

December 13, 2024

VIA HAND DELIVERY

The Honorable Scott S. Harris
Clerk of the Court
Supreme Court of the United States
One First Street NE
Washington, DC 20543

Re: *Stenger v. United States*

Dear Mr. Harris:

Pursuant to Supreme Court Rule 22.1, I kindly request that you transmit the enclosed Application for Extension of Time to File a Petition for Writ of Certiorari and the accompanying attachment to the Honorable Sonia Sotomayor, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Second Circuit.

Please contact me at (202) 879-7622 if you have any questions regarding this submission.

Sincerely,

Lawrence D. Rosenberg

Enclosures

No. 24A__

IN THE
Supreme Court of the United States

WILLIAM STENGER,

Applicant,

v.

UNITED STATES OF AMERICA,

Respondent.

**APPLICATION FOR AN EXTENSION OF TIME TO FILE A
PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES 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:

1. Pursuant to Supreme Court Rules 13.5, 22, and 30, petitioner William Stenger, through counsel, respectfully requests a 60-day extension of time, up to and including February 24, 2025, to file a petition for a writ of certiorari to the United States Court of Appeals for the Second Circuit to review *United States v. Stenger*, No. 23-6528. The United States Court of Appeals issued its decision on June 28, 2024. A copy of that order is attached as Appendix A. It issued its order denying rehearing en banc on September 27, 2024. A copy of that order is attached as Appendix B. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254, and the time to file a petition for a writ of certiorari will otherwise expire on December 26, 2024. This

Application for Extension of Time is timely because it has been filed on or before 10 days before the date on which the time for filing the petition is to expire.

2. The decision of the Second Circuit affirms the invocation of “hypothetical jurisdiction” to resolve the merits of an appeal without first establishing jurisdiction to do so. In its ruling, the Second Circuit parted ways with this Court’s decision in *Steel Company v. Citizens for a Better Environment*, 532 U.S. 83 (1998). *See also* *Waleski v. Montgomery, McCracken, Walker & Rhoads, LLP*, 143 S. Ct. 2027 (2023) (Thomas, J., dissenting from denial of *certiorari*, joined by Gorsuch, J. and Barrett, J.) (“This Court categorically repudiated ‘the doctrine of hypothetical jurisdiction’....”). The Second Circuit’s decision also exacerbated a pre-existing split among the circuits. *Compare, e.g., Butcher v. Wendt*, 975 F.3d 236, 244 (2d Cir. 2020) (collecting cases applying hypothetical statutory jurisdiction) *with Friends of the Everglades v. EPA*, 699 F.3d 1280, 1288 (11th Cir. 2012) (rejecting hypothetical statutory jurisdiction); *Di Biase v. SPX Corp.*, 872 F.3d 224, 231 (4th Cir. 2017) (same); *see also Kaplan v. Cent. Bank of the Islamic Republic of Iran*, 896 F.3d 501, 518 (D.C. Cir. 2018) (Edwards, J., concurring) (calling the application of hypothetical statutory jurisdiction into question).

3. Good cause exists for this motion. Undersigned counsel, Lawrence D. Rosenberg of Jones Day, directs the West Virginia University College of Law’s Supreme Court Litigation Clinic, which is co-counsel in this case. The Clinic students have been taking final exams since early December and will then be on their winter break until January 13, 2025. Moreover the Clinic students have devoted extensive

time over the last several weeks to researching and drafting the opening brief in *United States v. Davis*, No. 24-6432 (4th Cir.), which was filed on December 12, 2024, and in which Mr. Rosenberg and the Clinic were appointed to represent Mr. Davis. The requested extension is necessary so that the Clinic students can participate substantially in the research and drafting of the petition in this matter.

4. Mr. Rosenberg's ability to complete the petition without an extension has also been made extremely difficult by other professional and personal obligations. In addition to his work with the Clinic and the *Davis* matter mentioned above Mr. Rosenberg is lead counsel for appellees in *Citigroup v. Villar*, No. 24-1496 (9th Cir.), in which appellees' response brief was filed on December 6, 2024. He is also lead counsel in *SNB Bank, N.A. v. Hannelius, et al.*, No. 1:24-cv-24782-RAR, in which he has recently engaged in extensive motion practice. And Mr. Rosenberg is also lead counsel in *Lufthansa Technik v. Panasonic Avionics Corp.*, No. 2:17-cv-01453-JCC (W.D. Wash.), in which he is coordinating simultaneous document discovery from several parties, including related motion practice, and in which he will likely be conducting a deposition in Seattle, Washington in January 2025. Mr. Rosenberg also has in November and December had several out-of-town business trips and will be on a long-planned and prepaid family vacation from December 23 to January 1.

5. Finally, other members of Mr. Stenger's legal team also have conflicting professional and personal commitments, including year-end holiday observances and parental leave, that make compliance with the current deadline very difficult.

6. Thus, an extension of time will allow counsel to present the petition in a manner that allows efficient review by the Court.

WHEREFORE, Mr. Stenger respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari for 60 days, to and including February 24, 2025.

Dated: December 13, 2024

Respectfully submitted,

/s/ Lawrence D. Rosenberg
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