No. ______________

In The
Supreme Court of the United States

JOHN DOE,
Applicant,

VS.

SECURITIES AND EXCHANGE COMMISSION,
Respondent.

APPLICATION DIRECTED TO THE HONORABLE JOHN G. ROBERTS, JR. 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 DISTRICT OF COLUMBIA CIRCUIT

TO THE HONORABLE JOHN G. ROBERTS, JR., CHIEF JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE DISTRICT OF COLUMBIA CIRCUIT:

Pursuant to 28 U.S.C. § 2101(c) and Rules 13.5, 22, and 30.2 of the Rules of this Court, Petitioner John Doe respectfully requests for good cause a 60-day extension of time, to and including November 20, 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 District of Columbia Circuit ("D.C. Circuit") in this case.

The D.C. Circuit issued its judgment on April 17, 2026 and released its public opinion May 1, 2026 (attached as Exhibit 1). It denied timely petitions for rehearing and rehearing en banc on June 23, 2026 (attached as Exhibit 2).

Without an extension, the time for filing a petition for a writ of certiorari will expire on September 21, 2026. This application is being filed more than 10 days before that date. This Court has jurisdiction to review the judgment of the D.C. Circuit in this case under 28 U.S.C. § 1254(1).

1. This case presents an important and recurring question in litigation in which the D.C. Circuit has departed from its own precedent, Supreme Court precedent, and the precedent of all other circuit courts to rule on this issue: Does this Court's decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024) apply to cases pending in lower courts when it was decided?

Petitioner John Doe filed an application for a whistleblower award with the Securities and Exchange Commission ("SEC" or "the Commission") under the Dodd-Frank Act whistleblower statute. 15 U.S.C. § 78u-6.[1] This case arises out of the Commission's use of its regulatory definition of the word "voluntary" to deny Doe's application for a whistleblower award under the Dodd-Frank Act. The Commission issued its Final Order denying Doe's application on March 31, 2023. At the time that decision was rendered, *Chevron* deference was still good law. Doe petitioned the D.C. Circuit for review of the Commission's order on April 28, 2023.

While his appeal was pending, this Court granted certiorari in *Loper Bright*. The D.C. Circuit stayed briefing pending this Court's resolution of the *Chevron* standard of review issue, which was the subject of *Loper Bright*. Clerk's Order, Dkt. No. 2001241 (attached as Exhibit 3). After *Loper Bright* was decided, Doe argued

[1] Under 15 U.S.C. § 78u-6(d)(2)(A), Doe has the right to file anonymously.

that, under its new standard of review, the Court must interpret the term "voluntary" de novo using the "traditional tools of statutory construction," including the plain meaning of the term, with no deference to the Commission's regulatory definition. The D.C. Circuit upheld the Commission's regulation defining "voluntary" without applying the new standard of review required under *Loper Bright.* Instead, the Court held that Doe forfeited his *Loper Bright* argument because he did not raise it before the Commission in his administrative appeal.

However, Doe could not have argued the *Loper Bright* standard of review in his administrative appeal of the Commission's Preliminary Determination because he submitted his brief opposing the Commission's regulatory definition of "voluntary" on December 14, 2021, more than two years before *Loper Bright* was decided. Doe subsequently filed a petition for rehearing and rehearing en banc, which the D.C. Circuit denied on June 23, 2026 (attached as Exhibit 2).

The D.C. Circuit's decision that Doe's *Loper Bright* argument was forfeited because Doe did not raise it before the Commission conflicts with D.C. Circuit precedent, *United States v. Barrow*, 109 F.4th 521, 527 n.3 (D.C. Cir. 2024) ("[A]n appellate court must apply the law in effect at the time it renders its decision.") (citing numerous authorities); Supreme Court precedent, *United States v. Sec. Indus. Bank*, 459 U.S. 70, 79 (1982) ("The principle that statutes operate only prospectively, while judicial decisions operate retrospectively, is familiar to every law student."); and "every other circuit" to analyze the issue. *United States v. Durham*, 795 F.3d 1329, 1331 (11th Cir. 2015) (finding an argument is not forfeited if the Supreme Court "issues a decision that upsets precedent relevant to a pending case and thereby provides an appellant with a new theory or claim"); *see also Consolidation Coal Co. v. McMahon*, 77 F.3d 898, 904 (6th Cir. 1996) (holding that a party "did not waive its right to raise [an] issue by virtue of its failure to raise it before" an administrative agency if raising it "would have been futile" prior to an intervening judicial decision changing the standard").

This conflict resulting from the D.C. Circuit's opinion also raises an issue of nationwide importance and has serious practical ramifications, impacting cases where an administrative appeal was filed pre-*Loper Bright,* not just cases filed under the Dodd-Frank Act. The issue presented requires consideration of this case to clarify or correct application of the forfeit doctrine based on the new precedent established by *Loper Bright* and its application to then pending cases in the lower courts and it involves significant fairness and justice issues because the outcome could have wide-reaching implications.

2. Additional time is necessary to permit counsel to prepare and file a petition that adequately addresses these important issues and research the full scope of the split of authority on the question presented. An extension of 60 days is warranted because counsel of record have numerous preexisting professional responsibilities that conflict with the deadline for submitting a petition for certiorari in this case. Undersigned counsel continue to work diligently on this case but respectfully submit that good cause exists for an extension of time because Petitioner's lead counsel is out of the country on business-related travel in Asia

from August 21 to 28, 2026 and Petitioner's co-counsel will be out of the country on business-related travel from September 7 to 21, 2026. Counsel also have other pending deadlines during the original time period for filing a petition in this case that cannot be moved, including a brief on the merits that has already been extended and is due on September 9, 2026 in *Fixler v. Securities and Exchange Commission,* No. 26-1104 (D.C. Cir.) and matters in other cases that have deadlines that cannot be extended due to administrative regulations. No party would be prejudiced by a 60-day extension of time.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests a 60-day extension of time, to and including November 20, 2026, within which to file a petition for a writ of certiorari in this case.

Respectfully submitted,

/s/ Stephen M. Kohn
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