No. **24-6364**

IN THE
SUPREME COURT OF THE UNITED STATES

CEDRIC CROMWELL
Petitioner,
v.

UNITES STATES OF AMERICA
Respondent.

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

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REPLY BRIEF OF PETITIONER

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ARGUMENT

Petitioner Cedric Cromwell submits this reply to the opposition brief filed against his Petition for Writ of Certiorari.

I. Respondent's Brief in Opposition leaves unrebutted that the First Circuit has "decided an important question of federal law that has not been, but should be, settled by this Court."

In his Petition, Cromwell argued that the Petition should be granted under Rule 10(c) because a "United States court of appeals decided an important question of federal law that has not been, but should be, settled by this Court." Pet. at 3,15. To meet this criteria, Cromwell must show (1) "an important question of federal law that has not been, but should be, settled by this Court" and (2) that the "United States court of appeals decided [that] important question of federal law." He satisfies these criteria, despite the opposition brief arguing otherwise, as detailed below.

Nowhere in its brief in opposition does Respondent contest that the Petition's question presented—relating to the application of criminal liability for Hobbs Act extortion "under color of official right" to the leader of a sovereign Indian Tribe—is an "important question of federal law that has not been, but should be settled by this Court." It makes no argument that the Hobbs Act is not a "major federal statute" the judicial construction of which presents an important question of federal law that necessarily implicates important constitutional rights. Accord, *Schriro v. Summerlin*, 542 U.S. 348, 351-352 (2004) (constructions of "the scope of a criminal statute by

interpreting its terms ... necessarily carry a significant risk"). Respondent does not contest, nor could it, that prior to the First Circuit in this case, no appellate court in the Hobbs Act's entire 78-year history has ever issued an opinion, published or unpublished, extending criminal liability for extortion "under color of official right" to a tribal leader, as opposed to a federal, state, or municipal official, under the Act or meaningfully grapple with the import of this stark and inexorable reality vís-a-vís the specific reason for certiorari advanced by Petitioner.

Respondent's principal argument in opposition is that certiorari review by this Court is precluded by the absence of a circuit split. See Opp. at 11 ("At all events, petitioner has identified no case of this Court or of any court or appeals adopting his view or otherwise conflicting with the decision below. He accordingly presents no sound basis for this Court's review."). Respondent urges this Court to decline to review the First Circuit's unprecedented extension of the Hobbs Act liability in this case *precisely because* it is unprecedented, and therefore "does not conflict with any decision of this Court or of another court of appeals." Opp. 5. This circular argument ignores that this Court grants certiorari to answer important questions of federal law *see* Sup. Ct. R. 10(c)—a discrete and freestanding basis for review regardless of the existence of a jurisprudential conflict that this Court has frequently exercised where, as here, a case involves an important question of statutory interpretation, *see SEC v. Zandford*, 535 U.S. 813, 818 (2002) (granting

certiorari "to review the Court of Appeals ' construction" of a statutory phrase); *United States v. Donovan*, 429 U.S. 413, 422 (1977) (granting certiorari "to resolve ... issues, concern the construction of a major federal statute") and important constitutional rights are at stake. See *Jackson v. City & Cnty. of San Francisco*, 135 S. Ct. 2799, 2802 (2015) (Mem.) (Thomas, J., dissenting from denial of certiorari) (collecting cases). See also *Kastigar v. United States*, 406 U.S. 441 (1972) (cert granted to answer "important question" of criminal procedure); *United States v. Cooley*, 141 S. Ct. 1638 (2021) (same).

Petitioner asked the Court to grant the petition, not because of a circuit split, but because the First Circuit's novel and unprecedented extension of criminal liability for Hobbs Act extortion "under color of official right" to a tribal leader "decided an important question of federal law" that should be "settled by this Court." The wholly unprecedented nature of the First Circuit's extension of Hobbs Act liability in this case supports rather than diminishes the case for certiorari review. Respondent offers nothing to diminish the importance of the question presented.

II. The important question of federal law presented was wrongly decided below.

Respondent asserts that review is unwarranted because the decision below is correct. Opp. at 5. That would not justify denying certiorari even if true, given the undisputed importance of the question presented. But it is not true.

Respondent's central argument is that "No sound reason exists to exclude tribal officials from the *generally applicable* prohibitions of the Hobbs Act." Opp. at 6 (emphasis added). But Hobbs Act extortion "under color of official right"—the sole theory upon which Petitioner was indicted and convicted in this case, App.63-64, 93-94—is a substantively distinct form of extortion which, unlike the "force, violence, or fear" prong of the offense is not "generally applicable" in that it may *only* be committed only by a public official "by colour of his office." *Evans v. United States*, 504 U.S. 255, 260, 263-264 (1992) ("Although the present statutory text is much broader than the common-law definition of extortion because it encompasses conduct by a private individual as well as conduct by a public official, the portion of the statute that refers to official misconduct continues to mirror the common-law definition."). Respondent overstates the relevance and dispositive force of both the general existence of federal jurisdiction over crimes committed by Indians, see *United States v. Wheeler*, 435 U.S. 313, 330 n.30 (1978) (citing 18 U.S.C. § 1152) and the statute's prefatory use of the broad term "whoever," neither of which is determinative the statute's reach or scope to tribal leaders under that discrete theory.

The question raised is not one of federal jurisdiction over tribal members generally but rather whether Congress' definition of extortion to include extortion "under color of official right"—a common law concept that extends only to "public officials" *Evans*, *supra*—evinces its an intent to reach

the leaders of sovereign tribes like Petitioner, whose representation of a constituency limited to a small number of tribal members determined by ancestral lineage rather than geography or citizenship was by no means public. This is an "important question of federal law that has not been, but should be settled by this Court." For the reasons set out at pages 6-14 of the Petition, neither the statutory language, the legislative history, nor case precedent reveals suggest a clear intent to include tribal officers within the concept of "public official." This inherent ambiguity is only compounded by absence of a single appellate decision by any court in the Hobbs Act's entire 78-year history, referencing or upholding the conviction of a tribal official, as opposed to a federal, state, or municipal official, for extortion "under color of official right" under the Act. Thus, and notwithstanding Respondent's *ipse dixit* to the contrary, Opp. 11, "it cannot be said, with certainty sufficient to justify a criminal conviction," *Rewis v. United States*, 401 U.S. 808, 811 (1971), that Congress intended to reach the acts of tribal officials on that discrete theory.

CONCLUSION

For the foregoing reasons, and for those set forth in his original petition, Petitioner respectfully requests that the Court grant review in this case.

Respectfully submitted,
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By 

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