

In the Supreme Court of the United States

B.S.,

Petitioner,

v.

D.S.,

Respondent.

**APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO
PETITION FOR A WRIT OF CERTIORARI TO THE
CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT, DIVISION ONE**

Application to the Honorable Elena Kagan, as Circuit Justice for the Ninth
Circuit, California

Pursuant to Supreme Court Rule 13.5, Applicant B.S. requests a forty-day extension of time, to and including August 26, 2024,¹ within which to file a petition for a writ of certiorari.

1. The decision below is *D.S. v. B.S.*, California Court of Appeal case no. A167778 and California Supreme Court No. S283965. The California Court of Appeal issued its opinion on January 18, 2024 (App. A) and the California Supreme Court issued its denial of petition for review on April 17, 2024 (App. B). Unless extended, Applicant's time to seek certiorari in this Court expires July 26, 2024. Applicant is filing this application at least ten

¹ The forty-day mark falls on Sunday, August 25; August 26 is the next business day.

days before that date. S. Ct. R. 13.5. This Court's jurisdiction would be invoked under 28 U.S.C. § 1257(a).

2. Applicant and respondent are engaged in divorce proceedings with child custody disputes. Applicant is the subject of a Domestic Violence Protection Order (DVRO) for objectively non-violent behavior. A DVRO in California may be obtained by a showing of only a preponderance of the evidence--that is, only slightly greater than 50/50. *Hatley v. Southard*, 94 Cal. App. 5th 579, 592 (2023); *In re Marriage of Davila*, 29 Cal. App. 5th 220, 226 (2018). This is the current state of the law even though the DVRO is recognized to strip respondents of constitutional rights and despite the recent amendment of the California Domestic Violence Prevention Act (DVPA) to ambiguously include "conduct that, based on the totality of the circumstances, destroys the mental or emotional calm of the other party." Cal. Family Code § 6320(c); *Parris J. v. Christopher U.*, 96 Cal. App. 5th 108, 119 (2023). That is to say, non-violent conduct.

3. Good cause exists for a forty-day extension within which to file a petition.

a. Applicant intends to raise with this Court due process questions both in using a preponderance of evidence standard to strip a DVRO subject of constitutional rights as well as the application of the vague language found in § 6320(c) to do the same. This case involves clarifying the application of constitutional due process to DVROs, an important and recurring issue in California as well as in other states that have adopted similar statutory schemes. An extension of time will help to ensure that the petition thoroughly presents the important constitutional issues raised by the California courts and the DVPA.

b. An extension is further warranted because undersigned counsel has only recently been retained to represent Applicant in this matter. Applicant has been representing himself pro se in the lower courts. Additional time is necessary for counsel to become fully familiar with the issues, the decision below, the record, and the relevant case law.

c. The request is further justified by counsel's press of business on other pending matters and a preplanned week-long overseas trip. In addition to a full California state appellate practice, Counsel has a petition for writ of certiorari before this Court and three petitions for review before the California Supreme Court due by the end of the month and a complex motion and opening brief due in the Ninth Circuit by August.

The requested 40-day extension would cause no prejudice to Respondent, who remains "protected" by the DVRO in question pending appeal and review.

Respectfully submitted,

/s/ David Zarmi

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