

**IN THE  
SUPREME COURT OF THE UNITED STATES**

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No. \_\_\_\_

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JAMESTOWN S'KLALLAM TRIBE AND PORT GAMBLE S'KLALLAM TRIBE,  
*Applicants,*

v.

LUMMI NATION,

*Respondent.*

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

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Pursuant to Supreme Court Rule 13(5), the Jamestown S'Klallam Tribe and the Port Gamble S'Klallam Tribe (Applicants) hereby move for an extension of time of 60 days, to and including December 17, 2021, for the filing of a petition for writ of certiorari. Unless an extension is granted, the deadline for filing the petition for certiorari will be October 18, 2021.

In support of this request, Applicants state as follows:

1. The United States Court of Appeals for the Ninth Circuit rendered its decision on June 3, 2021 (Exhibit 1), and denied a timely petition for rehearing on July 20, 2021 (Exhibit 2). This Court has jurisdiction under 28 U.S.C. §1254(1).

2. This case concerns the interpretation of federal treaties governing tribal fishing rights in the Pacific Northwest near Seattle. The relevant treaties guarantee the rights of Applicants and other tribes to continue fishing in their traditional or

“usual and accustomed” fishing grounds. Disputes over the extent of each tribe’s traditional fishing grounds have long been governed by a procedural framework established in a decision and decree issued by a federal district court in the Western District of Washington. *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), *aff’d*, 520 F.2d 676 (9th Cir. 1975).

3. The present dispute arose when another tribe, the Lummi Nation, began fishing outside its own usual and accustomed fishing grounds, moving into Applicants’ usual and accustomed fishing grounds in the Strait of Juan de Fuca. Using the procedure established in the *Washington* decision, Applicants brought suit to clarify that the Lummi Nation did not possess fishing rights in the Strait of Juan de Fuca. The litigation lasted several years and resulted in four separate panel decisions of the Ninth Circuit. In the first decision, the Ninth Circuit agreed that the Lummi Nation did not possess fishing rights in the Strait of Juan de Fuca, but held that the tribe did possess rights in nearby Admiralty Inlet. *United States v. Lummi Indian Tribe*, 235 F.3d 443 (9th Cir. 2000). In the second decision, the Ninth Circuit concluded that no court had yet defined the eastern boundary of the Strait of Juan de Fuca, and the panel remanded to the district court to determine whether the Lummi Nation possessed any rights in the waters immediately to the west of Whidbey Island, which lies at the eastern edge of the Strait of Juan de Fuca. *United States v. Lummi Nation*, 763 F.3d 1180 (9th Cir. 2014). In the third decision, the Ninth Circuit held that the Lummi Nation possessed at least *some* rights in the waters west of Whidbey Island, but reiterated that the tribe possessed *no* rights in the Strait of Juan de Fuca.

*United States v. Lummi Nation*, 876 F.3d 1004 (9th Cir. 2017). Finally, in the fourth decision, the Ninth Circuit again refused to define the Strait of Juan de Fuca, yet this time determined that the Lummi Nation possessed rights in all waters east of an arbitrary line running from Trial Island to Point Wilson—right *through* the Strait of Juan de Fuca. Exhibit 1 at 4-6.

4. The Ninth Circuit’s decision throws long-established federal treaty rights—together with Applicants’ traditional livelihoods—into chaos. Applicants and other Pacific Northwest tribes in the Seattle area relinquished their right to defend their traditional fishing grounds by force in exchange for having their rights defined and adjudicated peacefully by federal treaty. Applicants depend on the federal courts to fairly and consistently decide disputes with neighboring tribes over traditional fishing grounds. Here, however, the Ninth Circuit abdicated its duty. Despite concluding—correctly—that the Lummi Nation possessed no rights in the Strait of Juan de Fuca, the Ninth Circuit repeatedly refused to define the Strait in relation to the ever-larger area at the edge of the Strait claimed by the Lummi Nation. And rather than reconcile conflicting panel decisions that both denied the Lummi Nation any rights in the Strait and yet (seemingly unwittingly) awarded the tribe rights that encroached on the Strait, the Ninth Circuit threw up its hands, embraced the contradiction, and awarded the Lummi Nation rights that pushed even further into the Strait. The result is a decision that upends treaty rights, defies geographic reality, and empowers the Lummi Nation to deplete Applicants’ traditional fishing grounds.

5. The record below is extensive, covering a decade of proceedings, and Applicants' lead counsel in this Court, George W. Hicks, Jr., was not involved in all of those proceedings. Lead counsel requires additional time to review the record and proceedings in order to prepare and file a petition for certiorari that best presents the arguments for this Court's review.

6. Applicants' lead counsel also has substantial briefing and argument obligations between now and the current due date, including a petition for certiorari in *AMN Services, LLC v. Clarke*, No. \_\_\_\_\_ (U.S.) (to be filed in early September 2021); a petition for certiorari in *Delta Air Lines, Inc. v. Oman*, No. \_\_\_\_\_ (U.S.) (due Sept. 9, 2021); a response brief in *In re Retail Group Inc.*, No. 21-167 (E.D. Va.) (due Sept. 10, 2021); a response brief in *In re Ultra Petroleum Corp. (Rockies Express)*, Nos. 20-20623 & 21-20126 (5th Cir.) (due Sept. 17, 2021); a reply brief supporting certiorari in *Viking River Cruises, Inc. v. Moriana*, No. 20-1573 (U.S.) (due Sept. 28, 2021); second-chairing an oral argument in *In re Ultra Petroleum Corp. (Ad Hoc Committee)*, No. 21-20008 (5th Cir.) (Oct. 4, 2021); and a response brief due in *In re Ultra Petroleum Corp. (Talarico)*, No. 21-20049 (5th Cir.) (due Oct. 7, 2021). In addition, Applicants' co-counsel recently had a death in the family, and Applicants need time during the upcoming fishing season to assess the full impact of the decisions below on their communities.

7. Finally, the COVID-19 Delta variant, and the corresponding increase in COVID-19 in Applicants' communities and Washington State more generally, has created additional professional and personal disruptions for Applicants and

Applicants' lead counsel and co-counsel, resulting in delays in correspondence, decisionmaking, and the preparation of a petition for certiorari.

WHEREFORE, for the foregoing reasons, Applicants request that an extension of time to and including December 17, 2021, be granted within which Applicants may file a petition for writ of certiorari.

Respectfully submitted,



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