

No. 22-5963

IN THE
SUPREME COURT OF THE UNITED STATES

Russell Spain PETITIONER
(Your Name)

VS.

Shenese Jones—RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR RE HEARING

Russell Spain
(Your Name)

2022 Pacific St Apt 3F
(Address)

Brooklyn NY 11233
(City, State, Zip Code)

347-793-8814
(Phone Number)

RECEIVED

FEB -7 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

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QUESTIONS PRESENTED

- 1- Do the lower court decisions have a long-term, detrimental effect on parties involved in this matter?
- 2- Does this petition for rehearing constitute matters of exceptional importance?

Question of exceptional importance:

First District has said that cases of exceptional importance include cases that 1) “may affect large numbers of persons” or 2) “interpret fundamental legal or constitutional rights. *Doe v. Dept. of Health & Rehab. Servs. (In re Interest of D.J.S.)*, 563 So. 2d 655, 657 n.2 (Fla. 1st DCA 1990) (citing 24 Idaho L. Rev. 255, 265 (1987-1988)).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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Temporary Order of Protection issued by Kings County Family Court

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Petition for Rehearing

Around or about the time that the Respondent was served with the Petition for Writ of Certiorari. The Respondent petitioned the lower court and was granted an order of protection against the Petitioner based off false allegations. This order of protection, issued by the same court whom the initial appeal was made (Kings County Family Court). Without due process, just cause or standing. Kings County Family Court has stripped the Petitioner of his parental rights.¹

This is the exact procedure in which the lower court ruled on the said custody order. As proven in the initial Writ of Certiorari, the Petitioner rights were blatantly violated to where he had to parent, as a second-class citizen. In present circumstances, the Petitioner also doesn't have the right to, at minimum, call the child in question without getting detained for up to seven years

If a scorn parent can make allegations without providing undeniable evidence that will strip a person of their parental rights. This nation is in jeopardy of being destroyed by the court system. This negates federal and local law.²

¹ APPX. 001a, APPX. 002a, APPX. 003a, APPX 004a, APPX. 005a, APPX. 006a, APPX. 007a, APPX. 008a

² 24 CFR § 180.535 - Protective orders, Family Court Act section 446, Family Court Act § 655(a).

An unrestricted parent that visits their child at the public school is not grounds to terminate their parental rights.³

As a caring parent, the Petitioner missed the child in question. Subsequently, there hasn't been a court that reviewed the facts of this case. The only way for the Petitioner was to see, embrace and let the child in question know that "daddy loves her," legally. Was to visit her at the school she attended.

On September 14, 2022, the Petitioner contacted the Domestic Violence Division of the 63rd police precinct to make an appointment. This is the police precinct in which the child in question school resides in. The Domestic Violence Officer searched their database to see if the Petitioner had any warrants or orders restraining me from visiting the child in question. There were none.

The DV officer informed the Petitioner to stand in front of the school and dial 911. And the police will come and escort the Petitioner inside the school. In which they did after they searched the database again. Once again, no restrictions for the Petitioner. Officer Cho talked to the Principal and Vice Principal. Whom agreed to bring the child in question to the lobby to see her father (Petitioner). The principal and vice principal contacted the Respondent who instructed them to prohibit the Petitioner from visiting the child in

³ 25 CFR § 11.1114 - Termination.

question. The Petitioner never saw the child in question. No one was threatened or in harm way. The Petitioner left the school and never returned.

The Board of Education and 14th amendment (Equal Protection Clause) of the U.S. constitution gives the Petitioner rights to visit the child in question at the school she attends. Nonetheless, Kings County Family Court has stripped the Petitioner of his God giving rights to be a father. Without probable cause or due process.

This sets a dangerous precedence where a scorn parent of a custody battle, can simply have the other parent rights revoked by making unproven, false and unsubstantiated allegations. Without supporting evidence, the Petitioner has been stripped of his rights as a father.

This is not the first occasion that the Respondent made false allegations against the Petitioner. Like the other order of protection filed against the Petitioner, without any proof, Kings County Family Court granted the order of protection against the Petitioner.⁴ The 2016 order of protection was withdrawn by the Respondent.⁵

The order of protections issued (unconstitutionally) states “I have not made any previous application to any court or judge for the relief requested in this

⁴ APPX. 009a, 010a

⁵ APPX. 011a

petition.”⁶ and “I have not filed a criminal complaint concerning these incidents.”⁷ The question is, why haven’t the Respondent file a criminal complaint? If the Petitioner has caused any form of harm, why the police was not involved?

According to the Board of Education, unless there is a court order in place (at the time the Petitioner visited the school), each parent has equal rights.

Rights of Non-Custodial Parents in the Family Educational Rights and Privacy Act of 1974. Which is the pamphlet that was developed by the Family Policy Compliance Office of the U.S. Department of Education. Section 99.4 gives an example of the rights of parents.⁸

An educational agency or institution shall give full rights under the Act to either parent, unless the agency or institution has been provided with evidence that there is a court order, State statute, or legally binding

⁶ APPX. 010a

⁷ APPX. 003a, 007a

⁸ Section 99.4 (Rights of Non-Custodial Parents in the Family Educational Rights and Privacy Act) means that, in the case of divorce or separation, a school district must provide access to both natural parents, custodial and non-custodial, unless there is a legally binding document that specifically removes that parent's FERPA rights. In this context, a legally binding document is a court order or other legal paper that prohibits access to education record, or removes the parent's rights to have knowledge about his or (cont.) her child's education. Custody or other residential arrangements for a child do not, by themselves, affect the FERPA rights of the child's parents. One can best understand the FERPA position on parents' rights by separating the concept of custody from the concept of rights that FERPA gives parents. Custody, as a legal concept, establishes where a child will live, and often, the duties of the person(s) with whom the child lives. The FERPA, on the other hand, simply establishes the parents' right of access to and control of education record related to the child.

document relating to such matters as divorce, separation, or custody, that specifically revokes these rights.

Where in this custody court order that “specifically” revokes Russell Spain rights to visit his offspring, at P.S. 222, on the day of question? This legal binding document came after the Respondent was served with the Writ of Certiorari.

There is no other means of access to the child in question, due to many obstacles put in place by the Respondent. Such as, constantly coming to the Petitioner’s residence with the police. Harassing phone calls and text messages while the Petitioner spend visitation with the child in question. Also, the Respondent would constantly move the child in question from institution to institution, with notifying the Petitioner. The Respondent has relocated the child in question from one address to another without (up to this day) notifying the Petitioner. The Petitioner was privy to the address of the child in question via the second judicial department, appellate division. In which the Petitioner filed an appeal to the family court order. This is the legal procedure to filing the initial writ of certiorari in this Court.

The Respondent alleged that the Petitioner “has not called, texted or communicated any other way besides continually filing motions in Family and the Appellate Courts.” Foremost, this is false. The Petitioner has

contacted the Respondent. Which is proven as an appendix (text messages) in the initial writ of certiorari. And the Petitioner was ignored.⁹

Conceivably, this was a tactic by the Respondent to undermine this Court as a contingency plan in case the writ of certiorari was granted. The Respondent waived her rights to response to the writ. In lieu of responding to the writ of certiorari.¹⁰ The Respondent filed a deceitful order of protection in the lower court. Contingent upon this Court granting the initial Writ of Certiorari. The Petitioner's parental rights would remain terminated. In other respects, this would set a precedence where any false statement would allow the lower court to terminate one's parental rights and undermine an appeal. In the recent order of protection that was granted. The respondent never mentioned that the custody order prohibits the petitioner from visiting the child in question at the school she attends.¹¹

Since there is a provision under the Family Court Act that allows a situation like this to terminate one's parental rights without adjudicating facts.¹² This is a total catastrophe. If this Honorable Court doesn't intervene. The "Nuclear Family," of this nation is in jeopardy.

⁹ APPX.012a

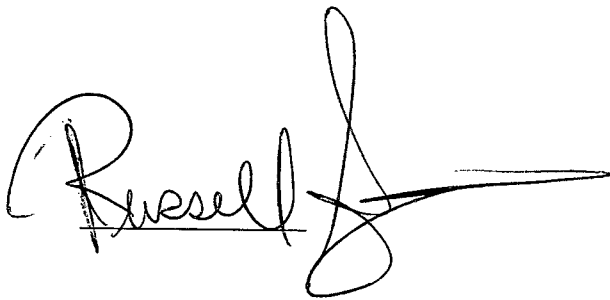
¹⁰ APPX. 013a

¹¹ APPX. 005a

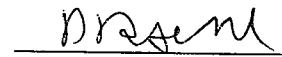
¹² Family Court Act 740 (b), Family Court Act 430 (b)

Conclusion

For the reasons set forth in this Petition, Russell Spain respectfully requests this Honorable Court grant rehearing and his Petition for a Writ of Certiorari. Please consider the proven facts.

A handwritten signature in black ink, appearing to read "Russell Spain", with a long horizontal flourish extending to the right.

Russell Spain


2/1/2023

Notary

PIYUSH B. SONI
Notary Public, State of New York
No. 01SO6038647
Qualified in Kings County
Commission Expires March 20, 2026

ORI No: NY023023J
Order No: 2023-000722
NYSID No: _____

At a term of the Family Court of the State of New York,
held in and for the County of Kings, at 330 Jay Street, Brooklyn, NY
11201, on January 12, 2023

PRESENT: Honorable Judith D. Waksberg

In the Matter of a FAMILY OFFENSE Proceeding

Shenese Jones (DOB: 07/06/1985),
Petitioner

- against -

Russell Spain (DOB: 01/02/1972),
Respondent

File # 232231
Docket # O-17847-22
Temporary Order of Protection

Ex Parte

NOTICE: YOUR FAILURE TO OBEY THIS ORDER MAY SUBJECT YOU TO MANDATORY ARREST AND CRIMINAL PROSECUTION, WHICH MAY RESULT IN YOUR INCARCERATION FOR UP TO SEVEN YEARS FOR CRIMINAL CONTEMPT, AND/OR MAY SUBJECT YOU TO FAMILY COURT PROSECUTION AND INCARCERATION FOR UP TO SIX MONTHS FOR CONTEMPT OF COURT. IF YOU FAIL TO APPEAR IN COURT WHEN YOU ARE REQUIRED TO DO SO, THIS ORDER MAY BE EXTENDED IN YOUR ABSENCE AND THEN CONTINUES IN EFFECT UNTIL A NEW DATE SET BY THE COURT.

THIS ORDER OF PROTECTION WILL REMAIN IN EFFECT EVEN IF THE PROTECTED PARTY HAS, OR CONSENTS TO HAVE, CONTACT OR COMMUNICATION WITH THE PARTY AGAINST WHOM THE ORDER IS ISSUED. THIS ORDER OF PROTECTION CAN ONLY BE MODIFIED OR TERMINATED BY THE COURT. THE PROTECTED PARTY CANNOT BE HELD TO VIOLATE THIS ORDER NOR BE ARRESTED FOR VIOLATING THIS ORDER.

A petition under Article 8 of the Family Court Act, having been filed on September 15, 2022 in this Court and good cause having been shown, and Russell Spain having been not present in Court.

NOW, THEREFORE, IT IS HEREBY ORDERED that Russell Spain (DOB:01/02/1972) observe the following conditions of behavior:

[01] Stay away from:

[A] [REDACTED] (DOB: 06/18/2014) and Shenese Jones (DOB: 07/06/1985);

[B] the home of [REDACTED] (DOB: 06/18/2014) and Shenese Jones (DOB: 07/06/1985);

[C] the school of [REDACTED] (DOB: 06/18/2014) and Shenese Jones (DOB: 07/06/1985);

[D] the business of Shenese Jones (DOB: 07/06/1985);

[E] the place of employment of Shenese Jones (DOB: 07/06/1985);

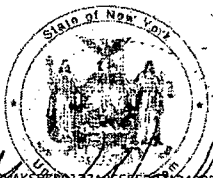
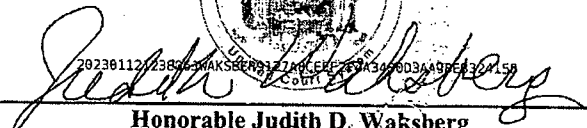
[14] Refrain from communication or any other contact by mail, telephone, e-mail, voice-mail or other electronic or any other means with [REDACTED] (DOB: 06/18/2014) and Shenese Jones (DOB: 07/06/1985);

[02] Refrain from assault, stalking, harassment, aggravated harassment, menacing, reckless endangerment, strangulation, criminal obstruction of breathing or circulation, disorderly conduct, criminal mischief, sexual abuse, sexual misconduct, forcible touching, intimidation, threats, identity theft, grand larceny, coercion, unlawful dissemination or publication of intimate image (s) or any criminal offense against [REDACTED] (DOB: 06/18/2014) and Shenese Jones (DOB: 07/06/1985);

It is further ordered that this temporary order of protection shall remain in force until and including March 08, 2023, but if you fail to appear in court on this date, the order may be extended and continue in effect until a new date set by the Court.

Dated: January 12, 2023

ENTER



20230112/23832 WAKSBERG JUDITH D. WAKSBERG
Honorable Judith D. Waksberg

PURSUANT TO SECTION 1113 OF THE FAMILY COURT ACT, AN APPEAL FROM THIS ORDER MUST BE TAKEN WITHIN 30 DAYS OF RECEIPT OF THE ORDER BY APPELLANT IN COURT, 35 DAYS FROM THE DATE OF MAILING OF THE ORDER TO APPELLANT BY THE CLERK OF COURT, OR 30 DAYS AFTER SERVICE BY A PARTY OR THE ATTORNEY FOR THE CHILD UPON THE APPELLANT, WHICHEVER IS EARLIEST.

The Family Court Act provides that presentation of a copy of this order of protection to any police officer or peace officer acting pursuant to his or her special duties authorizes, and sometimes requires such officer to arrest a person who is alleged to have violated its terms and to bring him or her before the court to face penalties authorized by law.

Federal law requires that this order is effective outside, as well as inside, New York State. It must be honored and enforced by state and tribal courts, including courts of a state, the District of Columbia, a commonwealth, territory or possession of the United States, if the person restrained by the order is an intimate partner of the protected party and has or will be afforded reasonable notice and opportunity to be heard in accordance with state law sufficient to protect due process rights (18 U.S.C §§ 2265, 2266).

It is a federal crime to:

- cross state lines to violate this order or to stalk, harass or commit domestic violence against an intimate partner or family member;
- buy, possess or transfer a handgun, rifle, shotgun or other firearm or ammunition while this Order remains in effect (Note: there is a limited exception for military or law enforcement officers but only while they are on duty) ; and
- buy, possess or transfer a handgun, rifle, shotgun or other firearm or ammunition after a conviction of a domestic violence-related crime involving the use or attempted use of physical force or a deadly weapon against an intimate partner or family member, even after this Order has expired (18 U.S.C. §§ 922(g)(8), 922(g)(9), 2261, 2261A, 2262).

Check Applicable Box(es):

- ☐ Party against whom order was issued was advised in Court of issuance and contents of Order
- ☐ Order personally served in Court upon party against whom order was issued
- ☒ Service directed by Police Service
- ☐ [Modifications or extensions only]: Order mailed on [specify date and to whom mailed]:
- ☐ Warrant issued for party against whom order was issued [specify date]: _____
- ☐ ADDITIONAL SERVICE INFORMATION [specify]: _____

**FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS**

In the Matter of a **Family Offense** Proceeding

File #: 232231

Docket #: O-17847-22

Shenese Jones,

Petitioner,

**FAMILY OFFENSE
PETITION**

- against -

Russell Spain,

Respondent.

TO THE FAMILY COURT:

The undersigned Petitioner respectfully states that:

I, Shenese Jones reside at¹ 3280 Nostrand Avenue, Apt. 514, Brooklyn, NY 11229.

The Respondent, Russell Spain resides at 2027 Pacific Street, Apt. 2F, Brooklyn, NY 11233.

The Respondent and I are related in the following way: I have a child-in-common with the Respondent.

The Respondent committed the following family offenses against me and/or my children which constitute attempted assault, assault in the second or third degree, aggravated harassment in the second degree, harassment in the first or second degree, disorderly conduct, menacing in the second or third degree, reckless endangerment, stalking, criminal mischief, sexual abuse in the second or third degree², sexual misconduct, forcible touching, strangulation, criminal obstruction of breathing or circulation, identity theft in 1st, 2nd, or 3rd degree, grand larceny in 3rd or 4th degree, coercion in 2nd degree [Penal Law § 135.60 (1),(2) or (3)], and unlawful dissemination or publication of intimate images.

Describe each incident: starting with the most recent incident: Unknown location of each incident; specify all injuries and if any weapons were used. at Unknown: As per petitioner, please see attached.

I have not filed a criminal complaint concerning these incidents.

¹if your health or safety or that of your child or children would be put at risk by disclosure of your address or other identifying information, you may apply to the Court for an address confidentiality order by submitting General Form GF-21, which is available on-line at www.nycourts.gov. See Family Court Act § 154-b.

²Where victim is incapable of consent for reason other than being under age 17 [Penal Law § 130.60(1)].

As of August 2017, a custody/visitation order has been in place. As of September 2018, Mr. Spain has not been involved in our child's life, on his own accord. He has not had any visitation, despite attempts to reach out to him. He has not called, texted, or communicated in any other way besides continuously filing motions in Family and the Appellate Courts. On Wednesday, Sept. 14 at approx. 12pm, Mr. Spain showed up to our child's school (PS 222 in Brooklyn), unannounced with 2 police officers demanding to see our child. The principal, who has a copy of the visitation order, did not release our child. It has been over 4 years since Mr. Spain has been active and to show up out of the blue is extremely scary and has me concerned for the safety and welfare of our child. I would like to ensure her protection from any harm.

The following children live with me [including children that are not mine]:

<u>Name</u>	<u>Date of Birth</u>	<u>Relationship to Me</u>	<u>Relationship to Respondent</u>
[REDACTED]	06/18/2014	Child	Child

The following court cases are pending between me and the Respondent: KCFC V-19264-15/22A R.O.P. 02.28.22 12:20PM Pt.. 60.

I have not made any previous application to any court or judge for the relief requested in this petition.

WHEREFORE, Petitioner respectfully requests this Court to:

- adjudge the Respondent to have committed the family offenses alleged;
- enter an order of protection, specifying conditions of behavior to be observed by the Respondent in accordance with Section 842 of the Family Court Act:
 - Respondent to refrain from menacing, harassing or assaulting Petitioner and Petitioner's child. Respondent not to contact Petitioner or Petitioner's child by phone calls e-mails, instant messaging, text messages, social media or through others. Respondent to stay away from Petitioner, Petitioner's child, Petitioner's home, Petitioner's child's home, Petitioner's job, Petitioner's school, Petitioner's pets, Petitioner's child's school or daycare. Respondent not to interfere with the care and custody of Petitioner's child. ;
- order such other and further relief as the Court deems just and proper.

Dated: September 15, 2022

Shenese Jones, Petitioner

**FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS**

In the Matter of a **Family Offense** Proceeding

File #: 232231

Docket #: O-24454-16

Shenese Jones,

Petitioner,

**FAMILY OFFENSE
PETITION**

- against -

Russell Spain,

Respondent.

TO THE FAMILY COURT:

The undersigned Petitioner respectfully states that:

I, Shenese Jones reside at¹ 2775 E. 12th Street, Apt. 222, Brooklyn, NY 11235.

The Respondent, Russell Spain resides at 2027 Pacific Street, Apt. 3F, Brooklyn, NY 11233.

The Respondent and I are related in the following way: I have a child-in-common with the Respondent.

The Respondent committed the following family offenses against me and/or my children which constitute attempted assault, assault in the second or third degree, aggravated harassment in the second degree, harassment in the first or second degree, disorderly conduct, menacing in the second or third degree, reckless endangerment, stalking, criminal mischief, sexual abuse in the second or third degree², sexual misconduct, forcible touching, strangulation, criminal obstruction of breathing or circulation, identity theft in 1st, 2nd, or 3rd degree, grand larceny in 3rd or 4th degree, and coercion in 2nd degree [Penal Law §135.60 (1),(2) or(3)].

Describe each incident: starting with the most recent incident: **September 27, 2016** location of each incident; specify all injuries and if any weapons were used. **At via social media: The petr. relates that the resp. posted an "ominous threat" on his Instagram page in which he stated that "He has given the courts, judge, [etc.] time to do what's right . . . and he will be handling things his way going forward."** Although the petr. is unclear as to what the aforementioned means, she is concerned that the resp. may take the child and not return her. The petr. states that during a dispute in July 2014, the resp. physically assaulted her; he grabbed her by the neck and slammed her against a wall. She states that as she attempted to get away from him, he grabbed her hair and proceeded to drag her across the floor. The petr. suffered bruises on the arm, and considerable pain in the head and body. She indicates that the resp. abuses alcohol. The petr. states that the resp. has made menacing gestures at her during prior disputes. She believes that the resp. is becoming increasingly aggressive, and has been behaving erratically.

¹If your health or safety or that of your child or children would be put at risk by disclosure of your address or other identifying information, you may apply to the Court for an address confidentiality order by submitting General Form GF-21, which is available on-line at www.nycourts.gov. See Family Court Act § 154-b.

²Where victim is incapable of consent for reason other than being under age 17 [Penal Law § 130.60(1)].

The petr. is afraid for the safety and well-being of her daughter.

I have not filed a criminal complaint concerning these incidents.

The following children live with me [including children that are not mine]:

<u>Name</u>	<u>Date of Birth</u>	<u>Relationship to Me</u>	<u>Relationship to Respondent</u>
[REDACTED]	06/18/2014	Child	Child

I have not made any previous application to any court or judge for the relief requested in this petition.

WHEREFORE, Petitioner respectfully requests this Court to:

- adjudge the Respondent to have committed the family offenses alleged;
- enter an order of protection, specifying conditions of behavior to be observed by the Respondent in accordance with Section 842 of the Family Court Act:
 - **ORDER THE RESP. NOT TO MENACE, HARASS OR ASSAULT HER OR HER CHILD. THE PETR. REQUESTS THAT THE RESP. NOT INTERFERE WITH THE CARE AND CUSTODY OF HER CHILD.;**
- enter a finding of aggravated circumstances;
- order such other and further relief as the Court deems just and proper.

Dated: September 29, 2016



Shenese Jones, Petitioner

2:35

◀ Phone

5G



+1 (215) 609-0936 >

Apr 25, 2021, 7:38 AM

Whenever you have free time. I wanna take you and ~~██████~~ to dinner. You can pick the spot just make sure they have oysters. If you're with it., don't tell ~~██████~~. I want it to be an unconscious surprise. Email me russssah@gmail.com

Apr 28, 2021, 10:01 PM

I'm free all next week after five. All day on the weekend. Pick the spot. Just make sure they have oysters

May 2, 2021, 11:13 AM



2:35

5G

Phone



+1 (215) 609-0936 >

May 2, 2021, 11:13 AM

Ok

I don't know if you're to proud or angry or frightened that you and ~~they~~ wouldn't dine with me. I want to see the both of you. Why now? Because I believe that we both are different people than we were back then. I will try to call you later

May 2, 2021, 9:06 PM

Since ur putting up resistance...what is ~~the~~ sizes

Jul 9 2021 5:14 PM



WAIVER

Supreme Court of the United States

No. 22-5963

Russell Spain
(Petitioner)

v.

Shenese Jones
(Respondent)

I DO NOT INTEND TO FILE A RESPONSE to the petition for a writ of certiorari unless one is requested by the Court.

Please check the appropriate box:

- ☒ I am filing this waiver on behalf of all respondents.
- ☐ I only represent some respondents. I am filing this waiver on behalf of the following respondent(s):

Please check the appropriate box:

- ☐ I am a member of the Bar of the Supreme Court of the United States. (Filing Instructions: File a signed Waiver in the Supreme Court Electronic Filing System. The system will prompt you to enter your appearance first.)
- ☒ I am not presently a member of the Bar of this Court. Should a response be requested, the response will be filed by a Bar member. (Filing Instructions: Mail the original signed form to: Supreme Court, Attn: Clerk's Office, 1 First Street, NE, Washington, D.C. 20543).

Signature

Date:

(Type or print) Name

☐ Mr.

☒ Ms.

☐ Mrs.

☐ Miss

Firm

Address

City & State

Zip

Phone

Email

A COPY OF THIS FORM MUST BE SENT TO PETITIONER'S COUNSEL OR TO PETITIONER IF PRO SE. PLEASE INDICATE BELOW THE NAME(S) OF THE RECIPIENT(S) OF A COPY OF THIS FORM. NO ADDITIONAL CERTIFICATE OF SERVICE OR COVER LETTER IS REQUIRED.

cc:

Russell Spain