

No. _____

In The Supreme Court Of The United States

ALIGN CORPORATION LIMITED,
Applicant,

v.

ALLISTER MARK BOUSTRED AND HORIZON HOBBY INC.,
Respondents.

APPLICATION TO THE HONORABLE SONIA SOTOMAYOR
FOR EXTENSION OF TIME TO FILE PETITION FOR WRIT OF CERTIORARI
TO THE COLORADO SUPREME COURT

Pursuant to Rule 13(5) of the Rules of this Court, Align Corporation Limited respectfully requests a sixteen-day extension of time to file its Petition for Writ of Certiorari. This request, if granted, would make the Petition due on February 28, 2018. Align will be asking this court to review a decision of the Colorado Supreme Court which was issued on November 13, 2017. No petition for rehearing was filed, meaning the date for filing the Petition for Writ of Certiorari is currently February 12. This application is being filed more than 10 days prior to the current due date of the Petition.

A copy of the opinion of the Colorado Supreme Court holding that Colorado courts have personal jurisdiction over Align under the stream of commerce doctrine under *World Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980), is attached as Exhibit 1. This Court has jurisdiction under 28 U.S.C. § 1257(a). The Colorado

Supreme Court’s “judgment is plainly final on the federal issue” of personal jurisdiction under the Due Process Clause, which “is not subject to further review in the state courts.” *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 485 (1975). Likewise, in *Shaffer v. Heitner*, 433 U.S. 186, 195 n.12 (1977), this Court held that it has jurisdiction under Section 1257(a) to review a state court’s assertion of personal jurisdiction

This request is made for the following reasons:

1. The case presents significant and important questions of law. Align contends the Colorado Supreme Court has permitted its state courts to exercise specific personal jurisdiction over a foreign company beyond what is permitted by the Due Process Clause. In two recent cases this Court has examined the “stream of commerce” doctrine of specific personal jurisdiction and in plurality opinions it has discussed limitations on the reach of stream of commerce jurisdiction to cases where the company in question has direct minimum contacts or sufficient direct knowledge that a distribution system will bring products into a forum state’s territory. *See Asahi Metal Industry Co., Ltd. v. Superior Court of California*, 480 U.S. 102 (1987) (plurality); and *J. McIntyre Machine Ltd. v. Nicastro*, 564 U.S. 873 (2011) (plurality). The Colorado Supreme Court considered these two recent decisions as “split decisions” and not binding, thus it applied the older decision in *World Wide Volkswagen* as supporting a “stream of commerce” theory of personal jurisdiction. Align Corporation argued below that the proper test for a state court’s personal

jurisdiction over a foreign corporation is instead the purposeful availment test laid out in the opinion of Justice Kennedy for a four-justice plurality in *J. McIntyre*, a test used by many other courts. Align will ask this Court to help bring clarity to this important area of law.

2. The Colorado Supreme Court's treatment of the different opinions in *J. McIntyre* also implicates an important question regarding lower-court treatment of this Court's precedents, a matter the Court has already agreed to review this term. *See Hughes v. United States*, No. 17-155 (granting petition presenting issues regarding what lower courts are bound to follow where the Supreme Court resolves a case without a majority opinion.)
3. Align's counsel of record, Daniel D. Domenico, was only recently retained to represent Align before the Court, and needs additional time to work with the client to prepare the Petition. In addition, shortly after being retained, undersigned counsel was called upon to appear before the Senate Judiciary Committee on Jan. 24, 2018 to testify regarding his nomination to the United States District Court. Kittredge LLC is a small firm with limited ability to bring additional attorneys or resources to the matter.
4. Furthermore, Align Corporation Limited is a Taiwanese entity without offices or employees in the United States, which complicates and extends the time needed for communications between counsel and the client.

For these reasons, applicant Align Corporation Limited respectfully requests an extension of time to and including February 28, 2018, to file a petition for a writ of certiorari.

Respectfully submitted,

/s/Daniel D. Domenico

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January 31, 2018