

ORIGINAL

21-7155
No. _____

Supreme Court, U.S.

FILED

DEC 31 2021

OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

BINBING XIE

Petitioner

v.

YAN FENG CHEN, PHYSICIAN, P.C.

Respondent

On Petition for a Writ of Certiorari to the New York Court of Appeal

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed in forma pauperis. Petitioner has previously been granted leave to proceed in forma pauperis in the New York Kings County Supreme Court. Petitioner's affidavit in support of this motion is attached.

Dated: December 31, 2021

Respectfully submitted,

Binbing Xie

Binbing Xie

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**AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

I, Binbing Xie, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

| Income source | Average monthly amount during the past 12 months | | Amount expected next month | |
|--|---|----------------------|-----------------------------------|----------------------|
| | You | Spouse | You | Spouse |
| Employment | \$ <u>0</u> | \$ <u>N/A</u> | \$ <u>0</u> | \$ <u>N/A</u> |
| Self-employment | \$ <u>0</u> | \$ <u>N/A</u> | \$ <u>0</u> | \$ <u>N/A</u> |
| Income from real property (such as rental income) | \$ <u>0</u> | \$ <u>N/A</u> | \$ <u>0</u> | \$ <u>N/A</u> |
| Interest and dividends | \$ <u>0</u> | \$ <u>N/A</u> | \$ <u>0</u> | \$ <u>N/A</u> |
| Gifts | \$ <u>0</u> | \$ <u>N/A</u> | \$ <u>0</u> | \$ <u>N/A</u> |
| Alimony | \$ <u>0</u> | \$ <u>N/A</u> | \$ <u>0</u> | \$ <u>N/A</u> |
| Child Support | \$ <u>0</u> | \$ <u>N/A</u> | \$ <u>0</u> | \$ <u>N/A</u> |
| Retirement (such as social security, pensions, annuities, insurance) | \$ <u>0</u> | \$ <u>N/A</u> | \$ <u>0</u> | \$ <u>N/A</u> |
| Disability (such as social security, insurance payments) | \$ <u>0</u> | \$ <u>N/A</u> | \$ <u>0</u> | \$ <u>N/A</u> |
| Unemployment payments | \$ <u>0</u> | \$ <u>N/A</u> | \$ <u>0</u> | \$ <u>N/A</u> |
| Public-assistance (such as welfare) | \$ <u>183</u> | \$ <u>N/A</u> | \$ <u>183</u> | \$ <u>N/A</u> |
| Other (specify): <u>SNAP, Economic impact payment, Resident tax refund</u> | \$ <u>508</u> | \$ <u>N/A</u> | \$ <u>345</u> | \$ <u>N/A</u> |
| Total monthly income: | \$ <u>691</u> | \$ <u>N/A</u> | \$ <u>528</u> | \$ <u>N/A</u> |

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

| Employer | Address | Dates of Employment | Gross monthly pay |
|-----------------|----------------|----------------------------|--------------------------|
| unemployed | | | \$ _____ |
| | | | \$ _____ |
| | | | \$ _____ |

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

| Employer | Address | Dates of Employment | Gross monthly pay |
|-----------------|----------------|----------------------------|--------------------------|
| N/A | | | \$ _____ |
| | | | \$ _____ |
| | | | \$ _____ |

4. How much cash do you and your spouse have? \$ 287.67

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

| Type of account (e.g., checking or savings) | Amount you have | Amount your spouse has |
|--|------------------------|-------------------------------|
| checking | \$ 378.14 | \$ N/A |
| saving | \$ 20.07 | \$ N/A |
| | \$ | \$ |

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Home
Value _____

Other real estate
Value _____

Motor Vehicle #1
Year, make & model _____
Value _____

Motor Vehicle #2
Year, make & model _____
Value _____

Other assets
Description Computer, Tablet
Value \$1500

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

| Person owing you or your spouse money | Amount owed to you | Amount owed to your spouse |
|--|---------------------------|-----------------------------------|
| N/A | \$ _____ | \$ _____ |
| _____ | \$ _____ | \$ _____ |
| _____ | \$ _____ | \$ _____ |

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

| Name | Relationship | Age |
|-------------|---------------------|------------|
| N/A | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

| | You | Your spouse |
|--|------------|--------------------|
| Rent or home-mortgage payment (include lot rented for mobile home) | \$ 0 | \$ N/A |
| Are real estate taxes included? <input type="checkbox"/> Yes <input type="checkbox"/> No | | |
| Is property insurance included? <input type="checkbox"/> Yes <input type="checkbox"/> No | | |
| Utilities (electricity, heating fuel, water, sewer, and telephone) | \$ 20 | \$ N/A |
| Home maintenance (repairs and upkeep) | \$ 0 | \$ N/A |
| Food | \$ 340 | \$ N/A |
| Clothing | \$ 20 | \$ N/A |
| Laundry and dry-cleaning | \$ 10 | \$ N/A |
| Medical and dental expenses | \$ 60 | \$ N/A |

| | You | Your spouse |
|---|---------------|--------------------|
| Transportation (not including motor vehicle payments) | \$ 40 | \$ N/A |
| Recreation, entertainment, newspapers, magazines, etc. | \$ 0 | \$ N/A |
| Insurance (not deducted from wages or included in mortgage payments) | | |
| Homeowner's or renter's | \$ 0 | \$ N/A |
| Life | \$ 0 | \$ N/A |
| Health | \$ 0 | \$ N/A |
| Motor Vehicle | \$ 0 | \$ N/A |
| Other: _____ | \$ 0 | \$ N/A |
| Taxes (not deducted from wages or included in mortgage payments) | | |
| (specify): _____ | \$ 0 | \$ N/A |
| Installment payments | | |
| Motor Vehicle | \$ 0 | \$ N/A |
| Credit card(s) | \$ 0 | \$ N/A |
| Department store(s) | \$ 0 | \$ N/A |
| Other: _____ | \$ 0 | \$ N/A |
| Alimony, maintenance, and support paid to others | \$ 0 | \$ N/A |
| Regular expenses for operation of business, profession, or farm (attach detailed statement) | \$ 0 | \$ N/A |
| Other (specify): <u>Print, Mail, Notary, Computer, Books,</u> | \$ 200 | \$ N/A |
| Masks, Gloves, Sanitization, Kitchen appliances, Tissue | | |
| Total monthly expenses: | \$ 690 | \$ N/A |

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9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

Yes No If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? Yes No

If yes, how much? _____

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

Yes No

If yes, how much? _____

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

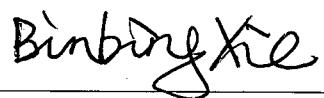
I am unemployed due to my medical conditions.

Alimony from my ex-husband was paid off on Febrary 2020.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: the 10th of Febrary, 2022

ORIN G. JAMES
No. 01JA6124298
Notary Public, State of New York
Qualified in Kings County
My Commission Expires July 27, 2025


Binbing Xie

(Signature)

No. _____

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BINBING XIE

Petitioner

v.

YAN FENG CHEN, PHYSICIAN, P.C.

Respondent

On Petition for a Writ of Certiorari to the New York Court of Appeal

AFFIDAVIT OF SERVICE

I, Edward Primus, do swear or declare that on this date, December 31, 2021, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

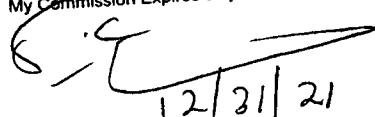
Judy C. Selmeci, Wilson, Elser, Moskowitz, Edelman & Dicker LLP
150 East 42nd Street, New York, NY 10017

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 31st of December, 2021


Edward Primus

ORIN G. JAMES
No. 01JA6124298
Notary Public, State of New York
Qualified in Kings County
My Commission Expires July 27, 2025


12/31/21

No. _____

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v.

YAN FENG CHEN, PHYSICIAN, P.C.

Respondent

On Petition for a Writ of Certiorari to the New York Court of Appeal

AFFIDAVIT OF SERVICE

I, Edward W. Grimes do swear or declare that on this date,
14 February, 2022, as required by Supreme Court Rule 29 I have served the
enclosed AFFIDAVIT OR DECLARATION IN SUPPORT OF MOTION FOR LEAVE
TO PROCEED IN FORMA PAUPERIS on each party to the above proceeding or that
party's counsel, and on every other person required to be served, by depositing an
envelope containing the above documents in the United States mail properly addressed to
each of them and with first-class postage prepaid, or by delivery to a third-party
commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Judy C. Selmeci, Wilson, Elser, Moskowitz, Edelman & Dicker LLP
150 East 42nd Street, New York, NY 10017

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 14 February, 2022

Edward W. Grimes III

AGNIESZKA KOWALEWSKA
No. 01KO6316036
Notary Public, State of New York
Qualified in Queens County
My Commission Expires 12/08/22