

THE LAW OFFICE OF THUY Q. PHAM

Via Overnight Mail

March 6, 2026

The Honorable Sonia Sotomayor
Associate Justice, The United States Supreme Court
United States Supreme Court
c/o Office of the Clerk
1 First Street, NE
Washington, DC 20543

RE: Doe v. Seliger, *et al.*
7:20-cv-2331 (PMH) (Southern District of New York)
Case Number 25-159 (Second Circuit)
Request for extension to file a petition for writ of certiorari

Dear Justice Sotomayor:

This office represents Jane Doe, who is the appellant-plaintiff (“Jane Doe” or “Appellant”) in a case brought principally pursuant to 42 U.S.C. § 1983 (“§ 1983”), against several respondents-defendants (“Respondents”) who are each an employee, official, or agent of New York State owned-and-operated Helen Hayes Hospital (“HHH”). On December, 16, 2025, the United States Court of Appeals for the Second Circuit (“Circuit Court”) issued a summary order constituting a judgment (“Appellate Judgment” attached hereto as Exhibit 1). Pursuant to 28 U.S.C. § 1254, the United States Supreme Court (“this Court”) now has appellate jurisdiction to hear a petition for writ of certiorari. Pursuant to *id.* § 2101(c), the deadline for filing such a petition is March 16, 2026. Pursuant to *id.*, and pursuant to this Court’s Rule 13.5, Appellant respectfully writes to request a 60-day extension of the filing deadline to May 15, 2026. The reasons for this request are respectfully set forth below.

Reason 1 – Complexity of the Case: Appellant’s anticipated appeal concerns the practical reality “a busy appellate court sometimes may not... devot[e] its limited resources to explaining [a lower court’s] error and the alternative basis for affirming

... so it issues a summary affirmance instead.” *Wilson v. Sellers*, 138 S.Ct. 1188, 1199-1200 (2018) (GORSUCH, J., dissenting). Accordingly, in theory, there generally should be no presumption that “summary affirmance orders rest on reasons articulated in lower court opinions.” *Id.* at 1200. Nonetheless, in practice, where a district court decision is cited as *ABC v. XYZ.... (aff’d...)*, the error will be treated as so persuasive as to be nearly binding. The question then arises as to what degree an error should be explained – whether through a full decision or through a more detailed summary affirmance.

Here, Appellant as identified at least three applicable situations where a summary affirmance without identification of an error appears to be insufficient. These were when an appellate court: (1) was silent in affirming a district court decision that relies upon *Dobbs v. Jackson Women’s Health Organization* “to cast doubt on precedents that do not concern abortion.”, 142 S.Ct. 2228, 2239 (2022); (2) may have overlooked that—within the meaning of Fed. R. Civ. P., Rule 11 (“Rule 11”)—the district court decision is not tenable under binding precedent; and (3) may have overlooked the part of the record that is dispositive in an appellant’s favor. However, the complexity of the issues in the instant action is such that Appellant requires additional time to analyze and to elaborate why these issues are worthy of this Court’s review and decision.

The Appellate Order states:

Plaintiff-Appellant Jane Doe appeals from a judgment of the United States District Court for the Southern District of New York, entered on December 17, 2024. On March 16, 2020, Doe brought suit against several employees of Helen Hayes Hospital, a rehabilitation center owned and operated by New York State’s Department of Health. Doe’s

operative complaint asserts twelve claims for various violations of the U.S. Constitution and New York law. On February 28, 2024, the district court granted Defendants' motion for summary judgment, (1) finding that it lacked jurisdiction over Doe's first through fifth claims because they arose under the Medicare Act, (2) dismissing Doe's sixth claim on the merits, and (3) declining to exercise pendent jurisdiction over Doe's remaining state law claims. On March 27, 2024, Doe filed a motion for reconsideration. On December 17, 2024, the district court denied this motion in part, modifying its decision only to dismiss Doe's first five claims without prejudice. Doe now appeals.

Upon careful consideration of the reasons stated by the district court, we AFFIRM the judgment.

Appellate Order at 1-2.

As an initial matter, Your Honor joined in the powerful dissenting argument that reversing the precedents which established a woman's right to choose whether to have an abortion could ultimately lead to circumstances where "all rights that have no history stretching back to the mid-19th century are insecure." *Dobbs*, 142 S.Ct. at 2319 (BREYER, J., dissenting). The majority's counterpoint was an assurance that "[n]othing in [the *Dobbs*] opinion should be understood to cast doubt on precedents that do not concern abortion." *Id.* at 2239.

Here, after receiving leave from the district court to serve a reply (SDNY-7:20-cv-02331-ECF 191), Appellant briefed the district court that for the first through fifth claims for relief, the controlling and binding precedent is *Society for Good Will v. Cuomo*, 737 F.2d 1239 (2d Cir. 1984) (establishing within the Circuit that individuals who are duly "voluntary residents of [state care facilities] cannot be punished and are entitled to rights of personal freedom at least as great as those of prison inmates.") SDNY-7:20-cv-02331-ECF 192 at 3, 9 (pdf:8, 14). *Good Will* is binding precedent that in no manner whatsoever concerns abortion. However,

without discussing nor referencing *Good Will*, the district court found that Appellant's claims arose under the Medicare Act (42 U.S.C. § 1395 *et seq.*), and not the Fourteenth Amendment Due Process Clause. The district court found that "[Appellant] fails offer any *historical evidence* to meet her burden that these 'interests' are constitutionally protected by operation of substantive due process. SDNY-7:20-cv-02331-ECF 261 at 15 (citing *Dobbs*, 597 U.S. at 237-38) (emphasis added).

The error in the District Court's reasoning is clear. The district court was obligated either to apply *Good Will* or find that *Good Will* was not controlling. Appellant had no "historical evidence" burden at all beyond citing *Good Will* as binding precedent. Moreover, the district court erroneously relied upon *Dobbs* without considering the majority's directive that *Dobbs* does not "cast doubt on precedents that do not concern abortion." 142 S.Ct. at 2239. The district court certainly never considered the concerns raised in *Dobbs* by Your Honor, Justice Breyer, and Justice Kagan. Instead, the district court invented a new "historical evidence" burden that removed a substantive due process protection created by binding precedent". It is troubling when a district court can rely upon *Dobbs* to reduce the clearly established rights of vulnerable individuals to be less than those of convicted and imprisoned felons, especially when those vulnerable individuals are in State care facilities and are accused of no wrongdoing. The Circuit Court, through silence in its summary affirmation, elevates the district court's error to a level of persuasiveness that functions, for all intents and purposes, as near precedential. Therefore, Appellant wishes an extension to further elaborate upon why this issue is worthy of this Court's review.

A second issue upon which the Circuit Court was silent, but Appellant anticipates raising, concerns Fed. R. Civ. P. Rule 11 (“Rule 11”). Rule 11 may be best described as creating and enforcing a minimum threshold, at the district court level, for which attorneys *must*: “Yield indefensible terrain[.]” Garner and Scalia, *Making Your Case: The Art of Persuading Judges*, at Ch. 11 (Kindle Ed. 2009). “Rule 11 imposes a duty on attorneys to certify that they have conducted a *reasonable inquiry* and have determined that any papers filed with the court are well grounded in fact, *legally tenable, and not interposed for any improper purpose.*” *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 393 (1990) (emphasis added) (quotation marks omitted). Furthermore, “Rule 11... imposes an objective standard of reasonable inquiry [on attorneys.]” *Business Guides, Inc. v. Chromatic Communications Enterprises, Inc.*, 498 U.S. 533, 554 (1991).

Here, Appellant motioned, pursuant to Rule 11(c)(2), that Respondents be sanctioned for, *inter alia*, their lack of subject matter jurisdiction argument for the first through fifth claims for relief and their argument for dismissal on the merits for the sixth claim for relief. The district court accepted Respondents’ arguments on those issues; importantly, however, it is not at all clear that those arguments are tenable.

To wit: the Circuit Court is affirming a lack of subject matter jurisdiction in finding that Appellant’s first through fifth claims for relief each “arise under” the Medicare Act. However, neither the district court nor the Circuit Court have ever identified any, particular Medicare “policy, regulation, or statute,” under which a lack of subject matter jurisdiction may exist. *See Shalala v. Illinois Council on Long Term Care, Inc.*, 529 U.S. 1, 10 (2000). In essence, the Circuit Court can only conclude from the record that Appellant’s first through fifth claims for relief *might potentially* “arise

from” the Medicare Act. Therefore, the expectations of Rule 11(b) are clear: the lack of subject matter jurisdiction should not be resolved before Respondents are required to state what, if any, inquiry Respondents have conducted, over the course of three years to date, to identify any actual provision of the Medicare Act that Respondents claim is at issue.

The merits question for the sixth claim for relief goes to the fundamental nature of summary judgment motion practice under Fed. R. Civ. P. Rule 56 (“Rule 56”). Factual assertions by a summary judgment movant are “legal contentions,” Rule 11(b)(2), that “here is no genuine dispute as to any material [part of the assertion,]” Rule 56(a). However, the district court used a standard that, in summary judgment motion practice, would be applicable to “denials of factual contentions[.]” Rule 11(b)(4). Specifically, the district court only required that Respondents’ factual assertions not be “utterly lacking in support[.]” SDNY-7:20-cv-02331-ECF 261 at 21 (quotation marks and citation removed). The plain text of Rule 56(a) clearly indicates that any summary judgment argument that relies upon material factual assertions without any supporting evidence is untenable. Therefore, Rule 11 requires that before Respondents can receive an affirmation of the summary judgment award, Respondents must present an argument to oppose sanctions under the stricter standard of proving that it was objectively reasonable *not* to believe that “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

A third issue that Appellant anticipates raising is a concern that the scope of the Circuit Court’s review was too narrow to constitute a truly *independent* review. “Appellate courts usually have an independent duty to review the facts and law in

the cases that come to them.” *Wilson* at 1199 (emphasis added). Appellant in no manner wishes to suggest that the Circuit Court conducted anything other than a conscientious and “careful consideration of the reasons stated by the district court[.]” Appellate Order at 2. However, “district court judges... are dedicated and scholarly, and I’m not impugning their motives in any way. But, you know, sometimes they’re wrong[.]” Transcript of Oral Argument at 14, *Trump v. Johnson*, No. 24A884 (U.S. May 15, 2025). To the extent that a district court judge provides a dedicated and scholarly opinion that incorrectly overlooked or ignored the parts of the record that are dispositive in an appellant’s favor, the Circuit Court reviewing that district court opinion would inherit the same oversight.

The lack of subject matter jurisdiction ruling results from the imposition of a Medicare exhaustion requirement. It is settled law that Medicare exhaustion has “two elements... The waivable element is the requirement that the administrative remedies prescribed by the Secretary be exhausted. The nonwaivable element is the requirement that a claim for benefits shall have been presented to the Secretary.” *Bowen v. City of New York*, 476 U.S. 467, 483 (1986), which is quoting *Mathews v. Eldridge*, 424 U.S. 319, 328 (1976)).

Here, the record includes a Medicare administrative law judge (“ALJ”) denial of coverage, made after a hearing. The dispositive parts of the record related to an *independent* lack of subject matter jurisdiction finding are the ALJ’s denial, the corresponding Medicare administrative record, and the parties’ pleadings. To the extent that ALJ’s denial or the Medicare administrative record establish that Appellant presented her issues to the ALJ, the nonwaivable element was met. Exhaustion is waived to the extent that the nonwaivable element is met, and nothing

in the pleadings suggest “challenges the agency’s denial on evidentiary, rule-related, statutory, constitutional, or other legal grounds.” *Illinois Council*, 529 U.S. at 10. Therefore, a doubt arises as to whether Appellant received an *independent* review of the parts of the record that are actually dispositive in Appellant’s favor on the lack of subject matter jurisdiction issue.

With regard to the sixth claim for relief, liability indisputably attaches to the extent that there is a showing of “totally arbitrary or outright malicious government action.” *Hancock v. Cnty. of Rensselaer*, 882 F.3d 58, 68 (2d Cir. 2018). It is indisputable that in “a motion for summary judgment, [courts] are required to view all facts and draw all reasonable inferences in favor of the nonmoving party[.]” *Brosseau v. Haugen*, 543 U.S. 194, 195 n.2 (2004). The district court’s local rule civil rule 56.1 provides for “Statements of Material Facts on Motion for Summary Judgment” that contains numbered paragraphs of factual assertions, admissions, and denials.

Here, Respondents motioned and Appellant’s cross-motioned for summary judgment. At the order of the district court, the parties submitted a joint 56.1 statement of the parties respective factual assertions, admissions, and denials. To the extent that: (1) construing the joint 56.1 in the light most favorable to Appellant proves totally arbitrary or actually malicious conduct, Respondents’ motion must be denied; (2) to the extent that construing the joint 56.1 in the light most favorable to Respondents, their conduct is nonetheless totally arbitrary, then Appellant’s cross-motion must be granted; otherwise (3) both the motion and cross-motion must be denied. However, the district court *never* made any mention of any factual assertion or disputation by Appellant. That is, the district court never made any mention of

any of Appellant's undisputed factual assertions. To the extent that the Circuit Court relied upon the district court's ruling, the Circuit Court's summary affirmation on the merits of the sixth claim for relief is entirely based upon Respondents' view of the 56.1, even though Respondents are the summary judgment movant. Therefore, a doubt arises as to whether Appellant received an *independent* review from the Circuit Court of the actual factual assertions, admissions, and disputations in the 56.1, which is the dispositive for determining the resolution, if any, of the sixth claim for relief at the summary judgment stage.

In sum, Appellant anticipates address complex questions that are worthy of consideration by this Court. Appellant, therefore, respectfully requests a sixty-day extension to the deadline for filing a petition for writ of certiorari.

Reason 2 - Time Required to Meet and Confer with Respondents: Appellant anticipates attempting to meet and confer with Respondents before filing her petition. The substantial complexity of this action may be reduced by the parties not only identifying where they agree, but also identifying where they agree to disagree.

Reason 3 – Recent Admission to Practice Before this Court: As Appellant's counsel, I have only recently been admitted to practice before this Court on March 2, 2026, within the October 2025 to June 2026 term. It is particularly time consuming to review arguments rooted in the Circuit Court's specific binding precedent, and translate those arguments to the more general principles, guidance, and holdings of this Court.

Reason 4 – Pending Legal Deadlines: I have appearances before the Executive Office for Immigration Review on March 12, 2026 and April 6, 2026 and

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motions to prepare and appearances in New York Supreme Court before March 24, 2026.

WHEREFORE, for the reasons stated above, I respectfully request 60 days of additional time through May 15, 2026 for proper and thorough preparation of the petition for writ of certiorari.

Respectfully,



Thuy Q. Pham, Esq.
The Law Office of Thuy Q. Pham

25-159-cv
Jane Doe v. Glenn M. Seliger

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 16th day of December, two thousand twenty-five.

Present:

ROBERT D. SACK,
WILLIAM J. NARDINI,
EUNICE C. LEE,
Circuit Judges.

JANE DOE,

Plaintiff-Appellant,

v.

25-159-cv

GLENN M. SELIGER, LINDA EGENES, 1-100
JOHN DOES, KATHLEEN MARTUCCI,
JACQUELINE VELEZ, JOHN MATHEW,

*Defendants-Appellees. **

For Plaintiff-Appellant:

THUY Q. PHAM, The Law Office of Thuy Q. Pham,
New York, NY

* The Clerk of the Court is respectfully directed to amend the caption on this Court's docket to be consistent with the caption on this order.

For Defendants-Appellees: TINA S. BHATT (Daniel J. Tarolli, *on the brief*),
Landman Corsi Ballaine & Ford P.C., New York, NY

Appeal from a judgment of the United States District Court for the Southern District of New York (Philip M. Halpern, *District Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **AFFIRMED**.

Plaintiff-Appellant Jane Doe appeals from a judgment of the United States District Court for the Southern District of New York, entered on December 17, 2024. On March 16, 2020, Doe brought suit against several employees of Helen Hayes Hospital, a rehabilitation center owned and operated by New York State's Department of Health. Doe's operative complaint asserts twelve claims for various violations of the U.S. Constitution and New York law. On February 28, 2024, the district court granted Defendants' motion for summary judgment, (1) finding that it lacked jurisdiction over Doe's first through fifth claims because they arose under the Medicare Act, (2) dismissing Doe's sixth claim on the merits, and (3) declining to exercise pendent jurisdiction over Doe's remaining state law claims. On March 27, 2024, Doe filed a motion for reconsideration. On December 17, 2024, the district court denied this motion in part, modifying its decision only to dismiss Doe's first five claims without prejudice. Doe now appeals.

Upon careful consideration of the reasons stated by the district court, we **AFFIRM** the judgment.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk


Catherine O'Hagan Wolfe

The signature is written in black ink over a circular official seal. The seal contains the text "UNITED STATES", "SECOND CIRCUIT", and "COURT OF APPEALS".

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JANE DOE,

Petitioner,

v.

GLENN M. SELIGER, LINDA EGENES, 1-100 JOHN DOES, KATHLEEN
MARTUCCI, JACQUELINE VELEZ, JOHN MATHEW,

Respondents.

CERTIFICATE OF SERVICE

Thuy Q. Pham, a member of the Bar of this Court and Counsel for Petitioner, do swear or declare that on this date, as required by Supreme Court Rule 29, that I have served the enclosed Application Requesting Leave for Extension to File the Petition for a Writ of Certiorari to Respondents' counsel by depositing an envelope containing the above document by delivery to a third-party commercial carrier for delivery within 3 calendar days. The name and address of the person served is:

Tina Bhatt
Landman Corsi Ballaine & Ford P.C.
120 Broadway, 13th Floor
New York, NY 10271

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 6, 2026



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