

No. 26A-_____

IN THE
SUPREME COURT OF THE UNITED STATES

MARIO TZUNUX-ZACARIAS

Applicant/Petitioner

v.

COMMONWEALTH OF KENTUCKY

Respondent

**Application to the Honorable Justice Brett M. Kavanaugh,
as circuit justice, for an 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.

Under Supreme Court Rules 13.5 and 30.3, Petitioner Mario Tzunux-Zacarias requests that this Court grant him a sixty (60) day extension of time from June 17, 2026, through August 16, 2026, in which to file a Petition for Certiorari to the Supreme Court of Kentucky. Counsel for Respondent Commonwealth of Kentucky, upon inquiry from undersigned counsel, does not oppose this request for an extension of time and authorized undersigned counsel to inform this Court.

On October 23, 2025, the Kentucky Supreme issued its direct appeal opinion, and subsequently denied a petition for rehearing on March 19, 2026 (both rulings are

attached). That makes the Petition for a Writ of Certiorari due on June 17, 2026, but an extension of time through August 16, 2026, is necessary to adequately present the certiorari worthy issue for which this Court has jurisdiction under 28 U.S.C. §1257(a).

The Petition will raise a substantial question of law that regularly occurs and warrants the Court's resolution or at least guidance, particularly since three Kentucky Supreme Court Justices noted, in its opinion in *Tzunux-Zacarias*' appeal, "the absence of definitive guidance by the Supreme Court [of the United States]" and "the ongoing split of authority among the federal circuit courts regarding the continuing validity of the language-conduit theory for the purpose of the Confrontation Clause in the wake of *Crawford v. Washington*, 541 U.S. 36 (2004)." *Tzunux-Zacarias v. Commonwealth*, 2025 WL 2999465, *20 n.7 (Ky.) (Nickell, J., joined by Conley and Keller, JJ., concurring in result only).

Specifically, through a Petition for a Writ of Certiorari, *Tzunux-Zacarias* will ask the Court to resolve whether out of court translations fall within the scope of the Sixth Amendment Confrontation Clause and *Crawford* and are therefore excluded at trial if the translator is not subject to cross-examination or are out of court translations exempt from the Confrontation Clause under a language conduit theory. As three of the seven justices of the Kentucky Supreme Court noted, both the federal courts of appeals and the state high courts are significantly, and hopelessly, split on this issue (often with the matter being decided by a bare majority of an appellate court), *id.*, rendering the Court's guidance, clarity, and resolution immensely valuable on an issue that will otherwise continue to occur with regularity and no realistic possibility that the lower courts will resolve the matter on its own in a

consistent way by which the outcome does not turn on which jurisdiction the case was tried. Under the criminal justice system in this country and our Constitution, how a constitutional amendment applies should never depend on a person's location. It should be universally applied in the same manner. But that will occur only if the Court grants certiorari and resolves the issue one way or the other, as three members of the Kentucky Supreme Court at least hinted this Court should do. *Id.*

To adequately develop this in a manner that fully presents the split of authority on this matter, the prevalence of this issue, why, consistent with S. Ct. R. 10, the issue is worthy of review now, and why this case is the appropriate vehicle to resolve the squarely addressed issue with none of the procedural hurdles we often see in cases, an extension of time of sixty days is reasonably necessary.

Counsel of Record Barron, who specializes in death penalty and federal habeas litigation, recently agreed to get involved in this case because of his nearly two decades of practice before the Court and Tzunux-Zacarias's state-court attorney neither being admitted to practice before the Court nor having any experience with Supreme Court practice and litigation Barron is an adjunct professor of law who recently had to grade law school final exams recently and represents as lead counsel twelve of the twenty-four individuals serving a death sentence in Kentucky. In addition to recent medical issues, in the month of May alone, he filed ten pleadings in death penalty cases. He also had a lengthy court proceeding in a capital case on June 1, 2026, and two pleadings due in two separate capital federal habeas cases that day. Additionally, he has objections to a magistrate judge's report and recommendation due on June 10, 2026, a significant discovery deadline in a capital

case only ten days later, additional capital federal habeas filings due in July, and two capital habeas Petitions for a Writ of Certiorari due shortly thereafter. To give the Petition here the adequate attention it deserves and that the Court expects, a sixty-day extension of time is necessary.

Associate counsel Karem represented Tzunux-Zacarias in state court, but she lacks the admission and experience before the Court to handle the Petition by herself. Her knowledge of the case, though, is important to the drafting and presentation of the Petition. Unfortunately, to this point, she has been unable to dedicate adequate time to working on a Petition for a Writ of Certiorari. That is mainly because she had to conduct a youthful offender resentencing hearing on June 2, 2026, submitted related filings May 27, 2026, conducted additional youthful offender resentencing hearings on April 17, 2026, and May 18, 2026, with related appearances on March 23, 2026, and filed a state habeas petition on May 21, 2026.

All of this prevented her from dedicating time to working on a Petition for a Writ of Certiorari in the interim and from reaching out earlier for assistance with a Petition for a Writ of Certiorari. And, even if she had time earlier or even now to work on the Petition, she is not currently admitted before the Court and thus could not file the Petition and lacks the experience to develop and present the important question presented here that cries out for the Court's resolution. That is why she reached out to undersigned counsel Barron who is currently familiarizing himself with the case for which he has had no previous involvement and knowledge. Because of his schedule and because of the time he needs to familiarize himself with the case in between the deadlines he has in state and federal court in capital cases, the requested extension

of time is necessary.

For these reasons, an extension of time of sixty days, to and including, August 16, 2026, is necessary, and thus requested, to adequately develop and prepare a Petition for a Writ of Certiorari on the important issue described herein.

Respectfully submitted,

/s/ David M. Barron

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June 4, 2026