

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

COUNTY OF GAGE, *et al.*,

Petitioners,

v.

JAMES DEAN, *et al.*,

Respondents.

CERTIFICATE OF SERVICE

**PETITIONERS' APPLICATION TO EXTEND THE TIME TO FILE PETITION FOR
WRIT OF CERTIORARI TO REVIEW JUDGMENT OF
THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT**

To the Honorable Justice Neil McGill Gorsuch of the United States Supreme Court:

Petitioners Gage County, et al., requests an extension of time to file their Petition for Writ of Certiorari from October 15, 2018 to November 15, 2018. The Petition for Rehearing En Banc was filed on June 25, 2018, and it was denied on July 17, 2018. The final judgment was entered on June 11, 2018, and after the Petition for Rehearing En Banc was denied, the Mandate issued on July 24, 2018. The Petition for Rehearing in the Eighth Circuit Court of Appeals was entered and the Petition for Writ of Certiorari will expire on October 15, 2018. This application is being filed 10 days prior to the due date.

Attached are copies of the opinion of the Eighth Circuit Court of Appeals which decided this case. This case was decided under 18 USC § 1983. Six Plaintiffs brought suit claiming their rights had been violated as a result of their arrest, prosecution and pleas, or in one case a trial, on first degree murder charges arising in Gage County, Nebraska. All their Fourth, Fifth and Sixth Amendment claims were dismissed prior to trial in the US District Court for Nebraska. This case was tried by the Plaintiffs on the theory that their substantive due process rights had been violated because the Defendants conducted a reckless investigation and because the Defendants manufactured evidence by taking statements from the Plaintiffs during the investigation of this matter. The only manufactured evidence was allegedly false statements made by the Plaintiffs in interrogations, interviews and depositions taken during the investigatory phase and prosecutorial phase of this case. The Eighth Circuit Court of Appeals found that Gage County was liable because Sheriff Dewitt was the chief policymaker for Gage County, even though Sheriff Dewitt was exonerated of all claims against him including conspiracy, manufacturing false evidence or conducting a reckless investigation. The Eighth Circuit described no policy, procedure or any

particular act that amount to Sheriff Dewitt establishing an official policy in violation of the Constitution. The Eighth Circuit found that Sheriff Dewitt “gave oxygen to the investigation by not stopping the investigation at an undefined time.” The judgment was based on substantive due process claim, essentially based on Fourth, Fifth and Sixth Amendment claims previously dismissed.

The Eighth Circuit is the only circuit recognizing a substantive due process claim under these circumstances.

An extension is necessary for two reasons. First, due to our limited experience in the Supreme Court, we are consulting with an experienced Supreme Court attorney who needs additional time to review the files in order to prepare our Petition for Certiorari properly under the rules.

Second, this is an extremely complex case in which there were two jury trials, four appeals and three requests for rehearing en banc to the Eighth Circuit Court of Appeals. Petitioners have worked diligently to prepare their Petition for Certiorari and have only recently learned of the difficulties to be encountered in the preparation required to complete this process.

WHEREFORE, the Petitioners request that Justice Gorsuch extend the time to file a Petition for a Writ of Certiorari thirty-one days to November 15, 2018.

Dated this 28th day of September, 2018.

Respectfully submitted,

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