

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

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**In the Supreme Court of the United States**

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PAUL S. MORRISSEY AND KELLY STEPHENSON,

*Petitioners,*

*v.*

ALEJANDRO N. MAYORKAS, SECRETARY, U.S. DEPARTMENT OF HOMELAND SECURITY,  
AND PETE BUTTIGIEG, SECRETARY, DEPARTMENT OF TRANSPORTATION,

*Respondents.*

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

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To the Honorable John G. Roberts, Jr., Chief Justice of the United States Supreme Court and Circuit Justice for the United States Court of Appeals for the District of Columbia Circuit:

1. Pursuant to Supreme Court Rule 13.5, petitioners Paul S. Morrissey and Kelly Stephenson respectfully request a 60-day extension of time, to and including Friday, September 9, 2022, within which to file a petition for a writ of certiorari. The United States Court of Appeals for the District of Columbia Circuit issued its opinion on November 9, 2021. A copy of the opinion is attached. The court denied petitioners' timely rehearing petition on April 12, 2022. A copy of the order is attached. This Court's jurisdiction would be invoked under 28 U.S.C. § 1254(1).

2. Absent an extension, a petition for a writ of certiorari would be due on Monday, July 11, 2022. This application is being filed more than 10 days in advance of that date, and no prior application has been made in this case.

3. This case concerns whether a district court’s dismissal of claims under Federal Rule of Civil Procedure 4(m), in a case where the applicable statute of limitations likely bars future litigation, should be governed by the same heightened standard used to review a dismissal with prejudice—and thus be permitted only where (1) there is a clear record of delay or contumacious conduct by the plaintiff, and (2) a lesser sanction would not better serve the interests of justice.

4. There is an acknowledged conflict among the courts of appeals on this issue. As both the majority and the dissent recognized in this case, it has been “a rule that has been on the books for 50 years in the Fifth Circuit” that “dismissals without prejudice when the statute of limitations has run must be treated as dismissals with prejudice” and thus evaluated under a heightened standard. Slip op. at 10 n.3 (citing *Pond v. Braniff Airways, Inc.*, 453 F.2d 347, 348-49 (5th Cir. 1972)); Slip dissent at 1, 19-22 (Millett, J., dissenting). In contrast to the Fifth Circuit’s approach, the Seventh Circuit and the D.C. Circuit (in the decision below) have held that dismissals without prejudice for failure to meet a service-of-process deadline may be issued as a matter of course, even *sua sponte* and without any order to show cause. See Slip op. at 9-11; Slip dissent at 18, 22 n.3; see also *Jones v. Ramos*, 12 F.4th 745, 750–51 (7th Cir. 2021) (“[O]ur circuit requires only that the district court consider whether dismissal without prejudice will effectively end the litigation as one factor to be weighed with others. We have required no heightened standard.”).

5. As Judge Millett explained in her dissent in this case, moreover, by permitting judges to issue effectively-with-prejudice dismissals under Rule 4(m) without requiring a heightened showing, the D.C. Circuit now treats such dismissals under 4(m) differently than other circumstance in which a court's dismissal without prejudice effectively ends a case. See Slip dissent at 31-34. As Judge Millett explained dismissals that are nominally without prejudice but that are effectively with prejudice are generally required, in the D.C. Circuit and in other circuits, to be evaluated under the heightened standard applicable to dismissals with prejudice because of their known case-ending consequences. See *id.* at 22-28. Yet the decision below adopts a different rule for Rule 4(m) dismissals.

6. This is an important case. Plaintiffs that make technical service-of-process errors are treated much more harshly in some circuits than in others. And the rule announced below is wrong on the merits. Even counseled litigants sometimes fail to effect correct service within Rule 4's presumptive 90-day service-of-process deadline. The rules themselves have been amended to try to prevent dismissals for mere technical service-of-process failures, like the ones at issue in this case, that are easily remedied and caused the defendant no prejudice. Dismissals that deny a litigant the chance to present a meritorious claim on the basis of an inadvertent mistake at the outset—one that causes no harm and may easily and quickly be remedied—damages the integrity and reputation of the courts and the judicial process, as Judge Millett explained in her dissent. See *id.* at 2, 39-40.

7. Petitioner respectfully requests an extension of time to file a petition for a writ of certiorari. A 60-day extension would allow counsel sufficient time to fully examine

the decision and its consequences, to research and analyze the issues presented, and to prepare the petition for filing. Additionally, the undersigned counsel have a number of other pending matters that will interfere with counsel's ability to file the petition on or before the current deadline of July 11, 2022.

*Wherefore*, petitioners Paul S. Morrissey and Kelly Stephenson respectfully request that an order be entered extending the time to file a petition for a writ of certiorari to and including Friday, September 9, 2022.

May 13, 2022

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Andrew T. Tutt". The signature is fluid and cursive, with a large initial "A" and a long, sweeping flourish extending to the right.

Andrew T. Tutt

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