

IN THE SUPREME COURT OF THE UNITED STATES

No. 23A581

METAL CONVERSION TECHNOLOGIES, LLC, Petitioner

v.

U.S. DEPARTMENT OF TRANSPORTATION, Respondent

**APPLICATION FOR A FURTHER EXTENSION OF TIME WITHIN
WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO
THE U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT**

**TO: The Honorable Associate Justice Clarence Thomas,
Circuit Justice for the Eleventh Circuit:**

Pursuant to Rules 13.5 and 30.2 of the Rules of this Court, Applicant Metal Conversion Technologies, LLC respectfully requests a further 28-day extension of time, to and including March 8, 2024, within which to file a petition for a writ of certiorari.

JUDGMENT FROM WHICH REVIEW IS SOUGHT

Applicants anticipate seeking review of the judgment and attached opinion of the United States Court of Appeals for the Eleventh Circuit in *Metal Conversion Technologies, LLC v. U.S. Department of Transportation*, 22-14140 (App. 1a-3a). The opinion is not reported and is available at 2023 WL 4789084. The Eleventh Circuit denied Applicant's petition for rehearing en banc on October 12, 2023 (App. 4a-5a). The final order (App. 7a-16a) of the U.S. Department of Transportation (DOT) dated July 25, 2022, is available at: <https://www.regulations.gov/document/PHMSA-2021-0088-0002>. The initial decision (App. 17a-33) of the agency's Chief Counsel is available at: <https://www.regulations.gov/document/PHMSA-2021-0088-0001>.

JURISDICTION

This Court has jurisdiction to review the Eleventh Circuit’s judgment and opinion under 28 U.S.C. § 1254(1). Unless extended, the deadline for filing a petition for a writ of certiorari would expire on February 9, 2024. This application is being filed more than 10 days before the expiration date. Applicant has received a prior 30-day extension of the deadline.

BACKGROUND

The Pipeline and Hazardous Materials Safety Administration (PHMSA)—an agency within DOT—brought an administrative proceeding against Applicant for alleged violations of regulations promulgated under the Hazardous Materials Transportation Act of 1975. The agency’s Chief Counsel issued an initial decision in October 2021 finding that Petitioner violated regulations and assessed a civil penalty of approximately \$131,000. App. at 32a. The agency assigned Applicant’s timely administrative appeal in December 2021 to its Chief Safety Officer. On July 22, 2022, the agency admitted in filings in a separate case before the Sixth Circuit Court of Appeals that its Chief Safety Office was never appointed as an Officer of the United States under *Lucia v. SEC*, 138 S. Ct. 2044, 2051 (2018), and thus he lacked the power to preside over agency adjudications and the civil penalty he issued must be vacated. See Motion to Vacate and Remand at 2, *Polyweave Packaging, Inc. v. DOT*, No. 21-4202 (6th Cir. July 22, 2022), Doc. 29. Three days later, the same unauthorized Chief Safety Officer issued a final order affirming the \$131,000 civil penalty against Applicant. App. at 16a. The agency never informed Applicant that the Chief Safety Officer lacked authority to issue that order.

Applicant first learned of the Chief Safety Officer's Appointments Clause defect in October 2022, after the 60-day period to challenge DOT's final order under 49 U.S.C. § 5127(a) had passed. Applicant retained new counsel and filed a petition to review the final order in December 2022, seeking equitable tolling of § 5127(a)'s 60-day limit. The Eleventh Circuit panel held that Federal Rule of Appellate Procedure 26(b) categorically prohibits the tolling of any non-jurisdictional time limit to seek judicial review of the order of an agency and dismissed the petition for review as untimely.

REASONS JUSTIFYING EXTENSION OF TIME

This case raises the important and novel issue of whether Federal Rule of Appellate Procedure 26(b) categorically prohibits federal courts from equitably tolling non-jurisdictional time limits within which parties aggrieved by agency orders may seek judicial review of such orders.

The additional time sought in this application is needed for Applicant to continue consulting with its attorneys to assess the legal and practical impact of the court of appeals' ruling so it can determine whether and how to petition for a writ of certiorari. Additional time is also needed because the attorneys who would have principal responsibility for preparation of the Applicant's petition have been heavily engaged with the press of other matters, including a case argued before the Court in January 2024 (*Relentless v. Dep't of Commerce*, 22-1219) and another case that will be argued before the Court in February 2024 (*Garland v. Cargill*, 22-976).

January 29, 2024

Respectfully submitted,

/s/ Kara M. Rollins

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