

No. 18A-_____

IN THE
Supreme Court of the United States

MARIANO MOYA and LONNIE PETRY,

Applicants-Petitioners,

v.

ROBERT GARCIA, MARK CALDWELL, MARK GALLEGOS, and BOARD
OF COMMISSIONERS OF SANTA FE COUNTY,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

APPLICATION FOR A 45-DAY EXTENSION OF TIME WITHIN WHICH TO
FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE TENTH CIRCUIT

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**TO: The Honorable Justice Sonia Sotomayor, Justice of the United States
Supreme Court and Circuit Justice for the United States Court of
Appeals for the Tenth Circuit**

Petitioners Mariano Moya and Lonnie Petry respectfully request an
extension of 45 days from October 9, 2018, to and including November 23, 2018,

within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit in this case.

The petition for a writ of certiorari is currently due on October 9, 2018. The Tenth Circuit issued its initial opinion on April 24, 2018. Petitioners timely filed a petition for rehearing en banc and the Tenth Circuit denied the petition, and issued an amended opinion, on July 10, 2018. This application is being filed on September 24, 2018—more than 10 days before the petition for a writ of certiorari is due. *See* S. Ct. R. 13.5. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1). Copies of the Tenth Circuit’s order denying rehearing en banc and its amended opinion are attached to this application.

1. This case involves a circuit split on the issue of whether state jailers and their municipalities may be held liable under 42 U.S.C. § 1983 for detaining arrestees for extended periods of time before bringing them before a court for the purpose of a bail hearing. This question arises in another case that is currently before the Court on a petition for a writ of certiorari—*Choctaw County, Mississippi, et al. v. Jauch*, No. 18-7, filed on June 27, 2018. The Tenth Circuit in this case, contrary to the Fifth, Seventh, Eighth, and Ninth Circuits, held that liability could not attach on the grounds that the wardens had no role in causing the delays.

2. Petitioners were arrested on bench warrants after having failed to appear pursuant to criminal summonses issued by the First Judicial District Court in the County of Santa Fe, New Mexico. Petitioners Moya and Petry, respectively, were detained in jail for 63 days and 30 days before they were brought before the state district court for their arraignments and bail determinations. Upon their first appearance in court, Petitioners were ordered released from custody on \$5,000 signature bonds. After determining that over 150 individuals had similar experiences in Santa Fe County within the three-year period between September 2013 and September 2016, Petitioners brought a putative class action lawsuit against the relevant policymakers and the county. The district court dismissed on the grounds that Petitioners failed to state a valid claim.

3. The Tenth Circuit affirmed in a divided opinion. The majority assumed that Petitioners had adequately alleged a substantive and/or procedural due process violation. The majority, however, held that Petitioners failed to allege causation adequately. In the majority's determination, the "overdetentions were caused by the court's failure to schedule and conduct timely arraignments rather than a lapse by the sheriff or wardens." Op. 7. Judge McHugh lodged a dissent in which she expressed alarm that "the majority sanctions a system by which states could regularly violate detainees' constitutional rights by holding them indefinitely on account of untimely state courts, without any fear of their collaborating

municipalities or state officials ever incurring monetary penalties under § 1983.” Dissenting Op. 20. Judge McHugh understood that the majority’s opinion created a circuit split because it put the Tenth Circuit “at odds with every circuit to consider the apportionment of blame between state courts and state jailers where a § 1983 plaintiff alleges that he or she was overdetained.” *Id.* at 13; *see, e.g., Jauch v. Choctaw County*, 875 F.3d 425, 435 (5th Cir. 2017) (holding it “obvious” that jailer’s policy of waiting for court to act before bringing arrestee before a judicial officer “caused the due process violation Jauch complains of”), *petition for reh’g en banc denied*, 886 F.3d 534 (5th Cir. 2018), *petition for cert. filed*, No. 18-7 (June 27, 2018); *Armstrong v. Squadrito*, 152 F.3d 564, 578-79 (7th Cir. 1988) (“[J]ailers hold not only the keys to the jail cell, but also the knowledge of who sits in the jail and for how long they have sat there. They are the ones directly depriving detainees of liberty.”).

4. Petitioners timely petitioned for rehearing en banc, but were denied. Four judges (Chief Judge Tymkovich, along with Judges Lucero, McHugh, and Moritz), however, voted to rehear the case en banc.

5. Petitioners respectfully request a 45-day extension of time to file a petition for a writ of certiorari seeking review of the Tenth Circuit’s decision and submit that there is good cause for granting the request. The law firm under which Petitioners’ counsel was practicing dissolved shortly before the Tenth Circuit

denied rehearing en banc. Since then, undersigned counsel has had insufficient time to devote to a petition for a writ of certiorari as he has been operating as a solo practitioner and has been involved in several state and federal criminal cases at the district court level. In addition, Petitioners and counsel are discussing associating with another firm to help with this matter and to evaluate how the petition pending before the Court in *Choctaw County v. Jauch*, No 18-7, may impact this case.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that the Court extend the time within which to file a petition for a writ of certiorari in this matter to, and including, November 23, 2018.

Respectfully submitted,

/s/Todd A. Coberly

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CERTIFICATE OF SERVICE

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In compliance with Supreme Court Rules 29.3 and 29.5, I, Todd A. Coberly, counsel of record for the applicants-petitioners and a member of the Bar of this Court, hereby certify that on September 25, 2018, a copy of the accompanying Application for a 45-Day Extension of Time Within Which to File a Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit, filed in the above-captioned matter, was sent by commercial carrier and by electronic mail to:

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All parties required to be served have been served.

/s/ Todd A. Coberly
Todd A. Coberly