

No. 26A-____

IN THE
SUPREME COURT OF THE UNITED STATES

ABC,
Respondent,

v.

DEF,
Applicant.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Second Circuit

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

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

TO: Justice Sonia Sotomayor, Circuit Justice for the United States Court of Appeals for the Second Circuit:

Under this Court's Rules 13.5 and 22, Applicant DEF requests an extension of sixty (60) days in which to file a petition for a writ of certiorari in this case. The U.S. Court of Appeals for the Second Circuit issued its summary-order decision on May 13, 2026. See *ABC v. DEF*, No. 25-807-cv, 2026 U.S.App. LEXIS 13774 (2d Cir. May 13, 2026). App. 1. On July 15, 2026, the court denied the petition for panel rehearing, or, in the alternative, for rehearing en banc. *Id.* 9. Unless extended, the time to file a petition for a writ of certiorari will expire on October 13, 2026. With the requested extension, the petition would be due on December 12, 2026.

This application is being filed more than 10 days before the petition is due. See S. Ct. R. 13.5. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1). In support of this application, Applicant states:

1. This unusual case is a serious candidate for review. It involves interpretation of the Federal Arbitration Act, codified at 9 U.S.C. §1 et seq. ("FAA"); Section 806(a) of the Sarbanes-Oxley Act of 2002 ("SOX"), codified at 18 U.S.C. § 1514A; the anti-retaliation protections in the False Claims Act ("FCA"), codified at 31 U.S.C. § 3730(h); and, this Court's holdings in *W.R. Grace & Co. v. Local Union 759, Int'l Union of United Rubber*, 461 U.S. 757 (1983) ("*W.R. Grace*") and *United Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29 (1987) ("*Misco*"), requiring a court to refuse to enforce an arbitrator's award when it violates law or public policy.

2. For a decade, the parties litigated whistleblower claims arising under SOX and FCA. In the SOX action, including after Respondent’s motion for summary judgment was denied, the parties’ dispute reached the Second Circuit twice, resulting in several precedential opinions and many hundreds of unsealed docket entries.¹ In the FCA action, after the Department of Justice declined to intervene and granted the whistleblower leave to prosecute the action against, inter alia, Respondent, that case was fully unsealed and all filings there were also publicly docketed.²

3. On February 11, 2021, with jury trial fully briefed and set in the SOX action, but indefinitely delayed by the COVID-19 global pandemic – and after nine-months of negotiations – the parties reached a multi-million-dollar settlement to resolve both the SOX and FCA actions and all disputes.

4. However, just weeks after that 2021 settlement, Respondent alleged breach of the parties’ Settlement Agreement’s confidentiality and non-disparagement clauses predicated on the parties’ defined term “Confidential Information” in the Settlement Agreement, based on a handful of very old, truthful, pre-settlement statements Applicant had posted to social media years before settlement – but which remained on an inactive and stale LinkedIn.com account – chiefly consisting of re-

¹ See e.g.: *[Redacted] v. [Redacted]*, 138 F.Supp.3d 329 (SDNY 2015); *[Redacted] v. [Redacted]*, 860 F.3d 80 (2d. Cir 2017); *[Redacted] v. [Redacted]* 923 F.3d 260 (2d. Cir 2019). In sum and substance, post-summary judgment, the District Court repeatedly sought to strip from the whistleblower, but not his many attorneys, few creditors, or the Bankruptcy Trustee, any proceeds from the SOX action, which was wholly reversed by the Second Circuit. As discussed *infra* (§§8, 11-13), and because of the still-unresolved sealing issues below, we redact all parties’ names herein out of an abundance of caution, until the District Court has amended its sealing order(s).

² See *United States ex rel. [Redacted] v. [Redacted]*, Case No. 15-cv-04277 (SDNY).

posted hyperlinks to years-earlier national news media articles about the parties' litigation. Respondent alleged that these old statements were now both disparaging and rendered Confidential Information by the Settlement Agreement, which thereby violated the Settlement Agreement's post-settlement non-disclosure clause.

5. These old "statements" about the litigations and underlying public, federal contracts worth hundreds of millions of dollars at issue in the litigations³, were not unknown. For example, in 2014, Respondent failed in the District Court, in the SOX action, including on First Amendment grounds, to obtain a take-down order respecting these social media posts and hyperlinks; (2) it remained silent about them after 2014 and throughout nine months of settlement negotiations in 2020-21; (3) and its attorneys undisputedly drafted a settlement agreement covering only future, post-settlement statements, staying silent about any of the innumerable public statements all the parties had made about the litigations in the prior decade, much less demanding or including any take-down provisions.⁴

6. In an arbitration, Respondent succeeded in obtaining (i) a liquidated damages award of \$750,000 – despite the testimony of its only witness that it had no damages, and could not have even had any damages – with a finding that the pre-

³ To wit, the FCA defendants litigated these contracts all the way to this Court, then.

⁴ Within 24-hours of Respondent's counsel identifying these pre-settlement, archived, and unviewed social media posts that they now considered breaches, after settling – and demanding their removal within that timeframe, under threat of future litigation – Applicant immediately took down all the identified posts. Nevertheless, Respondent commenced an arbitration seeking to claw back all of the proceeds of settlement belonging to Applicant, i.e. to effectively obtain the same relief it had unsuccessfully sought in the District Court for years, after losing its summary judgment, see supra n.1.

settlement “statements” violated the Settlement Agreement’s confidentiality and non-disparagement clauses, and (ii) a permanent injunction restricting Applicant from any pre- or post-settlement statements about the public facts and circumstances of the parties’ SOX and FCA retaliation litigations, or their settlement, despite the arbitrator holding that the Settlement Agreement was ambiguous as to the treatment of pre-settlement statements.⁵

7. The parties respectively moved, *inter alia*, to confirm and vacate the arbitration award in the District Court, including vacatur on various public policy grounds sounding in the SOX and FCA statutes, and authorities interpreting them, and in other employment retaliation and discrimination statutes and authorities.

8. However, before filing its petition, Respondent succeeded in sealing in toto the post-arbitration District Court proceedings, and placing the dispute back before the same District Court judge who had been earlier overruled in her decision(s) to strip from Applicant, any personal recovery from the litigations, *supra*, n.1, n.3.

9. While those confirmation/vacate motions remained *sub judice* in the District Court for nearly two years (with the arbitration award accruing New York state judgment interest), the states of New York and New Jersey enacted legislation and issued authorities explicitly barring, under law, on public policy grounds, any

⁵ Respondent also admitted in the arbitration that its term “Confidential Information” and its own definitions and uses of that term were inconsistent in the Settlement Agreement, including one key definition and use of that term under which this defined term could only pertain to (a) the amount of settlement and (b) terms of settlement, and nothing else, neither of which were publicly disclosed by Applicant. Respondent, however, publicized this information, *infra* at ¶11.

enforcement of damages awards from alleged breaches of confidentiality or non-disparagement in retaliation cases, i.e. exactly on point to the issues at bar:

- a. New York, the state governing the parties' Settlement Agreement, enacted

General Obligations Law §5-336. NY GOL §5-336(3) holds in relevant part:

Notwithstanding any other law to the contrary, no release of any claim, the factual foundation for which involves unlawful discrimination, including discriminatory harassment, or retaliation, shall be enforceable, if as part of the agreement resolving such claim:

(a) the complainant is required to pay liquidated damages for violation of a nondisclosure clause or nondisparagement clause;

(b) the complainant is required to forfeit all or part of the consideration for the agreement, for violation of a nondisclosure clause or nondisparagement clause;

- b. New Jersey, the state of Applicant's residence throughout the litigations

and where any judgment enforcement proceeds will occur, has a near-identical statute, 10:5-12.8(a) which provides in relevant part that: "[a] provision in any employment contract or settlement agreement which has the purpose or effect of concealing the details relating to a claim of discrimination, retaliation, or harassment (hereinafter referred to as a "non-disclosure provision") shall be deemed against public policy and unenforceable against a current or former employee."

- c. On July 27, 2024, while the confirmation/vacate petitions remained undecided, Applicant again advised the District Court "of new and relevant authority issued by the New Jersey Supreme Court in *Savage v. Twp of*

Neptune, 2024 N.J. LEXIS 377 (May 7, 2024)” holding that 10:5-12.8(a) “structure reinforces the conclusion that it encompasses “non-disparagement” provisions that would conceal details about discrimination claims” and that the law as “remedial legislation... must be liberally construed” further noting: “[s]pecifically, that settlement agreements that ‘prevent employees from revealing information that lies at the core of what section 12.8 protects--details about claims of discrimination’ are impermissible” while explaining that *Savage* “exemplified the strong trend of public policy pointing only in one direction.”

10. On March 13, 2025, the District Court confirmed the arbitration award, finding no explicit public policy that is well-defined and dominant and which barred confirmation, while delaying resolution of the parties’ sealing dispute until after the parties’ Second Circuit appeal proceedings. On appeal, in a summary order opinion, the Second Circuit affirmed, holding in relevant part that “[i]n particular, although Appellant reasons by analogy to established law in other contexts, he fails to establish that the confidentiality and non-disparagement provisions enforced by the arbitration award violate a “well defined and dominant” public policy “ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interests (citations omitted)”. App. 5. The court subsequently denied a petition for rehearing or rehearing en banc. *Id.* 9.

11. On appeal and in its decision, the Second Circuit panel additionally addressed the parties’ sealing arguments, noting that “all the proceedings before this

Court in this appeal are—to date—under seal[,]” remanding for further proceedings respecting any continued sealing of the District and Second Circuit dockets and filings. *Id.* 6-7. To wit, at oral argument – in open court, where Respondent voluntarily and needlessly disclosed all the confidential information it had previously sought to keep sealed (specifically, in its initial motion seeking in toto sealing, proposing an alternative that only the amount of settlement and terms of settlement be sealed) – the panel explicitly discussed the “unusual” sealing issues in the case “that puts us in a little bit of a bind.” *Id.* 23 (disclosing amount of settlement), 30-33, 35-36.⁶

12. On July 21 and August 3, 2026, the District Court issued [sealed] orders related to resolving proposed redactions and the public filing of the record, and referred these issues to its Magistrate Judge. The parties’ [sealed] responses pursuant to the District Court’s post-appeal sealing orders were fully briefed and filed on September 1, 2026.

13. As of the undersigned date, the sealing and/or redaction issues remain *sub judice*, therefore all of the filings below in the District Court and Court of Appeals remain sealed in toto, fully redacted, until the District Court resolves what, if any, limited redactions are permissible before the entire record is publicly docketed.

⁶ Although the parties’ pre-argument filings were docketed in entirely redacted form in the Second Circuit, this oral argument transcript was publicly docketed in the Second Circuit without objection by either party or the Court, and remains unredacted, available to the public, effectively eviscerating all arguments Respondent has pressed in the District Court in the *sub judice* redaction/sealing filings.

14. This case presents an important question of law, (i) raising a clear conflict with this Court's holdings in *W.R. Grace* and *Misco*, (ii) effectively splitting with its sister circuits, albeit by summary order, and (iii) raising issues of national importance and the overwhelming trend of well-defined and dominate public policy evident in federal and state statutes and authorities barring (a) confidentiality and non-disparagement terms in settlement agreements resolving retaliation and discrimination cases from muzzling settling victims about the public facts and circumstances of their litigations and (b) holding unenforceable, any awards of damages (or return of consideration) for alleged breaches of confidentiality and non-disparagement settlement terms when those victims speak about the public facts and circumstances of their litigations after settlement, including in whistleblower retaliation claims and the SOX and FCA statutes setting forth those protections.

15. That is the precise issue at bar in this case, including in the award of a permanent injunction below, and a damages award for what are undisputedly truthful, initially-First Amendment-protected statements made during litigation, by a litigant, that still remain available, today, online in the archives of national media news organizations, and which lived for a few weeks after settlement, online on a stale, inactive, undisputedly unviewed social media account tied to Applicant. See e.g., *id.* 32 (Tr. 23:6-16). For all these reasons, there is a reasonable prospect that this Court will grant the petition, such that it warrants this additional time for these important questions to be fully addressed, and to provide additional time for the District Court to adjudicate the unresolved sealing issues.

16. This application for a sixty-day extension seeks to accommodate Applicant's legitimate needs, and it is not filed for the purpose of delay. First, it permits the District Court time to resolve the remaining, fully-briefed sealing and redactions questions, so that the parties do not need to burden this Court with redacted filings and/or raising the propriety of sealing in this Court, as was necessary in the Court of Appeals. *Id.* Second, additional time is necessary to prepare a petition for certiorari in this case because the attorneys who have principal responsibility for preparing the petition have other competing deadlines and pre-planned family travel.

Respectfully submitted,

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