

IN THE SUPREME COURT OF THE UNITED STATES

No. A-_____

MIDWEST AIR TRAFFIC CONTROL SERVICE, INC., APPLICANT

v.

JESSICA T. BADILLA; INGRID S. BULOS; CONSORCIA A. CASTILLO;
JOSEPHINE R. ELBANBUENA; MICHELLE S. MEDINA; NELA A. PADURA;
ACEA M. MOSEY, ERIE COUNTY PUBLIC ADMINISTRATOR

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 SECOND CIRCUIT

Pursuant to Rules 13.5 and 30.2 of this Court, counsel for Midwest Air Traffic Control Service, Inc., respectfully requests a 30-day extension of time, to and including December 8, 2021, within which to file a petition for writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case. The Second Circuit entered its judgment on August 9, 2021. App., infra, 1a-65a. Unless extended, the time for filing a petition for a writ of certiorari will expire on November 8, 2021. The jurisdiction of this Court would be invoked under 28 U.S.C. 1254(1).

1. In Boyle v. United Technologies Corp., 487 U.S. 500, 512 (1988), this Court held that, in certain circumstances, the federal interest embodied in the discretionary-function exception to liability under the Federal Tort Claims Act, 28 U.S.C. 2680(a),

preempts state-law tort claims seeking to hold military contractors liable for design defects in military equipment. Subsequently, several courts of appeals have held that the federal interest embodied in the Act's combatant-activities exception, 28 U.S.C. 2680(j), can similarly preempt state-law tort claims seeking to hold military contractors liable for actions taken in support of the military's combat activities. But the courts of appeals have disagreed on when such preemption is appropriate.

2. This case arises out of the crash of a civilian cargo plane outside Kabul, Afghanistan, in 2010. App., infra, 2a. Applicant provided air-traffic controllers to work at Kabul International Airport pursuant to a subcontract to a contract with the United States military, and applicant's employees were working at the airport at the time of the crash. Id. at 4a-5a. In performing their duties under the subcontract, applicant's personnel reported directly to military officers. Id. at 5a. Throughout the contract period, applicant provided services in direct support of United States combat operations, and insurgents regularly attacked the airport. Id. at 4a.

Respondents, the administrators of the estates of individuals who died in the crash, filed the underlying complaint in New York state court against several defendants, including applicant. App., infra, 19a. Applicant removed the case to the United States District Court for the Western District of New York. Id. at 20a. After the close of discovery, applicant moved for summary judgment. Id. at 21a. Applicant argued that federal law preempted respond-

ents' claims because those claims interfered with the federal interest embodied in the combatant-activities exception to liability under the Federal Tort Claims Act, 28 U.S.C. 2680(j). App., infra, 28a. In the alternative, applicant contended that it neither owed a duty of reasonable care to the relevant flight nor proximately caused the crash. Id. at 50a. The district court granted applicant's motion and entered final judgment. Id. at 21a; D. Ct. Dkt. 179 (Jan. 17, 2020).

The court of appeals vacated and remanded for further proceedings. App., infra, 1a-65a. As is relevant here, the court concluded that applicant's claims were not preempted because the military did not "authorize or direct" the specific actions that gave rise to those claims. Id. at 47a-48a. In so concluding, the court expressly rejected the test for preemption adopted by the District of Columbia Circuit, which asks whether the military contractor is "[1] integrated into combatant activities over which [2] the military retained command authority." Id. at 32a-33a. Applying its own test, the court of appeals found inapposite applicant's evidence that "the military retained some authority" over its performance; in the court's view, preemption applies only when a contractor can say, "[t]he Government made me do it." Id. at 38a, 48a.

3. The court of appeals granted applicant's motion to stay the mandate until this Court acts on a petition for a writ of certiorari. App., infra, 66a.

4. Counsel for applicant respectfully requests a 30-day extension of time, to and including December 8, 2021, within which

to file a petition for a writ of certiorari. This case presents complex issues concerning the circumstances in which the federal interest embodied in the Federal Tort Claims Act's combatant-activities exception may preempt state-law tort claims. The undersigned counsel did not represent applicant below and needs additional time to review the record and underlying opinions. In addition, the undersigned counsel is preparing to present argument in this Court in City of Austin, Texas v. Reagan National Advertising of Austin, LLC, No. 20-1029, on November 10, and in Cummings v. Premier Rehab Keller, P.L.L.C., No. 20-219, on November 30. Additional time is therefore needed to prepare and print the petition in this case.

Respectfully submitted.

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