

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

IN THE

# Supreme Court of the United States

HUIFANG ZHANG, ET AL.,

*Applicants,*

v.

USA, ET AL.,

*Respondents.*

**APPLICATION FOR AN EXTENSION OF TIME TO FILE A  
PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF  
APPEALS FOR THE NINTH CIRCUIT**

HUIFANG ZHANG

DIRECT: 917-428-3953

EMAIL:

FLORAZHANGHUIFANG@GMAIL.COM

[PRO SE]

18450 FARJADO STREET

ROWLAND HEIGHTS, CA 91748

TOSHIYUKI TAKAHASHI

DIRECT: 00819084631850

EMAIL: SEATTLEFTCA@GMAIL.COM

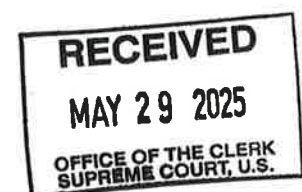
[PRO SE]

MIDORI 3-21-11 CORPO TAKEMURA

1F SUMIDA-KU

TOKYO, 130-0021

JAPAN



## **APPLICATION**

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

Pursuant to Supreme Court Rule 13.5, Applicants respectfully requests a 60-day extension of time, to and including August 14, 2025, within which to file a petition for a writ of certiorari. The United States Court of Appeals for the Federal Circuit issued an memorandum on November 26, 2024. A copy of that memorandum is attached as Exhibit A.

The Federal Circuit then denied Applicant's timely petition for a rehearing en banc in an order issued on March. 17, 2025. A copy of that order is attached as Exhibit B. This Court's jurisdiction would be invoked under 28 U.S.C. § 1254(1)

Unless extended, the time to file a petition for a writ of certiorari will expire on June 15, 2025. This application is being filed more than ten days before a petition is currently due. *See* Sup. Ct. R. 13.5. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1).

### **1. THE REASON:**

"The district judge dismissed Applicants' case for "not appeared at his hearing",even though he knew Applicants couldnot appear because the government-imposed travel ban(CDC) during COVID-19 pandemic, even though he knew there are 2 other judges support Applicants for deserving/pursuing the case.

By dismissing the case for Applicants honestly obeying the travel ban, it actually punished the

people for obeying the rule, complying with the law, further, it forces Applicants to break the law to follow the court order, but the court is supposed to uphold the law, therefore, it is so contradictory and ridiculous, that is why here we called it “The End of The Law”.”

This case presents a fundamental question of “the Constitution’s promise of equal access to justice”, and the conflicted decisions among several courts of appeals, and even the conflicted decisions in Ninth Circuit itself, is totally worthy of this Court’s review, as Guardian of the Law, the Last Reach.

## **2. THE FACT:**

To explain more specifically and early understandably, Applicants outline as below:

### **Timeline of Events**

- October 3, 2022 – The Central District Court of California issued an Order to Show Cause Hearing scheduled for October 17, 2022 (Dkt. 120).
- October 7, 2022 – The transcript of the October 3, 2022, proceedings was released to Plaintiffs, as they were not present in court that day.
- October 7, 2022 – Plaintiffs **promptly filed a Statement in Compliance** with the court’s order (Dkt. 120) (Dkt. 123).

### **Plaintiffs' Efforts to Comply with the Court’s Order**

In their statement, Plaintiffs explained that Defendant had illegally revoked Plaintiff Takahashi's Visa Waiver Program (VWP)—the very issue at the heart of this litigation. As a result, Takahashi required a **U.S. visa** to enter the country.

However, due to Takahashi's recent legal name change, the U.S. Visa Service informed him on October 7, 2022, that he needed to **apply for a new visa**. Plaintiffs **made every effort** to comply with the court's order (Dkt. 120) despite facing significant burdens and obstacles.

October 8-9, 2022 (Saturday & Sunday) – Plaintiffs began preparing the necessary documents for the visa application.

October 11, 2022 – Plaintiffs officially filed a visa application. Given that visa processing typically takes several weeks, Plaintiffs also submitted an **Expedited Petition** to the Department of State.

In this petition, Plaintiffs emphasized:

*"I petition if I could get the new visa on expedited process, as I was ordered by the Federal judge to make the appearance at the hearing on Oct 17, 2022. (I was abused and race discriminated by CBP caucasian officer at the border of Blaine, WA, on Sep 29, 2015, which caused losing my VWP, I filed the complaint against that CBP officer on 08/06/2019 at the Federal court)."*

Again, the evidence clearly demonstrates that Plaintiffs **made every possible effort** to appear in person.

- October 13, 2022 – The Department of State granted expedited processing and issued the visa to Plaintiff Takahashi.

At the U.S. Embassy, Plaintiff Takahashi **expressed deep gratitude**(deep Japanese bow) to the officer who expedited his visa—a government employee of integrity and principle, and he is white! demonstrating that there are still many white individuals act with no racial bias, decent and distinguished. However, it is unfortunate that some federal judges continue to exhibit white supremacy and racial discrimination in their decisions.

### **Impact of the CDC Travel Ban – A Force Majeure**

After obtaining the visa, Plaintiffs immediately searched for travel options but soon realized that

entry into the United States was impossible due to the Centers for Disease Control (CDC) **mandate, which prohibited unvaccinated foreigners from entering the country.**

According to the CDC travel mandate, to be considered "fully vaccinated," a traveler must wait 14 days after receiving the final dose of an approved COVID-19 vaccine.

- As of October 13, 2022, Plaintiff Takahashi was completely unvaccinated.
- Only four days remained before the hearing on October 17, 2022—making it impossible to take all doses of the vaccine and meet the 14-day vaccination requirement.
- This restriction constituted an official government-imposed travel ban—an undeniable case of force majeure.

Recognizing the impossibility of compliance, Plaintiffs filed an **Ex Parte Application** (Dkt. 135) on October 16, 2022, formally notifying the court of the CDC mandate.

### **The District Court's Arbitrary and Discriminatory Dismissal**

Despite the clear force majeure circumstances, on October 17, 2022, the white male district judge summarily dismissed the case without explanation, issuing only one word: "Dismiss."

### **3. THE LAW:**

The judgement of "Dismissals for failure to appear due to government-imposed travel bans" is unjust, and conflict with the Constitution, the Federal law, and numerous circuits' opinions, and even Supreme Court opinion.

#### **The Constitution:**

**“the Constitution’s promise of equal access to justice”** refers to a fundamental principle in U.S. constitutional law: every person should have a fair opportunity to present their case and be heard in court, without arbitrary barriers or discrimination. While not written verbatim in the Constitution, this promise is derived from several core doctrines:

1. Due Process Clause (5th and 14th Amendments)
2. Equal Protection Clause (14th Amendment)
3. Right to Petition the Government (First Amendment)
4. Case Law: Access to Courts as a Fundamental Right

#### **The Federal Law:**

18 U.S.C. § 3146 and the Sentencing Guidelines provide that a defendant who “fails to appear” may be punished, unless they can show their non-appearance was due to **“uncontrollable circumstances”** (e.g., a heart attack, your car breaks down, extreme weather).

Fed. R. Civ. P. 6(b): “Excusable Neglect” is satisfied for Extending Time.

#### **Numerous Circuits’ Opinions:**

a dismissal for lack of prosecution must be supported by a showing of **unreasonable delay**, which in turn creates a presumption of injury to the defense. *Ash v. Cvetkov*, 739 F.2d 493, 496 (9th Cir. 1984).

“Excusable neglect is the failure to timely perform a duty due to circumstances that were **beyond**

**the reasonable control** of the person whose duty it was to perform.” In re ValuePart, Inc., 802 F. App'x at 146 (emphasis added) (quoting In re Smith, 21 F.3d 660, 666 (5th Cir. 1994))

This judgement of the Circuit relied on Al-Torki v. Kaempfen, 78 F.3d 1381 (9th Cir. 1996), and Pagtalunan v. Galaza, 291 F.3d 639 (9th Cir. 2002). However, these cases are entirely distinguishable:

Al-Torki v. Kaempfen addressed **willful noncompliance** with a court order, whereas here, Appellants were barred by government mandate from attending the hearing.

Pagtalunan v. Galaza dealt with **unreasonable delays and failure to communicate** with the court. In this case, Appellants informed the court in advance, provided evidence of the CDC mandate, and requested alternative accommodations.

#### **United States Supreme Court:**

PIONEER INVESTMENT SERVICES v. BRUNSWICK ASSOC. LTD., 507 U.S. 380 (1993), United States Supreme Court held: “This history supports our conclusion that the enlargement of prescribed time periods under the "excusable neglect" standard of Rule 9006(b)(1) is not limited to situations where the failure to timely file is due to circumstances beyond the control of the filer. So, An attorney's inadvertent failure to file a proof of claim by the bar date can constitute "excusable neglect" within the meaning of Rule 9006(b)(1)”, which **means a broad of "excusable neglect" can be accommodated, no need to mention “failure to appear due to government-imposed travel bans”**.

#### 4. CONCLUSION:

here we need the court to review the case and declare that “failure to appear due to government-imposed travel bans” can be accommodated.

Applicants also respectfully request the court to declare that if the decisions in the same court are contradictory, it can be challenged afterwards at different court.<sup>1</sup>

Applicants also respectfully request the court to declare that if the decision is set as unpublished and unprecedented, it can be challenged afterwards at different court if there is a good cause there.<sup>2</sup>

At last, Applicants are Pro Se, one even is foreigner and lives in Japan, it is our first time in life to experience the Supreme Court procedure and rule, usually will take years for attorney. This case is important and intertwines massive doctrines, statutes and opinions, will require tremendous time and energy for Pro Se.

Therefore, For these above reasons, Applicants respectfully requests an extension of time to file a petition for a writ of certiorari, allow Pro Se sufficient time to fully examine the decision’s consequences, research and analyze the issues presented, and prepare the petition for filing, and solicit amicus curiae support. Thank you very much.

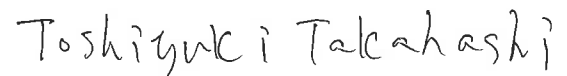
Respectfully Submitted,

Dated: May 22, 2025

Huifang Zhang



Toshiyuki Takahashi





According to Docket record(Exhibit C)

01/01/2025 Appellant Filed Urgent Motion to extend time to file petition for rehearing.

01/06/2025 Appellant Filed EMERGENCY Motion to extend time to file petition for rehearing

01/09/2025 Because the deadline for filing petition is imminent, and no response from the court so far, Appellants have no choice but to file the **unfinished** petition.

01/10/2025 at 4:42:19 PM, at the last minute of the deadline, the court issued the order to grant the extension of time to February 10, 2025, which means grant appellants to file the **finished** petition due on February 10, 2025.

02/06/2025 Under the instruction from the court clerk, appellants filed the motion to file the **finished** petition.

However, surprisingly, the court denied the motion on 03/17/2025.

Therefore, literally, the court granted appellants to file the finished petition, then 2 months later, surprisingly forbade appellants to file the finished petition. And the **petition circulated to all the judges is the unfinished petition, not the finished petition**. This is 100% blatant violation of due process!

2

This controversial judgement is set as unpublished and unprecedented, so literally, it doesnot exist.

Anastasoff v. United States, 223 F.3d 898 (8th Cir. 2000) The Eighth Circuit briefly ruled that nonprecedential opinions were unconstitutional under Article III because they allowed courts to avoid consistency.

- Courts may also use the unpublished label to **avoid setting a formal precedent in sensitive, controversial, or weakly reasoned cases.**

- This has led to criticism that the practice allows:

- Inconsistent rulings
- Avoidance of accountability
- Unequal application of the law

Critics argue it sometimes allows courts to **“bury” flawed or politically charged decisions.**

Sometimes courts may designate a decision as unpublished to avoid setting a precedent — especially if the decision might be:

- Controversial
- Based on poor reasoning
- At odds with broader legal norms

### **Criticism and Controversy**

Many legal scholars and litigants have criticized this system:

- Lack of transparency: Unpublished decisions are sometimes used to hide judicial error, inconsistency, or political motives.

- Double standard: Similar cases can get wildly different treatment depending on whether they're published.

- Access to justice: Pro se litigants often struggle to understand how courts actually rule, since many decisions aren't fully explained or publicized.

- Contradicts the record, and then conceals its impact by declaring the ruling 'unpublished.'

This practice frustrates the integrity of appellate review and invites arbitrary justice.

- Unpublished ruling undermines fundamental legal principles (e.g., due process, equal protection, judicial accountability).

- Highlight any arbitrary treatment, selective publication, or the concealment of flawed reasoning under the "unpublished" label.

"By designating its contradictory reasoning as 'unpublished,' the panel evaded scrutiny while denying Petitioner meaningful legal protection — raising serious concerns about transparency, fairness, and equality under the law."

# Exhibit A

**WARNING: AT LEAST ONE DOCUMENT COULD NOT BE INCLUDED!**

**You were not billed for these documents.**

**Please see below.**

## **Selected docket entries for case 22-56191**

Generated: 05/14/2025 00:18:30

<b>Filed</b>	<b>Document Description</b>	<b>Page</b>	<b>Docket Text</b>
11/26/2024	<u>46</u>		FILED MEMORANDUM (WILLIAM C. CANBY, RICHARD C. TALLMAN and RICHARD R. CLIFTON) All pending motions are denied.AFFIRMED. FILED AND ENTERED JUDGMENT. [12915639] (MM)
	<u>46</u> Memorandum	2	
	46 Post Judgment Form <b>DOCUMENT COULD NOT BE RETRIEVED!</b>		

**NOT FOR PUBLICATION**

**FILED**

UNITED STATES COURT OF APPEALS

NOV 26 2024

FOR THE NINTH CIRCUIT

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

HUIFANG ZHANG, on behalf of I.G. and  
D.G.; TOSHIYUKI TAKAHASHI,

Plaintiffs-Appellants,

v.

UNITED STATES OF AMERICA; U.S.  
DEPARTMENT OF HOMELAND  
SECURITY; U.S. CUSTOMS AND  
BORDER PROTECTION; KEVIN K.  
McALEENAN, in his official capacity as  
Acting Secretary of the US Department of  
Homeland Security, in his official capacity as  
Commissioner of US Customs and Border  
Protection,

Defendants-Appellees.

No. 22-56191

D.C. No. 2:22-cv-05843-RGK-KS

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
R. Gary Klausner, District Judge, Presiding

Submitted November 20, 2024\*\*

Before: CANBY, TALLMAN, and CLIFTON, Circuit Judges.

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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 panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Huifang Zhang and Toshiyuki Takahashi appeal pro se from the district court's order dismissing for failure to prosecute their Federal Tort Claims Act action. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion. *Al-Torki v. Kaempfen*, 78 F.3d 1381, 1384 (9th Cir. 1996). We affirm.

The district court did not abuse its discretion by dismissing appellants' action after they failed to appear for the scheduling conference and then failed to appear for the subsequent show cause hearing. *See Pagtalunan v. Galaza*, 291 F.3d 639, 642-43 (9th Cir. 2002) (discussing the factors to be considered in determining whether to dismiss for failure to prosecute and stating that this court may independently review the record if the district court has not made explicit findings). We reject as meritless appellants' contentions that the district court violated the Constitution, ethical canons, and local rules by refusing to permit appellants to appear remotely.

Because we affirm the district court's dismissal of appellants' action for failure to prosecute, we do not consider appellants' challenges to the district court's interlocutory orders. *See Al-Torki*, 78 F.3d at 1386 (“[I]nterlocutory orders, generally appealable after final judgment, are not appealable after a dismissal for failure to prosecute, whether the failure to prosecute is purposeful or is a result of negligence or mistake.” (citation and internal quotation marks omitted)).

The district court properly denied as moot appellants' motions for

declaratory relief and for reassignment because the action had already been dismissed. *See Rocky Mountain Farmers Union v. Corey*, 913 F.3d 940, 949 (9th Cir. 2019) (standard of review).

We reject as unsupported by the record appellants' contention that the district judge was biased against them.

All pending motions are denied.

**AFFIRMED.**



# Exhibit B

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

MAR 17 2025

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

HUIFANG ZHANG, on behalf of I.G. and  
D.G.; TOSHIYUKI TAKAHASHI,

Plaintiffs-Appellants,

v.

UNITED STATES OF AMERICA; et al.,

Defendants-Appellees.

No. 22-56191

D.C. No. 2:22-cv-05843-RGK-KS  
Central District of California,  
Los Angeles

ORDER

Before: CANBY, TALLMAN, and CLIFTON, Circuit Judges.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 40.

The petition (Docket Entry Nos. 49, 51, 52) for rehearing en banc is denied.

No further filings will be entertained in this closed case.

# Exhibit C

01/18/2024	<input type="checkbox"/> 44	Received 6 paper copies of Reply Brief [40] filed by Mr. Toshiyuki Takahashi and Huifang Zhang. [12849683] (SD) [Entered: 01/18/2024 04:11 PM]
01/19/2024	<input type="checkbox"/> 45 1 pg, 102.9 KB	Filed clerk order (Deputy Clerk: MCD): Appellants' motion for an extension of time to file paper copies (Docket Entry No. [42]) is granted. Paper copies of the reply brief and supplemental excerpts of record (Docket Entry Nos. [39] and [40]) are due January 26, 2024. [12850286] (RT) [Entered: 01/19/2024 04:37 PM]
11/26/2024	<input type="checkbox"/> 46 7 pg, 405.78 KB	FILED MEMORANDUM (WILLIAM C. CANBY, RICHARD C. TALLMAN and RICHARD R. CLIFTON) All pending motions are denied. AFFIRMED. FILED AND ENTERED JUDGMENT. [12915639] (MM) [Entered: 11/26/2024 09:22 AM]
01/01/2025	<input type="checkbox"/> 47 8 pg, 1.02 MB	Filed (ECF) Appellant Mr. Toshiyuki Takahashi Urgent Motion to extend time to file petition for rehearing until 03/10/2025. Date of service: 01/01/2025. [12918178] [22-56191] (Takahashi, Toshiyuki) [Entered: 01/01/2025 10:03 PM]
01/06/2025	<input type="checkbox"/> 48 5 pg, 800.04 KB	Filed (ECF) Appellant Mr. Toshiyuki Takahashi EMERGENCY Motion to extend time to file petition for rehearing until 03/10/2025. Date of service: 01/06/2025. [12918424] [22-56191] (Takahashi, Toshiyuki) [Entered: 01/06/2025 09:18 AM]
01/09/2025	<input type="checkbox"/> 49 20 pg, 1.24 MB	Filed (ECF) Appellant Mr. Toshiyuki Takahashi petition for rehearing en banc (from 11/26/2024 memorandum). Date of service: 01/09/2025. [12918712] [22-56191] --[COURT UPDATE: Attached corrected petition and exhibits. 01/10/2025 by TYL] (Takahashi, Toshiyuki) [Entered: 01/09/2025 07:14 PM]
01/10/2025	<input type="checkbox"/> 50 1 pg, 100.02 KB	Filed order (WILLIAM C. CANBY, RICHARD C. TALLMAN and RICHARD R. CLIFTON) : Appellants' motions for an extension of time to file a petition for rehearing (Docket Entry Nos. [42] and [48]) are granted in part. Any petition for rehearing is due on February 10, 2025. [12918839] (RT) [Entered: 01/10/2025 04:42 PM]
02/06/2025	<input type="checkbox"/> 51 18 pg, 2.33 MB	Filed (ECF) Appellant Mr. Toshiyuki Takahashi EMERGENCY Motion for miscellaneous relief [Emergency Motion to file an amended petition. Relief Requested by February 9, 2025.]. Date of service: 02/06/2025. [12921063] [22-56191] (Takahashi, Toshiyuki) [Entered: 02/06/2025 10:04 AM]
02/10/2025	<input type="checkbox"/> 52 35 pg, 2.7 MB	Filed (ECF) Appellant Mr. Toshiyuki Takahashi petition for rehearing en banc (from 11/26/2024 memorandum). Date of service: 02/10/2025. [12921259] [22-56191] --[COURT UPDATE: Attached corrected petition. 02/11/2025 by TYL] (Takahashi, Toshiyuki) [Entered: 02/10/2025 08:09 AM]
03/17/2025	<input type="checkbox"/> 53 1 pg, 122.79 KB	Filed order (WILLIAM C. CANBY, RICHARD C. TALLMAN and RICHARD R. CLIFTON) The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. See Fed. R. App. P. 40. The petition (Docket Entry Nos. [49], [51], [52]) for rehearing en banc is denied. No further filings will be entertained in this closed case. [12924102] (JBS) [Entered: 03/17/2025 04:56 PM]
03/25/2025	<input type="checkbox"/> 54 1 pg, 91.34 KB	MANDATE ISSUED. (WCC, RCT and RRC) [12924872] (BJK) [Entered: 03/25/2025 09:13 AM]

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☒ Documents and Docket Summary

☐ Documents Only

☒ Include Page Numbers

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

IN THE

# Supreme Court of the United States

HUIFANG ZHANG, ET AL.,

*Applicants,*

v.

USA, ET AL.,

*Respondents.*

## PROOF OF SERVICE

I hereby declare under penalty of perjury that on May 23, 2025, in compliance with Supreme Court Rules 29.3 and 29.5, the foregoing Application for an Extension of Time to File a Petition for a Writ of Certiorari was served on counsel of record for all parties via third-party commercial carrier.

the Solicitor General

U.S. Department of Justice, Room 5616

950 Pennsylvania Ave, NW, Washington, DC 20530-0001

Toshiyuki Takahashi Toshiyuki Takahashi

Direct: 00819084631850

Email: seattleftca@gmail.com

Midori 3-21-11 Corpo Takemura 1F

Sumida-Ku, Tokyo, 130-0021 Japan