

No. 26A-_____

IN THE
Supreme Court of the United States

NANCY FIEDLER, ET AL.,

Applicants,

v.

UNITED STATES,

Respondent.

On Petition for a Writ of Certiorari
to the U.S. Court of Appeals for the Ninth Circuit

**APPLICATION FOR EXTENSION OF TIME TO FILE
A PETITION FOR A WRIT OF CERTIORARI**

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**APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION
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TO: Justice Elena Kagan, Circuit Justice for the Ninth Circuit:

Under this Court’s Rules 13.5 and 22, Applicants Nancy Fiedler et al. request an extension of sixty (60) days to file a petition for a writ of certiorari in this case. Their petition will seek review of the Ninth Circuit’s decision in *Fiedler v. United States*, 165 F.4th 1310 (9th Cir. 2026), in which the court of appeals affirmed the dismissal of their action against the United States. A copy of the decision—which includes a full list of the plaintiffs, all of whom are Applicants here—is attached as App. 1-41. In support of this application, Applicants state:

1. The Ninth Circuit issued its decision in this case on January 30, 2026, and it denied a timely petition for rehearing en banc on July 20, 2026. *See* App. 42. Without an extension, the petition for a writ of certiorari would be due on October 18, 2026. With the requested extension, the petition would be due on December 17, 2026. This Court’s jurisdiction is based on 28 U.S.C. § 1254(1).

2. This case involves the question whether the Suits in Admiralty Act (SIAA), 46 U.S.C. § 30901 *et seq.*, contains a *sub silentio* discretionary function exception, thereby affording the United States sovereign immunity from suit even when the statutory requirements laid out in the statute’s text for bringing suit are met.

This question arises out of a tragedy. In 2019, a fire engulfed the dive boat *M.V. Conception*, off of the coast of Santa Barbara, California. Thirty-four people died. Applicants—personal representatives of the deceased and one surviving

crew member—brought this action against the United States. They allege that the U.S. Coast Guard acted negligently when it inspected the *M.V. Conception* and certified it as safe for operation as a small passenger vessel on overnight voyages. Applicants ground their causes of action in the SIAA, which provides that “a civil action in admiralty in personam may be brought against the United States” in any case in which, “if a private person or property were involved, a civil action in admiralty could be maintained.” 46 U.S.C. § 30903(a).

In response, the United States claimed sovereign immunity. Even though the text of the Suits in Admiralty Act contains no discretionary function exception, the United States pointed to the Ninth Circuit’s holding in *Earles v. United States*, 935 F.2d 1028, 1032 (9th Cir. 1991), in which the court of appeals engrafted such an exception into the Act. Adhering to *Earles* and finding that the Coast Guard’s conduct here was discretionary, the district court dismissed the case.

A divided panel of the Ninth Circuit affirmed. The majority conceded that this Court’s decision in *Thacker v. Tennessee Valley Authority*, 587 U.S. 218 (2019), “brings *Earles* into question.” App. A 16. In *Thacker*, this Court held that the Tennessee Valley Authority Act does not contain a discretionary function exception because its text waives sovereign immunity without setting forth any express exception for discretionary functions. *See* 587 U.S. at 223. In so doing, the Court stressed that federal courts may not invoke the separation of powers or related policy concerns to limit textually clear waivers of sovereign immunity.

But the Ninth Circuit majority held that the “tension” between *Thacker* and *Earles* does not “rise[] to the level of clear irreconcilability” required to allow a panel to overrule circuit precedent. App. A 16 (internal quotation marks and citation omitted).

Judge Bumatay dissented. He maintained that the SIAA’s “text settles the question here,” precluding dismissal of cases brought under the SIAA on discretionary-function grounds. *Id.* 23. He also concluded that *Earles*’s holding to the contrary is irreconcilable with *Thacker*. As Judge Bumatay put it: The opinion in *Thacker* reasoned that “importing an atextual discretionary-function exception into waiver-of-sovereign-immunity statutes . . . violates Congress’s intent and undermines the separation of powers.” App. 24. *Earles*, in direct contrast, “ignored plain text and privileged a policy-based rationale.” *Id.*

3. There are powerful reasons here for this Court to grant certiorari. No judge on the Ninth Circuit’s panel was willing to say that the SIAA—properly construed according to current rules of statutory construction—contains a discretionary function exception. Yet the court of appeals refused to rehear this case en banc. The panel’s decision, therefore, locks in the court of appeals’ atextual reading of the SIAA for the entire West Coast, including Alaska and Hawaii. That is a serious matter for an admiralty statute.

What’s more, another appellate judge has agreed with Judge Bumatay that *Thacker* dictates that the SIAA contains no discretionary function exception. In *Jones v. United States*, 155 F.4th 1270 (11th Cir. 2025), Judge William Pryor of

the Eleventh Circuit expressed the view that *Thacker* requires the SIAA to be construed according to its plain text, allowing lawsuits that otherwise satisfy the SIAA's requirements to proceed even when they challenge discretionary functions. *Id.* at 1270-71 (opinion respecting the denial of initial hearing en banc).

A panel of the Eleventh Circuit subsequently held—like the majority below here—that *Thacker* was not sufficiently on point to abrogate circuits' present reading of a discretionary function exception to the SIAA. *Jones v. United States*, 184 F.4th 1216 (11th Cir. 2026). And the Eleventh Circuit has now taken the case en banc. 2026 WL 2491473 (11th Cir. Aug. 25, 2026). But no matter how the Eleventh Circuit ultimately resolves the case, this Court's intervention will remain necessary. Either there will be a square circuit split, or not one but two courts of appeals will have issued post-*Thacker* rulings allowing the SIAA to be construed contrary to this Court's instructions as to how to interpret waivers of sovereign immunity—that is, contrary to the statute's plain text.

4. This application for a 60-day extension seeks to accommodate Applicants' legitimate needs. Applicants are now working with undersigned counsel at the Stanford Law School Supreme Court Litigation Clinic. The extension is needed for the clinic to fully familiarize itself with the record, decision below, and relevant case law, and to allow it adequate time to prepare the petition for certiorari. The press of other business—including two cases being argued this fall—and looming briefing deadlines in several other cases means these tasks will take several weeks.

5. For these reasons, Applicants request that the due date for their petition for a writ of certiorari be extended to December 17, 2026.

Respectfully submitted,

By: /s/ Jeffrey L. Fisher

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