

No. _____

IN THE
Supreme Court of the United States

MATT MARTORELLO,

Applicant,

v.

LULA WILLIAMS *et al.*,

Respondents.

**APPLICATION FOR EXTENSION OF TIME TO FILE A
PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

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October 28, 2025

APPLICATION

To the Honorable John G. Roberts, Jr., Chief Justice of the Supreme Court of the United States and Circuit Justice for the Fourth Circuit:

Pursuant to Rule 13.5 of the Rules of this Court and 28 U.S.C. § 2101(c), Applicant Matt Martorello respectfully requests a 60-day extension of time, to and including January 9, 2026, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

1. The Fourth Circuit issued its judgment on July 16, 2025 (Exhibit A), and denied a timely petition for rehearing on August 12, 2025 (Exhibit B). Unless extended, the time to file a petition for a writ of certiorari will expire on November 10, 2024. This application is being filed more than ten days before a petition is currently due. *See* Sup. Ct. R. 13.5. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1).

2. This case presents two important questions that have divided the circuits and are worthy of this Court's review. The first is whether, under the Indian Commerce Clause, states can regulate loans made by a tribal lender on an Indian reservation that are contracted via the internet. The second is whether scienter is required to impose civil liability for violating the unlawful debt prohibition of the Racketeer Influenced and Corrupt Organizations Act ("RICO").

3. In this case, a class of Virginia borrowers challenged the legality of "payday loans" they obtained from Big Picture Loans, LLC ("Big Picture") and Red

Rock Tribal Lending, LLC (“Red Rock”), arms of the Lac Vieux Desert Band of the Lake Superior Chippewa Indians (“the Tribe”) by applying via the internet. Mr. Martorello had assisted the Tribe in establishing and operating Red Rock, a lending business that preceded Big Picture. The loans were made by Big Picture and Red Rock on the Tribe’s reservation in Michigan and comply with Tribal law and federal law.

4. The borrowers’ theory was that the loans are unlawful under a Virginia civil usury statute, thereby making them “unlawful debt” under RICO and creating a RICO offense. The Fourth Circuit ruled that Virginia law governs the loans and that Mr. Martorello violated RICO through his actions, regardless of whether he knew that the loans were unlawful. It affirmed a \$43 million treble damages judgment against him.

A. The Indian Commerce Clause Issue

5. Whether the tribal lending operation was an unlawful RICO enterprise or, instead, a legitimate economic development project by the Tribe, depends on whether the loans Big Picture and Red Rock made are governed by state or by tribal law.¹

¹ The Fourth Circuit previously rejected the borrowers’ contention that Big Picture and Red Rock were formed “for the real purpose of helping Mr. Martorello . . . to avoid liability, rather than to help the Tribe start a business.” *Williams v. Big Picture Loans, LLC* (“*Williams I*”), 929 F.3d 170, 178 (4th Cir. 2019).

6. The Second Circuit opined in 2014 – in a case involving the Tribe – that loans a tribal lender makes on an Indian reservation to internet borrowers located off-reservation “could be regarded as on-reservation, based on the extent to which one side of the transaction is firmly rooted on the reservation.” *Otoe-Missouria Tribe of Indians v. N.Y. State Dep’t of Fin. Servs.*, 769 F.3d 105, 115 (2d Cir. 2014). If the tribal lender was firmly rooted on the reservation, an analysis of the respective federal, tribal, and state interests, pursuant to *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980), would determine whether the state could regulate the loans. *See Otoe-Missouria Tribe of Indians*, 769 F.3d at 114.

7. Mr. Martorello argued that Big Picture and Red Rock are firmly rooted on the Tribe’s reservation and that, under *Bracker*, the federal and tribal interests in preserving Indian sovereignty and promoting tribal self-sufficiency and economic development outweighed Virginia’s interest in regulating loans made to its citizens in other jurisdictions.² The Fourth Circuit, however, concluded that the loans constitute off-reservation conduct and so “a *Bracker* analysis would not have been appropriate” Exh. A at 18. It did not address the Second Circuit’s conflicting opinion in *Otoe-Missouria*.

² A lender can “legitimately lend funds outside the state, and stipulate for repayment in [the state] in accordance with its laws, and at the rate of interest there lawful” *Seeman v. Philadelphia Warehouse Co.*, 274 U.S. 403, 407 (1927). And “citizens of one State [a]re free to visit a neighboring State to receive credit at foreign interest rates.” *Marquette Nat. Bank of Minneapolis v. First of Omaha Service Corp.*, 439 U.S. 299, 318 (1978).

8. The Fourth Circuit blinks reality in deeming the loans off-reservation conduct. The tribal loan business is situated entirely on the reservation. Big Picture and Red Rock process and approve the loan applications on the reservation, and they lend the funds there. Had the borrowers submitted their applications in person on the reservation, tribal law unquestionably would govern the transactions. *See California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987) (state cannot regulate gaming conducted on a reservation). The only difference here is on the borrower side – they submitted their loan applications via the internet rather than in person. This does not shift the locus of the loans to the borrowers’ location. Long before the advent of the internet, this Court held that borrowers could obtain credit at foreign interest rates by utilizing “the convenience of modern mail” to “receive loans without visiting [another state].” *Marquette*, 439 U.S. at 311.

9. In any event, these loan transactions clearly constitute commerce “with an Indian tribe” on its reservation, and the Constitution assigns Congress plenary power to regulate such commerce. U.S. CONST. art. I, § 8, cl. 3. States can only regulate such loans if a *Bracker* analysis establishes that their legitimate interest outweighs the relevant tribal and federal interests. The Fourth Circuit’s decision shunts *Bracker* aside and empowers the states to regulate all internet commerce between their residents and Indian tribes, regardless of the impact on tribal and federal interests. This flouts the Constitutional mandate.

B. The RICO Scienter Issue

10. The Fourth Circuit also erred in ruling that no scienter is required for a

RICO unlawful debt offense and that Mr. Martorello could not defend himself on the grounds that he believed in good faith, and in reliance on the advice of counsel, that the loans at issue were governed by tribal law and so were lawful.

11. The Circuit Court reasoned that RICO itself, 18 U.S.C. § 1962, does not expressly require proof of a particular *mens rea*, and it rejected Mr. Martorello's argument that such an element must be implied because violations of RICO can carry either criminal or civil penalties. It reasoned that no presumption of *mens rea* exists in the civil context and that "the distinction between the civil and criminal contexts effectively ends our inquiry"; "even assuming that a *mens rea* requirement should be implied to obtain some criminal RICO convictions, it does not follow that such a requirement exists in a civil RICO claim." Exh. A at 24. This unprecedented conclusion is plainly wrong; the elements of a RICO violation do not differ in a civil versus a criminal context.

12. RICO sets forth a uniform set of prohibited activities, 18 U.S.C. § 1962, for which it authorizes criminal prosecution, 18 U.S.C. § 1963, and civil enforcement, 18 U.S.C. § 1964. Because RICO is silent on the issue of scienter for prohibited activities, courts must read into it "that *mens rea* which is necessary to separate wrongful conduct from otherwise innocent conduct." *Ruan v. United States*, 597 U.S. 450, 458 (2022) (emphasis in original; internal quotations omitted). A defendant must "possess a culpable mental state regarding 'each of the statutory elements that criminalize otherwise innocent conduct.'" *Rehaif v. United States*, 588 U.S. 225, 229 (2019) (quoting *United States v. X-Citement Video, Inc.*, 513 U.S. 64, 72 (1994)).

13. As relevant here, RICO prohibits collection of, or conspiracy to collect, “unlawful debt,” 18 U.S.C. § 1962, which is defined as debt that is (1) unenforceable under state or federal usury laws, and (2) where the usurious rate is at least twice the enforceable rate. 18 U.S.C. § 1961(6). Therefore, to violate this prohibition, a defendant must know that the debt at issue is unlawful and is at least twice the enforceable rate. The Second Circuit made precisely this point in two recent decisions. *See United States v. Grote*, 961 F.3d 105, 121 (2d Cir. 2020); *United States v. Moseley*, 980 F.3d 9, 19 (2d Cir. 2020).

14. The Fourth Circuit dismissed the Second Circuit’s scienter analysis as “speculative dicta [that] arose only in the context of what might be necessary to obtain a criminal RICO conviction, and thus is far removed from what a plaintiff must prove about § 1962(c) and (d) to establish civil liability for a RICO violation under § 1964.” Exh. A at 24 n.7. The Fourth Circuit’s rationale ignores this Court’s jurisprudence.

15. A court “must interpret [a] statute consistently, whether we encounter its application in a criminal or noncriminal context.” *Sessions v. Dimaya*, 584 U.S. 148, 164 (2018) (quoting *Leocal v. Ashcroft*, 543 U.S. at 11 n.8). This Court has rejected “the dangerous principle that judges can give the same statutory text different meanings in different cases.” *Clark v. Martinez*, 543 U.S. 371, 386 (2005). Thus, in construing hybrid civil/criminal statutes in a civil context, the Court applies the rules of construction applicable to criminal statutes. *See, e.g., Bittner v. United States*, 598 U.S. 85, 103 (2023) (construing the Bank Secrecy Act); *United States v. Thompson/Center Arms Co.*, 504 U.S. 505, 517-18 (1992) (construing the National

Firearms Act).

C. Good Cause Supports this Application

16. Mr. Martorello is now in personal bankruptcy as a result of collection efforts on the judgment against him. *In re Brandon Matthew Martorello*, Case No. 24-90016-mxm (Bankr. N.D. Tex.). The bankruptcy stay had to be lifted for a petition for certiorari to be pursued. A motion to lift the bankruptcy stay for this purpose was opposed by the Virginia borrowers, and did not occur until a hearing last week, on October 22, 2025. The order lifting the stay was entered on October 27, 2025. Accordingly, Applicant requests this extension of time to permit counsel to prepare a petition that fully addresses the important questions raised by the proceedings below.

17. For these reasons, Applicant respectfully requests that an order be entered extending the time to file a petition for certiorari to and including January 9, 2026.

October 28, 2025

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Steven D. Gordon".

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