

No. \_\_\_\_\_

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IN THE SUPREME COURT OF THE UNITED STATES

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RANDALL L. SPADE,  
*Petitioner*

v.

UNITED STATES DEPARTMENT OF JUSTICE

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***APPLICATION FOR AN EXTENSION OF TIME IN WHICH TO FILE  
A PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT***

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To the Honorable Samuel A. Alito, Jr., Associate Justice of the United States and Circuit Justice for the Third Circuit:

Pursuant to 28 U.S.C. § 2101(c) and Rules 13.5, 22, and 30.2 of this Court, Randall L. Spade respectfully requests a 29-day extension of the time, to and including Tuesday, June 14, 2022, in which to file a petition for a writ of certiorari in this Court. The U.S. Court of Appeals for the Third Circuit entered judgment on February 14, 2022. A copy of the Third Circuit's opinion is attached as Exhibit 1. See *Spade v. U.S. Dep't of Justice*, No. 21-1865, 2022 WL 444259 (3d Cir. Feb. 14, 2022). No requests for rehearing were filed in the Third Circuit. Mr. Spade's time to file a petition for writ of certiorari in this Court will currently expire on Monday, May 16,

2022. (Ninety days from February 14, 2022 is Sunday May 15, 2022; under Rule 30.1, the time is automatically extended to the next business day.) This application is being filed more than 10 days before that date.

The Federal Employees' Compensation Act ("FECA"), 5 U.S.C. § 8101 *et seq.*, provides that the United States "shall pay compensation \* \* \* for the disability or death of [a federal] employee resulting from personal injury sustained while in the performance of his duty." *Id.* § 8102(a). FECA vests the Secretary of Labor with the authority to "administer, and decide all questions arising under" the statute. *Id.* § 8145. The statute provides that the Secretary of Labor's decision "in allowing or denying a payment" to an injured federal employee is "not subject to review \* \* \* by a court." *Id.* § 8128(b)(2). Where FECA applies, the benefits provided under that statute are the injured employee's "exclusive" remedy. See *Weyerhaeuser S. S. Co. v. United States*, 372 U.S. 597, 601 (1963); 5 U.S.C. § 8116(c). For claims under FECA, "employees are guaranteed the right to receive immediate, fixed benefits, regardless of fault and without need for litigation, but in return they lose the right to sue the Government" under statutes such as the Federal Tort Claims Act ("FTCA"). *Lockheed Aircraft Corp. v. United States*, 460 U.S. 190, 194 (1983).

This case presents a substantial and recurring question on which the federal circuit courts are divided: whether federal courts have jurisdiction to determine what claims of injury fall within the scope of FECA's exclusive statutory scheme. Petitioner is a federal corrections officer who suffered emotional distress after his employer mistakenly disclosed his sensitive personal information (including his

social security number and family's home address) to an inmate at the prison where Petitioner works, in response to a Freedom of Information Act request. See Third Circuit Opinion at 2-3. Petitioner filed a complaint in federal court under the FTCA, seeking damages and arguing that his claim for emotional distress, unrelated to any physical injury, fell outside the scope of FECA. After the Department of Labor denied his FECA claim, on the ground that Petitioner had not provided sufficient medical evidence, the district court dismissed the complaint for lack of subject-matter jurisdiction. *Id.* at 4. The district court interpreted the agency's denial of Petitioner's FECA claim for lack of evidence as an implicit determination that his claim otherwise fell within the scope of FECA. *Ibid.* The Third Circuit affirmed, holding that FECA divests federal courts of subject-matter jurisdiction over the threshold question of what claims fall within the scope of that statutory scheme. *Id.* at 4-7.

The Third Circuit's decision implicates an acknowledged split among the circuits about whether federal courts have subject-matter jurisdiction to address the scope of FECA. The majority position (including the Third Circuit) holds that federal courts lack subject-matter jurisdiction to address the scope of FECA, and that the Secretary of Labor therefore has unreviewable discretion to decide the legal question of whether a particular kind of claim is covered by FECA. See, *e.g.*, *Mathirampuzha v. Potter*, 548 F.3d 70, 82-83 (2d Cir. 2008) (recognizing circuit split but holding that "the Secretary of Labor may determine what types of claims fall within the scope of FECA coverage."); *Bennett v. Barnett*, 210 F.3d 272, 277 (5th Cir. 2000) (where Secretary finds claim falls within scope of FECA, federal courts "[do] not have

jurisdiction”); *Fuqua v. U.S. Postal Service*, 956 F.3d 961, 964 (7th Cir. 2020) (“The Secretary of Labor has exclusive authority to administer FECA claims and to decide questions arising under that Act, including whether a claim is covered.”); *Swafford v. United States*, 998 F.2d 837, 841 (10th Cir. 1993) (“The Secretary of Labor, not the Tenth Circuit, has the final say as to the scope of FECA.”).

By contrast, the Ninth Circuit has held that federal courts retain subject-matter jurisdiction to address what claims fall within the scope of FECA. See *Moe v. United States*, 326 F.3d 1065, 1068 (9th Cir. 2003); *Figueroa v. United States*, 7 F.3d 1405, 1408 (9th Cir. 1993); *Sheehan v. United States*, 896 F.2d 1168, 1174 (9th Cir.), *as amended*, 917 F.2d 424 (9th Cir. 1990). Indeed, pursuant to its understanding of federal jurisdiction, the Ninth Circuit has held—consistent with Mr. Spade’s underlying position in this case—that emotional distress claims “divorced from any claim of physical harm” fall outside the scope of FECA. *Sheehan*, 896 F.2d at 1174.

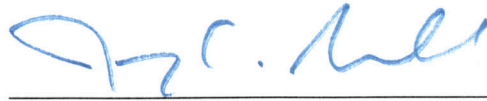
Undersigned counsel and the University of Virginia Supreme Court Litigation Clinic are working diligently, but respectfully submit that the additional time requested is necessary to complete preparation of Mr. Spade’s petition. Undersigned counsel was engaged for the first time at the certiorari stage. Despite diligent efforts, substantial work remains to complete review of the record of the case, to conclude research on the authorities supporting this Court’s review, and to finish preparing the petition and appendix for filing. Among other things, this case requires detailed inquiries into this Court’s precedents involving interpretation and application of FECA. It also requires careful review of a substantial body of case law from federal

district and circuit courts considering their own subject-matter jurisdiction to make threshold determinations regarding FECA's scope. Additional time is also required to allow Mr. Spade, as well as his existing counsel, sufficient opportunity to review and comment on draft filings.

Undersigned counsel has also faced numerous overlapping deadlines in other matters during the existing time for preparation of a petition for writ of certiorari in this case. Among other things, undersigned counsel presented oral argument on March 8, 2022, and April 7, 2022, in unrelated cases in the U.S. Courts of Appeals for the Ninth and D.C. Circuits, respectively. In addition, undersigned counsel filed a merits-stage *amicus* brief on April 18, 2022, in *Sackett v. EPA* (this Court's case 21-454); a certiorari-stage reply brief on April 18, 2022, in *Flowers v. United States* (this Court's case 21-835); a respondent-intervenor merits brief on April 25, 2022, in *Shrimpers & Fishermen of the RGV v. U.S. Army Corps of Engineers* (5th Cir. case 21-60889); and also on April 25, 2022, a significant substantive pleading in a proceeding before the Federal Energy Regulatory Commission.

Wherefore, Petitioner respectfully requests that an order be entered extending the time to file a petition for writ of certiorari up to and including Tuesday, June 14, 2022.

Respectfully submitted,



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