

No. 25A-_____

IN THE
SUPREME COURT OF THE UNITED STATES

ISABEL TZUNUX-ZACARIAS

Petitioner

v.

COMMONWEALTH OF KENTUCKY

Respondent

**APPLICATION TO THE HONORABLE JUSTICE BRETT M. KAVANAUGH
FOR A SIXTY (60) DAY EXTENSION OF TIME TO FILE A PETITION FOR
A WRIT OF CERTIORARI TO THE KENTUCKY SUPREME COURT**

To the Honorable Justice Brett M. Kavanaugh, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Sixth Circuit, Greetings:

Pursuant to Supreme Court Rules 13.5 and 30.3, Petitioner respectfully requests that this Court grant him a sixty (60) day extension, to and including August 16, 2026 in which to file a Petition for Certiorari from a decision of the Kentucky Supreme Court. The Petition for Certiorari is presently due to be filed on June 17, 2026, and this application is being filed outside of the 10-day window required by Rules 13.5 and 30.3. As noted below, good cause exists for granting the extension.

Background: The Petitioner, Isabel Tzunux-Zacarias (Tzunux) was convicted of rape, kidnapping, and burglary in Hardin County, Kentucky, and appealed as of right. Tzunux did not deny having sex with the victim, but claimed that the circumstances were consensual bondage. DNA results from an unidentified male

were found in the rape kit, and Tzunux argued that this person was the source of the injuries. The victim did not testify.

On appeal, Tzunux raised two issues relevant to this application. First, he challenged the Commonwealth being able to offer the testimony from the investigating officer that Tzunux admitted that the victim did not consent to the sex act. Tzunux is a native of Guatemala who is not a proficient English speaker, and he began many of his responses to questions from police with “yeah”, before providing the requested information. The officer had asked some version of the question of whether the victim had consented, and each time he had responded that Mario, who is his brother and co-defendant, had told him that the alleged victim would consent. The last time the officer asked, Tzunux responded “Yeah, so I told Mario –“ before being interrupted. It was the “yeah” portion of that statement which was the basis for the officer’s testimony. Counsel was allowed to ask the officer questions about the statement but could not play the full statement for the jury due to *Bruton* restrictions. The Kentucky Supreme Court rejected Tzunux’s argument, finding that because the statements “were susceptible of the meaning testified to by Detective Burris at trial and because [Tzunux] had an opportunity to cross-examine Detective Burris regarding that interpretation, there was no error in the trial court’s admission of that testimony.” *Tzunux-Zacarias v. Commonwealth*, 2023-SC-0253-MR, October 23, 2025 Slip Op., (“Slip Op.”) attached, pg. 17.

The other issue is that Spanish language text messages between Tzunux and his brother and co-defendant were translated by a local police officer. The officer did

not testify, and the officer who did testify acknowledged not speaking or understanding Spanish. Tzunux objected on several grounds, including that the translations were testimonial statements from the officer and therefore subject to confrontation under *Crawford v. Washington*, 541 U.S. 36 (2004). The majority opinion disagreed, finding that the translations were a mere “language conduit” and therefore were not separate statements, subject to hearsay and confrontation rules. Slip Op., pg. 23. The concurring opinion noted “ongoing split of authority among the federal circuit courts regarding the continuing validity of the language-conduit theory for the purpose of Confrontation Clause analysis in the wake of *Crawford*”, *supra*, and found that in the context of an out of court translation the language conduit theory should not apply. Slip Op., pg. 50 n. 1.

The Kentucky Supreme Court’s opinion was issued on October 23, 2025. Tzunux timely filed a petition for rehearing, and on March 19, 2026, the Kentucky Supreme Court denied that petition in a summary order. Copies of both are attached. In accordance with this Court’s rules, the Petition for Certiorari is presently due on June 17, 2026.

Jurisdiction: This Court has jurisdiction under 28 U.S.C. § 1257(a).

Issues to be Presented: This case presents the following important questions for review:

First, this case presents the question reserved in *Samia v. United States*, 599 U.S. 635, 641, n. 1. (2023), i.e., whether the state violates a defendant’s rights to due process, fundamental fairness, and a jury trial, when, in order to comply with *Bruton*

v. United States, 391 U.S. 123 (1968), the state rewrites the defendant's statement to be a confession to the crime, when the full text of the statement reflects that the defendant was talking with the co-defendant about the issue and believed the opposite was true.

Second, this case will ask whether out of court translations by a law enforcement officer are testimonial statements subject to *Crawford v. Washington*, 541 U.S. 36 (2004), as courts following *United States v. Charles*, 722 F.3d 1319 (11th Cir. 2013) have held, or whether the translation is not a separate statement but a mere "language conduit", as courts following *United States v. Nazemian*, 948 F.2d 522 (9th Cir. 1991), including the Kentucky Supreme Court, have held.

Extension: The undersigned certifies that he is not seeking this extension for hindrance or delay, but to ensure that the issues are properly presented to the Court. Between the time the Kentucky Supreme Court denied rehearing and the present, undersigned counsel has filed 14 major pleadings (principal briefs, reply briefs, motions for discretionary review, and the like). Undersigned counsel has filed two principal briefs in the Kentucky appellate courts in the 30 days before this extension is filed, and completed a third that is awaiting client contact before it can be filed. He is also required by his employer to attend an out-of-town CLE conference from June 8-10, where he is giving two presentations. This petition is presently due one week after last day of that conference. Due to his substantial workload and other responsibilities, counsel will not be able to timely complete the petition for certiorari in the time allotted.

The undersigned believes that a sixty (60) day extension of time is needed to ensure that the issues are properly framed and presented for this Court's review. Accordingly, for the reasons expressed above, Petitioner respectfully requests that this Court grant him a sixty (60) day extension, to and including August 16, 2026 in which to file the Petition for Certiorari.

Respectfully submitted,
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