No. A-_____

In the Supreme Court of the United States

R.K.B. and K.A.B.
Applicants,

v.

E.T.
Respondent

APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR WRIT OF CERTIORARI

Directed to the Honorable Sonia Sotomayor, Associate Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Tenth Circuit

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November 17, 2017

To the Honorable Sonia Sotomayor, as Circuit Justice for the United States Court of Appeals for the Tenth Circuit:

R.K.B. and K.A.B. ("Applicants") respectfully request a 30-day extension of the deadline for filing their petition for a writ of certiorari, from November 29, 2017, to December 29, 2017. Applicants will ask this Court to review a judgment by the Utah Supreme Court, issued on August 31, 2017 (App. A), which ruled that the federal Indian Child Welfare Act creates a federal standard for determining parenthood, rather than incorporating and relying upon existing state standards. No other court in the 39-year history of the Indian Child Welfare Act has held that a federal "reasonableness" standard applies. The Court will have jurisdiction under 28 U.S.C. § 1257(a).

1. Applicants' petition will ask this Court to clear up conflicts and confusion among state courts of last resort about the proper determination of parenthood in the context of adoptions of Native American children following this Court's decision in *Adoptive Couple* v. *Baby Girl*, 133 S. Ct. 2552 (2013). To give the Court an opportunity to resolve this confusion, Applicants presently intend to present at least the following issue for review:

> Does the Indian Child Welfare Act define "parent" in 25 U.S.C. 1903(9) to include an unwed biological father who has not complied with state law rules to attain legal status as a parent?

This Court granted certiorari on this very question in *Adoptive Couple* v. *Baby Girl*, but ultimately decided the case on other grounds. 133 S.Ct. 2552, 2560 (2013).

This question continues to divide state courts, including those of last resort. The New Jersey Supreme Court and Oklahoma Supreme Court have held that the Indian Child Welfare Act does not create parental rights for biological fathers when state law does not otherwise recognize that right.[1] But state courts of last resort in Alaska and South Carolina have held that the Indian Child Welfare Act requires biological fathers be given certain rights *regardless* of state law.[2] Agreeing with these courts—but going a step further than they had gone—the court below determined that courts must apply a previously unknown federal "reasonableness" standard in determining paternity.[3] This division creates confusion among courts, biological parents, and adoptive parents, substantially extending the amount of time before a child's home is finally determined.

2. This issue is obviously of substantial importance to the Applicants: if the decision below stands, they will face a litigation challenge, from the claimed biological father, to their right to adopt a child whom they welcomed into their home three years ago, and have loved ever since. This issue is also of substantial importance to other adoptive parents of Native American

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[1] *In re Adoption of a Child of Indian Heritage*, 543 A.2d 925, 932 (N.J. 1988); *In re Adoption of Baby Boy D*, 742 P.2d 1059, 1064 (Okla. 1985) (eroded on other grounds in *In re Baby Boy L.*, 103 P.3d 1099 (Okla. 2004)).

[2] *Bruce L.* v. *W.E.*, 247 P.3d 966, 979 (Alaska 2011); *Adoptive Couple* v. *Baby Girl*, 731 S.E.2d 550, 559–560 (S.C. 2012), *reversed on other grounds*, 133 S. Ct. 2552 (2013).

[3] In *re Adoption of B.B.*, ___ P.3d. ___; 2017 UT 59.

children: if this Court does not resolve the conflict among the state courts, many such parents will have to attempt to satisfy *both* state-law standards for terminating the rights of biological parents *and* some vague and undefined "federal" standard such as that adopted by the Utah Supreme Court. And the mere lack of clarity on this question will deter potential adoptive parents from adopting Native American children who urgently need stable homes.

The Utah Supreme Court's position is also indefensible on the merits: As noted in the two-Justice dissent, paternity has "never been a creature of federal law[.]" *In re Adoption of B.B.*, ___ P.3d. ___; 2017 UT 59, ¶ 163 (Lee, A.C.J., dissenting). And, as Petitioners will show in their petition, the ICWA did "not create an independent federal adoption regime," *id.* ¶ 160, but rather "recognized [state] jurisdiction over Indian child custody proceedings," *id.* ¶ 159 (quoting 25 U.S.C. § 1901(5)). Nor is the majority's vague "reasonableness" standard likely to produce consistent results. *Id.* ¶ 100 (Lee, A.C.J., dissenting).

3. To adequately present these and perhaps other issues for the Court's consideration, undersigned counsel needs additional time. Counsel has recently been occupied with a number of other matters, including various matters before this Court and several other courts, and has been unable to complete the research and analysis necessary to prepare the petition.

For example, in the last few weeks, undersigned counsel prepared and filed a major petition for certiorari in the *Evolutionary Intelligence LLC* v.

Sprint Nextel Corporation, No. 17-609, which was filed on October 23, 2017. That case presents important issues regarding the proper interpretation of this Court's decisions in *Mayo Collaborative Servs.* v. *Prome-theus Labs., Inc.*, 566 U.S. 10 (2012), and *Alice Corp. Pty. Ltd.* v. *CLS Bank Int'l*, 134 S.Ct. 2347 (2014). Other matters have also occupied counsel's time during the last few weeks:

- Counsel filed an opposition to a certiorari petition on behalf of the state of Washington on October 13, 2017. See *Ramos* v. *Washington*, No. 16-9363.
- Counsel is representing a group of motorists in a class-action suit against the Metropolitan Washington Airports Authority, and has made multiple filings in that case over the last month, including one yesterday, November 16, 2017. See *Kerpen* v. *Metropolitan Washington Airports Authority*, No. 17-1735 (4th Cir.).
- Also earlier this week, counsel filed an amicus brief in the Eighth Circuit concerning whether Title VII of the Civil Rights Act of 1964 provides protections for employees against retaliation for requesting a religious accommodation. See *EEOC* v. *North Memorial*, 17-2629 (8th Cir.).
- Counsel of record has also been busy teaching a Supreme Court Advocacy Clinic at Brigham Young University Law School.

All of these activities required a great deal of counsel's time until recently.

For all these reasons, Applicants respectfully request an extension of time to file its certiorari petition, up to and including December 29, 2017.

Respectfully submitted.

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