IN THE
SUPREME COURT OF THE UNITED STATES

No. 25A1084

UNITED BIOLOGICS, LLC,

Applicant,

v.

AMERIGROUP TENNESSEE, INC.; PHYSICIANS' MEDICAL ENTERPRISES, LLC; ALLERGY ASSOCIATES, P.A.; NED DELOZIER,

Respondents.

APPLICATION TO THE HON. BRETT M. KAVANAUGH FOR A FURTHER EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Pursuant to Supreme Court Rule 13(5), United Biologics, LLC, dba United Allergy Services (Applicant), hereby moves for a further extension of time of 30 days, to and including June 12, 2026, for the filing of a petition for a writ of certiorari. Unless an extension is granted, the deadline for filing the petition for certiorari will be May 13, 2026.

In support of this request, Applicant states as follows:

1. The United States Court of Appeals for the Sixth Circuit rendered its decision on October 10, 2025, *see* Exhibit 1, and denied a timely petition for rehearing *en banc* on January 13, 2026, *see* Exhibit 2. This Court has jurisdiction under 28 U.S.C. §1254(1).

2. On April 1, 2026, undersigned counsel, Paul D. Clement, applied on behalf of Applicant for an initial 30-day extension of time, to and including May 13, 2026, for the filing of a petition for a writ of certiorari.

3. On April 7, 2026, Justice Kavanaugh granted that initial application.

4. As explained in the initial application, this case is about whether the intended and actual target of a group boycott has antitrust standing to sue.

5. United Allergy Services ("UAS") partners with primary care physicians around the country to provide allergy testing and immunotherapy services. When UAS entered the market in 2009, it was an immediate success in large part because it met a massive unsatisfied demand. Patients seeking allergy testing and immunotherapy services historically had to see specialist physicians known as "allergists," who are scarce in number and concentrated in large urban areas. Allergy sufferers, by contrast, are numerous and widely dispersed. The mismatch is stark: Up to 25% of the American population suffers from allergies, but there are fewer than 5,000 board-certified allergists in the United States. Patients would often wait weeks or months to secure an appointment. And, for patients who lived in rural areas, securing treatment was next to impossible. UAS helped solve that problem.

6. But a group of allergists and health insurers did not take kindly to that market disruption, and instead conspired to drive UAS out of the market for allergy testing and immunotherapy services in Tennessee after its entry into the market threatened the allergists' market share and the insurers' bottom lines. Over several years, the Allergy, Asthma and Sinus Center ("AASC") and defendant Amerigroup

worked together and with other insurance companies to oust UAS from the market, including by coercing UAS's physician customers to cut ties with it. To carry out AASC's scheme, the insurers—Amerigroup, two defendant-BlueCross entities that subsequently settled, and UnitedHealthcare—audited UAS's customers on false pretenses and denied or capped reimbursement for the services they rendered with UAS. As a result, many physicians canceled their contracts with UAS, and many others refused to do business with it. By 2019, defendants had largely succeeded in their scheme to drive UAS from the Tennessee market, eliminating an innovative market entrant to the detriment of UAS and patients alike.

7. The central question in this case is whether the intended and actual target of that group boycott has antitrust standing to challenge it. While this Court's precedents seemingly require an affirmative answer, *see Assoc. Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519 (1983); *Blue Shield of Va. v. McCready*, 457 U.S. 465 (1982), here the Sixth Circuit held to the contrary based on a massive overreading of *Illinois Brick v. Illinois*, 431 U.S. 720 (1977)—a case that neither the defendants nor the district court even cited, because it is not applicable in this context. According to the Sixth Circuit, *Illinois Brick* establishes a "bright-line rule" that bars suit by any party "two or more steps removed" from a violator. Ex. 1 at 2, 18. So even though the entire point of the defendants' scheme was to drive UAS (a direct competitor of AASC) out of the market by coercing UAS's customers to stop doing business with UAS, the Sixth Circuit held that UAS lacks antitrust standing because its customers were the more "directly" injured parties.

8. That is not—and cannot be—the law. As the intended and actual target of a group boycott, UAS plainly has antitrust standing to sue. That is so even if the conspirators harmed UAS by coercing its customers to stop doing business with it. After all, coercing a rival's customers (or suppliers or distributors or banks) to stop doing business with the rival is hardly an uncommon way for market incumbents to maintain their market share. The Sixth Circuit's contrary decision creates a roadmap for antitrust violators to exclude upstart rivals from the market.

9. By the Sixth Circuit's telling, competitors are free to band together to drive an upstart rival from the market so long as they carry out their scheme by targeting the upstart's customers (or suppliers or banks). The upstart rival lacks antitrust standing to sue because it is not the "directly" injured party. And the customers have little incentive to sue because their injuries are comparatively small, and they need the conspirators' business. Under the decision below, then, Uber would lack antitrust standing to sue a group of taxi companies that conspire to exclude Uber from the market by agreeing not to hire Uber drivers or by coercing banks not to finance Uber drivers' cars.

10. In reality, nothing in *Illinois Brick* demands—let alone permits—that result. *Illinois Brick* did not announce a "bright-line rule" for "proximate cause." This Court clarified just a few years after *Illinois Brick* that "restrictions on the §4 remedy recognized in … *Illinois Brick*[]" are "[a]nalytically distinct from" the "conceptually more difficult question 'of which persons have sustained injuries too remote from an antitrust violation to give them standing to sue for damages under §4.'" *McCready*,

457 U.S. at 476 (emphasis omitted). And as courts across the country have recognized, "*Illinois Brick*" is "a rule concerning overcharges" and the unique problems occasioned when multiple plaintiffs seek damages from a single overcharge. *In re Brand Name Prescription Drugs Antitrust Litig.*, 123 F.3d 599, 606 (7th Cir. 1997). *Illinois Brick* has zero application in a case like this, where different plaintiffs suffer different damages measured by their own distinct lost profits.

11. It is thus no surprise that the Sixth Circuit's decision opens up a circuit split to boot. As the Second Circuit recent recognized, *Illinois Brick* has no role to play when plaintiffs seek damages for "lost profits" rather than "overcharges." *Mosaic Health v. Sanofi-Aventis*, 156 F.4th 68, 80 & n.5 (2d Cir. 2025), *pet'n for cert. filed*, No. 25-1070 (Mar. 5, 2026). And as other courts have long recognized, *Illinois Brick*'s "direct-purchaser doctrine does not foreclose equitable relief," *U.S. Gypsum v. Ind. Gas*, 350 F.3d 523, 627 (7th Cir. 2003), which UAS sought here. It is no wonder, then, that—despite voting against *en banc* rehearing—Judge Bush frankly admitted that "this case may warrant the [Supreme] Court's review to clarify the parameters of *Illinois Brick* in the context of an alleged group boycott and plaintiffs that operated essentially as part of an apparent joint venture." Ex. 2 at 3.

12. And that is not the worst of it. As Judge Kethledge candidly acknowledged in his separate opinion, the Sixth Circuit's novel rule "serves to harm consumer welfare rather than advance it." Ex. 1 at 42.

13. While counsel has been working diligently in preparing this petition, Mr. Clement also has substantial briefing and argument obligations over the next

few weeks, including an amicus brief in *Holtec Int'l v. New York*, No. 25-2657 (2d Cir.) due May 4, 2026; oral argument in *Town of Pine Hill v. 3M Company*, No. 25-10746 (11th Cir.) on May 5, 2026; a petition for rehearing in *Petersen Energía v. Argentine Republic*, No. 23-23 (2d Cir. 2026) due May 8, 2026; and preparation for oral argument in *Perkins Coie LLP v. Department of Justice, et al.*, No. 25-5241 (D.C. Cir.) on May 14, 2026.

WHEREFORE, for the foregoing reasons, Applicant requests that an extension of 30 days to and including June 12, 2026, be granted within which Applicant may file a petition for a writ of certiorari.

Respectfully submitted,

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April 29, 2026

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CORPORATE DISCLOSURE STATEMENT

Pursuant to this Court's Rule 29.6, Applicant states as follows:

United Biologics, LLC d/b/a United Allergy Services has no parent corporation, and no publicly held corporation owns ten percent or more of its stock.

Respectfully submitted,

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