

No. \_\_\_\_\_

# In the Supreme Court of the United States

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**MATEO CORTEZ, INDIVIDUALLY AND AS REPRESENTATIVE OF THE ESTATE OF  
DEBORAH CORTEZ, WILLIAM J. BROTHERTON, AND BROTHERTON LAW FIRM**

*Applicants/Petitioners,*

**v.**

**SANDRA FLESHER BROWN, CHARLOTTE FLESHER ASH, CHARLENE FLESHER  
JOHNSTON, CONNIE LOU KEITH BARRY, RANDALL WAYNE DAVIS, VIRGINIA  
VILLERS, CHARLES ROBERTS, LISA A. SMITH, PATRICIA CHAPMAN, BETTY J.  
MARKS WEBB, JAMES BERL MARKS, LINDA MURRAY, ET AL.**

*Respondents.*

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## **APPLICATION FOR UNOPPOSED EXTENSION OF TIME TO FILE A PETITION FOR WRIT OF CERTIFICATION**

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To the Honorable Samuel A. Alito Jr., Associate Justice of the United States  
Supreme Court and Circuit Justice for the Fifth Circuit

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**COUNSEL FOR PETITIONERS**

**To the Honorable Samuel A. Alito, Jr., Associate Justice of the United States Supreme Court and Circuit Justice for the Fifth Circuit, which includes Texas:**

Applicants/Defendants, Mateo Cortez, Individually and as Representative of the Estate of Deborah Cortez, William J. Brotherton, and Brotherton Law Firm (“Applicants”) respectfully request an extension of time to file a petition for writ of certiorari. Sup. Ct. R. 13.5. The current deadline for Applicants to file their petition is Thursday, March 12, 2020, which is ninety (90) days from Friday, December 13, 2019, the date that the Texas Supreme Court denied Applicants’ motion for rehearing. For good cause set forth in this application, Applicants request that the deadline to file their petition be extended by thirty-two (32) days<sup>1</sup> so that the new deadline would be Monday, April 13, 2020. This application is being filed at least ten (10) days before the date the petition is due.

**BASIS FOR JURISDICTION**

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

**JUDGMENT SOUGHT TO BE REVIEWED**

The Supreme Court of Texas denied Applicants’ petition of review of the Third Court of Appeals in Austin, Texas judgment under Cause No. 03-17-00365-CV (See App. A), which affirmed the trial court’s judgment, and then the Texas high

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<sup>1</sup> A 30-day extension would end on Saturday, April 11, 2020; therefore, Applicants have requested an extension to the Monday following the 30-day extension, which increases the request to a 32-day extension.

court denied Applicants' motion for rehearing on Friday, December 13, 2019. See App. B.

### **BRIEF OVERVIEW OF CASE**

This litigation involves more than twenty individuals living in several different states, the trustee of a Florida or Texas trust, and a Texas professional corporation. The trustee of the William D. Short and Phyllis D. Short Revocable Living Trust Including the Credit Shelter Trust Created Therein, which now has over six million dollars (\$6,000,000.00) in it and has been brought in two states by the trustee. On one side of the case is the Estate of the sole beneficiary, heir, and child of William and Phyllis Short, Deborah Cortez, by Mateo Cortez, her husband and his attorneys. On the other side is Linda Murray, the trustee and one of the heirs as determined by the West Virginia court, and the other relatives of the Shorts found to be heirs in West Virginia.

The trustee first filed litigation in Texas in 2014, where the trustee invoked the *in rem* or *quasi in rem* jurisdiction of the Travis County probate court under the Texas Estates Code. Then, over a year later in 2015, the trustee turned around and filed suit in West Virginia asking for distribution of the trust, that was the same *res* that was already being controlled by the Texas probate court. The case has been contentious and was improperly ping-ponged from state to state. This case invoked the prior exclusion jurisdiction doctrine established by this Court in *Princess Lida*,

which would render the West Virginia court's orders void due to lack of jurisdiction and which would result in a different outcome in the Texas litigation.

### **JUSTIFICATION FOR EXTENSION OF TIME**

The parties are attempting to settle all the claims in this complex litigation in both states. Not only are there outstanding issues in Texas in a related case to the one that Applicants seek additional time to file a petition on herein, but there are also outstanding issues in the Estate of William D. Short, the Estate of Deborah Cortez, and Estate of Phyllis D. Short in Texas. In West Virginia, Connie Barry, one of the named heirs in West Virginia, is seeking to recover close to \$600,000.00 from the trust for her litigation costs in Texas and in West Virginia. A hearing is set to be heard on March 5, 2020, in West Virginia. Settlement is pending the outcome of this hearing. Since the hearing date is so close to the Applicants' deadline for filing their petition to this Court, Applicants request that the Court grant an extension to allow the parties time to either settle this case or proceed depending on the outcome of the March 5, 2020 hearing.

Applicants also request additional time because William J. Brotherton, who is one of the Applicants and the attorney presenting this motion, is dealing with his wife's critical illness. Mrs. Brotherton has been hospitalized for several weeks this year for complications arising from liver disease and renal failure. Mr. Brotherton or his daughter, Shawn Brotherton, who is the researching and briefing attorney in

this case, are necessarily focused on her care and needs. Shawn Brotherton is working diligently with opposing counsel to resolve all issues so petition to this Court will be unnecessary. Applicants nonetheless wish to preserve their right and opportunity to appeal to this Court should such diligent efforts fail.

### **CONCLUSION AND PRAYER**

For the foregoing reasons and good cause shown, Applicants respectfully request that this Court grant this unopposed application and an order be entered extending the time to file a petition for a writ of certiorari for thirty-two (32) days, up to and including Monday, April 13, 2020.

Dated: February 27, 2020

Respectfully submitted,

/s/William J. Brotherton

William J. Brotherton

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**ATTORNEYS FOR APPLICANTS**

## **RULE 29.6 STATEMENT**

In accordance with Supreme Court Rule 29.6, Applicants make the following disclosure:

There is no parent or publicly held company owning 10% or more of the William J. Brotherton, P.C.'s stock. Brotherton Law Firm is a d/b/a of William J. Brotherton, P.C., a Texas professional corporation.

Dated: February 27, 2020

Respectfully submitted,

/s/William J. Brotherton

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