

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

---

In the Supreme Court of the United States

---

NELIDA MARIBEL DIAZ JUAREZ AND NALBERTA BRAVO DIAZ,  
*Petitioners,*

v.

COMMONWEALTH OF KENTUCKY, CABINET OF HEALTH AND FAMILY SERVICES  
*Respondents.*

---

APPLICATION TO EXTEND TIME TO FILE PETITION FOR A WRIT OF  
CERTIORARI FROM SEPTEMBER 11, 2019 TO OCTOBER 11, 2019

---

To the Honorable Justice Sotomayor:

Pursuant to 28 U.S.C. § 2101(c) and Supreme Court Rules 13.5, 22, and 30, petitioners Nelida Maribel Diaz Juarez and Nalberta Bravo Diaz respectfully request that the time to file a petition for a writ of certiorari in this case be extended for 30 days to and including October 11, 2019. The Supreme Court of Kentucky rendered its opinion on June 13, 2019. *See App. A, infra.* Absent an extension of time, the petition would be due on September 11, 2019. Petitioners are filing this application more than ten days before that date. *See Sup. Ct. R. 13.5.* This Court has jurisdiction under 28 U.S.C. § 1257 to review this case.

**BACKGROUND**

This case presents an important question about federal immigration law that has divided state courts of last resort. Under federal law, an immigrant under the age of 21 can obtain special immigrant status if she is:

(J) an immigrant who is present in the United States—

(i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;

(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

(iii) in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status, except that—

(I) no juvenile court has jurisdiction to determine the custody status or placement of an alien in the custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction; and

(II) no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter.

8 U.S.C. § 1101(a)(27)(J); *see also* 8 C.F.R. § 204.11 (regulation implementing these requirements). Special immigrant juvenile status, also known as "SIJS," is a path to permanent legal residency.

This provision of federal law is unusual in that SIJS is granted by the federal government, but the required factual findings must first be made by state courts or administrative agencies.

In this case, petitioner Nalberta Bravo Diaz filed a dependency petition in Kentucky Family Court on behalf of petitioner Nelida Maribel Diaz Juarez, who at

the time was under the age of eighteen.\* In connection with the petition, Nalberta and Nelida sought the required SIJS findings. The Family Court determined that it lacked jurisdiction to make those findings, and the Court of Appeals reversed, holding that Family Courts are required to make such findings upon request.

In a divided decision, the Supreme Court of Kentucky reversed that decision. The court held that the federal statute does not require state courts to make SIJS findings, App. A, at 8, but that family courts in Kentucky are permitted to make such findings when they deem it to be in the best interests of a child, *id.* at 9-10. The court noted that its decision is consistent with recent decisions from several other states. *Id.* at 4-6. It acknowledged, however, that numerous other states require SIJS factfinding, either by statute, or by judicial precedent. *See id.* at 10 & n.4-5. Applying this rule, the court held that no SIJS findings were required in this case. *See id.* at 10.

Two justices dissented, explaining that “without the requisite SIJS findings by a Kentucky court, undocumented immigrant children in Kentucky will be unable to proceed with an application for SIJS and may possibly face deportation. It is not an exaggeration to say that that child’s immigration status hangs in the balance.” App. A, at 13 (Minton, C.J., dissenting) (quotation marks omitted). “To ensure compliance with the judiciary’s duty to dispose of juvenile cases according to the child’s best

---

\* Although Nelida is now older than eighteen, she has recommitted to the custody of the Kentucky Cabinet of Health and Family Services until the age of twenty-one and remains under the jurisdiction of the Family Court.

interest and to ensure that Kentucky does not shirk its duty in cooperative federalism,” the dissent would “require Kentucky’s courts always to engage in SIJS factfinding when an undocumented immigrant child is before the court in an action involving a custodial arrangement.” *Id.* at 17.

The Supreme Court of Kentucky rendered its opinion on June 13, 2019, and gave it a “final date” of July 9, 2019. App. A, at 1.

### **REASONS FOR GRANTING AN EXTENSION OF TIME**

The time to file a petition for a writ of certiorari should be extended for 30 days, to October 11, for several reasons.

First, petitioners only recently retained undersigned counsel for the filing of a petition for a writ of certiorari before this Court. Additional time is necessary for counsel to review the record in the case as well as the decisions of other state courts of last resort in order to prepare a clear and concise petition for the Court’s review.

Second, no prejudice would result from the extension. Whether the extension is granted or not, the petition will be considered during this Term—and, if the petition were granted, the case could be heard and decided during this Term. Moreover, this Application is being filed out of an abundance of caution based on the belief that the deadline is September 11, but it may already be later. As noted above, the Supreme Court of Kentucky gave its decision a “final date” of July 9, 2019. It is not clear whether the judgment was “entered” before that date. If the due date is already later, then clearly no prejudice would result from an extension.

Third, the press of other matters makes the submission of the petition difficult absent an extension. Petitioners' counsel is currently responsible for numerous pending matters in the courts of appeals and this Court. These include:

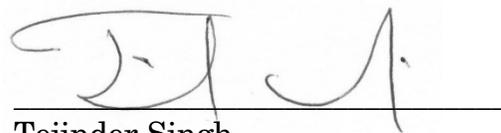
- Oral argument in *Shatsky v. Palestine Liberation Organization*, No. 17-7168 (D.C. Cir.), on September 9, 2019;
- A petition for a writ of certiorari due on September 27, 2019; and
- A certiorari-stage amicus brief due by September 30, 2019.

Finally, the petition is likely to be granted. This case presents an important question that affects tens of thousands of immigrants, and as the Supreme Court of Kentucky acknowledged, the various states' approaches to this federal legal issue diverge in outcome-determinative ways.

### CONCLUSION

For the foregoing reasons, the time to file a petition for a writ of certiorari should be extended for 30 days to and including October 11, 2019.

Respectfully submitted,



Tejinder Singh  
GOLDSTEIN & RUSSELL, P.C.  
7475 Wisconsin Ave.  
Suite 850  
Bethesda, MD 20814  
(202) 362-0636  
[tsingh@goldsteinrussell.com](mailto:tsingh@goldsteinrussell.com)

Dated: August 30, 2019