

MAR 18 2021

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No. 21-A-\_\_\_\_\_

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**IN THE SUPREME COURT OF THE UNITED STATES**

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ARVIND GUPTA, *pro se*

*Petitioner-Appellant,*

v.

Headstrong, Inc., Genpact Limited,

and,

MARTY WALSH, in his official capacity as  
Secretary of the U. S. Department of Labor,

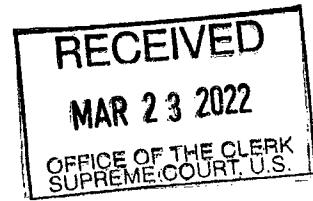
*Respondents-Appellees.*

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

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**TO THE HONORABLE SONIA SOTOMAYOR, ASSOCIATE  
JUSTICE OF THE SUPREME COURT OF THE UNITED STATES  
AND CIRCUIT JUSTICE FOR THE SECOND CIRCUIT:**

Pursuant to Supreme Court Rules 13.5, 22, and 30, petitioner Gupta respectfully request a 60-day extension of time, up to and including Monday, June 6, 2022, to file a petition for a writ of certiorari to the United States Court of Appeals for the Second Circuit to review that court's decision in *Gupta v. Headstrong, Inc.*, No. 20-3657-cv (2d Cir. October 19, 2021) reported at 2021 U. S. App. LEXIS 31268 and order denying petition for rehearing dated January 6, 2022, (attached as Exhibits A and B). June 5, 2022 - the 60th day from the date of order denying rehearing falls on a Sunday and is therefore excluded from computation of time per Supreme Court Rule 30.1. Second Circuit issued the mandate in this case on February 10, 2022.

The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1), and the time to file a petition for a writ of certiorari will expire without an extension on April 6, 2022. This application is timely because it has been filed more than ten days prior to the date on which the time for filing the petition is to expire.

This case arises under the H-1B nonimmigrant work authorization provisions of the Immigration and Nationality Act (INA) and presents a substantial and important question of federal law: Whether H-1B employers can have a legally enforceable private agreement with the nonimmigrant workers to prevent them from filing a complaint with Administrator (Wage-Hour) for required wage and other H-1B violations and collect attorneys' fee when the H-1B worker exercises his statutorily protected right to file a complaint and petitions for APA review in federal courts. The related issues include whether the Second Circuit properly deny Gupta (nonimmigrant worker) litigation costs despite Headstrong being found in violation of H-1B regulations by the Administrator (Wage-Hour) and by the Administrative Law Judge (ALJ) and whether Headstrong and its parent company Genpact complied with the required wage requirements of the H-1B work authorization program for the period of violations found by the Administrator (Wage-Hour) and ALJ.

Below, the Second Circuit held that a private settlement agreement that is contrary to the labor condition application attestations made by the employer under the H-1B provisions of the

INA can be enforced by the district court and affirmed the district court's award of attorneys' fee to Headstrong even though Headstrong and Genpact never alleged and proved any breach of contract by Gupta. In so doing, it created a circuit split with the Sixth Circuit and Seventh Circuit. *See Patel v. Boghra*, 369 Fed. Appx. 722, 724 (7th Cir. 2010) (Illinois does not enforce agreements to violate federal or state law; it leaves the parties where it found them.); *Kutty v. DOL*, 2011 WL 3664476 at \*9 (E. D. Tenn. August 19, 2011) ("Regardless of the private contracts, Dr. Kutty [H 1B employer] had to pay the "required wage," as set forth in the INA.") (*aff'd*, 764 F.3d 540 (6th Cir. 2014))

The Second Circuit decision affirming the district court order to award attorneys' fee to Headstrong, without Headstrong and Genpact alleging and proving any breach of contract by Gupta, is contrary to Supreme Court opinions in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007) (requiring a complaint to plead "enough facts to state a claim to relief that is plausible on its face.") and *Ashcroft v. Iqbal*, 556 U. S. 662, 679 (2009) ("When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.")

Petitioner Gupta is proceeding *pro se* and he needs sufficient time to familiarize himself with the relevant rules of the Supreme Court and to prepare, print and file a petition of certiorari in this case. Gupta prepared and filed a Rule 60(b)(4)-(5) motion for relief from judgment in the district court (SDNY) case no. 1:17-cv-05286 (RA) on February 23, 2022. Gupta is also in process of preparing a petition for certiorari in another case *Gupta v. Compunnel et al* for which he has applied for an extension of time with this court, and he has to divide time between the two cases with overlapping time limit to research the issues and file the petitions for certiorari. An extension of time would better enable preparation of a petition that would be most helpful to the Court.

Accordingly, petitioner Gupta respectfully request that an order be entered extending the time to file a petition for a writ of certiorari for 60 days, up to and including Monday, June 6, 2022.

Dated: March 18, 2022

Respectfully Submitted,

  
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