

No.

In the Supreme Court of the United States

NEIL PHILLIPS AKA SEALED DEFENDANT 1,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**On Petition for a Writ of Certiorari to
United States Court of Appeals for the Second Circuit**

**APPLICATION FOR EXTENSION OF TIME WITHIN WHICH TO FILE
A PETITION FOR A WRIT OF CERTIORARI**

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TO THE HONORABLE SONIA SOTOMAYOR, AS CIRCUIT JUSTICE FOR THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT:

In accordance with the Court’s Rules 13.5, 22, 30.2, and 30.3, counsel for Neil Phillips respectfully requests that the time to file his petition for a writ of certiorari be extended for 30 days. The Court of Appeals issued its opinion on September 3, 2025. *United States v. Phillips*, 155 F.4th 102 (2d Cir. 2025); App. 1. The Court of Appeals denied Mr. Phillips’s petition for rehearing *en banc* on December 22, 2025. App. 69. Absent an extension of time, the petition would be due on March 23, 2026. The Court has jurisdiction to review the questions presented under 28 U.S.C. § 1254(1).

The forthcoming petition will present two important questions concerning the substantive and extraterritorial reach of the Commodity Exchange Act (“CEA”). First, this case addresses whether certain types of spot transactions in foreign currencies, despite their categorical exclusion from the scope of the CEA in 7 U.S.C. § 2(c)(1), may nevertheless provide the basis for criminal prosecution or regulatory enforcement under the statute. Second, this case concerns whether the Second Circuit’s decision in this case—permitting the extraterritorial application of the CEA to trades made in the unregulated “over the counter” foreign exchange spot market by a foreign national from a foreign location through a foreign intermediary of a foreign bank, for the alleged purpose of deceiving a foreign counterparty on an option brokered by a foreign intermediary, for which a foreign branch served as prime broker—complies with the CEA’s extraterritoriality provision, this Court’s presumption against extraterritoriality, and the principles of international comity.

The Second Circuit’s decision here, holding that “over the counter” spot transactions in foreign currency may provide a basis for prosecution, is in tension with *Dunn v. Commodity Futures Trading Comm’n*, 519 U.S. 465 (1997), in which this Court held that the CEA categorically excludes foreign currency spot transactions from regulation and enforcement. It also conflicts with the Fifth Circuit’s holdings in *United States v. Radley*, 632 F.3d 177 (5th Cir. 2011), and *Aspire Commodities, L.P. v. GDF Suez Energy N. Am., Inc.*, 640 F. App’x 358 (5th Cir. 2016) (unpublished), that excluded transactions—like those at issue here—may not support civil enforcement or criminal prosecution, whether those transactions are part of a scheme or stand on their own. The Circuit’s decision also cannot be reconciled with the presumption against extraterritoriality, as set forth by this Court in *Morrison v. Nat’l Austl. Bank Ltd.*, 561 U.S. 247 (2010). If permitted to stand, it will set a standard that makes it effectively impossible for traders abroad to ensure they will not be subject to U.S. jurisdiction if they are a party to a swap.

Background

Neil Phillips is a South African national and U.K. citizen who at all relevant times resided in the United Kingdom (“U.K.”). On March 3, 2022, Phillips was charged in a four-count indictment with commodities fraud (7 U.S.C. § 9(1)), wire fraud (18 U.S.C. § 1349), and conspiracies to commit the same (18 U.S.C. § 371 and 18 U.S.C. § 1343). The indictment alleged that Phillips engaged in a large volume of currency transactions in the unregulated “over the counter” foreign exchange spot market to trigger a \$20 million payout to his hedge fund, Glen Point Capital LLP, and a client fund.

Phillips held a kind of swap called a one-touch option (the “Option”) that was linked to the dollar-rand currency exchange rate. If the exchange rate between U.S. dollars and

South African rand reached exactly 12.5, the Option would be triggered, and Phillips's counterparty would be required to pay \$20 million. The indictment alleged that on December 26, 2017, Phillips purchased approximately \$725 million of South African rand in exchange for U.S. dollars for the purpose of driving the exchange rate down and triggering the Option. His anonymous counterparty on the Option, revealed during this case to have been Morgan Stanley & Co. International PLC ("MS International"), a U.K. entity, paid the \$20 million as required, although it had transferred the risk it carried on the Option to Morgan Stanley Capital Services LLC ("MS Capital"), a U.S. entity.

Following a trial in the Southern District of New York, in October 2023, Phillips was acquitted of conspiracy to commit commodities fraud and convicted of a single count of commodities fraud. The government had decided shortly before trial not to proceed on its wire fraud charges.

On appeal, Phillips challenged his conviction on several grounds. Phillips challenged, among other arguments, the extraterritorial application of the CEA to his foreign conduct and the CEA's application to the foreign exchange spot transactions that triggered the Option. The appeal was argued on April 2, 2025, before Judges Sack, Bianco, and Merriam. On September 3, 2025, the Panel affirmed Phillips's conviction. App. 3.

The Second Circuit held that "[n]othing in the text of the CEA or corresponding CFTC regulations suggests that trades made in the foreign-exchange spot market cannot constitute a 'manipulative device, scheme, or artifice' used for the purpose of defrauding a counterparty to a foreign-exchange swap." App. 64. And despite the plain text of the statute, the Second Circuit stated that "[i]t is enough that the CEA regulates swaps, the one-touch barrier option is a swap, and there was sufficient evidence for the jury to conclude beyond a reasonable

doubt that Phillips’s trades were a ‘manipulative device, scheme, or artifice’ intended to defraud the counterparty to the option.” App. 64.

The Second Circuit also held that (1) Glen Point’s reliance on a foreign branch of a U.S.-based prime broker to facilitate the sale of the Option and (2) the fact that the foreign counterparty to the Option had transferred the risk it carried on the Option to a U.S. entity—entirely unbeknownst to Phillips—were sufficient to trigger extraterritorial application of the CEA here. App. 35.

Phillips filed a petition for rehearing *en banc* on October 20, 2025. The Second Circuit denied Phillips’s petition on December 22, 2025.

The petition for a writ of certiorari will present questions of extraordinary importance for the application of the CEA and regulation of global financial markets.

The Second Circuit’s decision brings a category of transactions that Congress categorically excluded from the scope of the CEA back within its ambit. It does so in conflict with the text of the statute, this Court’s precedent, and competing interpretations by the Fifth Circuit. The backdrop of Congress’s amendments to the CEA further supports that Congress deliberately kept the relevant foreign exchange spot market outside the scope of the statute.

The significance of the Second Circuit’s holding with regard to transactions covered by the CEA is magnified by its holding with regard to the statute’s extraterritorial reach. With respect to the extraterritoriality provision of the CEA, 7 U.S.C. § 2(i), the Second Circuit held that it is sufficient to sustain a criminal prosecution under the CEA that a UK-based entity decided to offload its firmwide risk, including the risk of Phillips’ one-touch barrier option, to a U.S.-based entity, and a foreign branch of a U.S.-based prime broker may hypothetically have been liable if the U.K.-based entity refused to pay out the Option. App. 35. The potential

to exercise jurisdiction based on such attenuated and fortuitous connections, in combination with the extension of the CEA to previously unregulated markets, will sow confusion in global markets and frustrate principles of international comity. Under the Circuit's decision, a foreign trader's decision to participate in these global markets effectively opens the door to the possibility of being subject to U.S. jurisdiction. The presumption against extraterritoriality requires more.

This case provides an ideal vehicle to prevent such extraterritorial overreach, and also to clarify the Court's holding in *Dunn* and resolve the split between the Second and Fifth Circuits on the scope of the CEA.

Reasons for Granting an Extension of Time

Petitioner's Counsel of Record, Sean Hecker, has had several competing litigation deadlines in the weeks leading up to the current deadline, including out of office travel for approximately four of the past five weeks for testimony in a regulatory matter, discovery in a civil matter, and a hearing in a criminal matter.

This case presents issues of extraordinary importance regarding the scope and extraterritorial reach of the CEA. It has implications for the uniformity of federal law, for individual traders and global financial institutions conducting transactions in the foreign exchange spot markets, and for sovereignty and international comity. The extension is respectfully requested to afford sufficient time for the preparation of Mr. Phillips's petition for a writ of certiorari.

Conclusion

For the foregoing reasons, Mr. Phillips respectfully requests that the time to file a petition for a writ of certiorari in this matter be extended 30 days, up to and including April 22, 2026.

Respectfully submitted,



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CERTIFICATE OF SERVICE

A copy of this application was served by electronic mail and certified mail to the counsel listed below in accordance with Supreme Court Rule 22.2 and 29.3.

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