No. 26A____

IN THE

Supreme Court of the United States

RICHARD MARKOWITZ, *et al.*,

Applicants,

v.

SKATTEFORVALTNINGEN,

Respondent.

APPLICATION FOR AN EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

ANDREW WEINER
KOSTELANETZ LLP
601 New Jersey Ave., NW
Suite 260
Washington, DC 20001

NEAL KUMAR KATYAL
Counsel of Record
COLLEEN E. ROH SINZDAK
EZRA P. LOUVIS
MILBANK LLP
1101 New York Ave., NW
Washington, DC 20005
Telephone: (202) 835-7505
nkatyal@milbank.com

Counsel for Applicants

November 10, 2026

CORPORATE DISCLOSURE STATEMENT

Applicants in this Court were Defendants-Appellants below. No applicant has a parent corporation; no publicly held corporation owns 10% or more of the stock of any Applicant. The complete list of Applicants is:

- Richard Markowitz,
- Jocelyn Markowitz,
- John van Merkensteijn,
- Elizabeth van Merkensteijn,
- Bernina Pension Plan,
- Basalt Ventures LLC Roth 401(K) Plan,
- Avanix Management LLC Roth 401(K) Plan,
- Hadron Industries LLC Roth 401(K) Plan,
- Cavus Systems LLC Roth 401(K) Plan,
- Starfish Capital Management LLC Roth 401(K) Plan,
- Voojo Productions LLC Roth 401(K) Plan,
- Azalea Pension Plan,
- Omineca Pension Plan,
- Batavia Capital Pension Plan,
- Calypso Investments Pension Plan,
- Routt Capital Pension Plan,
- RJM Capital Pension Plan,
- Michelle Investments Pension Plan,
- Remece Investments LLC Pension Plan,
- Xiphias LLC Pension Plan,
- Tarvos Pension Plan.

APPLICATION

To the Honorable Sonia Sotomayor, Associate Justice of the United States Supreme Court and Circuit Justice for the Second Circuit:

Pursuant to Rule 13.5 of the Rules of this Court and 28 U.S.C. § 2101(c), Applicants respectfully request a 60-day extension of time in which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case. The new due date would be January 29, 2027.

1. The Second Circuit issued its decision and entered judgment on August 31, 2026. *See Skatteforvaltningen* v. *Markowitz*, 190 F.4th 62 (2d Cir. 2026). Applicants did not seek rehearing or rehearing en banc. Unless extended, the time to file a petition for a writ of certiorari will expire on November 30, 2026. Sup. Ct. R. 13.1. This application is being filed more than ten days before the petition is currently due. *See* Sup. Ct. R. 13.5. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1).

2. This case involves the revenue rule, which bars enforcement "of the revenue laws" of a foreign sovereign in U.S. courts. *Her Majesty the Queen ex rel. Province of Brit. Columbia* v. *Gilbertson*, 597 F.2d 1161, 1164 (9th Cir. 1979) (quoting *Holman* v. *Johnson* (1775) 98 Eng. Rep. 1120, 1121 (Mansfield, J.)). In *Pasquantino* v. *United States*, 544 U.S. 349 (2005), this Court explained that the rule is a "corollary of the rule that, as Chief Justice Marshall put it, '[t]he Courts of no country execute the penal laws of another.'" *Id.* at 360-361 (quoting *The Antelope*, 23 U.S. (10 Wheat.) 66, 123 (1825)). Thus, the rule's "most straightforward application" is in suits in which a "foreign sovereign attempts to sue directly in its own right" to enforce a tax

liability "in the courts of another nation." *Id.* at 361 (citation omitted). But *Pasquantino* recognized that the common-law rule might even prevent the United States from enforcing its own criminal laws in cases involving the violation of foreign tax codes where the rule's application is "clear" or the "purposes" of the revenue rule require it. *Id.* at 368.

3. The revenue rule is "so well recognized" that it has "deterred" virtually "all attempts" by foreign sovereigns to recover their revenues in U.S. courts. *Her Majesty the Queen*, 597 F.2d at 1164 & n.7 (quotation marks and citation omitted). And while a handful of foreign sovereigns have tried to evade the revenue rule by reframing their suits to recover revenues as claims for garden-variety fraud, *see*, *e.g.*, *id.*, courts have seen through those efforts and uniformly rejected them, *Republic of Honduras* v. *Philip Morris Cos.*, 341 F.3d 1253, 1261 (11th Cir. 2003); *Att'y Gen. of Can.* v. *R.J. Reynolds Tobacco Holdings, Inc.,* 268 F.3d 103, 131 (2d Cir. 2001); *Eur. Cmty.* v. *RJR Nabisco, Inc.*, 424 F.3d 175, 180-181 (2d Cir. 2005) (Sotomayor, J.).

4. Contrary to well-settled law, the Second Circuit in the decision below refused to apply the revenue rule to bar a suit brought by Denmark's tax authority, Skatteforvaltningen ("Skat"), to recover a tax refund Skat paid to U.S. citizens, on the ground that Skat's suit was best characterized as one for funds "disbursed due to fraud." App. 25a, 30a (emphasis omitted). That decision creates a massive hole in the revenue rule, breaks with the decisions of the other courts of appeals, and misapplies the precedent of this Court. Accordingly, Applicants intend to file a petition for certiorari seeking this Court's review.

5. Applicants are Richard and Jocelyn Markowitz, John and Elizabeth van Merkensteijn, and several pension plans they control—all of which are United States citizens or U.S.-based entities. Applicants engaged a foreign broker and licensed custodian to purchase shares of Danish stock, and the custodian delivered statements reflecting the shares Applicants owned, the dividends paid, and the Danish tax withheld on those payments. App. 11a-12a.

6. A United States-Denmark treaty regarding the avoidance of double-taxation provides that tax-exempt U.S. pension plans—like Applicants'—are also exempt from taxation by Denmark.[1] A plan covered by that provision must submit a reclaim application to Skat, which reviews the application and issues a refund if satisfied that all requirements are met.

7. Applicants submitted reclaim applications to Skat based on the dividend statements received from their custodian. Skat then reviewed the applications, assessed their compliance with Danish tax law, and issued refunds for the full amount of tax withheld.

8. Skat subsequently determined that it should never have paid Applicants the tax refunds because Applicants' broker never actually purchased Danish shares on Applicants' behalf; rather, the broker and its agents submitted the reclaim applications as part of a tax fraud scheme against the Danish government. App. 12a-13a.

[1] Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income art. 10, Den.-U.S., Aug. 19, 1999, T.I.A.S. No. 13,056 ("U.S.-Denmark Tax Conv.").

9. Rather than seek to recover the tax refund payments in Denmark's own courts, as the United States would in similar matters, see I.R.C. § 7405(b), Skat sued Applicants in U.S. federal court for common-law fraud and related claims. App. 12a-13a. Skat argued that Applicants were liable because they should have recognized several "red flags" in their dealings with the broker. App. 15a.

10. Applicants promptly invoked the revenue rule, observing that Skat's effort to recover tax refunds from U.S. citizens was precisely the sort of effort to enforce a foreign sovereign's revenue laws in American courts that the revenue rule prohibits. Applicants further observed that the U.S.-Denmark Tax Convention codifies the revenue rule by providing that the United States will furnish "[n]o assistance" to Denmark with the enforcement of a "revenue claim" against United States citizens, and vice versa.[2] Applicants contrasted that strict bar in the U.S.-Denmark treaty with the terms of the tax treaty the United States negotiated with Japan, in which the parties expressly agreed to assist each other with the collection of claims against citizens who "file[] a fraudulent tax return or a fraudulent claim for refund."[3]

11. The district court rejected Applicants' revenue-rule defense, adjudicated Skat's entitlement to a refund, and issued a judgment ordering Applicants to repay the tax refunds to Skat. App. 17a-18a. The Second Circuit affirmed. The panel held that the revenue rule was inapplicable because Applicants had not incurred a "tax

[2] U.S.-Denmark Tax Conv., *supra*, art. 27(8).
[3] Protocol Amending the Convention of November 6, 2003 art. XIII, U.S.-Japan, Jan. 24, 2013, T.I.A.S. No. 19-830.

liability under Danish law," App. 22a-23a, and that, even though Skat sought to recover erroneously disbursed "tax revenue," App. 25a, its suit should be treated as one for funds "disbursed due to fraud," App. 30a (emphasis omitted). The panel used the same distinction to disregard the U.S.-Denmark and U.S.-Japan tax treaties. App. 28a-29a. In reaching these conclusions, the panel repeatedly relied on the standard that this Court articulated in *Pasquantino* for applying the revenue rule to prosecutions brought by the United States, even though this case was brought directly by a foreign tax authority and the United States has "never" even "weighed in." App. 32a.

12. This Court's review is essential. The decision below is irreconcilable with the precedents of the other courts of appeals and this Court, which correctly recognize that the revenue rule applies in cases like this one. And the foreign policy and separation-of-powers consequences of the decision are hard to overstate, particularly because this case is a bellwether for numerous similar claims Skat has brought against United States citizens.

13. Start with the irreconcilable conflict. This case appears to be the first time U.S. courts have rejected the application of the revenue rule in a suit brought by a foreign sovereign to collect revenues owed under its tax laws. Until the decision below, the courts of appeals had uniformly recognized that a foreign sovereign cannot pursue such a suit, regardless of the nature of the alleged violation, and regardless of how the foreign sovereign frames its revenue claims. Courts have, for example, applied the revenue rule to dismiss foreign-sovereign suits against parties not subject

to foreign tax laws, *Banco Do Brasil, S.A.* v. *A.C. Israel Commodity Co.*, 190 N.E.2d 235, 376 (N.Y. 1963), and against those on whom no tax liability had been assessed, *Honduras*, 341 F.3d at 1261. And while the Second Circuit attempted to distinguish those holdings by suggesting that Denmark's suit to reclaim its tax refunds is not a "revenue claim" at all because Applicants never paid a tax, App. 28a-29a, that holding cannot be squared with caselaw recognizing that the United States' own revenue claims for erroneous refunds require no showing of an underlying tax debt. *Compare id.*, *with United States* v. *Com. Nat'l Bank of Peoria*, 874 F.2d 1165, 1169 (7th Cir. 1989) (explaining that the IRS need only show that "a refund was paid"); *see also United States* v. *Wurts*, 303 U.S. 414, 415-416 (1938) (recognizing that the United States' claims for "wrongfully" paid tax refunds are claims based on its sovereign right to recover money "paid from the public treasury").

14. Moreover, the Second Circuit reached its erroneous conclusion by misapplying this Court's decision in *Pasquantino*. In that case, the Court concluded that the revenue rule did not prevent the United States from prosecuting wire fraud based on a scheme to evade foreign taxes because the rule most obviously applies to suits by foreign sovereigns to collect on their tax liabilities, and because the serious foreign policy concerns the rule protects were not implicated by a prosecution that "embodie[d] the policy choice of the two political branches"—the legislative branch that enacted the wire fraud statute and the executive branch that elected to bring a prosecution under it. *Pasquantino*, 544 U.S. at 370. Neither of *Pasquantino*'s rationales applies to this suit. Because this suit was brought by a foreign sovereign

to reclaim its own erroneously paid tax refund, it represents a heartland application of the revenue rule. And the panel itself "acknowledge[d]" that this suit lacks endorsement from either of the political branches because it does not involve a federal statute or federal prosecutors. See App. 32a-33a. The panel replaced those constitutionally grounded "safeguard[s]," *Pasquantino*, 544 U.S. at 369, with its own assessment that this suit might somehow benefit "international relations," App. 32a-33a, something the court was neither permitted nor competent to do.

15. The consequences of the Second Circuit's holding are enormous. Because the revenue rule is a globally established background principle, the Second Circuit's abrogation of it, even in this "one situation," "necessarily impacts foreign relations" by telling *all* other sovereigns that they may bring suit in similar circumstances. *See Eur. Cmty.* v. *RJR Nabisco, Inc.*, 355 F.3d 123, 132 (2d Cir. 2004) (Sotomayor, J.), *vacated*, 544 U.S. 1012 (2005). That holding upends the "expressed policy" of the political branches to channel collection assistance through narrow, reciprocal treaties, *Canada*, 268 F.3d at 118, risks the ire of treaty partners, like Japan, who bargained for assistance in exactly this circumstance, see *supra* p. 4, and invites courts to "speculate" about matters they are least equipped to address, App. 32a. And these effects are magnified by the circumstances of this case, which represents the first bellwether trial in a 140-case multi-district litigation brought by Skat across 11 different jurisdictions. App. 14a & n.4.

16. Applicants recently retained the undersigned to assist in preparing a petition for certiorari that adequately addresses the important issue at the heart of

this case. An extension will allow counsel to become familiar with the record, research the relevant issues, and prepare a petition. Additionally, counsel has upcoming briefing deadlines and oral argument in several matters that warrant an extension, including: a reply brief in *KalshiEX LLC* v. *Cox*, No. 26-4100 (10th Cir.), due November 12, 2026; a response brief in *Ford Motor Co.* v. *Mikhov*, No. 26-2317 (9th Cir.), due November 16, 2026; oral argument in *In re GOL Linhas Aereas Inteligentes S.A.*, No. 26-49 (2d Cir.), on November 16, 2026; a reply brief in *United States* v. *Wisconsin*, No. 26-2675 (7th Cir.), due November 19, 2026; a reply brief in *KalshiEX LLC* v. *Williams*, No. 26-1835 (2d Cir.), due November 20, 2026; a petition for a writ of certiorari in *Construction Laborers Pension Trust of Greater St. Louis* v. *Funko Inc.*, No. 24-4909 (9th Cir.), due December 1, 2026; a reply brief in *Empire Technology Development LLC* v. *Samsung Electronics Co.*, No. 26-1822 (Fed. Cir.), due December 4, 2026; and an opening brief in *KalshiEX LLC* v. *Bird*, No. 26-2874 (8th Cir.), due December 7, 2026.

17. For these reasons, Applicants respectfully request that an order be entered extending the time to file a petition for a writ of certiorari to and including January 29, 2027.

November 10, 2026

Respectfully submitted,

NEAL KUMAR KATYAL
COLLEEN E. ROH SINZDAK
EZRA P. LOUVIS
MILBANK LLP
1101 New York Ave., NW
Washington, DC 20005
Telephone: (202) 835-7505
nkatyal@milbank.com

ANDREW WEINER
KOSTELANETZ LLP
601 New Jersey Ave., NW
Suite 260
Washington, DC 20001

Counsel for Applicants