

No. 23A604

In The Supreme Court of the United States

Rosalie Simon, *et al.*,
Zehava Friedman and Vera Deutsch Danos,
individually for themselves and on behalf of
all others similarly situated,
Petitioners,

v.

Republic of Hungary and Magyar Államvasutak Zrt.,
Respondents.

Steven Heller and Charles Heller,
Petitioners,

v.

Republic of Hungary,
Respondent.

PETITIONERS' SECOND APPLICATION TO EXTEND TIME TO
FILE A PETITION FOR A WRIT OF CERTIORARI

To the Honorable Chief Justice Roberts, as Circuit Justice for the District of
Columbia Circuit:

Petitioners Zehava Friedman, the heirs at law of Vera Deutsch Danos
(deceased), Steven Heller, and Charles Heller respectfully request that the time for
them to file a Petition for a Writ of Certiorari be extended twenty-eight days from
February 9, 2024, to and including March 8, 2024. The Court of Appeals rendered its
decision on August 8, 2023, App. A, and denied rehearing on October 12, 2023. App.
B. On January 3, 2024, Your Honor granted Petitioners an extension of the original

due date from January 10, 2024, until February 9, 2024. This Application is being filed at least 10 days before that date. *See* S. Ct. R. 13.5.

The Court has jurisdiction to review the Circuit Court’s judgment pursuant to 28 U.S.C. § 1254(1).

Background

On October 20, 2010, Petitioners Zehava Friedman and the heirs at law of Vera Deutsch Danos, deceased, together with other Jewish survivors of the Holocaust in Hungary (collectively “Survivors”), sued the Republic of Hungary and its national railway (both defendants are referred to herein collectively as “Hungary”) under the Foreign Sovereign Immunities Act of 1976 (FSIA), 28 U.S.C. §§ 1330, 1602 *et seq.*, seeking compensation for property unlawfully seized. That action, *Rosalie Simon et al. v. Republic of Hungary, et ano.*, No. 1:10-cv-01770 (D.D.C.) (“*Simon*”), was previously before this Court. *See Republic of Hungary v. Simon*, 592 U.S. 207 (2021).

In *Simon*, the United States District Court for the District of Columbia, Beryl A. Howell, District Judge, granted Hungary’s motion to dismiss. 37 F. Supp. 3d 381 (D.D.C. 2014). Survivors appealed, and the Court of Appeals reversed in part and remanded. 812 F.3d 127 (D.C. Cir. 2016) (“*Simon I*”). The District Court then granted Hungary’s motion to dismiss a second time. 277 F. Supp. 3d 42 (D.D.C. 2017). Again, on Survivors’ appeal, the Court of Appeals reversed. 911 F.3d 1172 (D.C. Cir. 2018) (“*Simon II*”). Hungary sought certiorari, which this Court granted in part. *Republic of Hungary v. Simon*, 141 S. Ct. 187 (U.S. 2020). Meanwhile, since there was no stay of proceedings, the District Court denied Hungary’s motion to dismiss. 443 F. Supp.

3d 88 (D.D.C. 2020). Hungary appealed. In the certiorari proceeding before it, this Court then vacated the Circuit Court’s judgment in *Simon II* and remanded the case for reconsideration in light of the Court’s decision that day in *Federal Republic of Germany v. Philipp*, 592 U.S. 169 (2021). *Republic of Hungary v. Simon*, 592 U.S. 207 (2021). Upon that reconsideration, the District Court granted in part and denied in part Hungary’s motion to dismiss. 579 F. Supp. 3d 91 (D.D.C. 2021). Both Hungary and Petitioners appealed. The Circuit Court affirmed in part and vacated and remanded in part. App. A; 77 F.4th 1077 (D.C. Cir. 2023) (“*Simon III*”).

In a second action, *Steven Heller, et ano. v. Republic of Hungary*, also filed in the United States District Court for the District of Columbia, Chief Judge Howell granted Hungary’s motion to dismiss. C.A. No. 21-cv-1739 (BAH), 2022 WL 2802351 (D.D.C. July 18, 2022). The national railway was not a defendant in that action. The two Survivors in that case, Steven Heller and Charles Heller, appealed. Their appeal was consolidated in the Circuit Court with the appeals of the *Simon* Survivors who had been dismissed. In *Simon III*, the Circuit Court affirmed the District Court’s dismissal of *Heller*.

The dismissals the Circuit Court affirmed in *Simon III* are the subject of the Petition for a Writ of Certiorari to be filed by Petitioners, the Survivors who have been dismissed. Hungary and its national railway have requested a thirty-day extension of the deadline for their filing of a petition for writ of certiorari, directed to other aspects of *Simon III. Republic of Hungary, et ano. v. Rosalie Simon, et al.*, No. 23A592. (December 21, 2023). Your Honor granted that extension on January 4, 2024.

Reasons for Granting an Extension of Time

The time for Petitioners to file a Petition for a Writ of Certiorari should be extended for twenty-eight days for three reasons:

First, no prejudice or significant delay will result from the granting of this requested brief extension. The proceedings surviving *Simon III* were remanded and are now ongoing without a stay in the District Court. A Third Amended Complaint was filed on January 26, 2024, with limited discovery scheduled to follow. Further, Hungary has previously sought and obtained an extension comparable to the extension your Honor previously granted Petitioners herein, and Petitioners have no objection to a further extension for Hungary should it seek one. In addition, if the extension is granted, the Petition may still be fully briefed and presented for the Court's consideration before the end of the current Term.

Second, the requested additional time is necessary since until Friday, January 26, 2024, counsel for Petitioners were engaged in extensive efforts to produce the Third Amended Complaint which they filed that day in the District Court. That new pleading is intended to fulfill the standards articulated by the D.C. Circuit when, as this Court directed in *Republic of Hungary v. Simon*, 592 U.S. 207 (2021), it remanded the proceedings in part to enable just such amendments. Realistically, only with great difficulty could counsel now prepare and finalize a petition for certiorari within the less than two weeks remaining until the current deadline for a petition of certiorari to this Court of February 9, 2024.

Third, the Court may likely grant the Petition. The Court has previously granted certiorari in this case; Hungary has stated its intention to seek certiorari for review of the same Circuit Court judgment, *Simon III*, that is the subject of Petitioners' anticipated Petition; and the issues to be addressed in the Petition are important — as to their substance and its relationship to the limits on foreign sovereign immunity under the FSIA, and on another scale, as to the hundreds of thousands of members of the putative class Petitioners Friedman and Danos seek to represent.

Conclusion

For the foregoing reasons, the time to file a Petition for a Writ of Certiorari in this matter should be extended for twenty-eight days to and including March 8, 2024.

Dated: January 30, 2024

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