

No. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

**GUAM, GUAM ELECTION COMMISSION, ALICE M. TAIJERON, MARTHA
C. RUTH, JOSEPH F. MESA, JOHNNY P. TAITANO, JOSHUA F. TENORIO,
DONALD I. WEAKLEY and LEONARDO M. RAPADAS.**

Applicants,

v.

ARNOLD DAVIS, on behalf of himself and all others similarly situated.

Respondent.

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

**To the Honorable Elena Kagan
Associate Justice of the United States Supreme Court
and Circuit Justice for the Ninth Circuit**

**MICHAEL F. PHILLIPS, ESQ.
*Counsel of Record for Applicants***

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October 28, 2019

ORIGINAL

APPLICATION FOR EXTENSION OF TIME

To the Honorable Justice Elena Kagan, as Circuit Justice for the United States Court of Appeals for the Ninth Circuit:

Guam, The Guam Election Commission, Alice M. Taijeron, Martha C. Ruth, Joseph F. Mesa, Johnny P. Taitano, Joshua F. Tenorio, Donald I. Weakley and Leonardo M. Rapadas (collectively "Applicants") respectfully requests an extension, pursuant to Rule 13.5 of the Rules of Court, of sixty (60) days within which to file a petition for a writ of certiorari up to and including Friday, December 27, 2019.

JUDGMENTS FOR WHICH REVIEW IS SOUGHT

The Judgments for which review is sought are *Arnold Davis v. Guam, Guam Election Commission, et.al.*, No. 17-15719 (July 29, 2019), (attached as Exhibit 1); and *Arnold Davis v. Guam, Guam Election Commission, et.al.*, No. 13-15199 (May 8, 2015), (attached as Exhibit 2).

OPINIONS BELOW

Opinions related to this case and included herein are *Arnold Davis v. Guam, Guam Election Commission, et.al.*, Civil Case No. 11-00035 (District Court of Guam January 9, 2013), (attached as Exhibit 3); *Arnold Davis v. Guam, Guam Election Commission, et.al.*, Civil Case No. 11-00035 (District Court of Guam June 14, 2012), (attached as Exhibit 4); and *Arnold Davis v. Guam, Guam Election Commission, et.al.*, Civil Case No. 11-00035 (District Court of Guam February 1, 2012), (attached as Exhibit 5).

JURISDICTION

28 U.S.C. § 1254(1) vests this Court with jurisdiction over all relevant matters herein.

REASONS JUSTIFYING AN EXTENSION OF TIME

Applicants respectfully request a 60-day extension of time within which to file a petition for a writ of certiorari seeking review of the decisions of the Ninth Circuit Court of Appeals and District Court of Guam in this case, up to and including December 27, 2019.

1. Governor Lourdes A. Leon Guerrero is the duly elected Governor of the unincorporated territory of Guam. The Governor of Guam is Guam's Chief Executive Officer. Organic Act of Guam (Act of Aug. 1, 1950, as amended through 64 Stat. 384 [48 U.S.C. 1421, et seq.]) (declaring Guam to be "an unincorporated territory of the United States"). The Organic Act vests Governor Leon Guerrero with the executive power over Guam and holds Governor Leon Guerrero responsible for the faithful execution of the laws of Guam and the laws of the United States applicable in Guam. On behalf of Guam, Governor Leon Guerrero respectfully requests an extension of sixty (60) days in which to file a Petition for a Writ of Certiorari.

2. Governor Leon Guerrero makes her request for extension of time in which to file a Petition for a Writ of Certiorari pursuant to Rule 13.5. The Supreme Court Rules authorize Guam to make such a request for an extension under extraordinary circumstances. The *Davis* Opinion from the Ninth Circuit Court of

Appeals reverses and abolishes all of the United States' and Guam's self-determination efforts. The *Davis* ruling renders meaningless the United States and Spain agreeing through treaty to resolve the political status of Guam's native inhabitants, the United States' pledge a half century later while forming the United Nations to effectuate self-determination, and all recent Congressional and local Guam Legislature enactments intended to fulfill the Treaty of Paris, United Nations Charter, Congressional and Presidential commitments.

3. Guam is within her time to file a Petition for a Writ in this case. The Governor of Guam received opinions from her constituency and individuals who have worked on political status and self-determination issues, and after a complete review and consideration of all points of view, the Governor decided it was in the best interest of the people of Guam to file an appeal. Unfortunately, the attorneys representing Guam were not able at that time to continue the representation as directed by the Governor. The Governor asked attorney Michael F. Phillips who has a history of participating in cases with similar causes and constitutional questions if he would take this case. Attorney Phillips agreed to take this case on appeal, represent Guam, and agreed to ask this Court for an extension of time in which to file a Petition for a Writ herein. By the time the Governor was able to ask Attorney Phillips to take this case, the ten (10) day deadline preceding the date to file such a Petition had passed. Neither the Governor nor Attorney Phillips were aware of the past deadline to request an extension at the time the Governor finalized her decision and asked Attorney Phillips to represent Guam. The Governor and

Attorney Phillips have worked diligently to preserve the people of Guam's rights in this case and respectfully ask Justice Elena Kagan to use her discretion and allow Guam to file Guam's intended Petition by granting the Governor of Guam's request for a sixty (60) day extension in which to file a Petition for a Writ of Certiorari in this most serious matter.

4. A present conflict exists between the Sixth and Ninth Circuits. This Court is the only source of resolution for this conflict between circuits and their differing interpretations of law. The split between the two circuits (and other circuit rulings consistent with those of the Sixth Circuit) compels the granting of review of the Ninth Circuit's rulings in *Davis v. Guam*, 785 F. 3d 1311 (9th Cir. 2015) and *Davis v. Guam*, No. 17-15719 (9th Cir. 2019) (striking "Guam's Decolonization Registry" as a violation of the 15th Amendment), both in direct conflict with the Sixth Circuit's Opinion in *Lawson v. Shelby County*, 211 F.3d 331 (6th Cir. 2000) ("The U.S. Constitution protects an individual's right to vote during an election, not the right to register to vote prior to an election."). See *Lawson*, supra, at 336 ("Therefore, the harm to the Lawsons occurred on November 5, 1996 (election day) when they presented themselves at their polling station and were refused the right to vote. ").

5. Spain ceded Guam to the United States in accordance with the provisions of the Treaty of Peace between the United States and Spain. Organic Act of Guam, Sec. 1421. "Spain cedes to the United States the ...island of Guam in the

Marianas or Ladrones." *Treaty of Peace between the United States and Spain*, December 10, 1898.

6. Article IX mandates, "The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress." As recent as 1998, the United States House of Representatives acknowledged Guam's Commission on Decolonization and reaffirmed its commitment to the United States citizens of Guam for increased self-government, consistent with self-determination for the people of Guam. *Davis v. Guam*, 785 F.3d 1311, p. 4, f.n. 3 (9th Cir. 2015).

7. The Ninth Circuit Court of Appeals granted Davis Article III standing to pursue a court challenge to Guam's alleged race based classification. *Davis*, p. 4. The Ninth Circuit framed the issue and controversy as follows:

Pursuant to a law passed by the Guam legislature, eligible "Native Inhabitants of Guam" may register to vote in a plebiscite concerning Guam's future political relationship with the United States. Guam will conduct the plebiscite if and when 70 percent of eligible Native Inhabitants register. Plaintiff Arnold Davis is a Guam resident who isn't eligible to register because he is not a Native Inhabitant. He alleges that Guam's Native Inhabitant classification is an unlawful proxy for race. At this stage we must determine only whether Davis has standing to challenge the classification and whether his claims are ripe.

8. The Ninth Circuit subsequently issued its Opinion in *Davis v. Guam*, No. 17-15719 (9th Cir. 2019), equating Guam's 2000 Plebiscite Law to voting restrictions struck down in *Rice v. Cayetano*, 528 U.S. 495 (2000) and *Davis v. Commonwealth Election Commission*, 844 F.3d 1087 (9th Cir. 2016). *Rice v.*

Cayetano and *Davis v. Commonwealth* involved challenges to elections involving governance. Neither case involved challenges to the formation of a native inhabitant registry to be used, if ever, at a later unspecified time all complying with the Treaty of Paris mandate and United Nations required self-determination.

9. There can be no true democratic government without the formal consent of the governed. Self-determination exercised under the supervision of a democratic government can only be exercised through formal election. *Davis* forbids both the United States and the Government of Guam from receiving legitimacy from the native inhabitants of Guam.

10. Respondent *Davis* is not harmed by Justice Kagan allowing Guam sixty (60) days in which to file the requested Petition. It is undisputed there is no movement on the opposed registry and there is no election planned relating to this contested matter. Appellee *Davis* no longer resides on Guam. The prejudice to Guam by not being able to petition the Supreme Court is enormous. The Ninth Circuit *Davis* ruling not only conflicts with Sixth Circuit's view and holding regarding the 15th Amendment but also cripples any federal or local attempt to resolve the political status of Guam's native inhabitants through the Government of Guam. Governor Leon Guerrero respectfully requests Justice Kagan grant Guam's request for an additional sixty (60) days to file the required writ application.

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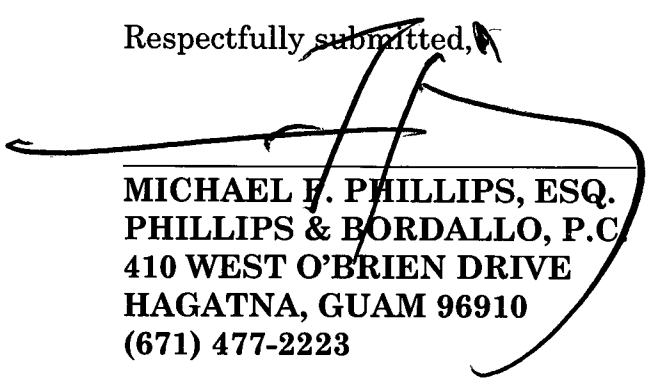
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CONCLUSION

For the foregoing reasons, Applicants respectfully request that this Court grant an extension of 60 days, up to and including December 27, 2019, within which to file a petition for writ of certiorari in this case.

Respectfully submitted,



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