

No. 23A___

IN THE
Supreme Court of the United States

THE ESTATE OF ISABELLA “BELLA” HERNDON,
JOHN HERNDON, J.H, a minor, T.H., a minor,

Petitioners,

v.

NETFLIX, INC.,

Respondent.

APPLICATION TO EXTEND THE TIME TO FILE A PETITION FOR WRIT
OF CERTIORARI FROM AUGUST 15, 2024, TO OCTOBER 14, 2024

**To the Honorable Elena Kagan,
Circuit Justice for the Ninth Circuit:**

Pursuant to 28 U.S.C. § 2101(c) and to Supreme Court Rules 13.5, 22, and 30.3, Petitioners—the Estate of Isabella “Bella” Herndon, John Herndon, J.H., and T.H.—respectfully request that the time to file a petition for a writ of certiorari be extended 60 days, up to and including October 14, 2024.

The U.S. Court of Appeals for the Ninth Circuit issued its opinion on February 27, 2024. App.A, *infra*. It then denied rehearing on May 17. App.C, *infra*. Without an extension, the cert petition is due August 15. This Application is being filed at least 10 days prior. *See* Sup. Ct. R. 13.5. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254. For the reasons detailed herein, the timeframe to submit a petition should be extended by 60 days.

Procedural Background

1. Petitioners filed suit in California Superior Court to seek redress for the tortious death of their daughter and sister, Bella Herndon, a fifteen-year-old girl. They filed suit, on behalf of themselves and others similarly situated, alleging claims for wrongful death, for the failure to adequately warn, and for negligence. Respondent Netflix, Inc., removed the action to federal court. Respondent asserted jurisdiction under the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d). Petitioners filed a motion to remand, challenging CAFA jurisdiction. Specifically, Petitioners are all California citizens and Respondent concedes that it too is a California citizen. Accordingly, Petitioners sought remand on the basis that there was no minimal diversity of citizenship as required by both the jurisdictional statutes and the U.S. Constitution.

2. The District Court denied remand. App.B, *infra*. Relying exclusively on Circuit precedent that held in favor of federal CAFA jurisdiction where the minimal diversity of citizenship was apparent *on the face of the complaint as to named parties in the action*, the District Court purported to exercise jurisdiction. App.B.8 (relying exclusively upon *Ehrman v. Cox Communs., Inc.*, 932 F.3d 1223, 1227-1228 (9th Cir. 2019)). Even though no diverse party was ever identified, and even though no diverse party ever joined in the action, the District Court proceeded to address the claims on the merits. Then, the District Court dismissed the action and Petitioners timely appealed to the Ninth Circuit.

3. The Court of Appeals affirmed, without ever addressing jurisdiction. App.A, *infra*. But see, e.g., *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316, 324 (2008) (“[W]e bear an independent obligation to assure ourselves that jurisdiction is proper before proceeding to the merits.”); *Herklotz v. Parkinson*, 848 F.3d 894, 897 (9th Cir. 2017) (“This Court has an independent obligation to assess both its own and the district court’s jurisdiction.”). There was still no identification of a party of diverse citizenship. There was still no identification of what that diverse state of citizenship was. There was still no indication how such a person had been made party to the civil action.

4. Thus, like the District Court, the Ninth Circuit purported to exercise *diversity* jurisdiction without identifying any *diversity* of citizenship. The other Courts of Appeals do the opposite. For example, in the CAFA context, the Seventh Circuit has repeatedly required the party invoking federal jurisdiction to *identify* the diverse party, their name, and their citizenship. See, e.g., *Dancel v. Groupon, Inc.*, 940 F.3d 381, 385-386 (7th Cir. 2019) (“Failure to identify a specific party from a diverse state fails to meet CAFA’s minimal diversity requirement.”); *Toulon v. Cont’l Cas. Co.*, 877 F.3d 725, 733 (7th Cir. 2017) (requiring party invoking jurisdiction to “identify the name and state of citizenship”).

5. In this sense, there’s a Circuit conflict on what CAFA—and, more fundamentally, what Article III—requires with respect to diversity. The Seventh Circuit requires what seems to be plainly true: invoking *diversity* jurisdiction requires identifying the *diversity*.

6. Petitioners sought rehearing, emphasizing that there's still been no allegation or evidence identifying a diverse person by name and by their place of citizenship—to no avail. App.C, *infra*. Here, a grieving California family sued a California corporation in California state court on California claims. Despite the family's repeated inquiries, no one has ever answered their basic questions: Who is the diverse person? Where are they from? How were they party to the case? Petitioners were ripped from their forum of choice and no minimally diverse person has ever been identified. No diverse state of citizenship has ever been identified. No other person has ever been brought into civil action.

7. Petitioners intend to petition this Honorable Court for review of the lower courts' jurisdiction.

Reasons for Granting an Extension of Time

8. Several reasons establish good cause and justify an extension here: **(1)** heavy demands upon Petitioners' nonprofit counsel; **(2)** health issues; **(3)** the desire to find additional counsel to collaborate in the drafting and submission of the petition; **(4)** the fair prospect of a cert grant in light of Circuit conflict; and **(5)** the deep importance of the issues.

9. As an initial matter, the 90-day period leading up to the petition deadline to file a petition for a writ of certiorari has been extraordinarily busy for Petitioners' nonprofit counsel. This much-heavier-than-usual press of business has included, *inter alia*, a whole slew of appellate briefs, oral arguments, and novel, difficult, and unexpected filings.

10. Second, and beyond the intense demands made upon the Petitioners' counsel, they have also had unanticipated personal health disruptions during the pertinent period. This unexpected illness of counsel proved highly disruptive during the 90-day period. These health issues further establish good cause and justify the extension.

11. Third, Petitioners' nonprofit counsel would like to find additional counsel with whom to collaborate on the cert petition. The 60-day extension of time would permit Petitioners' present counsel to obtain a fresh set of eyes and new perspectives.

12. Furthermore, there's a fair prospect that this Court would grant certiorari, given the Circuit conflict.

13. A cert petition is a substantial undertaking and Petitioners' counsel request the 60-day extension of time to give the petition the full time and attention it deserves.

14. Finally, these jurisdictional issues are of immense importance. Resolution of a Circuit split about the CAFA's requirements for minimal diversity is important. Moreover, the Ninth Circuit's interpretation of CAFA to permit jurisdiction absent the identification of any minimally diverse party has significant Constitutional implications. *See* U.S. Cons. art. III, § 2, cl. 1 ("between Citizens of different States"); *Home Depot U.S.A., Inc. v. Jackson*, 587 U.S. 435, 463 (2019) ("Section 1453 implicitly limits removal to class actions where there is minimal diversity, thus satisfying Article III.").

15. The issue is certainly of immense importance to the Herndons. The Herndon family lost their daughter and sister—and they should be entitled to know the basis for the District Court’s and Ninth Circuit’s belief that they could legitimately exercise diversity jurisdiction in a dispute between the Herndons (a California family) and Respondent (a California company) on California claims—without any non-California person ever being identified and without clarification how such person is part of the civil action.

Conclusion

For the foregoing reasons, the deadline to file a cert petition should be extended by 60 days, to October 14, 2024.

Respectfully submitted,

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