

No. 22A-

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IN THE  
Supreme Court of the United States

HAISAM ELSHARKAWI,  
*Applicant,*

v.

ALEJANDRO MAYORKAS, in his official capacity as Secretary of the Department of  
Homeland Security; TROY A. MILLER, in his official capacity as Acting Commissioner of  
Customs and Border Protection,  
*Respondents.*

On Application for Extension of Time to file Petition for Writ of Certiorari to the  
United States Court of Appeals for the Ninth Circuit

**APPLICATION FOR EXTENSION OF TIME TO FILE PETITION FOR WRIT OF CERTIORARI  
DUE TO EXTRAORDINARY CIRCUMSTANCES**

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*Counsel for Petitioner*

To the Honorable Justice Elena Kagan of the  
Supreme Court of the United States and Circuit Justice for the Ninth Circuit:

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Petitioner Haisam Elsharkawi prays for a fourteen (14) day extension to file his Petition for Writ of Certiorari in this Court, up to and including Monday, February 20, 2023.

The United States Court of Appeals for the Ninth Circuit issued its Opinion on November 7, 2022, affirming the decision of the District Court for the Central District of California to dismiss Petitioner's claims. *Elsharkawi v. United States, et al.*, 2022 U.S. App. LEXIS 30795 (9th Cir. Nov. 7, 2022). Petitioner's deadline to file a petition for writ of certiorari currently expires on Monday, February 6, 2023. Pursuant to Rule 13.5 and Rule 30.2, Petitioner files this application due to extraordinary circumstances justifying this extension being filed less than ten days before that date, specifically extreme weather in north Texas where Counsel for Petitioner's office is located. Petitioner also attaches copies of the opinions below, pursuant to Rule 13.5. This Court has jurisdiction under 28 U.S.C. § 1254. Petitioner Haisam Elsharkawi files this application solely as to himself, via his counsel, and not on behalf of any other parties.

The Ninth Circuit's Opinion in this matter presents several important issues that are ripe for review by this Court. Petitioner Haisam Elsharkawi intends to raise in his Petition a split among the Circuits that exists on an issue of standing, specifically on to the burden plaintiffs must meet to demonstrate "imminent harm" for future injury in order to establish standing to bring claims for prospective relief. Petitioner challenges the view of the Ninth Circuit requiring him to show exact travel dates and places to satisfy his duty of "concrete plans," while other Circuits including the D.C. Circuit accept a demonstrated past pattern of travel, coupled with an articulated clearly

expressed intent to travel in the future, as sufficient. This issue is both worthy of this Court's consideration and one only this Court can resolve.

The undersigned counsel, Christina A. Jump, serves as the Civil Litigation Department Head for the Constitutional Law Center for Muslims in America (CLCMA). At present, the following specifics support this request for additional time:

- Extreme winter weather in north Texas, where the office of Counsel for Petitioner is located. This weather event has shut down schools and businesses beginning on Monday, January 30, 2023 and currently those remain closed through and including Wednesday, February 1, 2023.
- In addition, due to a prior complete loss of Counsel's office's files as a result of a ransomware attack, Counsel's office has since that time greatly limited remote access to legal systems and files. That limitation on remote access to client files, combined with road and business closures due to the extreme weather, severely limits Counsel's ability to properly prepare the Petition in this matter to be filed in the upcoming week. CLCMA is a small nonprofit legal center with a nationwide practice and lean staffing, and this brief extension will greatly aid in Counsel's ability to provide quality legal services under the current conditions in Texas.

This brief additional time to prepare a Petition on behalf of Mr. Elsharkawi will allow lead Counsel to better represent Mr. Elsharkawi's interests, and best present the important legal issues implicated here to this Court. Counsel has not requested an extension in this matter before now.

Petitioner respectfully requests that his time to file a Petition for writ of certiorari be extended by fourteen days, to and including February 20, 2023. This extension will better allow

Mr. Elsharkawi's counsel to meet professional and ethical obligations, to Mr. Elsharkawi and to this Court.

Respectfully submitted this 31st day of January, 2023.

**/s/ Christina A. Jump**  
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## **APPENDIX**

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APPENDIX A — OPINION UNITED  
STATES COURT OF APPEALS FOR THE  
NINTH CIRCUIT, DATED NOVEMBER 7, 2022

**FILED**

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

NOV 7 2022

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

HAISAM ELSHARKAWI,

Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA; et al.,

Defendants-Appellees.

No. 21-56206

D.C. No.

8:18-cv-01971-JLS-DFM

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Josephine L. Staton, District Judge, Presiding

Argued and Submitted September 20, 2022  
Pasadena, California

Before: BOGGS,\*\* WARDLAW, and IKUTA, Circuit Judges.

Haisam Elsharkawi (“Elsharkawi”) appeals the dismissal of his claims for prospective relief arising out of a warrantless border search of his cell phones as he attempted to fly out of Los Angeles International Airport in 2017. In a prior appeal of this action, we held that Elsharkawi’s complaint failed to establish Article III

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The Honorable Danny J. Boggs, United States Circuit Judge for the U.S. Court of Appeals for the Sixth Circuit, sitting by designation.

standing to pursue a prospective injunction against future border searches of his cell phones at the airport, and remanded to the district court to allow Elsharkawi leave to amend his complaint. *See Elsharkawi v. United States*, 830 Fed. App'x 509, 512 (9th Cir. 2020). On remand, the district court found that Elsharkawi failed to allege sufficient new facts in the amended complaint to demonstrate the “imminent future injury” necessary to pursue prospective injunctive relief, and dismissed the case without leave to amend. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

1. The district court correctly dismissed Elsharkawi’s amended complaint for lack of Article III standing. To establish standing, plaintiffs must allege an “injury in fact,” which is “actual or imminent, not ‘conjectural’ or ‘hypothetical.’” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) (internal citations omitted). While “imminence is concededly a somewhat elastic concept,” *id.* at 564 n.2, “some day intentions—without any description of concrete plans, or indeed even any specification of *when* the some day will be—do not support a finding of the actual or imminent injury,” *id.* at 564 (internal quotation marks omitted).

Elsharkawi argues that the allegations of a “pattern of travel coupled with averments to upcoming travel” sufficiently establish an imminent risk of future injury. However, as the district court found, Elsharkawi’s first complaint alleged



that same pattern of travel: namely, that Elsharkawi “regularly traveled to Egypt to visit his family in 2009, 2013, and 2016” and that he hoped to travel to Egypt again that summer or to Saudi Arabia to complete a religious pilgrimage. While an extensive travel history can be sufficient to demonstrate an imminent risk of future history, *see Ibrahim v. Dep’t of Homeland Sec.*, 669 F.3d 983, 993 (9th Cir. 2012), Elsharkawi does not allege a sufficient record of international travel or pattern of having his cell phones searched during that travel. Nor do we find *Jibril v. Mayorkas*, 20 F.4th 804 (D.C. Cir. 2021), cited by Elsharkawi, persuasive authority. To be sure, like Elsharkawi, the Jibrils alleged that their sincerely held religious beliefs required international travel to complete pilgrimage obligations. *Id.* at 810. However, the Jibrils traveled abroad far more extensively than Elsharkawi—roughly once every two years—and alleged that they had been searched repeatedly because they were on a government watchlist. *Id.* at 810–11. By contrast, Elsharkawi did not allege he was on a government watchlist, had only traveled or attempted to travel internationally on four occasions, and had been searched but one time.

In his amended complaint, Elsharkawi did not plead any additional facts that would support a finding of “concrete” or imminent travel plans. Instead, the facts he added made his future travel plans *less* concrete, as his complaint now alleges that travel advisories for Egypt and Saudi Arabia, as well as the COVID-19

pandemic itself, had placed his travel plans on hold. The amended complaint also included the assertion that his “future travel abroad to visit his family is not a matter of speculation, it is a certainty for him.” But such “mere conclusory statements . . . are not entitled to the assumption of truth” at the pleadings stage and do not survive a motion to dismiss. *Ashcroft v. Iqbal*, 556 U.S. 662, 663–64 (2009).

These “new facts” in the amended complaint fail to describe “concrete plans” or a “specification of *when* the some day [travel] will be.” *Lujan*, 504 U.S. at 564 (emphasis in original). Elsharkawi’s “new facts”—an understandable delay in travel due to the COVID-19 pandemic and country conditions—instead stretch the timeframe of his future travel indefinitely. And while Elsharkawi argues that we should apply legal concepts like force majeure and equitable tolling to relax the standing analysis, those common law and statutory doctrines do not bear on issues of standing, which is an Article III jurisdictional requirement. Jurisdictional requirements are not subject to statutory equitable tolling, *see United States v. Wong*, 575 U.S. 402, 408–09 (2015), and force majeure primarily describes a contractual provision that details events that excuse a party from performance, *see, e.g., InterPetrol Bermuda Ltd. v. Kaiser Aluminum Intern. Corp.*, 719 F.2d 992, 997 (9th Cir. 1983).

2. The district court did not err in dismissing this case without leave to

amend. The “district court’s discretion to deny leave to amend is particularly broad where the court has already given the plaintiff an opportunity to amend his complaint.” *Fid. Fin. Corp. v. Fed. Home Loan Bank of San Francisco*, 792 F.2d 1432, 1438 (9th Cir. 1986). Here, Elsharkawi was granted an opportunity to amend his complaint to establish standing, but failed to allege any new facts about any imminent plans to travel in his amended complaint. In his complaint, and on appeal, Elsharkawi did not argue that he could plead any additional facts that would demonstrate standing, but simply speculated that COVID-19 pandemic restrictions on travel would eventually abate. Therefore, the district court correctly determined that any further amendment would be futile, and properly dismissed the amended complaint without leave to amend.

3. Because we hold that Elsharkawi failed to demonstrate Article III standing in his amended complaint, we decline to reach the merits of his Fourth and First Amendment claims.

**AFFIRMED.**