

App. No. \_\_\_\_

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In The  
Supreme Court of the United States  
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Sally Jim and the Miccosukee Tribe of Indians of Florida

*Petitioners,*

v.

The United States of America,

*Respondent.*

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PETITIONERS' APPLICATION TO EXTEND TIME TO  
FILE PETITION FOR A WRIT OF CERTIORARI  
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**To the Honorable Clarence Thomas, as Circuit Justice for the United  
States Court of Appeals for the Eleventh Circuit:**

Petitioners Sally Jim and the Miccosukee Tribe of Indians of Florida<sup>1</sup> (the “Miccosukee Tribe”) respectfully request that the time to file a petition for a writ of certiorari be extended sixty days from November 7, 2018 to and including January 7, 2018. The U.S. Court of Appeals for the Eleventh Circuit issued its judgment on June 4, 2018. App. A, *infra*. On August 9, 2018, the Eleventh Circuit denied petitioners’ timely request for panel rehearing. App. B, *infra*. Absent an extension, the petition,

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<sup>1</sup> The Miccosukee Tribe is a federally-recognized sovereign Indian tribe. As a result, it has no parent company and no public company owns any interest in it.

therefore, would be due on November 7, 2018. Petitioners file this application at least 10 days before that date. *See* S. Ct. R. 13.5.

### **Background**

In July 2014, the U.S. Government (the “Government”) filed, in the U.S. District Court for the Southern District of Florida, a one-count complaint against Sally Jim, a member of the Miccosukee Tribe, seeking to reduce to judgment its assessment of Ms. Jim’s 2001 taxable income. In the lawsuit, the IRS challenged the Miccosukee Tribe’s system of providing distributions to its members, which Ms. Jim received in 2001 on her own behalf, as well as for her husband and two minor children.

Ms. Jim and the Miccosukee Tribe—as an intervenor—raised several defenses. Relevant to its forthcoming petition, petitioners argued that the recently enacted Tribal General Welfare Exclusion Act of 2014 (“Tribal GWE Act”) rendered all or a portion of distributions made to tribal members, including those made to Ms. Jim, non-taxable. Enacted in 2014, the Tribal GWE Act defined criteria for non-taxable “Indian general welfare benefits.”<sup>2</sup> 26 U.S.C. § 139E(b). As codified, Congress wanted “deference...be given to Indian tribal governments for the programs administrated and authorized by the tribe to benefit the general welfare of the tribal community.” Tribal GWE Act of 2014, 128 Stat 1883, 1884.

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<sup>2</sup> Under the act, distributions made to tribal members are “Indian general welfare benefits” if the benefits: (1) are administered according to set guidelines; (2) do not discriminate in favor of members of the tribe’s governing body; (3) are available to any eligible tribal member; (4) are for the promotion of general welfare; (5) are not lavish or extravagant; and (6) are not compensation for services. *See* 26 U.S.C. § 139E(b).

The District Court granted summary judgment in favor of the Government,<sup>3</sup> regarding the applicability of the Tribal GWE Act. The District Court held that the Tribal GWE Act does not apply to the distributions the Tribe made to Ms. Jim and her family members. The District Court reasoned that because the distributions were not based on the needs of individual tribal members, they are outside of the meaning of “general welfare.” App. C, at 13. The District Court also found that, as a matter of law, the distributions were “lavish and extravagant.” *Id.* at 15. Ms. Jim and the Tribe appealed.

On June 4, 2018, a panel of the Eleventh Circuit affirmed the District Court. In so doing, the panel ignored whether the distributions fit within the parameters of the Tribal GWE Act, and instead focused on whether the Tribal GWE Act applied at all. *See* App. A, at 14-17. The panel held that distributions derived from gaming revenue are taxable because the Indian Gaming Regulatory Act (“IGRA”) requires the taxation of such income and in enacting the Tribal GWE Act, “Congress expressed no intent to release the per capita payments of gaming revenue from federal taxation.” *Id.* at 16. The Eleventh Circuit’s decision would subject Ms. Jim to tax on all of the distributions the Tribe made to her and her family members.

On August 9, 2018, the court denied petitioners’ timely request for panel rehearing.<sup>4</sup> App. B, *infra*.

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<sup>3</sup> The matter proceeded to trial on other issues, some of which may be presented in the anticipated petition for a writ of certiorari.

<sup>4</sup> The petition for panel rehearing raised issues other than the Tribal GWE. Some of those issues may be raised in petitioner’s petition for a writ of certiorari.

## Reasons for Granting an Extension of Time

The time to file a petition for a writ of certiorari should be extended for sixty days for two reasons:

1. This issue is of great importance not only for the Miccosukee Tribe and its members, but also for Indian tribes throughout the United States that face significant uncertainty regarding the proper interpretation of the Tribal GWE Act. Indian tribes lobbied in support of the Tribal GWE Act, viewing it as a step forward for tribal self-governance. Once the Tribal GWE Act was enacted, many Indian tribes interpreted the statute's plain text as affording tribal governments significant authority and flexibility in designing welfare programs for the benefit of their members. The Eleventh Circuit's decision reverses that progress, drastically reducing the capacity of tribal governments to create and implement welfare programs for the benefit of their members. Similarly, the Eleventh Circuit's decision jeopardizes tribal welfare programs created and implemented in express reliance on the protection of the Tribal GWE Act.


For this reason, several other Indian tribes and tribal advocacy organizations have expressed a desire to weigh in on what could be a sweeping change in their governing autonomy. Petitioners and the intended *amici* need time to coordinate efforts and streamline issues to raise to the Court. An additional sixty days, placing the deadline to January 7, 2019, provides sufficient time to coordinate, prepare and submit *amici* briefs that may aid the Court's consideration of the issues related to the Tribal GWE, while also reducing the quantity of briefing.

2. No prejudice will result from this request for an extension. The Government has a valid judgment, and Ms. Jim has posted a bond for payment of that judgment. The Government runs no risk of being unable to receive that tax revenue, regardless of whether petitioners file in November or January.

### Conclusion

For the foregoing reasons, the time to file a petition for a writ of certiorari in this case should be extended for sixty days to and including January 7, 2018.

Respectfully submitted,



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