

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

SABENA PURI,

Petitioner,

v.

UNITED STATES OF AMERICA

APPLICATION TO THE HONORABLE ELENA KAGAN FOR AN EXTENSION
OF TIME WITHIN WHICH TO FILE A PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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(Supreme Court Bar application filed
and pending decision)

Counsel for Applicant

MARCH 14, 2023

To the Honorable Elena Kagan, as Circuit Justice for the United States Court of Appeals for the Ninth Circuit:

Sabena Puri respectfully requests that her deadline for filing a petition for writ of certiorari in this matter be extended by sixty days, to and including June 4, 2023. The Court of Appeals issued its decision on August 22, 2022. Puri filed a petition for rehearing *en banc* on December 9, 2022, which the Court of Appeals denied on January 5, 2023. Without an extension, Puri's petition for certiorari would therefore be due on April 5, 2022. Puri files this application at least ten days before that date. *See* S. Ct. R. 13.5. This Court has jurisdiction over the judgment under 28 U.S.C. § 1254(1).

BACKGROUND

This case concerns the scope of a district court's review of an IRS summons issued pursuant to a tax information treaty request made by a foreign government. Since at least *United States v. Powell*, 379 U.S. 48 (1964), this Court has held that a district court must quash a summons issued for a bad faith or abusive purpose. *Id.* at 58. But in cases where the Internal Revenue Service ("IRS") issues a summons pursuant to a tax information treaty request, the IRS and the Government take the position that the Court must contradict this instruction and may not inquire at all into whether the foreign government acts with an abusive purpose. Rather, the court looks only to the good faith purpose of the IRS itself, and that good faith purpose is established if the IRS simply acts in response to a treaty request. This is so despite the IRS's acknowledgment that it conducts no inquiry into whether the

requesting government acts with a good faith and non-abusive purpose. While this approach appears to squarely conflict with *Powell*, the Government and lower courts have justified it based upon what Puri contends is over-broad reading of language from this Court's decision in *United States v. Stuart*, 489 U.S. 353 (1989).

In the proceedings below, Puri proffered evidence that the Republic of India had requested the summons at issue in bad faith, for the purpose of harassment and for the purpose of gaining leverage in collateral, non-tax related matters. The district court did not consider Puri's showing, however. The district court instead held it irrelevant in light of *Stuart*. The Ninth Circuit affirmed, joining the Fifth Circuit in *Mazurek v. United States*, 271 F.3d 226 (5th Cir. 2001). This has created a situation in which a taxpayer can approach the district court with conclusive evidence of a requesting nation's bad faith and an improper purpose behind an IRS summons, but leave without relief. Following *Puri* and *Mazurek*, the district court would hold itself powerless to consider the taxpayer's evidence, and allow its process to be coopted to further the foreign government's abusive purpose. This runs squarely contrary to *Powell*'s admonition that "[i]t is the court's process which is invoked to enforce [an IRS] summons and a court may not permit its process to be abused." 379 U.S. at 58.

Puri suspects that the Court may not have intended *Stuart* to go this far. Puri's case presents an ideal vehicle for the Court to clarify the relationship between *Powell* and *Stuart*, and to confirm a district court's inherent authority to

police bad faith abuse of its process, including orders enforcing IRS summonses issued pursuant to treaty requests.

REASONS FOR GRANTING AN EXTENSION OF TIME

The time to file a petition for writ of certiorari should be extended by sixty days for the following reasons: (1) personal hardships have prevented Puri from deciding whether to retain additional or different counsel; and (2) the press of Puri's current counsel's other business has prevented counsel from meeting the present deadline:

1. This case presents an important issue that warrants a carefully prepared certiorari petition. Permitting Puri additional time to do so would allow for a more effective and more concise presentation in the forthcoming petition.

2. Applicant Puri has been evaluating whether to retain additional or separate counsel to assist in the preparation of the certiorari petition. This process has taken longer than typical because Puri has been subject to considerable personal stress and distraction due to a February 2 fire that severely damaged her family's house in Delhi, India since Puri's petition for rehearing *en banc* was denied. She has accordingly been unable to devote the time to this decision that she otherwise would have and that the importance of the decision warrants.

3. Moreover, Puri's present counsel requires additional time to prepare her petition in this case.¹ Puri's counsel has had preexisting professional obligations

¹ Derick Vollrath from the law firm of Marcus Neiman Rashbaum & Pineiro LLP will draft the Petition for Certiorari. He moved for membership in the Supreme Court Bar on March 8, 2023. The obligations referred to in this motion are his.

that have prevented and will prevent him from devoting the full attention this matter warrants. Specifically, Puri's counsel points to the following matters

a. Preparation for and conduct of a half-day summary judgment hearing on January 6, 2023, in the matter of *Sellers v. Bear's Club Founding Partners LLC*, Case No. 50-2019-CA-003455XXXXMB in the Circuit Court for Palm Beach County, Florida.

b. Preparation for and conduct of depositions, multiple discovery hearings, and mediation in the matter of *Clark v. United States*, Case No. 21-cv-82056, before the United States District Court for the Southern District of Florida.

c. Preparation for and conduct of a half-day "Fast Track" settlement conference with the IRS on behalf of a taxpayer involving international trust penalties.

d. Preparation of a fact-intensive response to an Order to Show Cause on behalf of an enjoined tax return preparer in the matter of *United States v. Hernandez*, Case No. 18-20783-CIV, in the United States District Court for the Southern District of Florida.

e. Briefing in support of a motion to dismiss in the matter of *McHugh v. Sykes*, Case No. 22-cv-1685, pending in the United States District Court for the Northern District of Georgia.

f. Preparation for an evidentiary hearing (continued at the last minute upon opposing counsel's request) in the matter of *Doe v. Neverson*, Case No. 2021-026889-CA-01, pending in the Circuit Court for Broward County, Florida.

g. Numerous other non-public obligations, previously scheduled and emergent, in criminal and tax investigations.

3. Additionally, Counsel has at least the following responsibilities during the month of March, which will make intensive preparation of a certiorari petition during this time difficult:

a. Continuing discovery production and briefing obligations in *Clark v. United States*, Case No. 21-cv-82056, before the United States District Court for the Southern District of Florida, including coordination of expert discovery.

b. Post-judgment motions due to be filed in *Sellers v. Bear's Club Founding Partners LLC*, Case No. 50-2019-CA-003455XXXXMB before the Circuit Court for Palm Beach County, Florida.

c. Preparation and conduct of an evidentiary hearing in the matter of *United States v. Hernandez*, Case No. 18-20783-CIV, in the United States District Court for the Southern District of Florida, set for April 11, 2023.

d. Counsel will continue to have to address emergent issues related to his non-public tax and criminal investigations practice.

CONCLUSION

For the foregoing reasons, Applicant Puri respectfully requests that her time to file a petition for a writ of certiorari in this matter be extended sixty days, to and including June 5, 2023.

Date: March 14, 2023

/s/ Scott E. Schutzman

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CERTIFICATE OF SERVICE

A copy of this application was served by U.S. Mail to the Solicitor General of the United States in accordance with Supreme Court Rule 22.2 and 29.4, at the following address:

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