B. Halvorson, John Becker, Elling Kent Halvorson, Lon A. Halvorson, Papillon Airways, Inc. d/b/a Papillon Grand Canyon Helicopters, Xebec LLC, and Scott Booth (defendants-appellees below).

## **STATEMENT PURSUANT TO RULE 29.6**

Airbus Helicopters, Inc. is a non-governmental corporation. No publicly held corporation owns 10% or more of Airbus Helicopters, Inc.'s stock. Airbus Helicopters, Inc. is wholly owned by Airbus Group, Inc., which in turn is wholly owned by Airbus SE, a publicly held company.

## **APPLICATION FOR EXTENSION OF TIME**

Pursuant to this Court's Rules 13.5, 22, and 30.3, and pursuant to 28 U.S.C. § 2101(c), Applicant Airbus Helicopters, Inc. ("AHI") hereby requests a 30-day extension of time, to and including March 20, 2020, within which to petition for a writ of certiorari in this case. Absent an extension, the petition would be due on February 19, 2020. This application is made at least 10 days before that date.

## **JUDGMENT FOR WHICH REVIEW IS SOUGHT**

The judgment sought to be reviewed is the decision of the United States Court of Appeals for the Ninth Circuit in *Riggs v. Airbus Helicopters, Inc.*, 939 F.3d 981 (9th Cir. 2019) (attached hereto as Exhibit A).

## **JURISDICTION**

The Ninth Circuit issued its decision on September 20, 2019. The court denied AHI's petition for panel rehearing and rehearing *en banc* on November 21, 2019 (unreported order attached hereto as Exhibit B). This Court's jurisdiction will rest on 28 U.S.C. § 1254.

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

AHI respectfully requests a 30-day extension of time, to and including March 20, 2020, within which to file a petition for a writ of certiorari seeking review of the decision of the United States Court of Appeals for the Ninth Circuit. An extension is warranted because of the importance of the issues presented and undersigned counsel's need for additional time to prepare a petition that will assist this Court in deciding whether to grant certiorari.

1. This case concerns the proper interpretation of the “acting under” requirement in the Federal Officer Removal Statute, 28 U.S.C. § 1442(a)(1). AHI is a manufacturer and seller of Airbus helicopters and has also been delegated the authority by the Federal Aviation Administration (“FAA”) to issue certifications on FAA’s behalf—a formal delegation of federal authority that is memorialized by statute, regulation, agency orders, and a memorandum of understanding. *See* 49 U.S.C. § 44702(d)(1); 14 C.F.R. §§ 183.41-.67; Establishment of Organization Designation Authorization Program, 70 Fed. Reg. 59,932, 59,933 (Oct. 13, 2005); FAA, *Organization Designation Authorization Procedures*, Order 8100.15 ¶ 1-1 (2006); *Riggs*, 939 F.3d at 984-85 (majority op.), 990-92 (O’Scannlain, J., dissenting). Plaintiffs assert state-law tort claims arising from the crash of an Airbus helicopter and allege, in pertinent part, that the aircraft’s fuel system did not meet certain crash-resistance standards. AHI removed the action under 28 U.S.C. § 1442(a)(1), on the ground that Plaintiffs’ claims relate to AHI’s role in carrying out the duties delegated to it by FAA.

2. In a 2-1 decision, the Ninth Circuit held that AHI did not qualify for “acting under” status. The majority found that the FAA’s formal delegation of authority was essentially irrelevant and amounted to “mere compliance with federal directives” (or “self-certification”) and was insufficient to support removal under this Court’s decision in *Watson v. Philip Morris Cos.*, 551 U.S. 142 (2007). *Riggs*, 939 F.3d at 988-89 & n.6. Judge O’Scannlain dissented, explaining that the majority opinion “misunderstands the FAA’s regulatory regime and misapplies the Supreme Court’s

decision in *Watson*.” *Id.* at 990 (O’Scannlain, J., dissenting). As Judge O’Scannlain recognized, the “fatal flaw” in *Watson* was that the defendant, despite being heavily regulated, had “no evidence of any delegation of legal authority” from a federal agency, *id.* at 994 (quoting *Watson*, 551 U.S. at 156) (emphasis in original), whereas in this case, there was “clear evidence of delegation,” *id.* at 993. Indeed, the Solicitor General in *Watson* specifically identified the FAA’s delegation scheme as one that *would* support “acting under” status and removal. *Id.* (citing Br. for the United States as Amicus Curiae Supporting Petitioners, *Watson v. Philip Morris Cos.*, 551 U.S. 142 (2007) (No. 05-1284), 2007 WL 621847, at \*26).

3. AHI’s forthcoming petition will present a substantial question on an important issue—namely, the proper interpretation of *Watson* in cases in which there is a formal delegation of agency authority, and specifically in the important context of the FAA’s regulatory scheme. Further, this is an issue as to which there is considerable confusion and a split among the Circuits. Three courts have addressed this issue and not only have reached different results, but also have adopted *three different rationales*. Compare *Magnin v. Teledyne Cont’l Motors*, 91 F.3d 1424, 1428-29 & n.1 (11th Cir. 1996) (holding that FAA’s express delegation of authority to private individuals gives rise to “acting under” status), with *Lu Junhong v. Boeing Co.*, 792 F.3d 805, 809-10 (7th Cir. 2015) (rejecting removal based on the theory that a private party must be engaged in “rule making rather than rule compliance” in order to be “acting under” a federal officer), with *Riggs*, 939 F.3d at 989 (finding

removal improper but stating that “we decline to adopt the rule-making-rule-compliance distinction articulated by the Seventh Circuit”).

4. There is good cause for a 30-day extension of time to file a petition for writ of certiorari in this case. An extension is warranted because of the importance of the issue presented, which requires careful attention and time to prepare the petition. The extension of time also is necessary because of the press of other client business. For example, undersigned counsel of record will present oral arguments in *NASDAQ Stock Market, LLC v. SEC*, No. 18-1292, and *NASDAQ Stock Market, LLC v. SEC*, No. 18-1327, in the U.S. Court of Appeals for the D.C. Circuit on February 18, 2020, and is responsible for preparing the opening brief in *J.P. v. Barr*, No. 19-56400, due on February 21, 2020, in the U.S. Court of Appeals for the Ninth Circuit. Other counsel responsible for working on the petition, Mr. Carpenter, likewise has conflicting obligations, including presenting oral argument in the California Court of Appeal on February 21, 2020, and handling briefing on two separate matters headed for trial, for which there are hearings on February 5, 6, 7, and 19, 2020, as well as several pre-trial filing deadlines between now and February 19, 2020. Moreover, an extension will not cause any material delay in the consideration of the petition; with or without an extension, the petition will be set for conference before the end of this Term and, if the petition is granted, the case would not be set for argument until next Term.

## CONCLUSION

For these reasons, AHI respectfully requests an extension of 30 days, to and including March 20, 2020, within which to file a petition for a writ of certiorari in this case.

Dated: February 6, 2020

Respectfully submitted,

*/s/ Carter G. Phillips* \_\_\_\_\_

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