

No. _____

IN THE
Supreme Court of the United States

INTEGRITY ADVANCE, LLC. and JAMES CARNES,
Applicants,

v.

CONSUMER FINANCIAL PROTECTION BUREAU,
Respondent.

**APPLICATION FOR EXTENSION OF TIME
TO FILE PETITION FOR WRIT OF CERTIORARI**

To the Honorable Neil Gorsuch
Associate Justice of the United States Supreme Court
and Circuit Justice for the Tenth Circuit

Stephen R. McAllister
Counsel of Record
DENTONS US LLP
4520 Main Street, Suite 1100
Kansas City, MO 64111
(816) 460-2400
stephen.mcallister@dentons.com
*Counsel for Applicants Integrity
Advance LLC and James Carnes*

Pursuant to Rule 13.5 of the Rules of this Court, with the good cause set forth below, applicants Integrity Advance, LLC and James Carnes respectfully request a 30-day extension of time to file a petition for writ of certiorari up to and including October 6, 2023. This is petitioners' first request for an extension of time. Counsel for Respondent has been consulted and does not oppose this request.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The judgment for which review is sought is *Integrity Advance, LLC and James R. Carnes v. Consumer Financial Protection Bureau*, No. 21-9521 (10th Cir. Sept. 15, 2022) (App.). The Consumer Financial Protection Bureau (CFPB) brought an enforcement action against Integrity Advance, LLC, a payday lender that operated from 2008 to 2013 and its chief executive officer, James R. Carnes, alleging violations of federal laws. An ALJ heard the case, found violations, and recommended substantial restitution and fines against both petitioners.

While the petitioners' appeal to the Director of the CFPB was pending, the Supreme Court of the United States decided *Lucia v. SEC*, 138 S. Ct. 2044 (2018), which invalidated the SEC's appointment system for ALJs. The CFPB's appointment system suffered the same flaws so a new proceeding before a new, properly-appointed ALJ was ordered. However, the new ALJ refused to conduct a hearing, permit witnesses to testify, or allow petitioners to alter or amend any of their legal theories and defenses. Instead, the new ALJ decided the matter on the previous ALJ proceeding record. The new ALJ found violations by Integrity and Carnes, and recommended restitution of over \$100 million against Integrity and

joint and several liability for Carnes of \$38.4 million. The new ALJ also recommended multi-million dollar fines against each petitioner.

Petitioners appealed to the Director, who essentially adopted the new ALJ's recommendations except for reducing the total restitution to \$38.4 million. The Director agreed with the recommendation to impose civil penalties of \$7.5 million on Integrity and \$5 million on Carnes. Because the Supreme Court had decided *Seila Law LLC v. CFPB*, 140 S. Ct. 2183 (2020) by the time of the appeal, the Director also ratified the original Notice of Charges and prosecution of the action which had been filed and conducted when the CFPB had an unconstitutional structure.

Petitioners appealed to the United States Court of Appeals for the Tenth Circuit, arguing that the failure to conduct a de novo proceeding—including a hearing where witnesses could testify and the parties were free to alter or amend their previous legal arguments and defenses—was not what the Supreme Court had in mind as a remedy under *Lucia v. SEC*. Petitioners made several other arguments as well. The Tenth Circuit affirmed the Director's decision on September 15, 2022 (App. A). Petitioners thereafter filed a timely petition for rehearing and rehearing en banc. The Court ordered the CFPB to respond to that petition but ultimately denied review on November 1, 2022 (App. B.)

JURISDICTION

This Court's jurisdiction over a timely filed petition for certiorari would be invoked pursuant to 28 U.S.C. § 1254(1). Under this Court's Rules 13.1, 13.3, and

30.1, the deadline for Integrity Advance and Carnes to file a petition for a writ of certiorari is January 30, 2023. This Application is filed more than ten (10) days in advance of that date, in accordance with this Court's Rule 13.5.

REASONS JUSTIFYING AN EXTENSION OF TIME

In accordance with this Court's Rule 13.5, Integrity and Carnes state that the "specific reasons why an extension of time is justified" are as follows:

1. This case involves substantial questions about the CFPB's authority in remedying violations of the ALJ appointment process following this Court's decision in *Lucia v. SEC*. Here, the CFPB denied petitioners a de novo hearing before a properly-appointed ALJ, refused to hear witnesses or consider additional evidence, refused to allow petitioners to alter, amend, or supplement their legal arguments and defenses, and simply ruled on the basis of the record created before the prior, improperly-appointed ALJ.

2. The Tenth Circuit failed to remedy the CFPB's inadequacies by upholding this truncated proceeding as a sufficient remedy for a Lucia violation. A number of other courts have not been so passive, and have insisted on de novo ALJ proceedings to remedy a Lucia violation. In addition, a recent Fifth Circuit decision has called into question the constitutionality of the CFPB's funding and appropriations, with the result that a CFPB rule was stricken. Here, the unconstitutionality of the CFPB funding would permeate the entire prosecution which cost CFPB a considerable sum of money. These issues are substantial, important, and may well merit this Court's plenary review.

3. Lead counsel for the filing of the petition for writ of certiorari was only engaged for this matter in December, 2022. Given the holidays and a substantial workload that includes numerous deadlines between now and the petition deadline of January 30, 2023, lead counsel requests an extension of 30 days to properly research and address the substantial and important issues for presentation to the Court.

CONCLUSION

For the foregoing reasons, Integrity Advance, LLC. and James R. Carnes respectfully request a 30-day extension, to and including March 1, 2023, to file a petition for writ of certiorari in this case.

Respectfully submitted,
/s/ Stephen R. McAllister
Stephen R. McAllister
Counsel of Record
DENTONS US LLP
4520 Main Street, Suite 1100
Kansas City, MO 64111
(816) 460-2400
stephen.mcallister@dentons.com
*Counsel for Applicants Integrity
Advance, LLC and James R. Carnes*

January 11, 2023

CERTIFICATE OF SERVICE

I, Stephen R. McAllister hereby certify that on January 11, 2023, I served a copy of the foregoing Application for Extension of Time to File Petition for Writ of Certiorari, via FedEx Overnight delivery and the CM/ECF system for the Supreme Court of the United States on the following:

Kevin E. Friedl
Senior Counsel
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

/s/ Stephen R. McAllister
Stephen R. McAllister
Counsel of Record
Dentons US LLP
4520 Main Street, Suite 1100
Kansas City, Missouri 64111
Telephone: (816) 460-2400
Email: stephen.mcallister@dentons.com

Counsel for Applicants Integrity Advance
LLC and James R. Carnes