

No. 22A-\_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

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TREVOR MURRAY,

*Applicant,*

v.

UBS SECURITIES, LLC, AND UBS AG,

*Respondents.*

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On Petition for a Writ of Certiorari to the  
United States Court of Appeals for the Second Circuit

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

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

TO: Justice Sonia Sotomayor, Circuit Justice for the United States  
Court of Appeals for the Second Circuit:

Under this Court's Rules 13.5 and 22, Applicant Trevor Murray requests an extension of thirty (30) days in which to file a petition for a writ of certiorari in this case. The U.S. Court of Appeals for the Second Circuit issued its decision on August 5, 2022. *See Murray v. UBS Securities, UBS AG*, 43 F.4th 254 (2d Cir. 2022). App. 1. The Court denied the petition for panel rehearing, or, in the alternative, for rehearing *en banc*, on September 15, 2022. App 21. Unless extended, the time to file a petition for certiorari will expire on December 14, 2022. With the requested extension, the petition would be due on January 13, 2023.

This application is being filed more than 10 days before the petition is due. *See* S. Ct. R. 13.5. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1). In support of this application, Applicant states:

1. This case is a serious candidate for review. It involves interpretation of Section 806(a) of the Sarbanes-Oxley Act of 2002 ("SOX"), codified as amended at 18 U.S.C. § 1514A. Section 1514A provides a private cause of action to employees who report financial wrongdoing at publicly traded companies and claim that they suffered adverse employment consequences because of whistleblowing. It specifies that this whistleblower action "shall be governed by the legal burdens of proof set forth in" the Wendell H. Ford

Aviation Investment and Reform Act for the 21st Century—a statute commonly referred to as “AIR-21.” 18 U.S.C. § 1514A(b)(2) (cross-referencing 49 U.S.C. § 42121(b)).

AIR-21, and thus SOX, contains a specified burden-shifting framework. First, the plaintiff needs to show that his whistleblowing “was a contributing factor in the unfavorable personnel action alleged.” 49 U.S.C. § 42121(b)(iii). If he does, he has met his burden. At that point, the employer has an affirmative defense if it can “demonstrate[] by clear and convincing evidence that the employer would have taken the same unfavorable personnel action in the absence of that behavior.” *Id.* § 42121(b)(iv)).

2. Applicant was hired by respondents in April 2011, as a research strategist. His job was to report on commercial mortgage-backed securities (CMBS) markets to UBS’s current and potential customers. Securities and Exchange Commission regulations required him to certify that his research was independently produced and accurately reflected his own views. App. 3-4. In the fall of 2011, applicant reported to his supervisor that he was being pressured by the leader of UBS’s trading desk to alter his analyses and to preclear those analyses with the trading desk. Shortly thereafter, despite having received a strongly positive review, he was fired. App. 6.

3. Applicant brought suit in the United States District Court for the Southern District of New York, alleging that respondents had violated Section 1514A. After a jury trial lasting more than two weeks, the jury returned a

verdict for applicant, awarding \$653,300 in back pay and \$250,000 in non-economic damages. App 8. On the jury form, it found that applicant had met his burden of proving the four elements of a prima facie case, by a preponderance of the evidence. These were that: (1) his activity was protected; (2) his employer knew about the activity; (3) he suffered an adverse action in being fired; and (4) his protected activity contributed to his termination. The jury further found that UBS had not proved, by clear and convincing evidence, that it would have fired him absent his whistleblowing. The district court denied UBS's post-trial motion and upheld the jury verdict. *Id.*

4. On appeal, the Second Circuit reversed. It acknowledged that "the jury found that Murray's whistleblowing was a contributing factor to his termination." App. 19. It also conceded that "there was circumstantial evidence at trial that UBS terminated Murray in retaliation for whistleblowing." *Id.* 1817a. However, the Second Circuit held that this was insufficient to establish liability because the jury had not been required to find that Murray proved UBS had "retaliatory intent" in firing him. *Id.* 19. The court subsequently denied a petition for rehearing or rehearing en banc. *Id.* 21.

5. This case raises an important question of law on which the courts of appeals are divided. In the opinion below, the Second Circuit acknowledged that its decision "departs from the approach of the Fifth and Ninth Circuits as to the elements of a section 1514A claim." App. 16 n. 7 (citing *Halliburton, Inc. v. Admin. Rev. Bd.*, 771 F.3d 254 (5th Cir. 2014), and *Coppinger-Martin v.*

*Solis*, 627 F.3d 745 (9th Cir. 2010)). The Second Circuit’s decision also conflicts with decisions of the Fourth and Tenth Circuits. *See Feldman v. Law Enforcement Associates Corp.*, 752 F.3d 339 (4th Cir. 2014); *Lockheed Martin Corp. v. Dep’t of Labor*, 717 F.3d 1121 (10th Cir. 2013). And it also conflicts with positions the Department of Labor has taken both in administrative proceedings and in litigation regarding interpretation of the “contributing factor” language in whistleblower statutes. *See Hutton v. Union Pac. R.R. Co.*, ARB No. 11-091, 2013 WL 2450037 (ARB May 31, 2013); Br. for the Secretary of Labor as Amicus Curiae in Support of Plaintiff-Appellee and Affirmance, *Blackorby v. BNSF Railway Co.*, 12-13 (No. 15-3192) (8th Cir. Feb. 12, 2016), *cert. denied*, 138 S. Ct. 264 (2017).

Due to the circuit split on this issue, there is a reasonable prospect that this Court will grant the petition, such that it warrants this additional time for these important questions to be fully addressed.

6. This application for a thirty-day extension seeks to accommodate Applicant’s legitimate needs. Applicant recently affiliated counsel at the Stanford Supreme Court Litigation Clinic. The extension is needed for members of the Clinic to fully familiarize themselves with the record, the decisions below, and the relevant case law. In light of the Clinic’s many other obligations—including preparing two merits briefs for this Court, one due on a newly compressed time frame—the Clinic would face difficulties completing all those tasks by the current due date.

For these reasons, Applicant requests that the due date for his petition for a writ of certiorari be extended to January 13, 2023.

Respectfully submitted,

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