

App. No. _____

IN THE
Supreme Court of the United States

TEMPLE OF 1001 BUDDHAS; MIAOLAN LEE,
Petitioners,

v.

CITY OF FREMONT,
Respondent.

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

**PETITIONERS' APPLICATION TO EXTEND TIME
TO FILE PETITION FOR WRIT OF CERTIORARI**

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September 28, 2023

Corporate Disclosure Statement

Pursuant to Supreme Court Rule 29.6, Applicant Temple of 1001 Buddhas states that it has no parent corporation and that no publicly held company owns 10% or more of its stock.

TABLE OF CONTENTS

	Page
Table of Authorities	iii
Background	1
Reasons For Granting An Extension Of Time.....	5
Conclusion.....	6

TABLE OF AUTHORITIES

Page(s)

Statutes

28 U.S.C. § 1254(1) 1
42 U.S.C. § 1983..... 5

To the Honorable Elena Kagan, as Circuit Justice for the United States Court of Appeals for the Ninth Circuit:

In accordance with this Court’s Rules 13.5, 22, 30.2, and 30.3, Petitioners Temple of 1001 Buddhas and Miaolan Lee (collectively, “Applicants”) respectfully request that the time to file their petition for a writ of certiorari be extended for 30 days, up to and including November 4, 2023. Counsel of Record Glenn A. Danas was only recently retained on September 27, 2023 for the purposes of filing a Petition for a Writ of Certiorari. Mr. Danas’ wife also recently gave birth on September 26, 2023. The United States Court of Appeals for the Ninth Circuit issued its opinion on July 7, 2023 (Exhibit A). Absent an extension of time, the petition would be due on October 5, 2023. The jurisdiction of this Court is based on 28 U.S.C. § 1254(1).

Background

This case presents an important question on the application of the free-exercise clause: Whether the City of Fremont (the “City”) religiously discriminated against Applicants when it issued an Amended Notice and Order to Abate Nuisance, calling for demolition of four religious structures despite other, non-religious neighboring properties committing flagrant and substantial code violations without any enforcement action by the City.

Applicants Miaolan Lee and the Temple of 1001 Buddhas sought to establish and operate a private temple and meditation facility on a 29-acre parcel located at 6800 Mill Creek Road in Fremont, California (“the Property”). The Property was

purchased by Miaolan Lee in 2010 and deeded to the Temple of 1001 Buddhas in 2018.

Since its acquisition in 2010, Miaolan Lee has used the property as her personal residence. The Property is zoned as “Open Space,” and “Hill (beyond Ridgeline).”

In 1978, a predecessor in interest to Applicants signed a Land Conservation Contract with the City of Fremont (“the City”) pursuant to the Williamson Act, which states, in pertinent part, “[d]uring the term of this contract, or any renewal thereof, the said property shall not be used for any purpose, other than agricultural uses for producing agricultural commodities for commercial purposes and compatible uses as listed below” Following those words 13 compatible uses are listed. Three of those uses are: “(f) Living quarters and home occupations;” “(i) Public and quasi-public buildings;” and “(n) Accessory use to the above.” The contract has subsequently been renewed on multiple occasions, and the City maintains the contract is still in effect.

Several religious structures are present on the Property, including the Buddha Hall, the Retreat House, the God House, and the Tree House. In 2013 and 2014, Building Department Chief Chris Gale visited the Property, and gave Applicants “permission” to use the property as a “place for prayer.” Acting on Gale’s advice, Applicant Lee applied for and received a permit for modifications to the barn to be used as a “non habitable structure [used] for habitable purposes.”

After the Code Enforcement Manager for the City examined the property without Applicant Lee’s permission, in January 2018, Applicant Lee met with Gary

West, Building Official of the City of Fremont, and complained that she was being discriminated against because of her religion and ethnicity, and complained about the unauthorized entry onto her property. The same day, West told Applicant Lee that he had an “urgent need” to schedule an appointment to examine the property. Without noticing Applicant Lee, West went to the Superior Court and obtained an inspection warrant for a period when Applicant Lee said she would be out of town. The City executed the warrant in February 2018 and searched the entire property, including cabinets and drawers in Lee’s residence. The City also placed a license plate reader and recording camera at the entry gate for the property to document who was entering and leaving the property.

In March 2018, the City issued a “Notice and Order to Abate Nuisance,” regarding: (1) the main Buddha Hall; (2) the retreat house; and (3) the Meditation Hall, three structures used for religious purposes. When Applicant Lee appealed the notice, City Attorney Bronwen Lacey told Lee’s counsel that due to the Williamson Act Contract, a “House of Worship is not allowed [on the real property].”

After the City inspected the property once more, in June 2018, Gary West issued a notice and order to vacate three buildings on the Property, ordering Applicants to remove all personal property from the structures. The City once again entered the property and posted notices barring entry to the three condemned buildings and on the main entrance to the Property.

In September 2018, Officer Jagtap issued two citations regarding the property, totaling \$43,000. In 30 days, the amount doubled to \$86,000. When Applicant Lee

sought permits for the Property, City planner James Willis insisted that she pay \$27,250, \$20,000 above the standard \$7,250 fee. When Applicant Lee met with Deputy Community Director Wayne Morris about the citations, her and another officer laughed at Lee and teased her about her religion, stating “You are using the Buddha as a protective shield,”; “Do you think Buddha is ok with this construction?”; and “Do you think Buddha is ok with what you are doing?”

In early 2019, the City issued an Amended Notice and Order to Abate Nuisance, calling for demolition of the following religious structures: the Buddha Hall, the Retreat House, the God House, and the Tree House. While Applicants were being harassed by the City and the Property was being condemned, the City chose not to pursue enforcement actions against Lee’s neighbors, whose properties were not used for religious purposes, despite knowledge of code violations. Ron Sabraw, who owned a property adjoining Applicants’, constructed various unpermitted structures, including an 800–1000 square foot deck only 75 feet from the creek, in violation of City code. Applicant Lee confirmed that the City was aware of the code violations, but no enforcement action was taken.

On June 17, 2021, Applicants filed a complaint against the City of Fremont in the United States District Court for the Northern District of California, asserting several causes of action premised on religious and racial discrimination and other constitutional violations. The district court granted the City’s motion to strike due process causes of action from Applicants’ second amended complaint and the City’s motion to dismiss the second amended complaint. The district court: (1) struck due

process claims from the second amended complaint because the court permitted leave to amend only as to existing claims; (2) found that Lee failed to state a claim under 42 U.S.C. § 1983 because she failed to allege any constitutional harm caused by a municipal policy or final policymaker; (3) found Lee lacked standing under the RLUIPA because she used her property only for private purposes; and (4) found Lee's California free exercise claims failed because she did not plausibly allege that the City's decisions substantially burdened her religious practice. Applicant Lee timely filed a notice of appeal to the Ninth Circuit Court of Appeals on June 9, 2022.

On July 7, 2023, the Ninth Circuit issued a memorandum disposition affirming the district court's dismissal of Applicants' claims. The Ninth Circuit found that (1) the district court properly dismissed state-law damages claims for failure to provide the City with adequate written notice; (2) the district court did not abuse its discretion in striking the due process claims from the SAC; (3) Lee's SAC fails to state a claim under 42 U.S.C. § 1983 because Lee failed to plausibly allege that Gary West's decisions violated the Constitution (either by discrimination or retaliation); and (4) Lee lacked standing under the RLUIPA because she used her property only for private purposes and for a declaratory judgment as to the applicability the Williamson Act, because the city never enforced the Williamson Act against her.

Reasons For Granting An Extension Of Time

The time to file a Petition for a Writ of Certiorari should be extended 30 days up to and including November 4, 2023. Applicants' Counsel of Record, Glenn A. Danas, was not involved in the litigation below and has only recently been retained

for the purposes of filing a Petition for a Writ of Certiorari. Mr. Danas was not previously involved in litigating this case and was only recently retained on September 27, 2023. Mr. Danas' wife also recently gave birth on September 26, 2023. Mr. Danas will need additional time to familiarize himself with the substantial record in the lower courts and to prepare a concise petition that is helpful to the Court.

There is also the press of business on numerous other matters. Substantial commitments of counsel of record during the relevant period include:

- An opening brief in the United States Court of Appeals for the Ninth Circuit in *Whiteside v. Kimberly Clark Corp.*, No. 23-55581, due September 28, 2023;
- An opening brief in the United States Court of Appeals for the Ninth Circuit in *Kenney v. Fruit of the Earth, Inc., et al.*, No. 23-55583, due October 30, 2023;
- An opening brief in the California Supreme Court in *Fuentes v. Empire Nissan, Inc. et al.*, No. S280256, due November 7, 2023;
- A responding brief in the United States Court of Appeals for the Ninth Circuit in *Relevant Group, LLC, et al. v. Nourmand, et al.*, No. 23-55574, due December 6, 2023.

An extension will not cause prejudice to Respondents, as this Court would likely hear oral argument and issue its opinion in the October 2024 Term regardless of whether an extension is granted.

Conclusion

Applicants request that the time to file a writ of certiorari in the above-captioned matter be extended 30 days to and including November 4, 2023.

Dated this 28th day of September, 2023.

Respectfully submitted,



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