

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

WALLACE DIXON COX; LISA COX,

Defendants - Appellants.

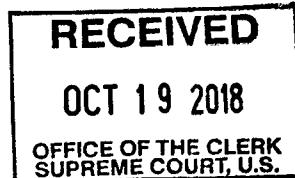
v.

UNITED STATES OF AMERICA; UNITED STATES OF AMERICA, Beneficiary;
UNITED STATES ATTORNEY JOHN STUART BRUCE, Substitute Trustee,

Plaintiffs - Appellees,

APPLICATION TO EXTEND THE TIME TO FILE A WRIT OF CERTIORARIS TO
THE UNITED STATES SUPREME COURT

COMES NOW PETITIONERS, by and through their undersigned counsel,
and moves for extension of time to file a Writ of Certioraris to
the United States Supreme Court. In support thereof, Petitioner
would state:



Procedural History

The United States brought a judicial foreclosure action on property securing promissory notes signed by Wallace Dixon Cox and Lisa Cox as part of the settlement of an earlier civil *in rem* forfeiture case. The district court granted the government's motion for judgment on the pleadings and the Coxes appealed alleging that an affidavit filed by Mr. Cox created a genuine issue of material fact that precluded judgment on the pleadings and that the promissory notes were the result of an unlawful settlement agreement and that the district erred by failing to rule on their Rule 12(b) (6) motion.

Nature of Case

The U.S. Government brought a civil *in rem* forfeiture action against the Petitioners as a result of their involvement in illegal gambling operations, seeking the forfeiture of "property constituting or derived from proceeds traceable to violations of 18 U.S.C. §§ 1955 and 1956." In December 2010, the Coxes attorney, without the Coxes consent and knowledge of the term of the settlement, signed settlement agreement with the government in which forfeit certain properties of the Coxes, including money in bank accounts, gambling machines, trucks, an airplane, and all their real property. The terms of the proposed settlement agreement, signed by their attorney, gave the Coxes three years to pay the required sum. In the event they failed to

pay, the government had "the right to immediately foreclose on" certain properties. The Coxes also agreed to waive their right to further contest the forfeitures.

Shortly after the settlement agreement was signed by the attorney in the civil forfeiture action, the government charged the Coxes with the criminal offense of conspiracy to commit money laundering. Both plead guilty. Wallace Cox was sentenced to thirty-three months' imprisonment and Lisa Cox to three years' probation. During this time, the Coxes, as a result of Coxes prison sentence, were unable to pay the entire amount before the three-year period expired.

B.

On September 3, 2015, the government filed a complaint seeking judicial foreclosure of the various properties securing the promissory notes. The Coxes filed a motion for extension of time to answer along, with an affidavit from Wallace Cox in support of their motion, which stated that the Coxes attorney had told them the settlement agreement in the civil forfeiture action would resolve their case without criminal or further civil charges and that "the proposed agreement was signed by their attorney, without their signature." The district court allowed their motion based on their affidavit showed Merit to their claim.

The Petitioners' answer and counterclaim, included Motions

to dismiss pursuant to Rule 12(b) (6), 12(c), as well as the claims that the forfeiture of all their property, both real property and personal violated the Excessiveness Clause of the 8th Amendment to the U.S. Constitution and that the civil forfeiture of proceeding constitutes punishment and the criminal proceeding based on the same transactions in which Petitioners received active criminal sentence constituted double jeopardy.

The District Court granted the Government Motion for Judgment on the pleadings and dismiss all of Petitioners claims alleged in their pleadings. The District Court stated that it could not find the Petitioners Affidavit "that their attorney signed the contract with the government without their consent or knowledge", although the Government, in its brief stated that the Coxes Affidavit was in the record, as reference by Petitioners in their pleadings and motions. The Court of Appeals affirmed the District Court decision in an unpublished opinion.

The Court should grant the extension based on extraordinary medical record and circumstances as follows:

- a. The undersigned counsel vision had been impaired because he under went surgery on August 8, 2018 to improve his vision.
- b. That counsel has to use a magnifying glass and other vision aids and to prepare these motions.

c. Since his surgery the undersigned counsel, has had complications from healing and is unable to read clearly due to his continued visual. As a result he is scheduled for additional surgery on November 7, 2018.

d. On October 12, 2018, the undersigned counsel was diagnosed with Vertigo which further complicated his problems.

The Writ of Certiorari should be granted because:

The District Court, in deciding and ruling on the Governments Motion for judgment on the pleadings, overlooked the Coxes affidavit in support of their response to the Governments Motion. There is a likelihood that the District Court would have ruled differently, if he had reviewed the Coxes Affidavit because the affidavit showed that there were disputed issues of material facts.

The District Court overlooked or disregarded the Coxes Motion in their answer and counterclaim to dismiss for failure to state a claim and the Governments Civil Forfeiture action complaint should be dismissed pursuant to 12(b)(6) for failure to state a claim, pursuant to 28 U.S.C. Rule 12(b). Such a motion may be made before judgment, to challenge the jurisdiction of the Court.

The granting of this motion for extension of time will not prejudice the rights of either party. The undersigned counsel respectfully requests this Court to grant the relief and allow

the Appellant's an extension of time of sixty (60) days to file
their writ of certiorari.

This 16 day of October, 2018.

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