

No.

IN THE
Supreme Court of the United States

GLENHAVEN HEALTHCARE LLC, a California corporation;
CARAVAN OPERATIONS CORP., a California corporation;
MATTHEW KARP, an individual; BENJAMIN KARP, an individual
Petitioners,

v.

JACKIE SALDANA; CELIA SALDANA; RICARDO SALDANA, JR.; MARIA SALDANA,
as individuals and as successors and heirs to Ricardo Saldana, deceased,
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 NINTH CIRCUIT**

Application to the Honorable Elena Kagan, as Circuit Justice for the Ninth Circuit

Pursuant to Supreme Court Rule 13.5, Applicants Glenhaven Healthcare LLC, Caravan Operations Corp., Matthew Karp, and Benjamin Karp (collectively, Glenhaven) request a 40-day extension of time, to and including August 29, 2022,¹ within which to file a petition for a writ of certiorari.

1. The decision below is *Saldana v. Glenhaven Healthcare LLC*, No. 20-56194 (9th Cir. 2022). The Ninth Circuit issued its opinion on February 22, 2022, *see* App. A, and denied rehearing and rehearing en banc on April 18, 2022, *see* App. B. Unless extended, Glenhaven's time to seek certiorari in this Court expires July

¹ The 40-day mark falls on Saturday, August 27; August 29 is the next business day.

18, 2022. Glenhaven is filing this application at least ten days before that date. *See* S. Ct. R. 13.5. This Court’s jurisdiction would be invoked under 28 U.S.C. § 1254(1). Respondents do not object to this extension request.

2. Congress passed the Public Readiness and Emergency Preparedness (PREP) Act in 2005 to enable the federal government to respond effectively to public health emergencies. 42 U.S.C. § 247d-6d, 247d-6e. This case concerns whether the PREP Act completely preempts state-law claims related to the administration of “covered countermeasures” by “covered persons” during a pandemic: here, Glenhaven’s decisions regarding the use of personal protective equipment (PPE) and isolation at its nursing home during the COVID-19 pandemic. If the PREP Act completely preempts such claims, then “a claim which comes within the scope of [the PREP Act], even if pleaded in terms of state law, is in reality based on federal law” and so is “removable” to federal court. *Beneficial Nat’l Bank v. Anderson*, 539 U.S. 1, 8 (2003).

3. Glenhaven operates a nursing home in California. Ricardo Saldana, Respondents’ relative, lived at the nursing home until he died in April 2020, at the beginning of the pandemic. Respondents sued Glenhaven in California state court and raised various state-law claims, such as willful misconduct, for Glenhaven’s alleged failure to protect Mr. Saldana from COVID-19. After Glenhaven removed the case to federal court, the district court held that it lacked subject-matter jurisdiction and granted Respondents’ motion to remand the case to state court.

The Ninth Circuit affirmed. It held, as relevant here, that although the PREP Act created a “specifically defined, exclusive federal cause of action” for willful-misconduct claims, the Act did not “completely preempt all state-law claims related to the pandemic.” App. A at 15. The court acknowledged that the PREP Act might preempt Respondents’ claim for willful misconduct, but it rejected Glenhaven’s argument that the Act regulated so comprehensively as to displace all of Respondents’ state-law claims. App. A at 15-16.

4. Good cause exists for a 40-day extension within which to file a petition.

a. This case presents an important and recurring question that has arisen in numerous courts of appeals and will continue to arise as the pandemic drags on. In addition to the Ninth Circuit, the Third, Fifth, and Seventh Circuits have also addressed the PREP Act and complete preemption. *See Maglioli v. Alliance HC Holdings LLC*, 16 F.4th 393 (3d Cir. 2021); *Mitchell v. Advanced HCS, LLC*, 28 F.4th 580 (5th Cir. 2022); *Martin v. Petersen Health Ops., LLC*, --- F.4th ---, 2022 WL 2154870 (2022). Additional cases raising this issue are pending in other courts. *E.g.*, *Leroy v. Hume*, No. 21-2158 (2d Cir.). Thus far, the courts of appeals have aligned with the Ninth Circuit in holding that the PREP Act does not completely preempt state-law claims like Respondents’. To be sure, complete preemption is uncommon. But the COVID-19 pandemic was unprecedented, and Congress enacted the PREP Act in the wake of the September 11 terrorist attacks and the anthrax attacks that followed precisely to allow for a speedy and uniform national response to such events. Allowing medical providers to face suits in different state forums under different

bodies of state tort law for their acts during the pandemic defeats the purpose of the PREP Act. An extension of time will help to ensure that the petition thoroughly presents the important issues raised by the Ninth Circuit's decision and the widespread ramifications of that decision.

b. An extension is further warranted because undersigned counsel has only recently been retained to represent Glenhaven in this matter. Additional time is necessary for counsel to become fully familiar with the issues, the decision below, the record, and the relevant case law.

c. The request is further justified by counsel's press of business on other pending matters. Counsel has petitions for certiorari due July 25 in *Medders v. SSA*, No. 21-11702 (11th Cir.); August 5 in *ML Genius Holdings LLC v. Google LLC*, No. 20-3113 (2d Cir.); and August 10 in *Priva v. U.S. Attorney General*, No. 20-12521 (11th Cir.). Counsel also has ongoing responsibilities in *Sony Music Entertainment v. Cox Communications*, No. 21-1168 (4th Cir.); *Sonos, Inc. v. ITC*, No. 22-1421 (Fed. Cir.); and *Continental Automotive Systems, Inc. v. Avanci, L.L.C.*, No. 20-11032 (5th Cir.).

The requested 40-day extension would cause no prejudice to Respondents, who have advised that they have no objection to the extension.

Respectfully submitted,

/s/ E. Joshua Rosenkranz

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