

No. \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

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TZVEE WOOD AND ANDREA MALESTER,

*Petitioners,*

v.

MUTUAL REDEVELOPMENT HOUSES, INC., ET AL.,

*Respondents.*

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Application for Extension of Time Within Which  
to File Petition for Writ Of Certiorari to the  
United States Court of Appeals for the Second Circuit

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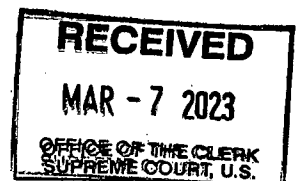
**PETITIONERS' APPLICATION TO THE HONORABLE SONIA  
SOTOMAYOR AS CIRCUIT JUSTICE**

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## Application for an Extension of Time

Pursuant to this Court's Rules 13.5, 22, 30.2, and 30.3, *pro se* Petitioners Tzvee Wood and Andrea Malester (the "Petitioners") respectfully request that the time to file their Petition for Writ of Certiorari in this matter be extended for sixty (60) days up to and including May 8, 2023. The Court of Appeals dismissed the appeal there in a text only Order on December 9, 2022. The Supreme Court Clerk's Office indicated that when there is a text only Order, there is not an Order of the type requiring attachment here and instead directing the Court to the underlying docket entry is sufficient. *See, Wood v. Mutual Redevelopment Houses*, Case No. 21-2775, ECF 181 (2d Cir.).<sup>1</sup> Absent an extension of time, the Petition for Writ of Certiorari would be due on March 9, 2023. Petitioners are filing this Application more than ten days before that date. *See* S. Ct. R. 13.5. This Court would have jurisdiction over the judgment under 28 U.S.C. 1254(1).

### Background<sup>2</sup>

The original case involved, *inter alia*, housing discrimination and retaliation by a Mutual Redevelopment Houses, Inc. ("Mutual"), a federally-assisted housing provider of low- to moderate-income housing in New York City. After discriminating against Petitioners in 2012 on classes including race and religion, a

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<sup>1</sup> For the avoidance of confusion, there is a tandem appeal, Case No. 21-2617, connected with which a similar request is being made.

<sup>2</sup> Nothing herein is intended to narrow or limit the petition.

case underlying Second Circuit Appeal 21-2617 was filed. By Mutual's own words, it then took further acts in what it describes as "saga" against Petitioners including in or about 2017 when it regarded Appellant Wood as so disabled as to be unable to find any housing at Mutual and refused to process and proceed to a housing application. After thinking it prevailed in the action in 2021, Mutual states that it never intended to and will never offer housing to Petitioners due to their engagement in protected activities including housing discrimination litigation (*inter alia*, the underlying action, appeals, and any petitions here) and making a disability accommodation request.

Petitioners' brief in the 21-2775 Appeal is submitted but the Second Circuit so far refuses to hear it. That briefing raises many important issues including that the district court failed to apply the law of the Supreme Court, Second Circuit, NY Court of Appeals, and other law correctly in a civil rights actions in which the district court refused to treat Jews as a race, abused its withholding of *pro se* deference, and did not even permit Petitioners to take a single deposition. Then the same district court after pulling in a different case (underlying 21-2775) as related relied upon its own misguided conclusions from the earlier case to dispose of the latter case just three days later. The result is extreme and amounts to civil rights statutes being devoid of any consequence which has emboldened Respondents to continue to violate the law.

In the underlying action, the district court's ultimate order was completely erroneous by applying both the wrong facts and incorrect law including having claims to go unaddressed in dispositive orders, *inter alia*, "regarded as,"<sup>3</sup> retaliation, and New York City Human Rights Law claims (which required independent analysis<sup>4</sup>). While not permitted to apply *prima facie* elements at Rule 12 under *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506 (2002), the district court did that anyway. It not only ignored such precedent in misapplying and dismissing on *McDonnell-Douglas* elements, but also failed to engage in a correct *McDonnell-Douglas* analysis by skipping the mandatory initial determination of which framework of elements apply in the particular circumstances of the action so as to misuse the qualified element which did not exist here to dispose of claims. When both an application for housing and post-application denial do not exist, a qualified element does not exist under a *McDonnell-Douglas* framework; instead the situation is more akin to a refusal to deal. *HUD v. Corey*, No. 10-M-207-FH-27,

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<sup>3</sup> By Mutual's own words it took further acts in its "saga" against Petitioners in or about 2017 when it regarded Petitioner Wood as so disabled as to be unable to find any housing at Mutual (which the Second Circuit deems a violation in *Rodriguez v. Vill. Green Realty, Inc.*, 788 F.3d 31 (2d Cir. 2015); a regarded as plaintiff is not required to plead a disability or even have one, see *Hilton v. Wright*, 673 F.3d 120, 128-29 (2d Cir. 2012)) and refused to process and proceed to a housing application.

<sup>4</sup> *Ya-Chen Chen v. City Univ. of New York*, 805 F.3d 59, 75 (2d Cir.2015); *Mihalik v. Credit Agricole Cheuvreux N. Am., Inc.*, 715 F.3d 102, 109 (2d Cir.2013).

2012 HUD ALI LEXIS 20, at \*19-20 (June 15, 2012). In deciding a case that did not exist, the district court seemingly failed to decide anything at all.

Post April 1, 2014, procedures of the Second Circuit attempt to apply a one-size-fits-all approach to all issues upon which a party may need to extend the time for briefing which does not adequately preserve party rights in matters important to public policy, including civil rights actions and *pro se* litigation.

In particular, the Second Circuit practice generally states, more or less, that:

the appeal is dismissed effective the due date if the brief is not filed by that date. A motion to extend the time to file the brief or to seek other relief will not toll the previously ordered filing date. See LR 27.1(f)(1); *cf. RLI Insurance Co. v. JDJ Marine, Inc.*, 716 F.3d 41, 43-45 (2d Cir. 2013).

These procedures are unclear because while they state motions will not toll the time, they do not address whether Orders present such as those in the underlying proceedings will toll the time (which was involved in the underlying action). It does not make sense to have conflicting aspects of deadlines for parties, as was the case below. These matters present important questions because the Second Circuit is deciding important cases such as civil rights actions on the basis of its one-size-fits-all approach.

The Second Circuit has operating procedures which are not in Local Rules, Internal Operating Procedures, or other public documents. Petitioners were adversely affected and have not been able to have the appeal heard because of

shadow procedures for which it is not possible to argue whether or not the Second Circuit is compliant with its own norms or to know about the procedures in advance. This is unacceptable, especially when such procedures may be fatal to an appeal.

### **Reasons For Granting An Extension Of Time**

The time to file a Petition for a Writ of Certiorari should be extended for sixty (60) days for the following reasons:

1. There are still motion proceedings before the Second Circuit which may obviate the need to petition the Supreme Court should the Second Circuit decide to hear the briefed appeal on the merits. Thus, efficient use of party and judicial resources warrants providing the full extension because there is not yet a definite need to petition this Court. By the time the Second Circuit proceedings conclude, the remaining time available to Petitioners will be significantly less than sixty (60) days (likely fewer than 40 days) which is a short time for a counselled petition and a very short time for a *pro se* party to petition the Court.

2. Petitioners remain involved in litigation involving the same Respondents. We are not attorneys and do not have staff. We have only finite *pro se* resources to devote to each legal task at one time. Thus, our resources are highly constrained and we need each available day to be able to present petitions here. We

say petitions, plural, because the problems below impacted tandem appeals, 21-2617 and 21-2775.

3. With an extension, Petitioners can consolidate issues into one petition. Some of those issues stem from Orders occurring after the December 9, 2022 Order and the time to petition as to those additional matters has not yet run. Thus, for efficiency, it appears prudent to consolidate the issues; however, to enable such consolidation we require the full sixty (60) additional days as to the earliest of the Orders from which a petition may be taken.

4. The Second Circuit's one-size-fits-all approach does not adequately protect litigants from suffering manifest injustice of not having appeals heard on the merits and should thus be struck down to be consistent with other caselaw urging significant caution against technical dismissal that are prejudicial.

5. In short, the Second Circuit's rulings puts civil rights claims at risk should a party suffer health issues or other unexpected challenges during the pendency of an appeal. Given this case's importance to civil rights actions across the nation, Petitioners requires additional time to ensure that the relevant issues are fully and adequately presented to the Court in our petition.

6. Tandem appeal filing deadlines do not adequately protect *pro se* litigants from the loss of substantive rights in multiple appeals should any technical defects arise.

7. A significant prospect exists that the Court will grant certiorari and return the action to the Second Circuit for consideration of the briefing. The Second Circuit's result so far effectively upholds sweeping bad law that conflicts with law of the Second Circuit and the Supreme Court. The Court has expressed concerns that lower courts are not adequately scrutinizing civil rights claims correctly, including the Second Circuit's improper application and use of *McDonnell-Douglas* elements to dispose of claims as in *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506 (2002). The Second Circuit's actions are of the same improper effect in which civil rights claims go unaccounted for.

8. An extension will not cause prejudice to Respondents, as this Court would likely hear oral argument and issue its opinion in the October 2022 Term regardless of whether an extension is granted. Respondents have despite many opportunities in many forums have not been able to even formulate a claim of prejudice. Delay alone is not prejudice. While Petitioners are the aggrieved party denied access to federally-assisted, affordable housing for more than one decade, Respondents' operations have continued during the underlying actions.

9. Petitioners have an appeal brief related to a derivative action (connected with the original matters here) due on April 10, 2023 before the New York State Supreme Court, Appellate Division, Second Judicial Department which will impact our ability to also petition here.



7

10. Petitioner Malester is 79 and suffered a pulmonary illness during the pendency of the appeal resulting in multiple hospitalizations and a surgery in mid-September 2022. Since that time she has suffered post-surgical pain and Covid-19 infection, which has and continues to limit the pace at which Petitioners have been able to and are able work.

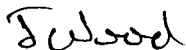
11. Petitioner Wood has been suffering from a shoulder condition during the pendency of the appeal. His condition is made worse by the work needed to be done for this petition which greatly slows the pace at which Petitioners are able to prepare the petition. While he was making some progress with a new medical provider, this appears to be slowing or reversing at this time.

### Conclusion

For the foregoing reasons, Petitioners respectfully request that the time to file the Petition for a Writ of Certiorari in this matter be extended sixty (60) days, up to and including May 8, 2023. We appreciate the Court's understanding and consideration.

Respectfully submitted,

Date: February 27, 2023



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- 11/17/2022  [164](#) MOTION ORDER, granting motion to reconsider [\[154\]](#) filed by Appellant Tzvee Wood and Andrea Malester. Appellants' motions for reconsideration are due by 11/28/2022 by AJN, copy to pro se, FILED. [\[3421965\]](#)[\[164\]](#) [21-2775] [Entered: 11/17/2022 03:24 PM]  
1 pg, 152.59 KB
- 11/29/2022  [165](#) MOTION, for reconsideration of the court's order related to the creation of a conference record, on behalf of Appellant Andrea Malester and Tzvee Wood, FILED. Service date 11/28/2022 by US mail.[\[3427337\]](#) [21-2775]--[Edited 11/29/2022 by BM] [Entered: 11/29/2022 09:02 AM]  
13 pg, 221.83 KB
- 11/29/2022  [167](#) MOTION, to file ex parte briefs and/or appendices on behalf of Appellant Andrea Malester and Tzvee Wood, FILED. Service date 11/29/2022 by US mail.[\[3428573\]](#) [21-2775] [Entered: 11/30/2022 12:18 PM]  
11 pg, 326.99 KB
- 11/29/2022  [169](#) MOTION, to extend time, on behalf of Appellant Andrea Malester and Tzvee Wood, FILED. Service date 11/29/2022 by US mail.[\[3428581\]](#) [21-2775] [Entered: 11/30/2022 12:23 PM]  
7 pg, 172.18 KB
- 11/30/2022  [172](#) OPPOSITION TO MOTION, to extend time [\[169\]](#), on behalf of Appellee Brendan Keany, Mutual Redevelopment Houses, Inc. and Carmen Santiago, FILED. Service date 11/30/2022 by CM/ECF, US mail. [\[3429024\]](#) [21-2775] [Entered: 11/30/2022 09:45 PM]  
11 pg, 233.92 KB
- 12/05/2022  [174](#) OPPOSITION TO MOTION, to reconsider [\[165\]](#), on behalf of Appellee Brendan Keany, Mutual Redevelopment Houses, Inc. and Carmen Santiago, FILED. Service date 12/05/2022 by CM/ECF, US mail. [\[3431319\]](#) [21-2775] [Entered: 12/05/2022 04:44 PM]  
18 pg, 1.24 MB
- 12/05/2022  [175](#) OPPOSITION TO MOTION, for \_\_\_ relief [\[167\]](#), on behalf of Appellee Brendan Keany, Mutual Redevelopment Houses, Inc. and Carmen Santiago, FILED. Service date 12/05/2022 by CM/ECF, US mail. [\[3431330\]](#) [21-2775] [Entered: 12/05/2022 04:53 PM]  
6 pg, 179.62 KB
- 12/09/2022  [180](#) NEW CASE MANAGER, Margaret Lain, ASSIGNED.[\[3434310\]](#) [21-2775] [Entered: 12/09/2022 03:06 PM]  
1 pg, 88.95 KB
- 12/09/2022  [181](#) ORDER, [\[157\]](#) appeal dismissed for Appellant Andrea Malester and Tzvee Wood failure to file brief and appendix, EFFECTIVE.[\[3434321\]](#) [21-2775] [Entered: 12/09/2022 03:08 PM]
- 12/09/2022  [184](#) MOTION ORDER, denying as moot motion for reconsideration, to file an ex parte brief and appendix, and to extend time to file a brief [\[165\]](#) [\[167\]](#) [\[169\]](#) filed by Appellant Tzvee Wood and Andrea Malester, copy to pro se appellant, FILED. [\[3434562\]](#)[\[184\]](#) [21-2775] [Entered: 12/09/2022 04:34 PM]  
1 pg, 148.02 KB
- 12/27/2022  [185](#) MOTION, to reinstate appeal, on behalf of Appellant Andrea Malester and Tzvee Wood, FILED. Service date 12/27/2022 by US mail.[\[3444068\]](#) [21-2775] [Entered: 12/28/2022 04:39 PM]  
16 pg, 345.28 KB
- 12/27/2022  [186](#) MOTION, for judicial notice, on behalf of Appellant Andrea Malester and Tzvee Wood, FILED. Service date 12/27/2022 by US mail.[\[3444071\]](#) [21-2775] [Entered: 12/28/2022 04:43 PM]  
367 pg, 6.75 MB
- 12/27/2022  [187](#) BRIEF, on behalf of Appellant Andrea Malester and Tzvee Wood, FILED. Service date 12/27/2022 by US mail. [\[3444075\]](#) [21-2775] [Entered: 12/28/2022 04:44 PM]
- 12/27/2022  [188](#) SPECIAL APPENDIX, on behalf of Appellant Andrea Malester and Tzvee Wood, FILED. Service date 12/27/2022 by US mail.[\[3444076\]](#) [21-2775] [Entered: 12/28/2022 04:45 PM]
- 12/27/2022  [189](#) APPENDIX, volume 1 of 1, (pp. 1-140), on behalf of Appellant Andrea Malester and Tzvee Wood, FILED. Service date 12/27/2022 by US mail.[\[3444077\]](#) [21-2775] [Entered: 12/28/2022 04:46 PM]
- 12/27/2022  [190](#) SEALED APPENDIX, volume 1 of 1, on behalf of Appellant Andrea Malester and Tzvee Wood, FILED. Service date 12/27/2022 by US mail.[\[3444078\]](#) [21-2775] [Entered: 12/28/2022 04:47 PM]
- 12/28/2022  [191](#) DEFECTIVE DOCUMENT, Brief, Special Appendix, Appendix, Sealed Appendix, [\[189\]](#), [\[188\]](#), [\[187\]](#), [\[190\]](#), on behalf of Appellant Andrea Malester and Tzvee Wood, FILED.[\[3444080\]](#) [21-2775] [Entered: 12/28/2022 04:51 PM]  
2 pg, 153.38 KB
- 01/06/2023  [193](#) OPPOSITION TO MOTION, to reinstate appeal [\[185\]](#), on behalf of Appellee Brendan Keany, Mutual Redevelopment Houses, Inc. and Carmen Santiago, FILED. Service date 01/06/2023 by CM/ECF, US mail. [\[3448421\]](#) [21-2775] [Entered: 01/06/2023 11:37 PM]  
49 pg, 835.49 KB
- 01/09/2023  [195](#) OPPOSITION TO MOTION, to reinstate appeal [\[185\]](#), on behalf of Appellee Penn South Social Services, Inc., FILED. Service date 01/09/2023 by US mail. [\[3448959\]](#) [21-2775] [Entered: 01/09/2023 02:13 PM]  
98 pg, 4.43 MB
- 01/09/2023  [196](#) OPPOSITION TO MOTION, for judicial notice [\[186\]](#), on behalf of Appellee Brendan Keany, Mutual Redevelopment Houses, Inc. and Carmen Santiago, FILED. Service date 01/09/2023 by CM/ECF, US mail. [\[3449178\]](#) [21-2775] [Entered: 01/09/2023 04:40 PM]  
4 pg, 154.11 KB
- 01/09/2023  [197](#) OPPOSITION TO MOTION, [\[185\]](#), on behalf of Appellee Penn South Cooperative Federal Credit Union, FILED. Service date 01/09/2023 by CM/ECF. [\[3449249\]](#) [21-2775] [Entered: 01/09/2023 05:52 PM]
- 01/17/2023  [198](#) MOTION, to file oversized reply to motion for reinstatement, to file reply under seal, on behalf of Appellant Andrea Malester and Tzvee Wood, FILED. Service date 01/17/2023 by US mail.[\[3453972\]](#) [21-2775] [Entered: 01/18/2023 10:06 AM]  
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