

# JONES DAY

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October 10, 2018

*VIA HAND DELIVERY*

The Honorable Scott S. Harris  
Clerk of the Court  
Supreme Court of the United States  
One First Street NE  
Washington, DC 20543

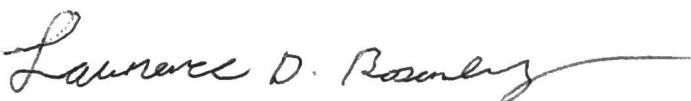
Re: *Banks v. Gore*

Dear Mr. Harris:

Pursuant to Supreme Court Rule 22.1, I kindly request that you transmit the enclosed Application for Extension of Time to File a Petition for Writ of Certiorari and the accompanying attachment to the Honorable John G. Roberts, Chief Justice of the Supreme Court of the United States and Circuit Justice for the Fourth Circuit. One original and two copies are enclosed.

Please contact me at (202) 879-7622 if you have any questions or concerns regarding this submission.

Sincerely,



Lawrence D. Rosenberg

Enclosures

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

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IN THE  
**Supreme Court of the United States**

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STEVEN LEON BANKS,

*Petitioner,*

v.

VINCENT MYRON GORE, Head-Physician; A. SMITH, Nurse; NURSE KEYS

*Respondents.*

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**On Petition for Writ of Certiorari To The Fourth Circuit**

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**APPLICATION FOR EXTENSION OF TIME  
TO FILE A PETITION FOR WRIT OF CERTIORARI**

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*Counsel for Petitioner Steven Leon Banks*

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To the Honorable John G. Roberts, Chief Justice of the Supreme Court of the United States and Circuit Justice for the Fourth Circuit:

1. Pursuant to Supreme Court Rules 13.5, 22, and 30, Petitioner Steven Leon Banks, through counsel, respectfully requests a sixty-day extension of time, up to and including Friday December 21, 2018, to file a petition for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit to review *Banks v. Gore*, No. 16-7512 (4th Cir.). The Fourth Circuit denied Mr. Banks' motion for rehearing and rehearing en banc on July 24, 2018. *See App.16* The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254. The time to file a petition for a writ of certiorari will otherwise expire on October 22, 2018. The application is timely because it has been filed on or before the first business day following the date ten days prior to the date on which the petition is otherwise due.

2. The decision of the Fourth Circuit presents two important questions that warrant this Court's review. The first is whether courts should liberally construe a *pro se* litigant's complaint. In this case, the record establishes that the *pro se* litigant, Mr. Banks, viewed his second amended complaint as a supplement to, and not replacement for, his original and first amended complaints. In particular, the second amended complaint did not repeat the most basic allegations from the original and first amended complaints. Nonetheless, the Fourth Circuit ruled that the second amended complaint "supplant[ed] all previous complaints," and the Fourth Circuit therefore "decline[d] to consider" "a host of issues" that were included only in the original and/or first amended complaint—but which were not

repeated in the second. App.4; App.5. The Fourth Circuit’s strict reading of a *pro se* litigant’s complaint is in tension with this Court’s guidance and directly conflicts with decisions of other regional courts of appeals. In *Erickson v. Pardus*, this Court explained that “a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.” 551 U.S. 89, 94 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)). Thus, the Seventh Circuit has ordered its courts to “view the *pro se* complaint with an understanding eye . . . to permit the adjudication of *pro se* claims on the merits.” *Donald v. Cook Cty. Sheriff’s Dep’t*, 95 F.3d 548, 555 (7th Cir. 1996). The Ninth Circuit has likewise explained that courts have “a duty to ensure that pro se litigants do not lose their right to a hearing on the merits of their claim due to ignorance of technical procedural requirements.” *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988). *Pro se* litigants file many complaints, and it is important for courts to know what standard to apply to them. This Court should resolve the circuit split on the issue.

3. The second important issue raised by the Fourth Circuit’s decision is whether a prison can immunize itself against Eighth-Amendment claims by contracting out the medical care of its prisoners. Here, the Fourth Circuit held that a doctor or nurse can only be liable if he or she is “personally involved” in violating the prisoner’s rights. App.11. Other regional circuits, however, have held that “the mere contracting of services with an independent contractor does not immunize the State from liability for damages in failing to provide a prisoner with the opportunity

for such treatment.” *Langford v. Norris*, 614 F.3d 445, 460 (8th Cir. 2010) (citations omitted). This Court’s decision in *West v. Atkins* strongly implies the same: “Contracting out prison medical care does not relieve the State of its constitutional duty to provide adequate medical treatment to those in its custody, and it does not deprive the State’s prisoners of the means to vindicate their Eighth Amendment rights.” 487 U.S. 42, 56 (1988). Given the number of prisoners in the United States, the question of who bears the burden of providing proper medical services is one that will come up frequently and warrants this Court’s review.

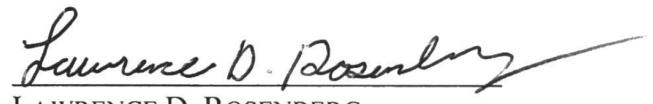
4. Good cause exists for this motion. Undersigned counsel, Lawrence D. Rosenberg of Jones Day, directs the West Virginia College of Law’s Supreme Court Clinic, which served as co-counsel in the Fourth Circuit. The Clinic strives to have students fully participate in its cases. Indeed, in this case, a Clinic student argued the appeal to the Fourth Circuit (under Mr. Rosenberg’s supervision). The current group of Clinic students started this past August and were not familiar with Mr. Banks’ case. They are working diligently to learn the nuances of the case, all while meeting their other obligations. In addition to their school work, the students are engaged in substantial Clinic work as well. The students have helped with briefing *Dawson v. Steager*, No. 17-419 (U.S.), where the Petitioner’s Brief was filed on August 28, 2018, and the Reply Brief will be due on November 15, 2018. In addition, along with Mr. Rosenberg, the Clinic has been appointed counsel in *Moss v. Atkinson*, No. 18-6096 (4th Cir.), where the Opening Brief is due on November 5, 2018. In light of the academic calendar, and the Clinic’s other obligations, the

requested extension is necessary to allow the students sufficient time to fully participate in this case.

5. Mr. Rosenberg himself also has had recently and has in the upcoming weeks significant professional and personal commitments that would make it extremely difficult to complete the petition without an extension. Like his students, Mr. Rosenberg is working on *Dawson* in this Court and *Moss* in the Fourth Circuit. He will be presenting oral argument in *Dawson*, which has been scheduled for December 3, 2018. Additionally, Mr. Rosenberg has a number of other pre-existing responsibilities: He is preparing for oral argument in *Cleveland Clinic Foundation v. True Health Diagnostics, LLC*, No. 18-1218 (Fed. Cir.); he has had to draft briefs and prepare for oral hearings regarding cross-summary judgment motions in *Stagg P.C. v. U.S. Dep't of State*, No. 1:15-cv-08468-KPF (S.D.N.Y.); he is lead counsel in *Lufthansa Technik v. Panasonic Avionics Corp.*, No. 2:17-cv-01453-JCC (W.D. Wash.), in which he has recently worked and is currently working on several filings; and he is lead counsel in *Owl Creek Asia I, L.P. v. USA, et al.*, No. 18-281C; *Appaloosa Investment Limited Partnership I, et al., v. United States*, No. 18-370C; *Akanthos Opportunity Master Fund, L.P., v. United States*, No. 18-369C, *CSS, LLC, v. United States*, No. 18-371C, *Mason Capital L.P., et al., v. United States*, No. 18-529C, and *CRS Master Fund, L.P., et al. v. United States*, No. 18-1155C (Ct. Fed. Cl.), in which an opposition to the government's 85-page motion to dismiss is due on October 23, 2018. In addition to his professional obligations, Mr. Rosenberg will be on a prepaid family trip from October 12-20, 2018, and was out of the office, observing Jewish holidays on September 10, 11, 19, 24, and 25.

WHEREFORE, Petitioner respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari for sixty days, up to and including December 21, 2018.

Respectfully submitted,

  
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