NO. 25- _____

In the
Supreme Court of the United States

THOMAS ANDERSON, et al.,

Applicants.

v.

UNITED AIRLINES, INC., et al.,

Respondents.

APPLICATION DIRECTED TO THE HONORABLE AMY CONEY BARRETT FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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August 26, 2025

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TO THE HONORABLE AMY CONEY BARRETT, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT COURT JUSTICE FOR THE SEVENTH CIRCUIT:

I. INTRODUCTION

Pursuant to Supreme Court Rule 13.5, Applicants, as defined at footnote 1 below[1], respectfully request a thirty (30)-day extension of time, to and including October 8, 2025, to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case. The Seventh Circuit entered its judgment on June 9, 2025, App. 1-9 ("Opinion"). Without an extension, the deadline for filing a petition for a writ of certiorari is September 8, 2025. Jurisdiction to review the judgment of the Seventh Circuit in this case will be invoked under 28 U.S.C. § 1254(1). This application is being filed more than ten days before the current due date. S. Ct. R. 13.5, 30.2.

In support of this request, Applicants state as follows:

II. BACKGROUND

1. Applicants' forthcoming petition for writ of certiorari will present the narrow but important question of whether the vaccine mandate to which Applicants were subjected by their private employer resulted in a violation of section 564 of the Federal Food, Drugs and Cosmetic Act ("FDCA"), 21 U.S.C. § 360bbb-3.

2. Applicants are all either former or current employees of United Airlines, Inc. ("United"). On August 6, 2021, United's Chief Executive Officer, announced that

[1] Applicants are twenty-three (23) of the twenty-eight (28) Plaintiffs-Appellants to the appeal below to the United States Court of Appeals for the Seventh Circuit, specifically: Thomas Anderson, James Breitsprecher, Lora Bauer, Elka Campbell, David Catala, James Curtis, Nicholas Decker, Aimee Doll, Tom Floyd, Kevin Hendershot, Kenneth Locke, Brenda Mallett, Sylvia Fitch-McConnell, John Morris, Carole O'Kobrick, Stephanie Pati, Paul Rozell, Darleen Shanley-Gilbert, Randy Sikora, Charles Snyder, John Sullivan, Rhett Wolfe, and Kevin Zwierko.

United would be imposing on all employees a mandate to receive a COVID-19 vaccine (the "Mandate."). Per the terms of the Mandate, all United employees who did not receive an exemption were required to have received their first shot of the COVID-19 vaccine by September 17, 2021. As alleged in Applicants' pleadings in this matter, no available COVID-19 vaccines had been approved by the United States Food & Drug Administration ("FDA") by the time of the Mandate's deadline. Rather, the COVID-19 vaccines available to United employees at that time had been granted Emergency Use Authorizations ("EUA") by the FDA.

3. All Applicants opposed the Mandate, and all submitted or attempted to submit requests for religious accommodations. Regardless, all Applicants suffered adverse employment consequences arising out of the Mandate and their refusal to receive the COVID-19 vaccination, including, for many, termination.

4. The law governing EUAs appears in section 564 FDCA, 21 U.S.C. § 360bbb-3 (the "EUA Law"). The EUA Law was designed to address emergencies. It provides a narrow exception to the traditional requirement that new "drugs" and "biological products" ("New Products") can only be introduced into interstate commerce if first approved by the FDA. 21 U.S.C. §§ 331(a), 355(a); 42 U.S.C. § 262(a). The EUA Law allows that, in the case of certain declarations of emergency by Federal government officials, the Secretary of Health and Human Services ("HHS") may authorize the release of New Products into interstate commerce that have not been approved by the FDA. 21 U.S.C. § 360bbb-3(a) (1), (b), (d).

5. Under the EUA Law "individuals to whom the [New Product] is administered" retain "the option to accept or refuse administration of the [New Product]" (the "Right to Refuse"). *Id.* at § 360bbb-3(e)(ii)(III). The Mandate did not afford Applicants the Right to Refuse, but instead conditioned Applicants jobs on taking a COVID-19 vaccine while the vaccine was still under EUA.

6. Applicants' Proposed Second Amended Complaint ("PFAC") was the operative submission considered by the District Court,[2] and was treated by the District Court as a second motion to amend. The PFAC contained twelve counts all revolving around the Mandate and focused on the fact that the COVID-19 vaccine was a New Product subject to an EUA. As Applicants' PFAC framed their claims, the Mandate denied their Right to Refuse and "[a]ll the. . . counts and injuries sustained by plaintiffs are a product of the total and egregious violation of this core EUA law violation." App. 56, PFAC ¶ 205.

7. Count IV of the PFAC brought a claim for violation of the Illinois Whistleblower Act ("IWA"). Under the version of the IWA in force at the relevant time, "[a]n employer may not retaliate against an employee for refusing to participate in an activity that would result in a violation of a State or federal law, rule, or regulation." §740 Ill. Comp. Stat. 174/20 (as in effect Dec. 31, 2024). The PFAC alleged the EUA Law violation as one of the violations on which the IWA claim was based. App. 56, 59, PFAC ¶¶ 205, 218.

[2] *Thomas Anderson, et al., v. United Airlines, Inc., et al.*, Case No. 1:23-CV-00989 in the United States District Court for the Northern District of Illinois, Eastern Division.

8. The District Court found that Applicants had failed to state a claim under the IWA and dismissed their case with prejudice. The Seventh Circuit affirmed.

III. REASONS FOR GRANTING THE EXTENSION

9. The Seventh Circuit's decision warrants this Court's intervention (1) because of the intrinsic importance of the question of whether a private employer's coercion of an employee to take a non-FDA-approved New Product results in a violation of the EUA Law and (2) because federal Courts and other authorities have interpreted the Right to Refuse language in uncertain and inconsistent ways, resulting in confusion over the applicable rights and duties arising from an EUA issued during a national emergency. In particular, several courts have interpreted the EUA Law, improbably, as doing nothing more than imposing an informational duty to inform recipients that they have a right to refuse while not conferring any actual right to refuse. *Johnson v. Brown*, 567 F. Supp. 3d 1230, 1256 (D. Or. 2021); *Villareal v. Rocky Knowles Health Ctr.*, No. 21-CV-729, 2021 WL 5359018, *2-3 (E.D. Wis. Nov. 17, 2021); *see also* U.S. Dep't Just. Off. Legal Couns., *Whether Section 564 of the Food, Drug, and Cosmetic Act Prohibits Entities from Requiring the Use of a Vaccine Subject to an Emergency Use Authorization*, 2021 WL 3418599 (O.L.C., July 6, 2021). Further, while the Third Circuit has ruled that the Right to Refuse language confers on the recipient "no unqualified right to decide whether to 'accept or refuse' an EUA product without consequence", *Child.'s Health Def., Inc. v. Rutgers, the State Univ. of N. J.,* 93 F.4th 66, 76 (3rd Cir. 2024), other federal courts have determined that the Right to Refuse language—albeit as incorporated by reference into a related

provision of the FDCA—does provide an unqualified statutory right to refuse an EUA product without consequence. *See Doe #1-#14 v. Austin*, 572 F. Supp. 3d 1224, 1232-1233 (N.D. Fla. 2021) (interpreting the Right to Refuse language as incorporated by reference in 10 U.S.C. §1107a applicable to members of the armed services); *see also Harkins v. United States*, 174 Fed. Cl. 592, 602 (Fed. Cl. 2025) (same); *and Botello v. United States*, 173 Fed. Cl. 26, 41-42 (Fed. Cl. 2024) (same); *and Bassen v. United States*, 171 Fed. Cl. 273, 283-85 (Fed. Cl. 2024) (same). Several other recent federal Court decisions have interpreted the EUA as providing no private right of action against employers and, thus, have not reached the question Applicants seek to present to the Court here: whether the vaccine mandate to which Applicants were subjected by their private employer resulted in a violation of the EUA Law. *See, e.g., Norris v. Stanley*, 73 F.4th 431, 438 (6th Cir. 2023); *Horsley v. Kaiser Found. Hosps.*, 746 F. Supp. 3d 791, 804 (N.D. Cal. 2024); *Klaassen v. Tr. of Ind. Univ.*, 549 F. Supp. 3d 836, 870-71 (N.D. Ind. 2021). The uncertainty arising from these rulings makes it impossible for a court faced with a claim such as Applicants' IWA claim to assess whether a violation of the EUA has occurred. The Supreme Court's intervention is needed to settle the conflicts in the varying interpretations of the EUA Law in order to provide certainty to parties in cases of national emergency.

10. Applicants' counsel requires additional time to prepare a petition that fully addresses the important and complicated issues raised by the decision below. Applicants' lead counsel, Mr. Childers, did not represent the Applicants until after

the Seventh Circuit's decision. An extension would allow counsel time to analyze the issues presented, review the record, and prepare the petition for filing.

IV. CONCLUSION

For the foregoing reasons, Applicants respectfully request a 30-day extension of time in which to file a petition for writ of certiorari in this case, to and including October 8, 2025.

Dated: August 26, 2025.

Respectfully submitted,

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