IN THE SUPREME COURT OF THE UNITED STATES

No. ____

PHILIP G. POTTER,

Applicant,

v.

INCORPORATED VILLAGE OF OCEAN BEACH, VILLAGE BUILDING DEPARTMENT, VILLAGE BOARD OF TRUSTEES, MAYOR OF THE VILLAGE OF OCEAN BEACH, VILLAGE BOARD OF ZONING APPEALS, GERARD S. DRISCOLL, Village Building Inspector, in his official and individual capacities, THEODORE MINSKI, Village Building Inspector, in his official and individual capacities, NICHOLAS WEISS, Village Building Inspector, in his official and individual capacities, LOUIS SANTORA, Village Building Inspector, in his official and individual capacities, ROBERT FUCHS, Village Prosecutor, in his official and individual capacities, KENNETH GRAY, Village Hearing Officer, in his official and individual capacities,

Respondents.

APPLICATION FOR AN EXTENSION OF TIME IN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE SECOND CIRCUIT

To the Honorable Sonia Sotomayor, Associate Justice of the United States and Circuit Justice for the Second Circuit:

Pursuant to 28 U.S.C. §2101(c) and this Court's Rule 13.5, Philip G. Potter respectfully requests a 60-day extension of time, to and including October 10, 2025, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this matter. The court of appeals entered its judgment on April 10, 2025, and denied Potter's timely rehearing petition on May 13, 2025. The petition for a writ of certiorari is currently due

August 11, 2025. See this Court's Rule 13.3. Under this Court's Rule 13.5, this application is being filed at least 10 days before that deadline. This Court has jurisdiction under 28 U.S.C. §1254(1). A copy of the court of appeals' opinion is attached as Exhibit A, and a copy of the order denying rehearing is attached as Exhibit B.

There is good cause for the extension. Counsel of record was retained only after the petition for rehearing had been filed in the Second Circuit. In addition, counsel has been heavily engaged with the press of other matters and requires additional time to prepare the petition.

1. Just two Terms ago, this Court held that the statute of limitations for a procedural due process claim under 42 U.S.C. §1983 begins to run "only when 'the State fails to provide due process'" for the deprivation of a constitutionally protected right—that is, when the allegedly inadequate state proceedings *conclude*. *Reed* v. *Goertz*, 598 U.S. 230, 236 (2023). If such claims accrued as soon as the State first deprived the plaintiff of "life, liberty, or property," litigants would be forced to "pursue relief in the state system and simultaneously file a protective federal §1983 suit challenging that ongoing state process." *Id.* at 236-237. Such "parallel litigation would 'run counter to core principles of federalism, comity, consistency, and judicial economy.'" *Ibid.* Yet at least five circuits continue to apply the very rule this Court rejected to procedural due process claims in land-use cases, including this one.

2. This case arises from a more than decade-long property dispute that the district court appropriately described as Sisyphean. In 2010, the Village of Ocean Beach, New York issued Applicant Philip G. Potter a permanent Certificate of Occupancy for his residence. Ex. A at 2. A year later, in July 2011, the Village Building Inspector sent Potter a letter purporting to revoke that Certificate of Occupancy without notice or an opportunity to contest the revocation. *Id.* at 5. That was just the beginning.

In 2012, the Village issued criminal citations against Potter for violations of the Village building code—all of which related to conditions *permitted* under his Certificate of Occupancy. Dist. Ct. Dkt. 15 ¶¶51, 63 (E.D.N.Y.). When Potter moved to dismiss the charges, the Village prosecutor admitted that he could not, "'in all good faith,'" oppose the motion because the Village "*did* issue a Certificate of Occupancy." *Id.* ¶62 (emphasis omitted).

In 2014, the Village convened a "'revocation hearing'" to determine *whether* to revoke the Certificate of Occupancy the Village's Building Inspector had purported to revoke three years earlier. Dist. Ct. Dkt. 15 ¶66. That hearing culminated in a recommendation that the Village Board of Trustees revoke Potter's Certificate of Occupancy. *Id.* ¶70. But the Board never voted on that recommendation, instead tabling it indefinitely over a year later in 2015. *Id.* ¶72.

Despite admitting that Potter *had* a valid Certificate of Occupancy and then tabling a resolution to revoke it, the Village denied Potter's applications for rental

permits in 2016, 2017, and 2018—specifically citing the purported absence of a valid Certificate in its decision to deny the 2017 request. Dist. Ct. Dkt. 15 ¶77; Dist. Ct. Dkt. 15-13, at 2.

In 2020, unable to occupy, rent, or sell his residence without threat of prosecution, Potter brought a state-court proceeding seeking a declaration that his Certificate of Occupancy remained valid. Dist. Ct. Dkt. 15 ¶81. The state court dismissed the action as "premature," finding that the Village had "failed to make a final determination as to the revocation of the [Certificate]" and that Potter had not "exhausted" his "administrative remedies." Dist. Ct. Dkt. 15-15, at 3. The court directed the Village to hold a hearing and determine "whether or not to revoke the [Certificate]." *Ibid.* That never happened.

Despite the state court's ruling that Potter's Certificate of Occupancy had never been revoked, a search of Village records in March 2023 turned up no sign of the Certificate. Dist. Ct. Dkt. 15 ¶76.

3. On August 29, 2023, Potter filed this case in the United States District Court for the Eastern District of New York, bringing a series of state-law and federal constitutional claims against the Village and its officers. Ex. A at 5. The district court dismissed the complaint without prejudice to give Potter an opportunity to allege what steps he had taken to secure the Village's compliance with the state court's order to hold a hearing.

Following that dismissal, Potter commissioned another search of Village records. This time—just months after a similar search turned up *nothing*—the Village responded that Potter's Certificate of Occupancy had been revoked after all, as of the former Village Building Inspector's July 2011 letter. Dist. Ct. Dkt. 15 ¶¶88-89. Potter then filed an amended complaint on March 1, 2024, bringing four claims: (1) a claim for denial of procedural due process under 42 U.S.C. §1983; (2) a claim for denial of substantive due process under 42 U.S.C. §1983; (3) a claim for municipal liability under 42 U.S.C. §1983; and (4) a claim for civil conspiracy to violate Potter's constitutional rights under 42 U.S.C. §1985.

4. Respondents moved to dismiss Potter's claims as untimely. As relevant here, they argued that Potter's challenge to the *procedures* by which the Village had revoked the Certificate of Occupancy accrued when Potter had reason to know that his Certificate had been revoked—something they argued was clear when the Village Building Inspector sent the 2011 letter. Potter argued that his claims accrued in 2024, after the second search of Village records revealed that the Village considered the 2011 letter to validly revoke Potter's Certificate of Occupancy—notwithstanding the Village's own acknowledgement years earlier that it had never revoked the Certificate or the state-court order confirming that the "'Village has failed to make a final determination as to the revocation of the [Certificate of Occupancy].'" Dist. Ct. Dkt. 15 ¶83.

The district court granted Respondents' motion. The court held that Potter's claims related to the concededly meritless criminal citations and the denials of rental permits accrued in 2012, 2016, 2017, and 2018, respectively. The court held that any claims arising from the Village's revocation of the Certificate of Occupancy accrued in 2011. The court did not address the Village prosecutor's admission that Potter had a Certificate of Occupancy. It did not address the Village's failure since 2015 to vote on a resolution to revoke the Certificate of Occupancy. Nor did it attempt to square its conclusion with the state court's 2021 determination that the Village had not finally decided one way or another whether to revoke the Certificate of Occupancy.

5. The Second Circuit affirmed. The court agreed with the district court that Potter's claims relating to the denial of rental permits and the criminal citations had accrued years earlier. But it found "more difficult" the question of when "Potter's claims relating to the Village's revocation of his [Certificate of Occupancy]" accrued. Ex. A at 5. Citing Circuit precedent, the court applied the accrual rule for *takings* claims announced in *Williamson County Regional Planning Commission* v. *Hamilton Bank of Johnson City*, 473 U.S. 172 (1985), and refined in *Pakdel* v. *City and County of San Francisco, California*, 594 U.S. 474 (2021). Ex. A at 6 n.1. Under that rule, the court explained, Potter's claim accrued when the Village reached a "'final decision'" on Potter's Certificate of Occupancy—that is, when "the Village 'demonstrated its "arriv[al] at a definitive position on the issue that inflict[ed] an

actual, concrete injury."'" *Ibid.* But the Second Circuit could not say exactly when that was. Instead, the court concluded that Potter's claim accrued at *some* point after the Village denied Potter's rental permit applications "despite the Village Board's purported indefinite tabling of the revocation." *Id.* at 6.

6. Potter timely sought rehearing, which the Second Circuit denied on May 13, 2025. Ex. B.

7. The Second Circuit's decision squarely implicates an important and recurring issue. The Second Circuit applies *Williamson County*'s "final decision" requirement to "'various types of land use challenges'" beyond the takings context, including procedural and substantive due process and equal protection challenges. *Village Green at Sayville, LLC* v. *Town of Islip*, 43 F.4th 287, 294 (2d Cir. 2022). That approach defies this Court's admonition that, "[t]o determine when a plaintiff has a complete and present cause of action" that triggers when a statute of limitations begins to run, courts must "focus[] first on the *specific* constitutional right alleged to have been infringed." *Reed*, 598 U.S. at 235-236 (emphasis added).

The decision below also deepens longstanding confusion among the courts of appeals over how to evaluate ripeness and accrual for a procedural due process claim in the land-use context. Like the Second Circuit, the Third, Seventh, Eighth, and Eleventh Circuits apply *Williamson County*'s final-decision rule in such cases.[1] The

[1] See *Doughtery* v. *Town of North Hempstead Bd. of Zoning Appeals*, 282 F.3d 83, 88-89 (2d Cir. 2002); *Taylor Inv., Ltd.* v. *Upper Darby Twp.*, 983 F.2d 1285, 1293-1294 (3d Cir.

Fourth and Sixth Circuits do not.[2] The Fifth, Ninth, and Tenth Circuits have staked out a middle position—applying the final-decision rule to procedural due process claims only in certain circumstances.[3] That is untenable. It cannot be that Potter's federal claims are too late in New York, but too early in Virginia.

8. Potter now seeks a 60-day extension of time within which to file a petition for writ of certiorari seeking review of the Second Circuit's decision.

An extension is warranted because Potter's counsel of record in this Court, Eugene A. Sokoloff, was retained only after the petition for rehearing had been filed in the Second Circuit. The requested extension will allow counsel to familiarize

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1993), cert. denied, 510 U.S. 914 (1993); *Discovery House, Inc.* v. *Consol. City of Indianapolis*, 319 F.3d 277, 281-282 (7th Cir. 2003), cert. denied, 540 U.S. 879 (2003); *Christopher Lake Dev. Co.* v. *St. Louis County*, 35 F.3d 1269, 1273 (8th Cir. 1994); *Eide* v. *Sarasota County*, 908 F.2d 716, 724-725 (11th Cir. 1990), cert. denied, 498 U.S. 1120 (1991).

[2] See *Clayland Farm Enters., LLC* v. *Talbot County*, 672 F. App'x 240, 245, 248 (4th Cir. 2016); *Nasierowski Bros. Inv. Co.* v. *City of Sterling Heights*, 949 F.2d 890, 893-894 (6th Cir. 1991). Although the First and District of Columbia Circuits have not squarely addressed the question, they have applied the final-decision requirement to non-takings claims in the land-use context, such as substantive due process claims, but not to procedural due process claims in the land-use context, suggesting that they follow the Fourth and Sixth Circuit's approach. *Elena* v. *Municipality of San Juan*, 677 F.3d 1, 8-10 (1st Cir. 2012); *Tri Cnty. Indus., Inc.* v. *District of Columbia*, 104 F.3d 455, 458-462 (D.C. Cir. 1997).

[3] See *Bowlby* v. *City of Aberdeen*, 681 F.3d 215, 223-224 (5th Cir. 2012) (applying *Williamson County* to procedural due process claims that are "ancillary" to takings claims but not to other procedural due process claims in the land-use context); *Harris* v. *County of Riverside*, 904 F.2d 497, 500 (9th Cir. 1990) ("Procedural due process claims arising from an alleged taking may be subject to the same ripeness requirements as the taking claim itself depending on the circumstances of the case."); *Rocky Mountain Materials & Asphalt, Inc.* v. *Bd. of Cnty. Comm'rs of El Paso Cnty.*, 972 F.2d 309, 311 (10th Cir. 1992) (applying *Williamson County* where "a plaintiff asserts a right to procedural due process [that] is coextensive with the asserted takings claim"); but see *Landmark Land Co. of Okla., Inc.* v. *Buchanan*, 874 F.2d 717, 723 (10th Cir. 1989) (declining to apply *Williamson County* to a procedural due process claim in the land-use context).

himself with the record and the legal issues involved. In addition, counsel has been, and will remain, heavily engaged with the press of other matters before this Court and other courts. Those matters include: opening and rebuttal expert reports in *Hunnewell Partners (BVI) Ltd., et al.* v. *Deloitte Transactions and Business Analytics LLP*, No. 2022-652259 (N.Y. Sup. Ct.), due July 25, 2025 and currently due on August 29, 2025; a response brief in *Sire Spirits, LLC* v. *Beam Suntory, Inc.*, Nos. 2024-07876, 2025-01072 (N.Y. App. Div.), currently due on August 6, 2025; a combined response and reply brief in *Ninth Inning, Inc.* v. *National Football League, Inc.*, Nos. 24-5493, 24-5691 (9th Cir.), currently due on August 11, 2025; a combined response and reply brief in *UMB Bank, N.A.* v. *Bristol-Myers Squibb Co.*, Nos. 24-2865, 24-2928 (2d Cir.), currently due on August 11, 2025; accelerated discovery and an evidentiary hearing in *Crystallex Int'l Corp.* v. *Bolivarian Republic of Venezuela*, No. 17-mc-151 (D. Del.), currently set for August 18, 2025; a reply brief in *United States* v. *Agarwal*, Nos. 24-2230, 24-2236 (7th Cir.), currently due on August 25, 2025; and an amicus brief in support of petitioners in *Urias-Orellana* v. *Bondi*, No. 24-777 (U.S.), currently due on September 3, 2025.

In view of those considerations, Potter respectfully requests an extension of 60 days, to and including October 10, 2025, within which to file a petition for a writ of certiorari.

Respectfully submitted.

Eugene A. Sokoloff
Counsel of Record
MOLOLAMKEN LLP
300 North LaSalle Street
Suite 5350
Chicago, IL 60654
(312) 450-6718
esokoloff@mololamken.com

Counsel for Applicant

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