

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

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IN THE  
**Supreme Court of the United States**

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CANADA,

*Applicant,*

v.

CYNTHIA L. MERLINI,

*Respondent.*

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

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To the Honorable Stephen Breyer  
Associate Justice of the United States Supreme Court  
and Circuit Justice for the First Circuit

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Pursuant to Rule 13.5 of the Rules of the Supreme Court of the United States, and for good cause set forth herein, applicant Canada respectfully requests a 45-day extension of time to file a petition for writ of certiorari up to and including March 6, 2020. Respondent Merlini's counsel has authorized the undersigned to inform the Court that this extension request is unopposed.

### **JUDGMENT FOR WHICH REVIEW IS SOUGHT**

The judgment for which review is sought is *Cynthia L. Merlini v. Canada*, No. 17-2211 (1st Cir. June 20, 2019) (App. A). The United States Court of Appeals for the First Circuit asserted jurisdiction pursuant to the "commercial activity" exception to the Foreign Sovereign Immunities Act of 1976 ("FSIA"), 28 U.S.C. § 1605(a)(2). Canada filed a timely petition for rehearing and rehearing en banc, which the Court of Appeals denied (by a 3-3 vote) on October 23, 2019 (App. B). By order dated November 1, 2019, the Court of Appeals stayed its mandate pending Canada's potential petition to this Court for a writ of certiorari.

### **JURISDICTION**

This Court's jurisdiction over a timely filed petition for certiorari would be invoked pursuant to 28 U.S.C. § 1254(1). Under this Court's Rules 13.1, 13.3, and 30.1, the deadline for Canada to file a petition for certiorari is January 21, 2020. This Application is filed more than ten (10) days in advance of that date, in accordance with this Court's Rule 13.5.

## REASONS JUSTIFYING AN EXTENSION OF TIME

In accordance with this Court's Rule 13.5, Canada states that the "specific reasons why an extension of time is justified" are as follows:

1. This case involves substantial questions under the FSIA. The First Circuit held that respondent Merlini, a former employee at the Canadian Consulate in Boston, could sue Canada under a Massachusetts workers compensation statute pursuant to the FSIA's "commercial activity" exception, 28 U.S.C. § 1605(a)(2), notwithstanding Canada's Government Employees Compensation Act, R.S.C. 1985, c. G-5, which creates an exclusive remedy under Canadian law for employees of the Canadian Government, including consular employees, who are injured at work. In their dissent from the denials of rehearing en banc, Judge Lynch and Chief Judge Howard stated as follows: "We urge the Supreme Court to grant review in this important case about the Foreign Sovereign Immunities Act (FSIA), 28 U.S.C. § 1602 et. seq. The opinion rests on what we view as significant misreadings of FSIA and of Supreme Court FSIA precedent." App. B. Judge Torruella similarly opined that this matter raises a "question of exceptional importance." *Id.*

2. Canada is examining diligently and in good faith whether to file a petition for certiorari. Like the U.S. Government, the Canadian Government considers the filing of a petition for certiorari with the Supreme Court of the United States a very serious matter, and multiple steps are required within the Canadian Government to authorize such a filing. Particularly in a case like this one, which involves complex issues and requires Canada to weigh potential precedential effects

on its embassy and consular facilities throughout the United States, and on other foreign sovereigns, that deliberative process requires substantial time.<sup>1</sup>

3. The current deadline of January 21, 2020, falls shortly after several official holidays observed by both the United States and Canada, which have extended the time needed to complete Canada's review process.

### **CONCLUSION**

For the foregoing reasons, Canada respectfully requests a 45-day extension, to March 6, 2020, of the time to file a petition for writ of certiorari in this case.

Respectfully submitted,  
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January 7, 2020

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<sup>1</sup> If Canada ultimately decides not to file a petition for certiorari, Canada will promptly notify the First Circuit of that decision in order to ensure that there is no unnecessary delay to issuance of that Court's mandate.

\*Not admitted in the District of Columbia.