

No. _____

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2023

DMITRY NIKOLENKO, *Petitioner*,

v.

LUIZA NIKOLENKO, *Respondent*.

*APPLICATION FOR EXTENSION OF TIME TO FILE PETITION FOR WRIT OF
CERTIORARI TO THE SUPREME COURT OF TEXAS*

To the Honorable Samuel Alito, Associate Justice of the United States and
Circuit Justice for the Fifth Circuit:

1. Petitioner Dmitry Nikolenko respectfully prays for a 45-day extension of time to file his petition for certiorari in this Court to and including January 22, 2024¹. The final judgment of the Supreme Court of Texas, denying review of the judgment of the Texas Court of Appeal, was entered on September 8, 2023. Petitioner's time to petition for certiorari in this court expires December 7, 2023. This application is being filed more than 10 days before that date.

2. Copies of the judgment appealed from and the opinion below are attached hereto. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

¹ Forty-five days would end on January 21, 2024, but that date is a Sunday, so the next business day would be January 22, 2024. See Sup. Ct. R. 30.1.

3. As shown by the opinion below, this case concerns the exercise and upholding of jurisdiction by the state courts of Texas to dissolve the foreign-made marriage of Dmitry and Luiza Nikolenko, after a prior, complete, and valid dissolution of that marriage by a court of competent jurisdiction in a foreign nation, the Russian Federation. Throughout the proceedings, Petitioner/Applicant Dmitry Nikolenko challenged the validity under the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution, of a Texas court asserting subject matter jurisdiction over an already-dissolved foreign marriage between two aliens, Petitioner and Respondent. Petitioner, a non-resident alien with no continuing contacts to the United States, also challenges the validity under the Due Process Clause of the Fourteenth Amendment of Texas state court proceedings which deprived Dmitry Nikolenko of his liberty and property without due process, including the denial to Petitioner Dmitry Nikolenko of meaningful opportunity to participate personally in contest of the court proceedings; and his unfair treatment as a party litigant by the Texas court in violation of the Equal Protection Clause of the Fourteenth Amendment. The case also concerns violations of the Supremacy Clause in the obstruction of national immigration and visa policy and impairment of judicial comity with foreign nations.

4. Petitioner's counsel has identified five Questions to be Presented worthy of extensive research and argument to the Court. The case thus presents important questions under the Constitution of the United States which were determined adversely to Petitioner by the courts below.

5. The undersigned counsel has been retained as a new appellate attorney for purposes of appeal to this Court. Filing on December 7 would pose a challenge for undersigned counsel because of preexisting obligations to the federal judiciary and other courts. For example, the following matters before this Court and other federal and state appeals courts have competed for his time and attention:

- Preparation and filing of the petition for certiorari in this Court for *Mark Sami Ibrahim v. United States*, No. 23-459, docketed by the Clerk of the Court on November 1, 2023, and distributed for the Court's conference on December 1, 2023;
- Preparation and presentation of the two-hour TRT CLE course on the topic of federal criminal appeals, recorded on October 2, 2023;
- Preparation and assistance as retained appellate counsel in anticipation of attendance at trial in the United States District Court for the District of Columbia, originally scheduled for the week of November 6, 2023, in the case of *United States v. Christopher Warnagiris*, No. 21-CR-00382 (PLF), and now rescheduled to begin on January 22, 2024;
- Preparation and filing of the Appellant's opening brief and accompanying Record Excerpts, due December 6, 2023, in the Fifth Circuit case of *Cassandra Lea Sanchez v. Dolgencorp of Texas, Inc.*, No. 23-40536;

- Preparation for oral argument before a panel of the Fifth Circuit in the first full week of January 2024 (specific day yet to be determined) in the case of *United States v. Antonio Wiley*, No. 23-60068;
- Preparation of the appellee brief to be filed no later than December 28, 2023, in the Mississippi Supreme Court case of *Michelle Bagnaud v. Jamie A. Begnaud*, after filing of the Appellant brief expected on November 28, 2023, in case No. 2023-CA-00822;
- Preparation to assist, advise, and possibly attend at a sentencing hearing to be scheduled sometime in January 2024 in the case of *United States v. Francisco Javier Pineda*, No. 4:21-CR-299 (E.D. Tex.), in anticipation of the retained appeal from the judgment and conviction to the U.S. Court of Appeals for the Fifth Circuit; and
- Other family and business matters that counsel must address.

Counsel will require additional time to familiarize himself with the Texas divorce court record (including exhibits and transcripts of testimony) and to perform the necessary legal research so that the questions may properly framed and argued to this Court.

6. This is the first Application to the Court by counsel for extension of time to file in this case. Counsel for the Respondent in the Texas appellate courts has been informed of this Application, and has responded that they no longer represent Respondent Luiza Nikolenko, and they cannot therefore speak to the request for extension of time. Accordingly, this Application is being served on Ms. Nikolenko, and

any extension of time will also afford her added time to seek appellate representation before the Court.

Wherefore, Petitioner/Applicant Dmitry Nikolenko respectfully requests that an order be entered extending his time to petition for certiorari to and including January 22, 2024.

Respectfully submitted,

/s/ Theodore M. Cooperstein
Theodore M. Cooperstein
CLOUTHIER COOPERSTEIN PLLC
1020 Highland Colony Parkway,
Suite 803
Ridgeland, MS 39157
Tel.: (601) 397-2471
Fax: (769) 468-2468
Ted @msappellatelawyers.com

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