

IN THE

Supreme Court of the United States

LAURA SMITH, AS DULY APPOINTED REPRESENTATIVE OF THE ESTATE OF ANDREA
MANFREDI,

Applicant,

v.

THE BOEING CO.,

Respondent.

**Application for Extension of Time Within
Which to File a Petition for a Writ of Certiorari to
the U.S. Court of Appeals for the Seventh Circuit**

**APPLICATION TO THE HONORABLE JUSTICE
AMY CONEY BARRETT AS CIRCUIT JUSTICE**

FILIPPO MARCHINO
THOMAS E. GRAY
THE X-LAW GROUP, P.C.
625 Fair Oaks Ave., Suite 390
South Pasadena, CA 91030
(213) 599-3380
dm@xlawx.com

JEFFREY T. GREEN*
TOBIAS S. LOSS-EATON
DANIELLE HAMILTON
THE CARTER G. PHILLIPS/
SIDLEY AUSTIN LLP
SUPREME COURT CLINIC
NORTHWESTERN PRITZKER
SCHOOL OF LAW
375 East Chicago Ave.
Chicago, IL 60611
(240) 286-5686
jeff@greenlawchartered.com

Counsel for Applicant

November 27, 2024

* Counsel of Record

APPLICATION FOR EXTENSION OF TIME

Under this Court's Rule 13.5, Applicant respectfully requests a 30-day extension of time within which to file a petition for a writ of certiorari, to and including January 8, 2025.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The judgment for which review is sought is *In re Lion Air Flight JT 610 Crash*, 110 F.4th 1007 (7th Cir. 2024) (attached as Exhibit 1).

JURISDICTION

This Court will have jurisdiction over any timely petition under 28 U.S.C. § 1254(1). The Seventh Circuit issued its judgment on August 6, 2024, and denied a timely petition for rehearing en banc on September 10, 2024. Thus, a petition to this Court is currently due by December 9, 2024. In accordance with Rule 13.5, this application is being filed more than 10 days before that date.

REASONS JUSTIFYING AN EXTENSION OF TIME

1. This case involves an important question of admiralty law that implicates a circuit split: Is federal admiralty jurisdiction under the Death on the High Seas Act (DOHSA), 46 U.S.C. §§ 30301-08, concurrent, or exclusive? After the 2018 crash of a Boeing 737 MAX in the Java Sea, Applicant brought a wrongful-death action against Boeing and other defendants on the "law side" of federal district court, asserting jurisdiction under 28 U.S.C. §§ 1332 (diversity) and 1369 (multiforum, multiparty) and demanding a jury trial. Ex. 1 at 2–4. Although the §§ 1332 and 1369 requirements were satisfied, Boeing argued that the claims arose under

DOHSA and that, in federal court, DOHSA claims are heard exclusively in admiralty, where the Seventh Amendment right to a jury trial does not apply. Respondent moved to strike the jury demand, and the district court granted its motion.

The Seventh Circuit affirmed, holding that—at least in federal court—DOHSA claims are subject to exclusive admiralty jurisdiction, primarily because DOHSA explicitly grants admiralty jurisdiction without mentioning the possibility of law-side jurisdiction. *Id.* at 13–14. Yet the Seventh Circuit conceded that, under this Court’s precedent, DOHSA claims may be brought in state court as common-law tort claims. *Id.* Put differently, the court below held that DOHSA creates admiralty jurisdiction that is exclusive as between the two sides of federal court, but not between federal court and state court.

This decision warrants review because it arbitrarily deprives parties of their Seventh Amendment jury-trial rights and conflicts with other federal appellate decisions. Other circuits correctly recognize that admiralty jurisdiction is either wholly concurrent (meaning state courts have jurisdiction too) or wholly exclusive (meaning they do not); there is no middle category. See, e.g., *Guidry v. Durkin*, 834 F.2d 1465, 1472–73 (9th Cir. 1987) (holding that, when two federal admiralty statutes “provide original and exclusive admiralty jurisdiction in the United States District Courts ... state courts lack jurisdiction over such matters”).

DOHSA is no exception. The district court below had concurrent jurisdiction, not exclusive (or quasi-exclusive) jurisdiction. It had law-side jurisdiction under both 28 U.S.C. § 1332 (diversity) and 28 U.S.C. § 1369 (multiparty, multiform).

DOHSA's grant of admiralty jurisdiction did not implicitly negate the law-side jurisdiction that Congress explicitly created under § 1332 and § 1369. Nor did it create the anomalous "exclusive-only-in-federal-court" jurisdiction that the decision below recognized. As this Court explained in *Offshore Logistics, Inc. v. Tallentire*, DOHSA's saving clause was intended to "serve as a jurisdictional saving clause, ensuring that state courts enjoyed the right to entertain causes of action and provide wrongful death remedies both for accidents arising on territorial waters and, under DOHSA, for accidents occurring more than one marine league from shore." 477 U.S. 207, 207 (1986).

The Seventh Circuit's decision ignores that holding and creates a jurisdictional morass. It also produces arbitrary results. Under the decision below, whether victims of air crashes are entitled to a jury trial will depend on whether the plane crashed over land or water. There is no indication that Congress intended that result. And the Seventh Circuit's novel quasi-exclusive concept invites gamesmanship. As a companion case to this one illustrates, the decision below allows defendants to erase a plaintiff's jury-trial right by removing a case from state court to federal court, where admiralty jurisdiction suddenly becomes exclusive. Again, nothing in the statutory scheme suggests that Congress contemplated that anomalous outcome.

2. An extension is warranted to allow counsel time to coordinate and prepare a petition that will aid the Court's review of these issues. The Carter G. Phillips/Sidley Austin LLP Supreme Court Clinic at Northwestern Pritzker School of

Law has recently agreed to prepare Applicant's petition. An extension of time will permit the Clinic students the time necessary to complete a cogent and well-researched draft petition without interfering with their other studies or the academic calendar, and will give counsel adequate time to review and revise the draft to finalize it for filing.

An extension is also warranted because of the press of counsel's other client business. Counsel and the Clinic are also responsible for forthcoming petitions in *Brannan v. United States*, No. 24A453 (due December 13), *Kovac v. Wray*, No. 24A335 (due December 19), and *Tucker v. United States*, No. 24A353 (due December 19). Counsel also commenced a wrongful-death trial on Monday, November 25, 2024 that is estimated to last for three weeks.

A 30-day extension will allow counsel the necessary amount of time to effectively handle Applicants' petition and other client business, and will allow the Clinic students sufficient time for research and drafting efforts.

CONCLUSION

For these reasons, Applicant respectfully requests a 30-day extension of time within which to file a petition for a writ of certiorari, to and including January 8, 2025.

Respectfully submitted,

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