

No.

IN THE

Supreme Court of the United States

HONG TANG

Applicant/Petitioner

V.

KURT L. SCHMOKE, et al.

Respondents

Application For An Extension Of Time Within Which To File A Petition For A Writ
Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

APPLICATION TO THE HONORABLE CHIEF JUSTICE JOHN G.
ROBERTS, JR. AS CIRCUIT JUSTICE

HONG TANG

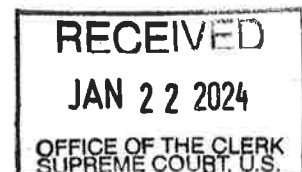
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APPLICATION FOR AN EXTENSION OF TIME

TO THE HONORABLE JOHN G. ROBERTS, JR., CHIEF JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE FOURTH CIRCUIT:

Pursuant to Supreme Court Rule 13.5, *pro se* applicant Hong Tang ("Applicant") respectfully requests a 60-day extension of time within which to file a petition for a writ of certiorari up to and including Monday, April 1, 2024.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The judgment for which review is sought is *Tang v. Schmoke*, No. 22-1889 (4th Cir. Jun. 20, 2023) (attached as Appendix 1). The Fourth Circuit denied the applicant's petition for rehearing and rehearing en banc on November 3, 2023 (attached as Appendix 2).

JURISDICTION

This Court has jurisdiction in this case pursuant to 28 U.S.C. § 1254(1). Pursuant to Supreme Court Rules 13.1, 13.3, and 30.1, a petition for a writ of certiorari is due to be filed on or before February 1, 2024. In accordance with Rule 13.5, this

application is being filed more than 10 days before the final filing date for the petition for a writ of certiorari.

REASONS JUSTIFYING AN EXTENSION OF TIME

1. The underlying, same, 42 U.S.C. § 1983 claims were initially timely commenced in the U.S. District Court for the District of Maryland on July 18, 2018 and had gone through three district court and appellate court proceedings. But as of today, after five years and five months, this matter still has not had any real determination on the merits. (*See also Tang v. Univ. of Baltimore*, Case No. 19-1146 (4th Cir. 2019); *Tang v. Univ. of Baltimore*, Case No. 20-1810 (4th Cir. 2021); *Hong Tang v. Kurt L. Schmoke, et al.*, Case Nos. 20-2308; 21-1243 (4th Cir. 2021))

2. In the instant proceedings, the respondents voluntarily removed the applicant/petitioner's third case (instant proceedings) from the Maryland state court "Circuit Court for Baltimore City, Maryland" to the U.S. District Court for the District of Maryland. Hence, the respondents have waived their Eleventh Amendment immunity. *See Lapidus v. Board of Regents of University System*, 535 U.S. 613, 122 S. Ct. 1640 (2002) ("a State's voluntary appearance in federal court amounts to a waiver of its Eleventh Amendment immunity,"); *Williams v. Morgan State Univ.*, No. 19-2477 (4th Cir. Mar. 18, 2021) ("a State waives its Eleventh Amendment immunity by voluntarily removing a case to federal court, which did occur here." (quoting *Lapidus v. Bd. of Regents of the Univ. Sys. of Ga.*, 535 U.S. 613,

619-20 (2002)); *See also Carter v. Maryland*, CIVIL NO. JKB-12-1789 (D. Md. Dec. 3, 2012) (“Voluntary removal constitutes a waiver of Eleventh Amendment immunity,” (quoting *Lapides v. Board of Regents*, 535 U.S. 613, 616 (2002)))

3. Moreover, it should be noted that the respondents have also expressly agreed to the applicant/petitioner’s aforementioned waiver assertion, in their reply memorandum in support of their motion to dismiss in the district court. ((Dist. Ct. Dkt.) ECF No. 26 at 2 n.2)

4. Given that the initial claim, the first case (*Tang v. Univ. of Baltimore*, Case No. 19-1146 (4th Cir. 2019); *Tang v. Univ. of Balt.*, Civil No. JKB-18-2200 (D. Md. Dec. 21, 2018)) was dismissed solely on jurisdictional grounds (Eleventh Amendment immunity and improper service) and the respondents have now waived their Eleventh Amendment immunity, the applicant/petitioner intends to refile a Fed. R. Civ. P. 60(b) motion in the district court¹ to reopen the previous proceedings (*Tang v. Univ. of Balt.*, No. 19-1146 (4th Cir. 2019); *Tang v. Univ. of Balt.*, Civil No. JKB-18-2200 (D. Md. Dec. 21, 2018)), so that this same matter can be finally determined on the merits for the first time.

5. Given the said fresh refile of the Fed. R. Civ. P. 60(b) motion and reopening of the first case (*Tang v. Univ. of Baltimore*, Case No. 19-1146 (4th Cir. 2019); *Tang v.*

¹ *See also Tang v. Univ. of Baltimore*, Case No. 20-1810 (4th Cir. 2021)

Univ. of Balt., Civil No. JKB-18-2200 (D. Md. Dec. 21, 2018)) in the U.S. District Court for the District of Maryland, which is for the exactly same underlying 42 U.S.C. § 1983 claims, the extension of time will permit the *pro se* applicant/petitioner the time necessary to complete a cogent and well-researched petition for a writ of certiorari.

6. In light of the said reopening and coming pendency of the same claim/action in the U.S. District Court for the District of Maryland, and the principle of judicial economy, the extension of time is also necessary and warranted.

7. It should also be noted that the applicant is proceeding *pro se* in both the Supreme Court and the district court proceedings simultaneously, and thus a 60-day extension of time is the necessary amount of time, which is essential for the *pro se* litigant to effectively contribute to both the fresh, coming litigation in the district court and the petition for a writ of certiorari, for the same 42 U.S.C. § 1983 claims.

For all of the foregoing reasons, there is good cause for a 60-day extension. Accordingly, Applicant respectfully requests that this Court extend the time within which to file a petition for a writ of certiorari for sixty (60) days, until April 1, 2024.

Respectfully submitted,

Dated: January 18, 2024



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APPENDIX

1. Court of Appeals Opinion and Judgment
2. Court of Appeals Order Denying Rehearing