

In the Supreme Court of the United States

MRUGESHKUMAR KUMAR SHAH,
Applicant,

v.

UNITED STATES OF AMERICA

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

To the Honorable Samuel A. Alito, Jr., Associate Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Fifth Circuit:

1. Pursuant to Supreme Court Rule 13.5, Applicant Mrugeshkumar Kumar Shah respectfully requests a 60-day extension of time, to and including August 5, 2024, within which to file a petition for a writ of certiorari. The United States Court of Appeals for the Fifth Circuit issued its initial opinion on October 2, 2023. On March 8, 2024, the Fifth Circuit withdrew its October 2 opinion, denied all pending petitions for rehearing en banc, and issued a substitute opinion. A copy of the March 8 opinion is attached. This Court's jurisdiction would be invoked under 28 U.S.C. § 1254(1).

2. Absent an extension, a petition for a writ of certiorari would be due on June 6, 2024. This application is being filed more than 10 days in advance of that date, and no prior application has been made in this case by Applicant.

3. This case seeks review of an important question that has divided Members of this Court and jurists throughout the country: whether the Sixth Amendment reserves to juries the determination of any fact underlying a criminal restitution order. *See, e.g., Hester v. United States*, 139 S. Ct. 509, 509-10 (2019) (Gorsuch, J., dissenting from denial of certiorari).

4. Applicant is one of several defendants convicted of engaging in a healthcare conspiracy in Dallas, Texas. Slip op. at 2. Applicant was a physician, who was charged with receiving fees in 2011 to 2012 for patients referred to an outside clinic, Forest Park Medical Center in Dallas. *See generally* slip op. at 5. In 2016, the government charged the owners of Forest Park and several physicians with what it characterized as a scheme to enrich themselves through out-of-network billing and reimbursement by steering privately-insured patients to the clinic, for whom they could recoup higher out-of-network reimbursement rates. Applicant was convicted of violations of the Anti-Kickback Statute (“AKS”) and conspiracy to violate the AKS for paying or receiving remuneration for arranging services payable by a federal health care program (FECA). *Id.* Applicant was sentenced to 42 months of imprisonment. Slip op. at 6.

5. Over Applicant’s objection, the district court also imposed restitution in the amount of \$40,339.37 based on facts never found by the jury beyond a reasonable doubt, and the court of appeals affirmed. Slip op. at 82. Relying on existing precedent, the Fifth Circuit rejected Applicant’s argument that the Sixth Amendment requires a jury to find facts supporting the allowable amount of restitution as foreclosed by circuit precedent. Slip op. at 80 (citing *United States v. Rosbottom*, 763 F.3d 408, 420 (5th Cir. 2014)). The Fifth

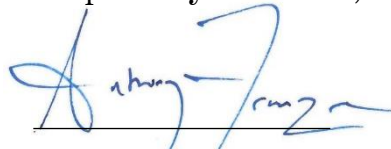
Circuit has employed reasoning Members of this Court have found “isn’t well-harmonized with this Court’s precedents” and is “difficult to reconcile with the Constitution’s original meaning.” *E.g., Hester v. United States*, 139 S. Ct. 509, 509-10 (2019) (quotation marks omitted) (Gorsuch, J., dissenting from denial of certiorari). Those Members found the question here “is worthy of [the Court’s] review.” *Ibid.*

6. Applicant respectfully requests an extension of time to file a petition for a writ of certiorari. Counsel here was not counsel in the Fifth Circuit or district court, and a 60-day extension would allow counsel sufficient time to fully examine the Fifth Circuit’s lengthy decision’s consequences, research and analyze the issues presented, and—importantly—to coordinate with counsel for codefendants in an effort to avoid duplication and repetition in separate petitions in this large-scale case.

Wherefore, Applicant respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari to and including August 5, 2024.

Dated: May 23, 2024

Respectfully submitted,



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