

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2021

CLARK COUNTY BANCORPORATION, Petitioner,

v.

FEDERAL DEPOSIT INSURANCE CORPORATION,
as Receiver for Bank of Clark County, Respondent.

**MOTION FOR EXTENSION OF TIME
TO FILE A PETITION FOR WRIT OF CERTIORARI
PURSUANT TO RULE 13(5)**

To the Honorable Elena Kagan, Associate Justice of the Supreme Court of the United States and Circuit Justice to the United States Court of Appeals for the Ninth Circuit:

1. Petitioner Clark County Bancorporation ("Petitioner") respectfully moves pursuant to Supreme Court Rule 13(5) for a fifty-seven (57) day extension of time within which to file its petition for writ of certiorari with this Court.
2. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).
3. This application is being submitted more than ten (10) days prior to the current due date for Petitioner's petition for writ of certiorari. The pertinent dates are as follows:
 - a. On **May 21, 2021**, the United States Court of Appeals for the Ninth Circuit issued the decision attached as Exhibit A in the matter *Clark Cnty. Bancorporation v. Fed. Deposit Ins. Corp.*, No. 19-35097 (9th Cir. May 21, 2021) ("the Memorandum Order").
 - b. On **July 29, 2021**, the Ninth Circuit denied Petitioner's Petition for Rehearing *En Banc* by the order attached as Exhibit B.

- c. Unless extended, Petitioner's deadline to file its petition for writ of certiorari will be **October 27, 2021** pursuant to Supreme Court Rule 13(3).
- d. If this motion is granted, Petitioner's new deadline to file its petition for writ of certiorari will be **December 23, 2021**.

4. As grounds for this motion, Petitioner states as follows:

- a. Only yesterday, October 14, 2021, Petitioner retained the undersigned member of the Supreme Court Bar to pursue this Court's review.
- b. This case presents an important issue of the failure to adhere to relevant Supreme Court decisions, involving three cases, *Rodriguez v. FDIC, as Receiver for United Western Bank*, 589 U.S. ___, 140 S.Ct 713 (2020), *United States v. Wong*, 575 U.S. 402 (2015) and *Bobby v. Bies*, 556 U.S. 825, 836 (2009).
- c. The Ninth Circuit Memorandum Order conflicts with the Supreme Court Decision in *Rodriguez*, which confirmed that The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") is not applicable to tax refund allocation actions between a parent and subsidiary pursuant to tax allocation agreements.
- d. The Ninth Circuit Memorandum Order engages in federal common lawmaking by disregarding the United States Code, contrary to *Rodriguez*, and the express jurisdiction provided by 12 U.S.C. § 1821(d)(6)(A)(ii).
- e. The Ninth Circuit Memorandum Order conflicts with the Supreme Court Decision in *Wong*, which established that the FIRREA claims filing date is an administrative claims processing rule and is not jurisdictional.

- f. The Ninth Circuit Memorandum Order conflicts with the Supreme Court decision in *Bies* by giving effect to a prior proceeding dismissed for lack of jurisdiction without regard to the change in law found in *Rodriguez* and *Wong*.
- g. The Supreme Court's Order of March 19, 2020 gave all parties 150 days to file their petitions for writ of certiorari in light of the Covid-19 emergency. While this order was rescinded effective July 19, 2021, Petitioner would have been automatically permitted 150 days to file its Petition for Writ of Certiorari had its Petition for Rehearing *En Banc* to the Ninth Circuit been decided only 10 days earlier.
- h. The Covid-19 emergency continues to disrupt Petitioner's and Appellate counsel's operations and delayed its selection of Supreme Court counsel.
- i. Lead Appellate counsel's elderly mother was diagnosed with cancer on June 30, 2021. This has necessitated counsel to travel to and from Florida to assist his mother obtain chemotherapy treatments. This has contributed to the delay in the selection of Supreme Court counsel.
- j. The respondent, Federal Deposit Insurance Corporation, does not have a position at this time as to whether an extension of time to file a petition for certiorari would be appropriate and therefore does not consent to the relief requested

WHEREFORE, Petitioner Clark County Bancorporation respectfully requests a fifty-seven (57) day extension of the due date for its Petition for Writ of Certiorari, which would make its new deadline December 23, 2021.

/s/ W. Scott O'Connell

W. Scott O'Connell
HOLLAND & KNIGHT LLP
10 St. James Avenue, 11th Floor
Boston, Massachusetts 02116
617.573.5860
scott.oconnell@hklaw.com

Dated: October 15, 2021

CERTIFICATE OF SERVICE

I, Scott O'Connell, counsel for petitioner Clark County Bancorporation, hereby certify that I caused copies of the foregoing to be served by e-mail and overnight mail upon counsel for the respondent addressed as follows:

Joseph Brooks, Esq.
Sonia Lorge Levine, Esq.
Legal Division / Appellate Unit
Federal Deposit Insurance Corporation
3501 N. Fairfax Drive, VS-D-7010
Arlington, VA 22226-3500
jobrooks@fdic.gov
slevine@fdic.gov

/s/ W. Scott O'Connell

Scott O'Connell