

No. _____

SUPREME COURT OF THE UNITED STATES

MARK ZAVISLAK,

Applicant,

v.

NETFLIX, INC.,

Respondent.

APPLICATION TO THE HONORABLE ELENA KAGAN FOR AN EXTENSION OF TIME TO FILE A PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

O. Shane Balloun
Counsel of Record
BALLOUN LAW P.C.
355 Harris Avenue, Suite 201
Bellingham, Washington 98225
(360) 318-7778
o.shane@ballounlaw.com

Counsel for Applicant

January 13, 2026

EXTENSION REQUESTED

TO THE HONORABLE ELENA KAGAN,
Associate Justice of the Supreme Court of the United States,
in her capacity as the Circuit Justice for the Ninth Circuit:

Pursuant to 28 U.S.C. § 2101(c) and Rules of the Supreme Court 13.3, 13.5, 22, and 30, Applicant Mark Zavislak respectfully requests a 60-day extension of time, up to and including **March 30, 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 Ninth Circuit in this case.

The jurisdiction of this Court is invoked according to 28 U.S.C. § 1254(1). The time to file a petition for writ of certiorari will otherwise expire on **January 29, 2026**. This application is filed at least ten days before that date.

Procedural Background

The Ninth Circuit issued its memorandum disposition affirming the district court's judgment and denying Zavislak's appeal on September 24, 2025. *See App.1 (Memorandum Disposition)*. Applicant filed a timely petition for rehearing and rehearing en banc, which the Ninth Circuit denied on **October 31, 2025**. *See App.8 (Order Denying Rehearing)*. Pursuant to Supreme Court Rule 13.3, the current deadline for a petition for writ of certiorari in this case is January 29, 2026.

Despite denying rehearing, the Ninth Circuit panel voted to stay the mandate pending the filing of the petition. *See App.10 (Order Staying Mandate)*. The panel's grant of the motion indicates the Ninth Circuit's understanding that a petition for writ of certiorari in this case "would present a substantial question and that there is good cause for

the stay.” Fed. R. App. P. 41(d)(1); *accord* 9th Cir. R. 41-1 (stating “a motion for stay of mandate … pending petition to the Supreme Court for certiorari, will not be granted as a matter of course”).

Importance of This Case

At issue in this case is a question that goes to the very heart of the Employee Retirement Income Security Act of 1974 (“ERISA”): whether an employee benefit plan fiduciary may hide from beneficiaries any contract that defines the plan’s administration.

Upon written request by a plan participant or beneficiary, plan administrators must disclose “any … contract, or other instruments under which the plan is established or operated.” 29 U.S.C. § 1024(b)(4). For decades, circuit courts have understood this plain text to encompass administrative services agreements (“ASAs”—the master contracts between plan sponsors and third-party claims administrators that determine how health benefits are adjudicated, paid, or denied.

The decision below, however, reinforces the Ninth Circuit’s break from that consensus, creating a dangerous loophole in ERISA’s transparency regime and a clear split among the Circuits. In affirming the district court, the Ninth Circuit held that an ASA is merely a contract for services rather than a governing instrument, thereby permitting fiduciaries to withhold it from beneficiaries. This holding essentially creates a secret law of the plan: it allows third-party administrators (“TPAs”) to operate under undisclosed rules regarding reimbursement rates and claims approval, denial, and other processing, while plan participants and beneficiaries are left in the dark, unable to verify whether their claims are being adjudicated in accordance with the

plan's actual governing documents.

This decision cements an acknowledged and intractable circuit split. The Seventh, Tenth, and Eleventh Circuits have explicitly held that contracts defining a TPA's authority or governing the relationship between the plan and its service providers are subject to mandatory disclosure. *See, e.g., Mondry v. Am. Family Mut. Ins. Co.*, 557 F.3d 781, 796 (7th Cir. 2009) (holding that claims administration agreements must be disclosed because they govern plan operations); *M.S. v. Premera Blue Cross*, 118 F.4th 1248, 1267 (10th Cir. 2024) (holding that claims administration agreements must be disclosed since they both establish and operate the plan); *see Heffner v. Blue Cross and Blue Shield of Ala.*, 443 F.3d 1330, 1343 (11th Cir. 2006).

By contrast, the Ninth Circuit's ruling leaves millions of plan participants in the country's largest circuit with significantly fewer rights than their counterparts in the Mountain West, Midwest, and Southeast. The implications of the Ninth Circuit's error are sweeping. Modern health plans are increasingly dominated by TPAs who manage billions of dollars in claims. By shielding the ASAs from scrutiny, the court below has immunized these powerful entities from the oversight Congress intended. The decision allows fiduciaries to conceal the financial incentives and procedural mandates that drive benefit denials, effectively rendering the statutory right to a "full and fair review" of claims illusory.

Applicant anticipates filing a petition that demonstrates the profound error in the Ninth Circuit's decision, which contorts the plain text of ERISA and defies foundational principles of trust law. Just as a trustee cannot hide the trust instrument from the beneficiary, an

ERISA fiduciary cannot hide the contract that “establishes or operates” the plan. The petition will show that the Ninth Circuit’s narrow reading ignores the practical reality of modern plan administration, where the ASA—not the Summary Plan Description—often contains the dispositive rules governing benefits.

The legal issues involved—specifically the intersection of statutory construction, fiduciary accountability, and the common law of trusts—are complex and of national importance. The requested extension is necessary to allow Counsel to produce a concise and coherent petition that will assist the Court in resolving this deep fracture in federal benefits law.

Reasons for Granting an Extension of Time

ERISA is a “comprehensive and reticulated statute” about “an area of the law Congress has chosen to regulate with painstaking detail.”

Nachman Corp. v. Pension Benefit Guaranty Corp., 446 U.S. 359, 361 (1980); *Hughes Salaried Retirees v. Administrator of Hughes*, 72 F.3d 686, 695 (9th Cir. 1995). Even where the questions presented are clearly distilled, a petition for writ of certiorari involving “ERISA’s interlocking, interrelated, and interdependent remedial scheme” demands the utmost due consideration and time of counsel. *See Mass. Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 155 (1985).

The statutory period for preparing the petition has coincided with the Thanksgiving and winter holidays. These interruptions—with concomitant preplanned holiday travel—have significantly reduced the time available for counsel to coordinate with Applicant, conduct necessary legal research, and prepare the petition in a manner that meets

the highest standards of this Court.

Undersigned counsel is a quasi-sole practitioner with one part-time associate and no other staff. Conflicting professional obligations comprising a compressed series of obligations outside this case, including nine depositions (and preparation time and corresponding travel), sixteen substantive briefs, several hearings, and numerous transactional matters—all between November 5 and January 9—have diverted time and resources away from this matter during the relevant period.

Additionally, every member of undersigned counsel's seven-member household was ill at the end of December, and unfortunately, undersigned counsel as of the night before the filing of this application has fallen moderately ill again, all reducing available time to dedicate properly to the forthcoming petition.

Conclusion

For the forgoing reasons, Applicant Mark Zavislak respectfully requests that his deadline to file a petition for writ of certiorari in this case be extended to (and including) March 30, 2026.

Respectfully submitted,

/S/ O. Shane Balloun

O. Shane Balloun
Supreme Court Bar No. 297819
Counsel of Record
Balloun Law P.C.
355 Harris Avenue, Suite 201
Bellingham, Washington 98225
(360) 318-7778
o.shane@ballounlaw.com

Counsel for Applicant