

No. _____

IN THE
Supreme Court of the United States

KALSHIEX, LLC

Respondent,

v.

MARY JO FLAHERTY AND JENNIFER DAVENPORT,

Applicants.

**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 THIRD CIRCUIT**

1. Under Rules 13.5 and 30.2 of this Court, undersigned counsel requests a 60-day extension of time, to and including Friday, September 4, 2026, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in this case. Applicants (defendants-appellants below) are Mary Jo Flaherty and Jennifer Davenport. The request is unopposed.

2. The United States Court of Appeals for the Third Circuit rendered its decision on April 6, 2026. *See KalshiEX, LLC v. Flaherty*, 172 F.4th 220 (3d Cir. 2026) (Exhibit 1). Unless extended, the time for filing a petition for a writ of certiorari will expire on Monday, July 6, 2026. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1).

3. Respondent Kalshi operates a designated contract market where users can buy and sell derivatives contracts known as “event contracts,” which identify a future event and allow the user to place money on whether the event will occur. Ex. 1 at 2. Among other things, Kalshi allows users to place positions on the outcome of

sporting events, from questions like which team will win a specific game to whether a player will exceed a set number of points. *See ibid.* Kalshi in 2025 self-certified to the Commodity Futures Trading Commission that it complied with federal law governing the products that can be sold on such exchanges. *See ibid.* Kalshi further advertised that this product allows users to engage in sports betting on its platform.

4. After Kalshi began offering these sports bets to individuals within New Jersey, the New Jersey Division of Gaming Enforcement issued a cease-and-desist letter to Kalshi. The Division notified Kalshi that its conduct violated the Sports Wagering Act, N.J. Stat. Ann. § 5:12A-11, which only permits licensed entities to offer sports wagering to patrons located in New Jersey, and the State's Constitution's prohibition on offering sports wagers for certain New Jersey collegiate sporting events, N.J. Const. art. IV, § 7, ¶2(D). The Division demanded Kalshi cease and desist from accepting such unauthorized sports wagers.

5. Kalshi then sued Applicants, seeking to preliminarily enjoin enforcement of New Jersey's Sports Wagering Act and the New Jersey Constitution art. IV, § 7, ¶2(D), alleging that (1) event contracts based on the outcome of sporting events offered on designated contract markets fall within the CFTC's exclusive jurisdiction under the Commodity Exchange Act; and (2) the Commodity Exchange Act preempts New Jersey's authority to regulate these sports-related contracts because the Act occupies the entire field of trading on CFTC-regulated markets and because state law interferes with the CFTC's exclusive authority to regulate designated exchanges.

6. The district court granted the preliminary injunction, holding that the Act likely field preempts New Jersey’s sports-wagering laws because Kalshi’s sports bets fall within the Act’s exclusive-jurisdiction provision and that provision “reflects an intent to occupy the field.” *KalshiEX LLC v. Flaherty*, No. 25-02152, 2025 WL 1218313, at *5-6 (D.N.J. Apr. 28, 2025). In doing so, the district court largely relied on a District of Nevada decision granting Kalshi a preliminary injunction on the same issue. *See KalshiEX, LLC v. Hendrick*, No. 25-00575, 2025 WL 1073495 (D. Nev. Apr. 9, 2025). That Nevada judge later reversed course and dissolved the injunction. *See* 817 F. Supp. 3d 1014 (D. Nev. 2025).

7. A divided panel of the Third Circuit affirmed. The majority held Kalshi’s sports bets fit the definition of “swaps” under the exclusive jurisdiction provision of the Commodity Exchange Act, giving the CFTC exclusive regulatory authority over those event contracts traded on designated contract markets. Ex. 1 at 8. It then held that the Act preempts New Jersey’s sports-wagering laws as applied to these sports-related event contracts on designated contract markets. Ex. 1 at 9-10. First, looking to field preemption, the majority held that the CFTC’s exclusive jurisdiction entirely displaces States’ sports-gambling authorities as applied to the conduct on designated exchanges. Ex. 1 at 11. Second, looking to conflict preemption, the majority held that applying state sports-wagering laws would obstruct Congress’ intent to have a single body of federal regulations governing these contracts. Ex. 1 at 12-13.

8. Judge Roth dissented. She would have held that New Jersey’s sports-wagering laws are not preempted by the Commodity Exchange Act because trading

on designated contract markets “is not the sort of comprehensive field where the federal interest is so dominant that Congress intended for the ‘complete ouster of state power,’” particularly given the Act’s two savings clauses that specifically authorize a role for state measures, and which are “incompatible” with a congressional intent to leave no “role for state law.” Ex. 1 at 29-33. And she would have held that neither obstacle nor impossibility preemption applies because “Kalshi can comply with both New Jersey and federal law,” and New Jersey’s laws “do not frustrate the congressional objectives behind the Act.” Ex. 1 at 35. That is, New Jersey’s laws cannot undermine congressional objectives when the Commodity Exchange Act and the CFTC’s regulation actually prohibit event contracts involving “gaming.” Ex. 1 at 37-38.

9. Cases raising the identical legal issues are currently pending in several courts of appeals—where Kalshi has challenged a series of other state gaming laws. Two courts of appeals and one state high court already heard argument, but neither has yet rendered a decision. *See KalshiEX, LLC v. Assad*, No. 25-7516 (9th Cir.) (oral argument held on Apr. 16, 2026); *Massachusetts v. KalshiEX, LLC*, No. SJC-130906 (Mass.) (oral argument held on May 4, 2026); *KalshiEX, LLC v. Martin*, No. 25-1892 (4th Cir.) (oral argument held on May 7, 2026). And while a Sixth Circuit panel has declined to grant Kalshi an injunction pending appeal of the denial of its preliminary injunction motion and questioned the Third Circuit’s decision here, *Kalshiex LLC v. Schuler*, No. 26-3196, 2026 WL 1295806 (6th Cir. Apr. 24, 2026) (per curiam), the Sixth Circuit will hear oral argument on the merits of this issue on July 30, 2026. *See KalshiEX LLC v. Schuler*, No. 26-3196 (6th Cir.); *KalshiEX LLC v. Orgel*, No. 26-5235

(6th Cir.). Other courts will be considering these issues as well, with over 11 district court decisions having taken an approach contrary to the Third Circuit majority.

10. Applicants are considering a petition for writ of certiorari in this case. This issue is tremendously important: The Third Circuit majority's conclusion—that sports bets fall under the exclusive jurisdiction of the Commodity Exchange Act and that the Act preempts state regulation of these sports bets—would federalize a multi-billion-dollar-a-year sports-wagering industry at the expense of every state law in the country. Applicants thus request additional time for two reasons. First, the high likelihood of imminent rulings from the Fourth or Ninth Circuits and/or the Massachusetts Supreme Court on the same legal issue would inform both the petition and this Court as to the presence of a split. Second, the attorneys handling this case are managing a significant volume of other competing responsibilities. Granting this unopposed extension would allow for the appropriate time to prepare a petition.

11. For these reasons, Applicants request that an extension of time to and including September 4, 2026, be granted within which Applicants may file a petition for a writ of certiorari.

Respectfully submitted,

/s/ Jeremy M. Feigenbaum
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