

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

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**In The Supreme Court of the United States**

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**FANG ZENG,**  
*Applicant,*

v.

**MINGAN CHEN,**  
*Respondent.*

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**FANG ZENG,**  
*Applicant,*

v.

**ANQIN WANG,**  
*Respondent.*

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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

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

In accordance with Supreme Court Rules 13.5, 22, 30.2, and 30.3, Applicant Fang Zeng requests that the time to file her petition for a writ of certiorari be extended for 60 days, to June 24, 2024. The Court of Appeals issued its opinions on December 11, 2023 (Exhibits C and D), and denied Zeng's petitions for rehearing on January 24, 2024 (Exhibits A and B). Absent an extension of time, the petition would be due on April 23, 2024. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

This application for an extension of time is unopposed. It is Applicant's first request.

### **Background**

These cases present an important question of due process in the context of service of process.

In both cases, Plaintiffs accused Applicant Zeng and others of participating in a fraudulent scheme: Defendants, for a fee, would help Chinese nationals obtain permanent U.S. residency through the U.S. EB-5 visa program. But Plaintiffs allege that Defendants misappropriated their money for personal use.

Zeng is a Chinese national, as are all Plaintiffs. While Zeng visited California from time to time and owned property there, she was at all times domiciled in China. Nevertheless, Plaintiffs filed their actions in the Central District of California, based on alleged violations of U.S. securities laws.

Because Zeng never lived in California, Plaintiffs were unable to personally serve her in California. And despite possessing facts suggesting that Zeng could be located in China; and despite not asking people, such as co-Defendant Zeng's step-daughter, where to find Zeng; the District Court found that Plaintiffs had conducted "reasonably diligent" searches for Zeng. The court therefore excused personal service, and permitted Plaintiffs to serve Zeng by substituted service. As Zeng was in China and oblivious to these proceedings, Plaintiffs then obtained default judgments against Zeng.

Zeng only learned of the default judgments when Plaintiffs sought to enforce them in China. (All of the sudden, Plaintiffs were able to find her and serve her.)

Zeng moved to set aside the default judgments in the District Court. The court denied her motions. The Ninth Circuit Court of Appeals affirmed in unreported opinions.

As will be set out and explained in greater depth in Zeng's petition for certiorari, this violated Zeng's right to due process. All defendants have a fundamental due process right to notice of a pending action. That due process right entails *personal* service, unless personal service is a practical impossibility. Substituted service is kosher only if after a *reasonably diligent search*, plaintiff cannot locate defendant.

In short, due process requires a reasonably diligent search for defendant before personal service can give way to substituted service.

This case presents the issue of what constitutes a reasonably diligent search that satisfies due process when plaintiff has reason to believe that defendant lives abroad. Zeng contends that when plaintiff has reason to suspect that defendant is *in* China, due process demands that plaintiff's reasonably diligent search extend *to* China.

The Ninth Circuit did not agree. Other circuits have taken different approaches, or apparently have not considered this precise question.

Service of process is an ingredient of every case. Satisfying due process is always a fundamental requirement. In a global economy there are innumerable legal actions involving foreign defendants, so potentially this is a frequently-recurring issue. Therefore, the Supreme Court should grant certiorari and settle the matter.

### **Reasons for granting an extension of time**

Counsel for Applicant is a sole practitioner, without staff to assist in legal research or other essential tasks. Counsel has also suffered a recent period of illness that hampered his effective functioning as a lawyer. This, with the press of other business has prevented counsel from completing the petition for certiorari in both a timely and thorough fashion. An extension of time will benefit the Court by allowing for the creation of a better-researched, better-argued petition.

Therefore, Applicant requests that the time to file a writ of certiorari in the

above-captioned matter be extended 60 days to June 24, 2024.

April 12, 2024

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Paul Kujawsky  
Attorney for Applicant  
FANG ZENG

# Appendix A

# Appendix B

# Appendix C



# Appendix D

**Proof of service**

I am counsel of record for Applicant Fang Zeng. I certify that on April 12, 2024, I caused this Application for an Extension of Time to File Petition for a Writ of Certiorari to be served by overnight delivery on counsel on Plaintiffs and Respondents:

Clark Braunstein  
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*Counsel for Plaintiffs and Respondents*

April 12, 2024

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Paul Kujawsky  
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FANG ZENG