No. ___

IN THE

Supreme Court of the United States

Olivet University,

Applicant,

v.

Newsweek Digital LLC, et al,

Respondents.

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

YEN-YI ANDERSON
ANDERSON & ASSOCIATES
61 BROADWAY, SUITE 2809
NEW YORK, NY 10028
(646) 452-9982
y.anderson@aalawpc.com
Counsel for Applicant OU

CORPORATE DISCLOSURE STATEMENT

Applicant Olivet University, a religious nonprofit corporation, certifies that it has no parent corporation and no publicly held corporation owns 10% or more of its stock.

To the Honorable Sonia Sotomayor, Associate Justice of the Supreme Court of the United States 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), Applicant Olivet University ("Applicant," "Olivet," or "OU") respectfully requests a 60-day extension of time, to and including May 5, 2025, within 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.

1. The Second Circuit entered judgment on December 6, 2024. *See* Summ. Order and J., No. 24-1473 (2d Cir. Dec. 6, 2024), Dkt. 42 (attached as Exhibit A). Applicant did not petition the Second Circuit for rehearing. Unless extended, the time to file a petition for a writ of certiorari will expire on March 6, 2025. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1).

2. Newsweek and a covert team of its executives, editors, and reporters have run a systematic smear campaign against Olivet, bullying the private, Christian university by plastering 20 defamatory articles, several of which were published as top, global headline news, on full display for all the magazine's 100 million readers to see.

3. The statements Newsweek published that are at issue in this appeal—that Olivet "pleaded guilty to money laundering," when even Newsweek admits that Olivet never did—are some of the earliest defamatory statements Newsweek published in the campaign, but certainly not the last. All told, Newsweek published hundreds of statements over three years scapegoating Olivet with all manner of

egregious crimes—including money laundering, human trafficking, drug trafficking, and many more—none of which Olivet ever committed. The bullying and terrorizing Newsweek has systematically committed against Olivet amounts to defamation *per se*.

4. Defamation is a very serious tort related to personal and business reputation and dignity that has existed as a legal cause of action since at least the 1500s. Shakespeare wrote about the importance of reputation in *Othello*:

> "Good name in man and woman, dear my lord, [/] Is the immediate jewel of their souls. [/] Who steals my purse steals trash; [/] 'Tis something, nothing; [/] 'Twas mine, 'tis his, and has been slave to thousands; [/] But he that filches from me my good name [/] Robs me of that which not enriches him, [/] And makes me poor indeed." Act III, scene 3.

Milkovich v. Lorain Journal Co., 497 U.S. 1, 12 (1990). The Bible also highlights the value of a person's reputation: "a good name is rather to be chosen than great riches, and loving favour rather than silver and gold."[1]

5. The appellate decision below, coupled with a recent ruling from the United States District Court for the Middle District of Florida, created a flummoxing situation. *See* Order, No. 24-1473 (M.D. Fla. Jan. 13, 2025), Dkt. 42; *see also* Second Am. Compl., No. 24-1473 (M.D. Fla. Feb. 21, 2025), Dkt. 45. Plaintiff Olivet sued two different authors of the *very same* article—for defamation *per se* over the *very same* statement—but received different outcomes at the motion

[1] Kraig J. Marton, Nikki Wilk & Laura Rogal, *Article from Professors and Practitioners: Protecting One's Reputation—How to Clear a Name in a World Where Name Calling is So Easy*, 4 Phoenix L. Rev . 53 (2010) (*citing* Proverbs 22:1 (King James)).

to dismiss stage in two different federal courts. Olivet's complaint survived a motion to dismiss in the Middle District of Florida, which decided sufficient factual issues were raised that should be presented to a jury, while in the Southern District of New York, defendant Newsweek's motion to dismiss was granted, reasoning that the statement's truth or falsity could be decided as a matter of law. The Second Circuit upheld the Southern District's decision, leading to the present appeal.

6. The implications of two different federal courts reaching a different conclusion at the motion to dismiss stage for two respective authors of the very same article, in a defamation *per se* case over the very same statement, are significant. For starters, the appellate court praised as well-reasoned the district court's decision—and the district court, in turn, heavily relied on a Southern District defamation decision about the question of whether President Trump "raped" or "forcibly digitally penetrated" a woman. *Carroll v. Trump*, No. 20 Civ. 7311 (LAK), 2023 WL 5017230 (S.D.N.Y. Aug. 7, 2023). The Southern District court found the statement that Trump raped Carroll inaccurate, but yet, substantially true. Meanwhile, in Florida, Trump's lawsuit over nearly the exact same statement, against a different major news media, resulted in a $16 million libel settlement.[2] Such divergent federal court outcomes affect people as high as the

[2] "President Donald Trump has won a $16 million dollar libel settlement from the American Broadcasting Corporation, a Disney company, which agreed to 'make a statement of regret.' Trump is liable for sexual assault of E. Jean Carroll in a New York dress shop. The trial judge—a Florida federal District Court judge held a 'reasonable viewer…could be misled' by an on-air statement by ABC correspondent George Stephanopoulos that Trump had been found liable for rape. But he did not make clear that in New York digital penetration is a sexual assault only—not the crime of rape. The Florida federal trial judge, Cecilia Altonaga, ruled that a 'reasonable juror' could misunderstand the difference, making the

President of the United States, and as low as the everyday students of a private, Christian university.

7. The difference in decisions cannot be explained simply by federal courts' applications of differing state laws according to the Eerie doctrine. This is because the substantial truth doctrine, a defense to defamation relied upon by the Second Circuit in its decision, is itself rooted in First Amendment jurisprudence. The Second Circuit relies on cases that, in turn, involve significant Supreme Court First Amendment decisions, including *Masson v. New Yorker Magazine*, 501 U.S. 496, which itself relies on landmark defamation cases including *NYT v. Sullivan* and *Gertz*.[3] Circuit courts' proper understanding, interpretation, and application of Constitutional law under Supreme Court precedent is critical to consistent outcomes in federal cases and controversies involving defamation.

correspondent's statements to Trump false and defamatory. Facing trial under a mistake of law, Disney settled. The landmark 1963 case of New York Times v. Sullivan immunizes such errors—and requires actual malice—the heedless disregard of the truth when the person disparaged is a public figure." The Law Journal Editorial Board, *ABC's $16M Settlement With Trump Sets Bad Precedent in Uncertain Times*, NEW JERSEY LAW JOURNAL, (Jan. 24, 2025), https://www.law.com/njlawjournal/2025/01/24/abcs-16m-settlement-with-trump-sets-bad-precedent-in-uncertain-times/.

[3] "In all events, technical distinctions between correcting grammar and syntax and some greater level of alteration do not appear workable, for we can think of no method by which courts or juries would draw the line between cleaning up and other changes, except by reference to the meaning a statement conveys to a reasonable reader. To attempt narrow distinctions of this type would be an unnecessary departure from First Amendment principles of general applicability, and, just as important, a departure from the underlying purposes of the tort of libel as understood since the latter half of the 16th century. From then until now, the tort action for defamation has existed to redress injury to the plaintiff's reputation by a statement that is defamatory and false." *Masson v. New Yorker Magazine*, 501 U.S. 496, 515.

8. Even as interpreted under New York state law, the substantial truth doctrine relies heavily on the First Amendment. See for instance, the opinion of the New York Court of Appeals, citing *Gertz*, in *Rinaldi v. Holt, Rinehart & Winston*, Inc., 42 N.Y.2d 369 at 380: "The First Amendment does not recognize the existence of false ideas. 'However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas. But there is no constitutional value in false statements of fact.' (*Gertz v Robert Welch, Inc.*, 418 US 323, 339-340.)" The opinion further concludes, "[n]o First Amendment protection enfolds false charges of criminal behavior. (*Gregory v McDonnell Douglas Corp.*, supra; cf. *James v Gannett Co.*, 40 NY2d 415, supra.)"

9. The appellate court would also have dismissed the complaint based on New York's fair report privilege. *See* N.Y. Civ. Rights Law § 74. However, even a leading national rights group for reporters, The Reporters Committee for Freedom of the Press, has found that New York's fair report privilege is rooted in the First Amendment:

> The source of the reporter's privilege lies in the Shield Law itself (Civil Rights Law § 79-h), article I, § 8 of the New York State Constitution and, arguably, the First Amendment to the U.S. Constitution. See *O'Neill v. Oakgrove Constr., Inc.*, 71 N.Y.2d 521, 527-28, 528 N.Y.S.2d 1, 3 (1988) (recognizing qualified privilege for nonconfidential information under state constitution and First Amendment).... In *Gonzales v. NBC*, 194 F.3d 29, 36 & n.6 (2d Cir. 1999), the Second Circuit noted that prior decisions have expressed differing views as to whether the federal reporter's privilege is constitutionally required or rooted in federal common law but declined to decide the issue.

New York: Reporter's Privilege Compendium, THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS, https://www.rcfp.org/privilege-compendium/new-york/.

10. The proper interpretation of Constitutional law and Supreme Court precedent also has an especially outsized impact on defamation case outcomes when intertwined with New York state law in this way because New York is the media center of the United States. Many of the largest US media organizations are headquartered in New York, and thus Circuit Courts grappling with defamation issues need to interpret New York law.

11. For example, when the Eleventh Circuit interpreted New York state's substantial truth doctrine in *Project Veritas v. CNN, Inc.*, 121 F.4th 1267, a district court's order granting a motion to dismiss was reversed, and the case was remanded for further proceedings. This outcome throws the Second Circuit's extremely broad interpretation of New York state's substantial truth doctrine into question.

12. The present case also raises issues regarding the interplay between federal pleading standards and the substantial truth doctrine. This is because the appellate court relies in its decision on Supreme Court cases that interpret the Federal Rules of Civil Procedure and require the drawing of all inferences in the plaintiff's favor—and the acceptance of all non-conclusory factual matters as true—a requirement that puts the pleading standards at direct odds with the substantial truth doctrine's core principle of disregarding portions of the pleadings as, supposedly, immaterial as a matter of law. Florida's approach is the correct one,

putting the question of whether falsity was properly alleged through to a jury. To add insult to injury, the lower court also relied in its decision on key facts that literally include defamatory statements supplied by Newsweek, over which Newsweek's reporter, Alex Rouhandeh, is currently being sued for defamation in Florida—for example, the statement that Olivet University was currently under investigation for money laundering at the time of the writing of the Newsweek article, which is utterly false and defamatory.

13. The issues in this case are exceptionally important, and the Second Circuit's incorrect interpretations of the First Amendment and Supreme Court precedent led to the wrong outcome at the appellate level—where the district court's granting of Newsweek's motion to dismiss should have been overturned, and Olivet's complaint should have survived.

14. Good cause exists for a 60-day extension of time to file a certiorari petition. Olivet is a private, Christian institution and retained boutique law firm Anderson & Associates for this Supreme Court appeal. As a boutique firm, Anderson & Associates has very limited resources. The firm has a significant number of upcoming argument and briefing deadlines, including in the following cases: in the Southern District of New York, *Sillam et al. v. Labaton Sucharow LLP et al* (1:21-cv-06675); in the Eastern District of New York, *Du v. Segelman et al* (2:23-cv-06780), and *Bi et al v. Johnson et al* (1:24-cv-01494); in the Bankruptcy Court of Nevada, *In re James Park*, 24-11788; in the Middle District of Florida, parallel case *Olivet University v. Rouhandeh* (8:24-cv-00771). Also, Mrs. Anderson is

working on many cases in the New York state court system, including, *S.V. v. Garufi*; *Jane Doe v. Andrew Zhao*; *Xiang Dan Ye v. Dr. Yong Kang He et al*; and *Wei-Hong M. Cheng v. Raymond Cheng et al*, among others.

15. To the extent that extraordinary circumstances are needed to justify this Application, Olivet would like to point out that the Florida case was just decided on January 13, 2025, eating into the time Olivet had to appeal the Supreme Court decision by more than a month. Therefore, Olivet's time for this filing was extraordinarily limited. Furthermore, as this is Olivet's, and Anderson & Associates', first Supreme Court Application, Olivet's counsel called the Supreme Court and spoke with a clerk on Thursday, February 27, 2025 about the process. When Olivet indicated that the deadline for this Application was March 6, 2025, the clerk stated that there was still time to file this extension request. Based on this discussion with a clerk from the Supreme Court, Olivet is making this filing.

16. The requested extension will ensure that counsel have time to fully brief the important issues in this case. For all these reasons, Applicant Olivet University respectfully requests a 60-day extension of time, to and including May 5, 2025, within which to file a petition for a writ of certiorari.

Dated: March 6, 2025

Respectfully submitted,

YEN-YI ANDERSON
ANDERSON & ASSOCIATES
61 BROADWAY, SUITE 2809
NEW YORK, NY 10028
(646) 452-9982
y.anderson@aalawpc.com
Counsel for Applicant OU