

In the Supreme Court of the United States

LEE ELBAZ, A/K/A LENA GREEN,

Applicant,

v.

UNITED STATES OF AMERICA,

Respondent.

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

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

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

Pursuant to Supreme Court Rule 13.5, applicant Lee Elbaz respectfully
requests a further, 14-day extension of time, until April 27, 2023, within which to file
a petition for a writ of certiorari. The United States Court of Appeals for the Fourth
Circuit issued its amended opinion in this case on November 3, 2022. The court of
appeals denied Ms. Elbaz's petition for rehearing en banc on November 29, 2022.¹

¹ The Fourth Circuit's November 29, 2022 order denying en banc rehearing was
attached as Exhibit A to Ms. Elbaz's Application for an Extension of Time to File a
Petition for a Writ of Certiorari of February 7, 2023. The Fourth Circuit's November
3, 2022 amended opinion was attached as Exhibit B.

The Honorable John G. Roberts, Jr., Chief Justice of the United States and Circuit Justice for the Fourth Circuit, previously extended the time to file a petition for a writ of certiorari from February 27, 2023 to April 13, 2023. Unless extended, the time for filing a petition for a writ of certiorari will expire on April 13, 2023. This Court’s jurisdiction would be invoked under 28 U.S.C. § 1254(1).

1. As explained in the initial application, this case is about whether the domestic wire-fraud statute, 18 U.S.C. § 1343, can be applied to conduct occurring as part of an extraterritorial scheme. The domestic wire-fraud statute prohibits fraudulent schemes that use domestic wire, radio, or television communications. The questions presented are whether (i) the statute applies extraterritorially and (ii) if it does not, whether the “focus” of the domestic wire-fraud statute can be defined as the use of a wire, and not the scheme to defraud, such that this domestic statute can be applied to fraudulent schemes that occurred almost entirely extraterritorially so long as the scheme involved at least one domestic wire, radio, or television communication.

2. As described in the initial application, the courts of appeals are split as to whether the domestic wire-fraud statute, 18 U.S.C. § 1343, applies extraterritorially in light of its reference to “interstate or foreign commerce.” It is a “longstanding principle of American law that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States.” *Morrison v. Nat’l Australia Bank Ltd.*, 561 U.S. 247, 255 (2010) (quoting *EEOC v. Arabian Am. Oil Co.*, 499 U.S. 244, 248 (1991)) (internal quotation marks omitted). And as this Court has “repeatedly held,” a “general reference to

foreign commerce” in a statute “does not defeat the presumption against extraterritoriality.” *Id.* at 263. Despite these well-established principles, the First and Third Circuits have held that the Federal Wire Act (18 U.S.C. § 1084, which governs the use of wires in placing bets) and the domestic wire-fraud statute (which looks at the use of wires in general fraud schemes) apply extraterritorially in light of similar “in interstate or foreign commerce” language in both statutes. Meanwhile, the Second, Fourth, and Eleventh Circuits have reached the opposite conclusion.

3. If a statute does not apply extraterritorially, courts consider “whether the case involves a domestic application of the statute . . . by looking to the statute’s ‘focus.’” *RJR Nabisco, Inc. v. European Cmty.*, 579 U.S. 325, 337 (2016). Although most courts to consider the issue have held that the focus of the wire-fraud statute is the mere use of a domestic wire, the courts of appeals significantly differ in the test they apply in making this determination, as the initial application explains.

4. This case squarely presents these two important questions that have divided the courts of appeals. Ms. Elbaz worked in Israel for Yukom Communications, a company based in Israel. Ex. B. at 5. Yukom’s agents created a fraudulent scheme involving “binary options,” all-or-nothing options in which purchasers bet on the price of an asset at a specific time. *Id.* Purchasers who incorrectly bet on an asset’s price lost their investment, but purchasers who bet correctly profited by a fixed amount. *Id.*

As part of this scheme, two foreign companies marketed the binary-option investments. *Id.* When customers responded to these advertisements, an agent from

a different company would contact them and persuade them to deposit at least \$250. *Id.* After customers made this deposit, agents from Yukom made fraudulent representations to retain these customers so that the customers would deposit more money and refrain from withdrawing their money. *Id.*

Although Yukom's scheme netted over \$100 million in deposits worldwide, Ms. Elbaz was prosecuted for only three incidental domestic wire transmissions that occurred in Maryland—two emails and one phone call. *Id.* Even though Ms. Elbaz's conduct largely occurred overseas, she was indicted for conspiracy to commit wire fraud and for three substantive wire-fraud counts. *Id.* at 6. Ms. Elbaz was convicted and sentenced to 264 months in prison and three years of supervised release. *Id.* at 7. The district court also ordered Ms. Elbaz to pay \$28 million in restitution. *Id.*

Ms. Elbaz appealed, arguing, among other things, that the domestic wire-fraud statute was improperly applied because the fraudulent scheme largely occurred outside of the United States. *Id.* Although the Fourth Circuit concluded that the domestic wire-fraud statute does not apply extraterritorially, *id.* at 8–9, the court held that it was properly applied to Ms. Elbaz because the statute focused on the use of wire communications, not the fraudulent scheme, *id.* at 10–11. Because the communications used wires in Maryland, the court reasoned, Ms. Elbaz's convictions were permissible domestic applications of the wire-fraud statute. *Id.* at 12.

5. Applicant's counsel was not involved in the proceedings below and requires additional time to familiarize herself with the record, research the legal issues presented in this case, and prepare a petition that fully addresses the

important and far-reaching issues raised by the decision below in a manner that will be most helpful to the Court. While counsel has been working diligently in preparing this petition, she also has had or will have substantial briefing obligations, including a brief in the Fourth Circuit due on March 20, 2023; a brief in the Sixth Circuit due on March 29, 2023; a brief in the Federal Circuit due on March 30, 2023; a brief in the U.S. District Court for the Southern District of New York due on March 30, 2023; a brief in the U.S. District Court for the Southern District of New York due on March 31, 2023; and a brief in the U.S. District Court for the District of Massachusetts due on April 14, 2023. Accordingly, counsel respectfully requests an additional 14-day extension of time to file the petition for a writ of certiorari from the Fourth Circuit's decision until and including April 27, 2023.

The government will not suffer any prejudice from the requested extension.

Wherefore, applicant respectfully requests that the Court further extend the time to file a petition for a writ of certiorari to April 27, 2023.

April 3, 2023

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Respectfully submitted,



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