

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

IN THE  
SUPREME COURT OF THE UNITED STATES

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CHRISTOPHER PONZO,

Applicant,

v.

UNITED STATES OF AMERICA,

Respondent.

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

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

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**APPLICATION FOR EXTENSION OF TIME TO FILE  
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**TO:** Justice Ketanji Brown Jackson, Circuit Justice for the United States Court of Appeals for the First Circuit.

Under this Court’s Rules 13.5 and 22, Applicant Christopher Ponzo respectfully requests an additional sixty days to file his petition for a writ of certiorari. The petition will challenge the precedential decision of the United States Court of Appeals for the First Circuit in *United States v. Ponzo*, 171 F.4th 507 (1st Cir. 2026), which is attached. In support of this application, Ponzo submits the following information:

**Introduction**

1. The First Circuit issued its decision and judgment on April 1, 2026. *See* App. 1, 29. With no extension, the petition for a writ of certiorari would be due June 30, 2026. With the requested sixty-day extension, the petition would be due on August 31, 2026. This Court’s jurisdiction will be based on 28 U.S.C. § 1254(1).

2. This case is a serious candidate for review. Ponzo seeks review of several questions implicating his constitutional rights that were recently left open by this Court in *McIntosh v. United States*, 601 U.S. 330 (2024): whether, under Fed. R. Crim. P. 32.2, a trial judge may grant the government’s request for forfeiture pursuant to a criminal sentence where the judge (1) never entered a preliminary forfeiture order, (2) did not allow the defendant an opportunity to oppose the government’s post-sentencing forfeiture motion until *after* the forfeiture order had already entered, and (3) did not impose forfeiture orally “at sentencing.”

3. These errors prevented the defendant from putting forth substantial credible evidence that the vast majority of the \$13.2 million the government sought to forfeit, which the district court allowed without allowing the defendant a meaningful opportunity to be heard, was not tainted.

### **Procedural History and Legal Issues Presented**

4. Ponzo was sentenced after pleading guilty to conspiracy, honest-services wire fraud, and lying to federal agents.<sup>1</sup> App. 2. The charges centered on Ponzo's unlawful payments to employees of a for-profit firm that administered "Mass Save," a state-endorsed energy conservation program in Massachusetts. App. 2. Ultimately, the district court judge sentenced Ponzo to an upwardly variant sentence of 27 months in prison, and ordered Ponzo to forfeit \$13.2 million. App. 2.

5. Ponzo seeks certiorari review on only the forfeiture order entered in his case. The order was entered after an extremely unusual series of events and numerous violations of the Federal Rules of Criminal Procedure.

6. *First*, in contravention of Fed. R. Crim. P. 32.2(b)(2), no preliminary order of forfeiture was entered. App. 23.

7. *Second*, the government never specified the amount it sought to forfeit from Ponzo until the day of the sentencing hearing. App. 23.

8. *Third*, the district court did not order forfeiture at sentencing itself. App. 32-33.

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<sup>1</sup> Ponzo's brother Joseph Ponzo was sentenced simultaneously but is not a part of this application or petition.

9. *Fourth*, rather, the district court granted the government's request to postpone the forfeiture issue and file a post-sentencing forfeiture motion, after the government stated to the court and the defendant that he "obviously would have time to respond to that." App. 32.

10. *Fifth*, notwithstanding that under Local Rule 7.1(b)(2) in the District of Massachusetts, Ponzo had **fourteen days** to submit an opposition to the government's motion for forfeiture that was filed after Ponzo was sentenced, the district court judge **allowed** the motion **six days** after it was filed, before Ponzo's opposition was due and without providing any notice that the opposition period would be truncated. App. 37-38.

11. Judgment entered the same day, including the \$13.2 million in forfeiture, without a hearing ever having been held. App. 37-38.

12. Ponzo therefore never had an opportunity to express his position concerning the \$13.2 million the government sought to forfeit prior to entry of the order forfeiting the entire amount.

13. On appeal to the First Circuit, the defendant identified several "process-based errors" that the First Circuit conceded were "all true," but, it also found, were all harmless. App. 23.

14. Among other significant errors, the First Circuit's ruling concerning the district court judge's allowance of the government's forfeiture motion prior to Ponzo's opposing it was especially egregious. The Court ruled that it did not

“matter” that the district court granted the government’s forfeiture motion prior to the expiration of the opposition period and before Ponzo could respond. App. 24.

15. The Court based its ruling on its assertion that the district court judge “considered and rejected as unconvincing” Ponzo’s “motion for reconsideration,” but this is not true. App. 24-25. The district court judge *never* reconsidered his ruling, which was entered prior to Ponzo’s opposition, and never afforded Ponzo the opportunity to contest the government’s forfeiture motion as required by Fed. R. Crim. P. 32.2—rather, the district court only denied Ponzo’s motion for a stay of the forfeiture pending appeal. App. 45-47. To the extent that the district court made reference to the merits of Ponzo’s forfeiture arguments, which he was never permitted to fully develop, it dedicated two sentences to them and concluded they were “ludicrous.” App. 47.

16. Forfeiture was therefore entered without a preliminary order, a hearing, or an opportunity to oppose the government’s motion, in violation of the Federal Rules of Criminal Procedure, and also the due process clause, which prohibits criminal forfeiture of property without adequate procedural safeguards. *Cf. United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 46 (1993).

17. This case presents a question left open by *McIntosh v. United States*, 601 U.S. 330, 344 (2024), in which this Court concluded that a district court may still order forfeiture even if it fails to enter a preliminary forfeiture order as required by Rule 32.2(b)(2)(B).

18. This Court in *McIntosh* did not address whether a forfeiture order may enter where there is no preliminary forfeiture order, the defendant is given no opportunity to contest the government’s forfeiture until after the judgment is entered, and the district court does not orally impose forfeiture “at sentencing”: indeed, the Court in *McIntosh* acknowledged that, unlike the preliminary forfeiture order, the requirements related to the *final* forfeiture order under Fed. R. Crim. P. 32(b)(4)(B) may have the character of claims-processing rules, such that failure to follow them may prevent the district court from ordering a final forfeiture order entirely. *See McIntosh*, 601 U.S. at 341 n.5, citing *United States v. Lee*, 77 F.4th 565, 582 (7th Cir. 2023).

19. The United State conceded in *McIntosh* that these requirements present “a harder set of issues” that were not implicated in that case, *id.* at 341 n.5, but which Ponzo’s case presents squarely.

20. Additionally, unlike in *McIntosh*, Ponzo vehemently contests that the error here, even if it ultimately were subject to harmless-error review, could be considered harmless.

21. Ponzo was, and is, in possession of ample “relevant and reliable” “evidence [and] information” that the vast majority of the \$13.2 million that ultimately was forfeited was not earned as a result of any crime, and yet Ponzo was never afforded a hearing, or any opportunity, to make this showing. Fed. R. Crim. P. 32.2(b)(1)(A).

### **Basis for Extension of Time**

22. A sixty-day extension should be granted for several interrelated reasons.

23. Appellate counsel Christian Kiely, who argued this case before the First Circuit, has been since the date of the judgment in this case, preparing for the second week of a non-public two-week arbitration, which is currently being held and which has diverted significant firm resources.

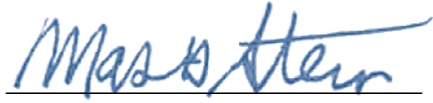
24. In light of Attorney Kiely and Attorney Stern's prior obligations, and previously scheduled travel, two attorneys at Todd & Weld have just been added to this case—Charlotte Bednar and Samuel Myers.

25. These two new attorneys lack familiarity with this case but will have primary responsibility for drafting the certiorari petition and will require substantial time to become familiar with the complicated facts of the case, including the intricacies underlying the substantive forfeiture issue and the multi-layered procedural errors at issue.

### **Conclusion**

26. For these reasons, Ponzo respectfully requests that the due date for his petition for a writ of certiorari be extended to August 31, 2026.

Respectfully submitted,



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