No. 25A-_____

IN THE
SUPREME COURT OF THE UNITED STATES

TREVOR MURRAY,

Applicant,

v.

UBS SECURITIES, LLC, AND UBS AG,

Respondents.

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

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 twenty-one (21) days in which to file a petition for a writ of certiorari in this case.

1. The Second Circuit Court of Appeals issued its order denying rehearing en banc on May 16, 2025. Without an extension, the petition for a writ of certiorari would be due on August 14, 2025. With the requested extension, the petition would be due on September 4, 2025. This Court has jurisdiction to review the Second Circuit's judgment under 28 U.S.C. § 1254(1).

2. This case is about the proper interpretation of the Sarbanes Oxley Act (SOX) whistleblower protection provision, which makes it unlawful to "discharge" an employee "because of" protected whistleblowing activity. 18 U.S.C. § 1514A(a).

Congress specified precisely how violations of that provision are proven. A plaintiff must show that whistleblowing was a "contributing factor in the unfavorable personnel action." 49 U.S.C. §§ 42121(b)(2)(B)(i), (iii) (incorporated into SOX by 18 U.S.C. § 1514A(b)(2)(C)). A defendant can avoid liability if it "demonstrates by clear and convincing evidence" that it "would have taken the same unfavorable personnel action in the absence of" the whistleblowing. 49 U.S.C. §§ 42121(b)(2)(B)(ii), (iv) (incorporated by 18 U.S.C. § 1514A(b)(2)(C)).

That two-part framework was drawn directly from the Whistleblower Protection Act of 1989 (WPA), which protects federal employees. *See Murray v. UBS Securities, LLC*, 601 U.S. 23, 28 (2024). Because the WPA was the first statute to use the "contributing factor" standard, Congress itself defined "contributing factor" in an Explanatory Statement: "The words 'contributing factor' . . . mean any factor which, alone or in connection with other factors, tends to affect in any way the outcome of the decision." 135 Cong. Rec. 5033 (1989).

Shortly after the WPA's passage, the Federal Circuit—which has exclusive jurisdiction over the WPA—adopted Congress's definition in *Marano v. Department of Justice*, 2 F.3d 1137, 1140 (Fed. Cir. 1993), holding that a factor that "tends to affect in any way the outcome of the decision" constitutes a "contributing factor." *Id.* at 1140. Congress has since written the WPA's same two-part framework into SOX and more than a dozen other whistleblower statutes. *See Murray*, 601 U.S. at 28 & n.1.

3. Petitioner Trevor Murray was a research strategist employed by respondent UBS. Reviews of Murray's work were glowing, and his division was growing. Federal regulations required Murray's reports to be independent, but another department tried to influence Murray's research. App. 5. When Murray reported that pressure, he was fired.

Murray filed suit under SOX, and when his case went to trial, the district court instructed the jury in accordance with SOX's two-part framework. In language drawn directly from the statute, Congress's Explanatory Statement, and *Marano*, the district court told the jury it must find "that the protected activity in which [Murray] engaged

was a contributing factor in his termination." App. 20. It went on: "For a protected activity to be a contributing factor, it must have either alone or in combination with other factors tended to affect in any way UBS's decision to terminate plaintiff's employment." *Id.*

The jury found that Murray's reporting of regulatory violations was a "contributing factor" in his termination. *Murray*, 601 U.S. at 31. It also concluded that UBS had not shown it would have fired Murray absent that protected conduct. *Id.*

4. On appeal, a panel of the Second Circuit vacated that verdict, holding that "even though the jury found that Murray's whistleblowing was a contributing factor to his termination, we cannot know whether it would have found that UBS acted with retaliatory intent." *Murray v. UBS Securities, LLC*, 43 F.4th 254, 262 (2d Cir. 2022), *overruled*, 601 U.S. 23 (2024).

This Court unanimously reversed, holding that SOX does not require proof of retaliatory intent. *Murray*, 601 U.S. at 32. The Supreme Court described the "contributing factor" test as "easier-to-satisfy" than other employment discrimination tests and "reflect[ing] a judgment that 'personnel actions against employees should quite simply not be based on protected [whistleblowing] activities'—not even a little bit." *Id.* at 28, 36-37. The Court explained that in Murray's case, "the burden-shifting framework worked as it should . . . The jury heard both sides of the story. It then determined that Murray had shown his protected activity was a contributing factor in his firing." *Id.* at 37.

5. On remand, the same Second Circuit panel again vacated the jury verdict. This time, the panel majority held that the "tended to affect in any way" definition of "contributing factor" was wrong because it "allowed the jury to hold UBS liable without finding that Murray's whistleblowing contributed to his termination." App. 18.

Judge Pérez dissented. She criticized the majority for "doubling down" after its reversal by the Supreme Court: "One of the benefits of life tenure is that we can freely admit when we're wrong. . . . [W]e ought to take our lumps and apply the law as it stands, even when it leads us to a new result." App. 35.

6. There is a fair probability that certiorari will be granted in this case. In the context of the whistleblower protection burden-shifting framework, 10 circuits have defined "contributing factor" to mean a factor that "tends to affect in any way" the termination decision.[1] By rejecting that definition of "contributing factor," the Second Circuit opened a split with virtually all the other circuits. The panel majority also breaks ranks with the Department of Labor. Across multiple decades, multiple statutes, and hundreds of cases, the Department of Labor has maintained that a

[1] *See Araujo v. N.J. Transit Rail Ops.*, 708 F.3d 152, 158-59 (3d Cir. 2013); *Feldman v. L. Enf't Assocs. Corp.*, 752 F.3d 339, 348-49 (4th Cir. 2014); *Allen v. Admin. Rev. Bd.*, 514 F.3d 468, 476 n.3 (5th Cir. 2008); *Norfolk S. Ry. Co. v. U.S. Dep't of Lab.*, No. 21-3369, 2022 WL 17369438, at *9 (6th Cir. Dec. 2, 2022); *Addis v. Dep't of Lab.*, 575 F.3d 688, 691 (7th Cir. 2009); *Kuduk v. BNSF Ry. Co.*, 768 F.3d 786, 791 (8th Cir. 2014); *Frost v. BNSF Ry. Co.*, 914 F.3d 1189, 1195 (9th Cir. 2019); *Miller v. Inst. for Def. Analyses*, 795 F. App'x 590, 597 (10th Cir. 2019); *Majali v. U.S. Dep't of Lab.*, 294 F. App'x 562, 566 (11th Cir. 2008); *Marano v. Dep't of Just.*, 2 F.3d 1137, 1140-43 (Fed. Cir. 1993).

"contributing factor" is a factor that "tends to affect in any way the outcome of the decision."[2]

7. This Court would have jurisdiction to review the Second Circuit's judgment and opinion under 28 U.S.C. § 1254(1).

8. This application is not filed for the purpose of delay. Rather, additional time is necessary to prepare a petition for certiorari in this case because the attorneys who have principal responsibility for preparing the petition have other competing deadlines and pre-planned family travel.

Respectfully submitted,

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July 31, 2025

[2] *See, e.g.*, *In re Stacey M. Platone*, 2004 WL 5032621, at *23 (Apr. 30, 2004) (SOX); *In re Sheida Hukman*, 2024 WL 4503358, at *21 (Oct. 2, 2024) (Food Safety Modernization Act); *In re Arngeletta Wells*, 2025 WL 327464, at *12 (Jan. 15, 2025) (Surface Transportation Assistance Act).