

No. \_\_\_\_\_

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IN THE  
Supreme Court of the United States

JAMES THOMAS HURST, II,

*Petitioner,*

v.

JAMES CALDWELL  
CITY OF BURGIN, KENTUCKY  
JASON ELDERIDGE  
AND CITY OF HARRODSBURG, KENTUCKY,

*Respondents.*

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**On Petition for a Writ of Certiorari  
to the Supreme Court of the Commonwealth of Kentucky**

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**APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH  
TO FILE A PETITION FOR A WRIT OF CERTIORARI  
TO THE SUPREME COURT OF THE COMMONWEALTH OF KENTUCKY**

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April 27, 2018

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**TO: The Honorable Elena Kagan, Justice of the United States Supreme Court and  
Circuit Justice, Supreme Court of the Commonwealth of Kentucky**

Applicant James Thomas Hurst, II respectfully requests an extension until July 7, 2018 in which to file a petition for a writ of certiorari to review the judgment of the Supreme Court of the Commonwealth of Kentucky in this case.

The decision of the Supreme Court of Kentucky of which Applicant seeks review was entered on February 7, 2018. A petition for a writ of certiorari is currently due on May 8, 2018.

The requested deadline for Applicant Hurst's requested extension is within the period set forth in Rule 13.5 of the Rules of the Supreme Court of the United States and 28 U.S.C. § 2101(c).

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a). Copies of the opinions of the Supreme Court of Kentucky and the Kentucky Court of Appeals are attached to this application. A1-A13 and B1.

1. This case involves an important question as to the application of the Civil Rights Act, 42 USC § 1983, whether claims against a state actor for the affirmative abuse of power directed at a specific citizen and which causes direct nearly fatal injury is subject to the special relationship test set forth in this Court's decision in Deshaney v. Winnebago Cty. Dep't of Soc. Servs., 489 U.S. 189, 197, 109 S. Ct. 998, 1004 (1989).

2. Applicant Hurst was directly and maliciously targeted by James Caldwell, Chief of Police of the City of Burgin, Kentucky. On the night of November 30, 2007, James Caldwell acting in his official capacity reported over a dispatch that James Hurst had threatened a third-party with a weapon and fled the scene before the law enforcement arrived. Acting on this information an officer of another department, Jason Elderidge, aggressively pursued James Hurst and ultimately Mr. Hurst was shot through the lower abdomen and still has significant injuries. Caldwell's report was false. The alleged third-party victim testified that he never even saw James Hurst that night and also testified that there was bad blood between Caldwell and Hurst. Applicant Hurst filed a lawsuit alleging a state law assault, negligence and claims for deprivation of his federal constitutional rights under the color of state law as per 42 USC § 1983 against James Caldwell, City of Burgin, Kentucky, Jason Elderidge and City of Harrodsburg, Kentucky.

3. Applicant Hurst filed his lawsuit in Kentucky state court. Caldwell and City of Burgin opposed removal. After discovery Caldwell and Burgin then filed a motion to dismiss

Applicant Hurst's complaint based on the special relationship doctrine. Applicant Hurst opposed the motion to dismiss based, in large part, on this Court's decision Deshaney v. Winnebago Cty. Dep't of Soc. Servs., 489 U.S. 189, 197, 109 S. Ct. 998, 1004 (1989), both in that the special relationship doctrine does not apply to the affirmative acts of state actors and even if it did the "state created danger" exception would apply. The Circuit Court of Mercer County Kentucky dismissed the claims finding the special relationship doctrine applied and the "state created danger" exception did not apply because the third-party, Officer Eldridge, was another state actor not a private actor..

4. Applicant Hurst appealed the Circuit Court of Mercer County Kentucky's decision to the Court of Appeals of Kentucky. A1. On January 13, 2017, the Court of Appeals of Kentucky upheld the Mercer County Court's dismissal. *Id.* at A11-13.

5. Applicant Hurst moved for discretionary review of the Court of Appeals of Kentucky decision to the Supreme Court of Kentucky. On February 7, 2018, the Supreme Court of Kentucky denied discretionary review. B1.

6. The Kentucky Courts' decisions conflict with the holdings of this Court in Deshaney v. Winnebago Cty. Dep't of Soc. Servs., 489 U.S. 189, 197, 109 S. Ct. 998, 1004 (1989) as set forth above and at least one Court of Appeals - Rivas v. City of Passaic, 365 F.3d 181, 196 (3d Cir. 2004) that has found the state created danger applied even when the third-party actors were other government employees. .

7. Applicant Hurst respectfully requests an extension of time within which to file her petition for a writ of certiorari seeking review of the Supreme Court of Kentucky's ruling and submits that there is good cause for granting the request. While they have been working diligently towards the goal of a petition, the undersigned counsel is a solo practitioner and has

several previously schedule professional legal obligations that necessitate the requested extension.

## CONCLUSION

For the foregoing reasons, Applicant James Thomas Hurst, II respectfully requests the Court extend the deadline for him to file his petition for a writ of certiorari up to and including July 7, 2018.

Respectfully Submitted,

S/Andrew J. Horne

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Dated: April 27, 2018