

No. 25A587

In the
Supreme Court of the United States

NOVARTIS PHARMACEUTICALS CORP.,
Applicant,

v.

SECRETARY UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES;
ADMINISTRATOR CENTERS FOR MEDICARE & MEDICAID SERVICES;
UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; CENTERS FOR
MEDICARE & MEDICAID SERVICES; SECRETARY UNITED STATES DEPARTMENT OF
TREASURY; UNITED STATES DEPARTMENT OF TREASURY; COMMISSIONER OF
INTERNAL REVENUE; INTERNAL REVENUE SERVICE,
Respondents.

**APPLICATION DIRECTED TO THE HONORABLE SAMUEL A. ALITO, JR.
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 THIRD CIRCUIT**

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Novartis Pharmaceuticals Corp.

December 8, 2025

RULE 29.6 STATEMENT

Pursuant to Rule 29.6 of the Rules of this Court, Applicant Novartis Pharmaceuticals Corp. states that it is a direct, wholly owned subsidiary of Novartis Finance Corporation, a New York corporation; and Novartis Pharmaceuticals Corporation is an indirect, wholly owned subsidiary of Novartis AG, a Swiss company, and that no publicly held corporation owns 10% or more of its stock.

TO THE HONORABLE SAMUEL A. ALITO, JR., JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE THIRD CIRCUIT:

Pursuant to 28 U.S.C. § 2101(c) and Supreme Court Rules 13.5, 22, and 30.2, Applicant Novartis Pharmaceuticals Corp. (“Novartis”) respectfully requests a further 14-day extension of time, to and including January 23, 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. The petition is currently due on January 9, 2026, which reflects one 30-day extension of time granted on November 20, 2025. Jurisdiction to review the judgment of the Third Circuit in this case will be invoked under 28 U.S.C. § 1254(1).

1. This case raises constitutional questions of exceptional importance concerning an unprecedented effort by the government to requisition valuable drugs from manufacturers at prices well below market value, under threat of ruinous penalties. In 2022, Congress created the Drug Price Negotiation Program (the “Program”) as part of the Inflation Reduction Act. The Program threatens manufacturers with enterprise-destroying fines unless they “agree[]” to sell their products at highly discounted, government-dictated prices while publicly endorsing those prices as “fair prices” arrived at via “negotiation[s].” *See* 42 U.S.C. § 1320f *et seq.* For Novartis, that penalty would swiftly escalate to *\$93.1 billion each year*. Although branded as a “tax,” the Congressional Budget Office has estimated this “tax” would, in fact, raise zero revenue. Rather, in the words of the statute itself, it is designed to force manufacturers’ “[c]ompliance” with the Program’s requirements. 26 U.S.C. § 5000D.

2. Novartis, which manufactures a drug that has been selected for inclusion in this regime, challenged the Program as imposing grossly disproportionate fines in violation of the Eighth Amendment, effectuating a *per se* taking of private property in violation of the Fifth Amendment, and compelling it to express the government’s disputed messages about drug pricing in violation of the First Amendment.

3. The district court rejected all three challenges, and a panel of the Third Circuit affirmed. With respect to Novartis’s Eighth Amendment claim, the panel held that the Tax Anti-Injunction Act—which prohibits suits “for the purpose of restraining the assessment or collection of any tax,” 26 U.S.C. § 7421(a)—deprived it of jurisdiction simply because Congress chose to label the penalty a “tax”—even though the statute is deliberately crafted such that *no* tax will ever be assessed or collected. *See* Op. 16-21. The panel further declined to apply the *Williams Packing* exception to the Anti-Injunction Act because, in its view, it was not “clear” Novartis would prevail on the merits because “[t]he Supreme Court has reserved the question of whether the Excessive Fines Clause applies to civil penalties imposed without any connection to criminal conduct.” *Id.* at 20-21.

On Novartis’s First and Fifth Amendment claims, the panel relied on a decision it had issued one week earlier in *Bristol Myers Squibb Co. v. Secretary, United States Department of Health & Human Services* (“BMS”), 155 F.4th 245 (3d Cir. 2025), rejecting parallel challenges to the Program because participation in Medicare—and thus the Program—is “voluntary.” *See* Op. 21-22.

That premise drew serious criticism from Judge Hardiman. In his dissenting opinion in *BMS*, Judge Hardiman explained that the Program is “voluntary” in name only because manufacturers cannot opt out without incurring “enterprise-crippling” penalties. 155 F.4th at 269, 273-81. Under that understanding, Judge Hardiman concluded that the Program effects a physical taking by “forc[ing] [manufacturers] to turn over physical doses of their drugs to Medicare beneficiaries.” *Id.* at 281. He likewise would have sustained the manufacturers’ compelled-speech challenges because the Program forces manufacturers to state in writing that the price set by CMS is not only the agreed-upon product of a negotiation, but also the “maximum fair price”—assertions the manufacturers vigorously dispute. *Id.* at 282-87. Judge Hardiman emphasized that the questions presented in these challenges are “of great importance to consumers of pharmaceutical drugs, the companies that provide them, and the public at large.” *Id.* at 289.

4. On November 14, 2025, Novartis requested an extension of time within which to file a petition for certiorari. On November 20, 2025, Your Honor extended the deadline for filing a petition by 30 days, to and including January 9, 2026.

5. Undersigned counsel respectfully requests an additional 14 days within which to file the petition. Good cause exists for a further extension of time. Counsel has been working diligently on the petition, but has, and has had, several other matters with proximate due dates, including: an oral argument before the Delaware Supreme Court on December 3, 2025, in *ITG Brands, LLC v. Reynolds American Inc., et al.*, No. 204, 2025; a merits brief due in this Court on December 12, 2025, in

Keathley v. Buddy Ayers Construction, Inc., No. 25-6; an oral argument before the Indiana Supreme Court on December 18, 2025, in *City of Fishers, Ind. v. Netflix, Inc.*, No. 24A-PL-01657; a merits response brief due in the Fifth Circuit on December 19, 2025, in *Friends of the Earth v. Export-Import Bank of the United States, et al.*, No. 25-5387; a merits response brief due in the Seventh Circuit on January 9, 2026, in *AbbVie Inc. v. Commissioner of Internal Revenue*, No. 25-2622; an oral argument before the Second Circuit on January 26, 2026, in *In re SVB Financial Group*, No. 25-00567; and an oral argument before the Fifth Circuit during the week of February 2, 2026, in *IFG Port v. Lake Charles Harbor*, No. 24-30552.

In addition, multiple members of the case team have, and have had, travel plans planned for over the holidays that make the coordination and preparation of a petition to be filed by January 9, 2026, difficult.

A brief, 14-day extension will enable counsel to fully research and, as appropriate, narrow the important questions raised by this case in the most direct and efficient manner for the Court's consideration. It also would in no meaningful way delay the Court's consideration of the petition, or the briefing and argument of the case on the merits, if certiorari is granted.

Your Honor has granted additional extensions of time in similar circumstances. *See, e.g., Zadeh v. Robinson*, No. 19A308 (Oct. 17, 2019) (Alito, J.) (granting additional 28-day extension after having granted a 30-day extension); *Wingfield v. Unknown Garner, CO, et al.*, No. 24A1284 (July 22, 2025) (Alito, J.) (granting additional 20-day extension after having granted a 30-day extension).

Here, a further 14-day extension fully comports with the certiorari statute and this Court's rules, *see* 28 U.S.C. § 2101(c); Sup. Ct. R. 13.5, and would not work any meaningful prejudice on any party or prevent the Court from considering the petition before its summer recess.

Accordingly, Novartis respectfully requests a further 14-day extension of time, to and including January 23, 2026, within which to file a petition for a writ of certiorari.

December 8, 2025

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gregory G. Garre", is written over a horizontal line.

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