

No. ____

In the Supreme Court of the United States

UNITED STATES OF AMERICA *ex rel.* ALLEN TIMOTHY YU,

Petitioner,

v.

GRIFOLS USA, LLC; GRIFOLS SHARED SERVICES NORTH AMERICA, INC.;
GRIFOLS, S.A.; and GRIFOLS BIOLOGICALS LLC,

Respondents.

**On Application for Extension of Time to File
Petition for a Writ of Certiorari to the United
States Court of Appeals for the Second Circuit**

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

James E. Miller
Miller Shah LLP
65 Main Street
Chester, CT 06412

Counsel for Petitioner

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

Petitioner, the United States of America *ex rel.* Allen Timothy Yu, through undersigned counsel and pursuant to Supreme Court Rules 13.5 and 30, respectfully applies to Associate Justice Sonia Sotomayor as Circuit Justice for the United States Court of Appeals for the Second Circuit and requests a sixty-day (60-day) extension of time from January 12, 2022 until March 13, 2023 to file his petition for a writ of certiorari.

1. On October 14, 2022, the United States Court of Appeals for the Second Circuit affirmed the District Court’s order granting the motion to dismiss of respondents (collectively, “Grifols”) in a summary order and judgment in *United States ex rel. Allen Timothy Yu v. Grifols USA, LLC, Grifols Shared Services North America, Inc., Grifols, S.A., and Grifols Biologicals, Inc.*, No. 22-107, 2022 WL 7780544 (2d Cir. Oct. 14, 2022). A copy of the Second Circuit’s opinion is attached hereto as Appendix A. *See* Sup. Ct. R. 13.5.

2. Petitioner did not petition for panel rehearing or rehearing *en banc* in the Second Circuit. *See* Sup. Ct. R. 13.5. Accordingly, the deadline for Petitioner’s petition for a writ of certiorari is currently due 90 days after October 14, 2022, which is January 12, 2023.

3. Petitioner’s case raises important questions regarding the materiality standard governing claims asserted under the False Claims Act (“FCA”), 31 U.S.C. § 3729, *et seq.*, which this Court set forth in *Universal Health Servs., Inc. v. United States ex rel. Escobar*, 579 U.S. 176, 193 (2016)(“*Escobar*”). Although the

undersigned served as Petitioner's counsel in the proceedings before the Second Circuit Court of Appeals and have agreed as a courtesy to Petitioner to file the instant Application, the undersigned have not agreed to represent Petitioner in substantive proceedings before this Court in requesting grant of *certiorari*, which is beyond the scope of the undersigned counsel's retention agreement, which Petitioner understands and has acknowledged.

4. The Second Circuit Court of Appeals' summary order and judgment issued in this case, *United States ex rel. Allen Timothy Yu v. Grifols USA, LLC, Grifols Shared Services North America, Inc., Grifols, S.A., and Grifols Biologicals, Inc.*, No. 22-107, 2022 WL 7780544 (2d Cir. Oct. 14, 2022), raises important and significant issues under the FCA and with respect to the pleading of materiality under *Escobar* and, specifically, with respect to the false or fraudulent nature of claims allegedly submitted by Grifols to secured approval of the Food and Drug Administration ("FDA") to sell certain drugs and the manufacturing of such drugs in violation of current Good Manufacturing Practices ("cGMPs"), compliance with which is required by FDA regulations. *See generally United States ex rel. Campie v. Gilead Scis., Inc.*, 862 F.3d 890 (9th Cir. 2017), *cert denied* 139 S.Ct. 783 (2019)(holding that materiality was adequately alleged in similar case and that adulteration of drug could form basis for FCA claim); *U.S. ex rel. Rostholder v. Omnicare, Inc.*, 745 F.3d 694 (4th Cir. 2014)(holding that submission of reimbursement request cannot constitute a false claim under the FCA on the basis

that the drug was adulterated as a result of having been manufactured in violation of FDA safety regulations).

5. After engaging in a careful review of the Second Circuit Court of Appeals' decision and consulting with undersigned counsel, Petitioner recently has made the final determination that he wishes to seek grant of *certiorari* of the Second Circuit Court of Appeals' decision in this case. The undersigned counsel is unable to represent Petitioner in such proceedings in light of other current commitments, including upcoming trials in significant matters in February, March and April of 2023, as well as because Petitioner and undersigned counsel respectfully disagree about whether *certiorari* should be sought in this case. Nevertheless, it is respectfully submitted that, in light of Petitioner's substantial and unflagging commitment to the claims asserted in this litigation, Petitioner should be granted an opportunity to seek *certiorari* and obtain suitable replacement counsel to represent Petitioner's interests in this regard.

6. Petitioner is actively seeking new counsel to represent him before this Court and to prepare the petition for a writ of *certiorari*, and requires more time for that purpose. Therefore, Petitioner seeks an extension of sixty (60) days in which to file his petition for a writ of *certiorari*, which would extend the deadline from January 12, 2023 to March 13, 2023. *See* Sup. Ct. R. 13.5 (“[A] Justice may extend the time to file a petition for writ of *certiorari* for a period not exceeding 60 days”).

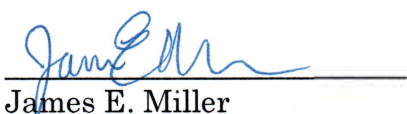
7. No prejudice would result from the requested extension. Any petition can be considered this Term—and, if granted, the case will be argued and decided next Term. In the interim, the *status quo ante* remains intact.

8. In accordance with Supreme Court Rule 13.5, this Application is submitted at least ten (10) days prior to the present due date. Further, the requested extension is made in good faith and not to cause any undue delay.

WHEREFORE, Petitioner respectfully requests that this Court extend the current January 12, 2023 deadline to March 13, 2023.

December 30, 2022

Respectfully submitted,



James E. Miller
MILLER SHAH LLP
65 Main Street
Chester, CT 06412
(866) 540-5505

Monique Olivier
OLIVIER & SCHREIBER, LLP
475 14th Street, Suite 250
Oakland, CA 94612
(415) 484-0980