

In The  
**SUPREME COURT OF THE UNITED STATES**

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**BENJAMIN JOSEPH GUTIÉRREZ,**  
*Petitioner*

*v.*

**THE TEXAS HEALTH  
AND HUMAN SERVICES COMMISSION,**  
*Respondent*

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

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*Pro Se*

*Rule 29.6 statement not required*

**RECEIVED**

**NOV 25 2019**

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

**TO THE HONORABLE SAMUEL A. ALITO, ASSOCIATE JUSTICE OF  
THE SUPREME COURT OF THE UNITED STATES:**

Pursuant to Supreme Court Rules 13.5, 22, and 30, Applicant, Pro Se, Benjamin Joseph Gutiérrez respectfully requests an extension of time to file a petition for a writ of certiorari. The deadline for Applicant to file his petition is Wednesday, November 20, 2019, which is ninety days from Friday, August 23, 2019, the date when Texas Supreme Court denied Applicant's Motion for Rehearing on the matter. For good cause and extraordinary circumstances set forth herein, Applicant humbly asks that the deadline be extended sixty days so that the new deadline would be Sunday, January 19, 2020.

**GENERAL AND PROCEDURAL BACKGROUND**

After exhausting Texas' Health and Human Services Commission's (THHSC) Administrative process regarding denial of children's Medicaid Benjamin Joseph Gutiérrez sought judicial review. At the trial level the Texas district court reversed the THHSC's administrative decision for denying children's Medicaid by holding findings that were consistent with THHSC's policy rules, Federal Regulations, and governing custody order of child for services sought.

THHSC then appealed to Texas' Third Court of Appeals and on June 14, 2018 the Court of Appeals reversed the trial court. *See* Appendix A for related opinion and order of Case No. 03-16-00748-CV. After rehearing was denied, as Case No. 18-1135, Applicant petitioned for review to Texas' Supreme Court

denoting that the court of appeal's opinion was inconsistent with THHSC own policy rules and Federal Regulation, 42 C.F.R. §435.603(f)(2)(iii), that directs a Custodial parent determination is governed by a court order, a court order which is in the record and holds Applicant to be a custodial parent with the other related elements the trial court findings held to be true. Thus, THHSC's interpretation of the statute was unreasonable and improper as THHSC's deduction was in direct conflict with the language of the rule.

The court of appeals on page eight of their opinion omitted vital portions of 42 C.F.R. §435.603(f)(2)(iii) that THHSC ought to have followed for assessing eligibility, the omitted portion is included here:

For purposes of this section -

- (A) A court order or binding separation, divorce, or custody agreement establishing physical custody controls; or
- (B) If there is no such order or agreement or in the event of a shared custody agreement, the custodial parent is the parent with whom the child spends most nights.

Texas's Supreme Court requested THHSC produce a response brief to Applicant's petition for review. After which, on Friday, June 14, 2019 the Texas Supreme Court denied Applicant's petition. *See App. B.* Applicant's motion for rehearing was denied on Friday, August 23, 2019. *See App. C.* The fundamental rights of parents has repeatedly been upheld by the United States Supreme Court, however THHSC actions below are in contravention to the Constitution, Federal

Regulations, THHSC's own polices, and the related governing order.

### JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1257.

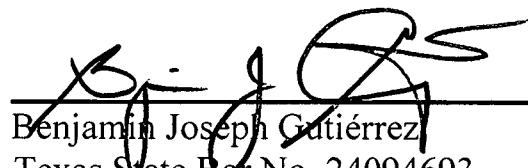
### REASONS EXTENSION IS JUSTIFIED

1. This instrument is the first filing Applicant has ever filed in the United States Supreme Court; accordingly Applicant is not familiar with this Court's rules but will strive his best to meet all the requirements and demands if an extensions is granted and he is privileged with appearing before the United States Supreme Court.
2. Applicant is a solo-practicing Attorney of appeals and trials in various areas of law and assists other counsel in matters including jury trials. Applicant has no staff and attends many Continued Legal Education Courses regularly during late summer into the fall.
3. Additionally, the requested extension is necessary to accommodate pressing deadlines in Applicant's other matters in his legal practice that includes pending appeals.

## CONCLUSION

For the foregoing reasons, Applicant respectfully request that this Court grant this application for an extension of time to file a petition for writ of certiorari.

Respectfully submitted,



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