

No. 19-_____

IN THE SUPREME COURT OF THE UNITED STATES

CHARLES M. HALLINAN,

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 Charles M. Hallinan 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. Petitioner will seek review of the decision of the Court of Appeals for the Third Circuit in *United States v. Hallinan*, No. 18-2539, 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 A copy of the court's non-precedential opinion is attached hereto as Exhibit A. The Third Circuit denied Applicant's petition for rehearing on November 5, 2019.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 debts in violation of the Racketeer Influenced and Corrupt Organizations Act (RICO), wire fraud, and related charges. The Government invoked two theories of prosecution: (1) Mr. Hallinan collected 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) Applicant's alleged misleading statements made during the course of a civil class action constituted wire fraud because it caused plaintiffs to settle the case for a lower amount and thereby defrauded plaintiffs out of their right to sue. Applicant, a 78 year-old man, was convicted on November 27, 2017, and sentenced to 168 months' in prison, an effective death sentence.

5. Applicant filed a timely appeal to the Third Circuit and raised two issues relevant to his expected Petition: (1) the District Judge's refusal to charge the jury on willfulness for the RICO counts violated Petitioner's constitutional right to due process; and (2) the Government's wire fraud theory was deficient because an unvested cause of action is not traditionally recognized as money or property.

6. A petition for writ of certiorari is essential in this case because Applicant is serving a sentence that will likely last his entire life, and his petition 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 a willfulness instruction is not required for the collection of an unlawful debt under RICO, Courts in the Second and Fifth Circuit have approved of a willfulness instruction for that same charge, and such an instruction is required by this Court's decision in *United States v. Liporata*, 471 U.S. 419 (1985), among others. 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, counsel's obligations in other cases (which include a trial that is set to begin on March 2, 2020, in the Eastern District of New York), and the difficulty in communicating with Petitioner in prison. In addition, Petitioner was diagnosed with two forms of aggressive cancer shortly before his sentencing, has experienced other significant health issues, and has been receiving treatment by the Bureau of Prisons, which further hinders timely communication.

8. An extension of time will not prejudice Respondent.

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,

/s Robert Smith

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