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**In the Supreme Court of the United States**

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JAY HYMAS,

*Applicant,*

v.

UNITED STATES DEPARTMENT OF INTERIOR,

*Respondent.*

\_\_\_\_\_  
**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 NINTH CIRCUIT**

To the Honorable Elena Kagan, Associate Justice of the United States and  
Circuit Justice for the United States Court of Appeals for the Ninth Circuit:

Pursuant to 28 U.S.C. § 2101(c) and Supreme Court Rule 13.5, petitioner Jay Hymas respectfully requests an extension of time of sixty days within which to file a petition for a writ of certiorari in this matter, to and including February 18, 2024 (a Sunday). The United States Court of Appeals for the Ninth Circuit issued its Opinion and Judgment on July 12, 2023. *See App., infra*, A1-A12. Petitioner timely petitioned for rehearing en banc, and the Court of Appeals denied that petition on September 21, 2023. *See App., infra*, A13. The time to file a petition for certiorari in this Court accordingly expires on December 20, 2023. This application is being filed more than 10 days before that date. Copies of the Court of Appeals' Opinion, and of the Court's Order denying rehearing en banc, are attached. The jurisdiction of this Court is based on 28 U.S.C. § 1254(1).

1. This case presents a significant question of law—namely, whether, pursuant to 28 U.S.C. § 1915(a)(1), district courts may impose a partial filing fee on *in forma pauperis* civil litigants, or instead must waive entirely the \$350 filing fee statutorily set by Congress in 28 U.S.C. § 1914(a). This recurring question has divided lower federal courts. *Compare Garza v. Thaler*, 585 F.3d 888, 890 (5th Cir. 2009) (holding that district court could not impose partial filing fees because the Fifth Circuit could “not find any authority that authorizes a district court to grant leave to proceed *in forma pauperis* in a § 2254 case [which is not subject to the Prisoner Litigation Reform Act (PLRA)], and yet require payment of appellate filing fees pursuant to the [partial filing fee] provisions of the PLRA”), *with Samarripa v. Ormond*, 917 F.3d 515, 516 (6th Cir. 2019) (holding that “district court [has] discretion to require partial prepayment of appellate filing fees” under PLRA); *Hymas v. U.S. Dep’t of the Interior*, 73 F.4th 763, 767 (9th Cir. 2023) (holding that “district courts have the authority to impose partial filing fees on non-prisoner civil litigants under 28 U.S.C. § 1915(a)(1)”).

2. Unlike the decision below, Petitioner’s position is consistent with the plain text of 28 U.S.C. § 1914 and § 1915(a)(1), which do not afford district courts discretion to impose a partial filing fee. Sections 1914(a)-(b) require a \$350 filing fee as well as fees, such as the \$52 administrative fee for filing a civil lawsuit, prescribed by the Judicial Conference. Section 1915(a)(1) then gives district courts limited discretion to waive payment of those specific, statutory fees as a condition precedent to filing suit: “[A]ny court of the United States may authorize the commencement,

prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, *without prepayment of fees or security therefor.*” (Emphasis added.) “[W]ithout prepayment of fees” is clear—a court may permit a litigant to proceed without paying any fees. Use of the plural “fees” indicates an all or nothing choice; the district court may allow a litigant to commence suit with payment of the statutorily required fees or “without” them. What the court may not do under § 1915(a)(1) is engage in fee setting by ordering a civil litigant to pay a portion of the required fee amount, as the district court did here, or impose an installment payment plan with an initial downpayment.

Sections 1915(b) and (c) further support this reading. Section 1915(b), which applies only to prisoners, provides that a prisoner bringing a civil action “shall be required to pay the full amount of *a filing fee*” and that the “court shall assess and, when funds exist, collect, as a *partial payment* of any court fees required by law, an *initial partial filing fee.*” 28 U.S.C. § 1915(b)(1) (emphasis added). Subsection (b)(2) then provides that, “[a]fter payment of the *initial partial filing fee*, the prisoner shall be required to make [specified] monthly payments” until “the *filing fees* are paid.” § 1915(b)(2) (emphasis added). Subsections (b)(3)-(4) then state that “[i]n no event shall” (i) “the *filing fee* collected exceed the amount of fees permitted by statute for the commencement of a civil action” or (ii) “a prisoner be prohibited from bringing a civil action” for inability to pay the “*initial partial filing fee.*” § 1915(b)(3)-(4) (emphases added).

Section 1915(b) thus uses the word “partial” four times and distinguishes among a “filing fee,” “any court fees,” and “fees permitted by statute for the commencement of a civil action.” If Congress intended § 1915(a)(1) to afford district courts discretion to require partial fee payments, or to waive particular fees but not others, § 1915(b) shows that Congress knew how to do so clearly.

Likewise, § 1915(c) provides that, “[u]pon the filing of an affidavit in accordance with subsections (a) and (b) and the prepayment of *any partial filing fee* as may be required under subsection (b), the court may direct payment by the United States of [certain] expenses.” (Emphasis added.) Thus, in subsection (c), Congress explicitly acknowledges that partial filing fees are permitted under subsection (b), while omitting any reference to “partial filing fees” under subsection (a).

Courts “generally presume that Congress acts intentionally and purposely when it includes particular language in one section of a statute but omits it in another.” *Intel Corp. Inv. Pol’y Comm. v. Sulyma*, 140 S. Ct. 768, 777 (2020) (cleaned up).

3. Good cause exists for this application. Applicant requests this extension of time to file its petition for a writ of certiorari because counsel primarily responsible for preparing the petition has had, and will continue to have, responsibility for a number of other matters: *Allen v. Milligan*, Nos. 21-cv-1291, 21-cv-1530, 21-cv-1536 (N.D. Ala.) (serving as court-appointed counsel to special master; proposed redistricting maps and special master reports filed on Sept. 25, 2023; public hearing on proposed maps held on Oct. 3, 2023); *New Hampshire v. 3M Co.*, No. 23-1362 (1st

Cir.) (oral argument on Oct. 2, 2023); *Sanders v. CSX Transportation, Inc.*, No. 1-23-0481 (Ill. App. Ct., First Dist.) (reply brief filed on Nov. 13, 2023); *In re FICO Antitrust Litig.*, No. 20-cv-2114 (motion to dismiss filed on December 1, 2023); *Maine v. 3M Co.*, No. 23-1709 (1st Cir.) (opening brief due on Dec. 11, 2023). Accordingly, an extension of time is warranted.

4. An extension of time will not prejudice respondent.

For the foregoing reasons, petitioner hereby requests an extension of time, to and including February 18, 2024, within which to file a petition for a writ of certiorari.

Respectfully submitted.

/s/ Michael A. Scodro  
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