

No. 23A-

In The

Supreme Court of the United States

Advocate Christ Medical Center, et al.,

Applicants,

v.

Xavier Becerra, Secretary, U.S. Department of Health & Human Services.

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

To the Honorable John Roberts, as Circuit Justice for the United States Court of Appeals for the D.C. Circuit:

Under Court Rule 13.5, Advocate Christ Medical Center and over 200 other Medicare-participating hospitals identified in Appendix A respectfully request a 29-day extension of time, to and including December 29, 2023, within which to file a petition for a writ of certiorari in this case.¹ The U.S. Court of Appeals for the D.C.

¹ Appendix A also includes Applicants' corporate disclosure statement.

Circuit issued its decision on September 1, 2023, and no petition for rehearing was filed. *See* App. B. Absent an extension of time, a petition for a writ of certiorari would be due November 30, 2023. This application is filed more than 10 days before that date, *see* S. Ct. Rule 13.5, and the Court would have jurisdiction over the case under 28 U.S.C. § 1254(1).

1. This case presents an important and recurring question of federal law left open by this Court’s decision in *Becerra v. Empire Health Foundation*, 142 S. Ct. 2354 (2022), involving the proper interpretation of the Medicare Act. Because hospitals that serve many low-income patients face higher costs to provide medical care, Congress requires the Department of Health and Human Services to reimburse such hospitals at higher Medicare rates when they treat a disproportionate share of low-income patients. Whether and to what extent a hospital qualifies for higher reimbursements depends upon several factors, including the number of days that a hospital provides inpatient care to patients who “were entitled to benefits under part A of [Medicare] and were entitled to supplementary security income [SSI] benefits.” 42 U.S.C. § 1395ww(d)(5)(F)(vi)(I).

The Department currently interprets “entitled to [SSI] benefits” differently than “entitled to [Medicare part A] benefits.” The Department limits the SSI-entitled category to patients who actually received an SSI payment for the month of their hospital stay, rather than including all who qualify for the SSI program. *See* App. B at 2. Yet, for the Medicare-entitled category, the Department takes the opposite

approach, including all patients who qualify for the Medicare program, regardless of whether Medicare paid for their hospital stay. *Empire Health*, 142 S. Ct. at 2358. In *Empire Health*, the Court upheld the Secretary’s broad interpretation of “entitled to [Medicare part A] benefits.” *Id.* at 2368. The Court expressly left open the question whether “entitled to [SSI] benefits” must likewise include all those who qualify for the SSI program. *Id.* at 2361 n.2. This case presents that open question.

2. The D.C. Circuit held that “entitled to benefits” means two different things within the same sentence of the Medicare Act, upholding the Secretary’s internally inconsistent reading of the statute. The court reasoned that the only relevant benefit provided by the SSI program was payment of cash assistance, and therefore the Department reasonably counted only those who received cash payments as “entitled” to SSI benefits. App. B at 8-12. That decision conflicts with the reasoning underlying the Court’s holding in *Empire Health* as well as the statutory text. It also bolsters a regulatory approach that has proved unworkable in practice, with serious negative consequences for safety-net hospitals and the patients they serve. As in *Empire Health*, the question presented here is “technical but important,” 142 S. Ct. at 2358, as it recurs regularly and affects thousands of hospitals nationwide.

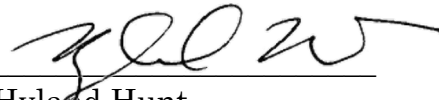
3. A 29-day extension of time is needed to prepare and file a petition for a writ of certiorari. Counsel of record in this Court was retained by Applicants recently, only after the D.C. Circuit issued its judgment. Counsel also currently faces the press of other matters, including but not limited to argument in *Carbon Crest, LLC v. Tencue*

Productions, LLC Nos. 22-15707 et al. (9th Cir.), scheduled for November 14, 2023 and two amicus briefs in cases in the Fifth and Ninth Circuits.

* * * * *

For the foregoing reasons, Applicant hospitals respectfully request that the time within which to file a petition for a writ of certiorari be extended by 29 days, to and including December 29, 2023.

Respectfully submitted,



Hyland Hunt
Counsel of Record
DEUTSCH HUNT PLLC
300 New Jersey Ave., NW
Suite 900
Washington, DC 20001
202-868-6915
hhunt@deutschhunt.com

November 1, 2023