

**CIVIL CASE
No. 22A-___**

**In The
SUPREME COURT OF THE UNITED STATES
October Term 2022**

**USP HOLDINGS, INC., SUBSTITUTED FOR UNIVERSAL
STEEL PRODUCTS, INC., PSK STEEL CORPORATION,
DAYTON PARTS, LLC, BORUSAN MANNESMANN PIPE
U.S. INC., JORDAN INTERNATIONAL COMPANY,
*Petitioners,***

v.

**UNITED STATES, JOSEPH R. BIDEN, JR., PRESIDENT OF
THE UNITED STATES, GINA M. RAIMONDO,
SECRETARY OF COMMERCE, CHRIS MAGNUS,
COMMISSIONER of U.S. CUSTOMS AND BORDER
PROTECTION,
*Respondents.***

**Application 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 Federal Circuit.**

**APPLICATION TO THE CHIEF JUSTICE AS CIRCUIT
JUSTICE FOR THE FEDERAL CIRCUIT**

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November 1, 2022

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APPLICATION FOR AN EXTENSION OF TIME TO FILE PETITION FOR CERTIORARI

Pursuant to Rule 13.5 of the Rules of the Supreme Court of the United States, Petitioners, through their attorney, request a 30-day extension of time within which to file a petition for a writ of *certiorari* to Friday, December 16, 2022.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The judgment for which review is sought is *USP Holdings, Inc. v. United States*, No. 2021-1726 (June 9, 2022) (attached as Exhibit 1). The United States Court of Appeals for the Federal Circuit denied Applicant's motion for panel rehearing on August 18, 2022 (attached as Exhibit 2). The current deadline to file a petition for *certiorari* is November 16, 2022.

JURISDICTION

This Court will have jurisdiction over any timely filed petition for certiorari in this case pursuant to 28 U.S.C. § 1254(1). Under Rules 13.1, 13.3, and 30.1 of the Rules of this Court, a petition for a writ of certiorari was due to be filed on or before November 16, 2022. In accordance with Rule 13.5, this application is being filed more than 10 days in advance of the filing date for the petition for a writ of *certiorari*.

REASONS JUSTIFYING AN EXTENSION OF TIME

A. Applicants Require Additional Time to Prepare a Petition.

Pursuant to Supreme Court Rule 13.5, Petitioners request a 30-day extension of time to file a petition for a Writ of Certiorari for the Federal Circuit decision in *USP Holdings, et al. v. United States*, 36 F.4th 1359 (Fed. Cir. 2022), *petition for panel rehearing denied* (Docket # 74, August 18, 2022). The basis of this request for an extension of time is that Petitioners must deal with a new issue central to the Court of Appeals decision that neither that Court nor the lower Court had reached before. The Federal Circuit did not provide petitioners the opportunity to

brief this issue before its decision. The additional thirty days requested are necessary to develop the arguments necessary for this effort. Counsel must research additional cases and prepare a petition for *certiorari* based on this new issue.

B. The Court of Appeals Diverged from Supreme Court Precedent and Decisions of other Circuits over the Standard of Review of Final Agency Action under the Administrative Procedure Act.

The subject matter in this case is highly complex. The Court of Appeals decision diverges from Supreme Court precedent and other Circuit decisions. The Court of Appeals determined that the report of the Secretary of Commerce that steel was being imported under such circumstances as to “threaten to impair the national security” constituted final agency action subject to judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 704. 36 F.4th at 1368.

Having reached that determination, the Court of Appeals panel then, for the first time, reached the issue of the proper standard of review for final agency action. The panel held that, although the Commerce decision was subject to judicial review under the APA as final agency action, the “arbitrary and capricious” standard of review did not apply.

The petition for certiorari will challenge an unprecedented preclusion of “arbitrary and capricious” review of “final action” of an agency under the APA. This Court and several Courts of Appeals have noted that, “in all cases,” final agency action under the APA is subject to judicial review to determine whether an agency decision was arbitrary and capricious, or otherwise not in accordance with law (*see, e.g., Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 413 (1971)). Yet, the Federal Circuit explicitly declined to review the decision of the Department of Commerce under the arbitrary and capricious standard, citing *United States v. George S. Bush & Co., Inc.*, 310 U.S. 371 (1940), which was decided six years before the APA

was passed by Congress. This degree of deference to an agency determination appears to be unprecedented in cases where Congress did not commit the determination to agency discretion by law, which the panel agreed was not the case here.

Petitioners asked the panel to reconsider the opinion denying arbitrary and capricious review, but the panel denied the petition for reconsideration without a published opinion on August 18, 2022.

A petition for *certiorari* will address whether the Commerce determination, which the Federal Circuit ruled was subject to judicial review, is shielded from arbitrary and capricious review despite the APA's unambiguous instruction to examine agency determinations with at least that minimum standard of review. The additional period requested will permit Petitioners to prepare an adequate document with supporting materials that will fully examine this important issue.

For these reasons, Petitioners request that the Court grant them an additional 30 days so that counsel can properly research the issues and present a well-prepared and thorough petition to this Court.

C. There is No Prejudice to Respondents from This Brief Extension of Time.

Applicants see no prejudice to Respondents from granting the requested extension.

REQUESTED RELIEF

For the foregoing reasons, Applicants respectfully request a 30 day extension of the time within which to petition for Writ of Certiorari in this action, from November 16, 2022 to December 16, 2022.

Respectfully submitted,

Dated: November 1, 2022

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