

IN THE  
SUPREME COURT OF THE UNITED STATES

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No. \_\_\_\_

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MATHEW MARTOMA,

*Applicant,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

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**APPLICATION TO THE HON. RUTH BADER GINSBURG  
FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE  
A PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT**

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Pursuant to Supreme Court Rule 13(5), Mathew Martoma hereby moves for an extension of time of 30 days, to and including December 26, 2018, for the filing of a petition for a writ of certiorari. Unless an extension is granted, the deadline for filing the petition for certiorari will be November 26, 2018.

In support of this request, Applicant states as follows:

1. The United States Court of Appeals for the Second Circuit rendered its initial decision in this case on August 23, 2017 (Exhibit 1). After Applicant filed a timely petition for rehearing, the Second Circuit withdrew its initial decision and issued an amended decision on June 25, 2018 (Exhibit 2). The Second Circuit then denied a second timely petition for rehearing on August 27, 2018 (Exhibit 3). This Court has jurisdiction under 28 U.S.C. §1254(1).

2. This case involves ongoing confusion over what the government must prove in order to impose criminal liability under the federal insider-trading laws. As this Court has explained, federal law does not impose any “general duty between all participants in market transactions to forgo actions based on material, nonpublic information.” *United States v. O’Hagan*, 521 U.S. 642, 661 (1997). Instead, to hold a person who receives an inside tip liable for insider trading, the government must prove that the tipper “disclose[d] the inside information for a personal benefit.” *Salman v. United States*, 137 S. Ct. 420, 423 (2016) (citing *Dirks v. SEC*, 463 U.S. 646 (1983)). That established rule is a critical safeguard for the securities markets, ensuring that professional traders can conduct legitimate market research—a process that is “necessary to the preservation of a healthy market,” *Dirks*, 463 U.S. at 658—without facing years in prison whenever they happen to learn non-public information.

3. This Court has recognized that a personal benefit can be inferred when the tipper makes “a gift of confidential information to a trading relative or friend,” since in such cases the tip is the equivalent of “trading by the insider himself followed by a gift of the profits to the recipient.” *Id.* at 664; *see Salman*, 137 S. Ct. at 428. In its initial decision in this case, the divided Second Circuit panel held (over a spirited dissent) that the government can rely on a similar “gift” theory not only when the tippee is a “trading relative or friend,” *Dirks*, 463 U.S. at 664, but also when there is no prior relationship at all between the tipper and tippee. On that theory, the government could ask a jury to believe that *any* tip was intended as a “gift” to the

tippee—and therefore constituted a “personal benefit” to the tipper—even when the tipper and tippee were just casual acquaintances or indeed total strangers.

4. Applicant filed a timely petition for rehearing explaining that the panel decision contravened Supreme Court and Second Circuit precedent. Eight months later, the panel vacated its previous decision and issued a new opinion that abandoned its previous reasoning and instead held (again over a spirited dissent) that the government can prove a personal benefit to the tipper just by showing that the tipper “intended to benefit” the tippee—regardless of any prior relationship between the two. Like the panel’s initial decision, that ruling cannot be squared with established precedent from this Court, and would eviscerate the longstanding personal benefit requirement by allowing the government to impose criminal liability on practically any trades involving non-public information.

5. Between now and the current due date of the petition, Counsel of Record, Paul D. Clement, has substantial oral argument and briefing obligations, including oral argument in *Ultra Petroleum Corp. v. Ad Hoc Committee of Unsecured Creditors*, No. 17-20793 (5th Cir.), oral argument in *United States v. Ashe*, No. 18-1725 (2d Cir.), a brief in opposition in *Amgen Inc. v. Sanofi*, No. 18-127 (U.S.), a reply brief in *Zappos.com, Inc. v. Stevens*, No. 18-225 (U.S.); and a reply brief in *Ruch v. Common Cause*, No. 18-422 (U.S.).

6. Applicant thus requests a modest extension for counsel to prepare a petition that fully addresses the complex issues raised by the decision below and frames those issues in a manner that will be most helpful to the Court.

WHEREFORE, for the foregoing reasons, Applicant requests that an extension of time to and including December 26, 2018, be granted within which Applicant may file a petition for a writ of certiorari.

Respectfully submitted,



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