

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

ALWASI YONG,
Petitioner

v.

COMMONWEALTH OF PENNSYLVANIA

***APPLICATION FOR AN EXTENSION OF TIME IN WHICH TO FILE
A PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF PENNSYLVANIA***

To the Honorable Samuel A. Alito, Jr., Associate Justice of the United States and Circuit Justice for the Third Circuit:

Pursuant to 28 U.S.C. § 2101(d) and Rules 13.5, 22, and 30.2 of this Court, Alwasi Yong respectfully requests a 58-day extension of the time, to and including Friday, June 15, 2018, in which to file a petition for a writ of certiorari in this Court. The Supreme Court of Pennsylvania entered judgment on January 18, 2018. A copy of the Supreme Court of Pennsylvania's opinion is attached as Exhibit 1. See *Commonwealth v. Yong*, 177 A.3d 876 (Pa. 2018). Mr. Yong's time to file a

petition for certiorari in this Court will currently expire on April 18, 2018. This application is being filed more than 10 days before that date.

The Fourth Amendment requires that, in order to conduct an arrest or search, police officers ordinarily must have probable cause to believe that the subject committed a crime or that evidence of a crime will be found. *United States v. Watson*, 423 U.S. 411, 417 (1972); *Brinegar v. United States*, 338 U.S. 160, 174 (1949). The existence of probable cause is determined based on the acting officer's knowledge. *Devenpeck v. Alford*, 543 U.S. 146, 152 (2004). In limited types of searches and seizures, such as investigatory stops, this Court allows officers to act on reasonable suspicion, even without probable cause. *Terry v. Ohio*, 392 U.S. 1, 20 (1968). An arresting officer may also validly rely on an order or direction from another officer in making an arrest or investigatory stop, if the ordering officer herself had probable cause or reasonable suspicion. See *Whiteley v. Warden*, 401 U.S. 560, 568-569 (1971); *United States v. Hensley*, 469 U.S. 221, 229-231 (1985).

This case presents a substantial and recurring question on which the federal circuits and state courts of last resort are deeply divided: whether a search and seizure can be upheld under the Fourth Amendment based on facts *not* known to the arresting or searching officer, but rather known by some other officer who happened to be physically on the scene. As the Supreme Court of Pennsylvania explained, this and related issues have “led to circuit splits.” *Yong*, 177 A.3d at 886; compare also *United States v. Massenbourg*, 654 F.3d 480 (4th Cir. 2011) (analyzing probable cause based on facts actually known to the officer conducting the search),

with *United States v. Ragsdale*, 470 F.2d 24 (5th Cir. 1972) (upholding search despite searching officer's lack of reasonable suspicion, based on facts known to another officer present on the scene).

Undersigned counsel and the University of Virginia Supreme Court Litigation Clinic are working diligently, but respectfully submit that the additional time requested is necessary to complete preparation of Mr. Yong's petition. We represent Mr. Yong *pro bono*. Undersigned counsel were engaged for the first time at the certiorari stage, and substantial work remains to master the record of the case, to complete research on the authorities supporting this Court's review, and to finish preparing the petition and appendix for filing. Among other things, this case requires detailed inquiries into this Court's interpretation and application of the Fourth Amendment as applied to both arrests and investigatory stops. It also requires careful review of a large body of case law from federal and state courts applying the Fourth Amendment to arrests and investigatory stops where communication between officers is absent or unclear. In the past decade alone, courts have addressed the issues arising in this case hundreds of times. Additional time is also required to allow Mr. Yong (who is currently incarcerated) sufficient opportunity to review and comment on draft filings.

Undersigned counsel also face numerous overlapping deadlines in other matters, including a reply brief in support of a petition for a writ of certiorari prepared in conjunction with the University of Virginia Supreme Court Litigation Clinic, that will be filed on or before April 17, 2018. See *Quarles v. United States*,

17-778 (response brief filed March 30, 2018). In addition, Mr. Marwell recently presented oral argument in two court of appeals cases. See *Del. Riverkeeper Network v. FERC*, D.C. Cir. No. 17-5084 (argued March 22, 2018); *Big Bend Conservation Alliance v. FERC*, D.C. Cir. No. 17-1002 (argued March 6, 2018). Mr. Marwell has also been engaged in preparing merits briefs or substantive motions in several other pending matters, see *Johnson v. District of Columbia*, D.C. Cir. No. 15-5207 (opening merits brief filed April 2, 2018); *HALT v. FERC*, D.C. Cir. No. 18-1079 (dispositive motions due May 7, 2018), as well as a summary judgment motion in a complex federal-court action to be filed in April 2018, and a petition for a writ of certiorari currently due May 1, 2018. Mr. Elwood has been engaged in preparing briefs in *MCC (Xiangtan) Heavy Indus. Equip. Co., Ltd. v. Liebherr Mining & Construction Equip., Inc.*, Va. S. Ct. No. 171003 (filed Apr. 5, 2018); *Emerson Elec. Co. v. Superior Court of California* (certiorari petition due May 9, 2018); and *Doe v. Federal Election Commission*, D.C. Cir. (briefing schedule not yet set, but opening brief likely due in early- to mid-May).

Wherefore, Petitioner respectfully requests that an order be entered extending the time to file a petition for writ of certiorari up to and including June 15, 2018.

Respectfully submitted,



JEREMY C. MARWELL
Counsel of Record
JOHN P. ELWOOD
VINSON & ELKINS LLP
2200 Pennsylvania Ave., NW
Suite 500 West
Washington, D.C. 20037
(202) 639-6507
jmarwell@velaw.com

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