

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

CITY OF CLARKSTON, ET AL.,

Petitioners-Defendants,

v.

RYAN J. BONIVERT,

Respondent-Plaintiff.

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

Directed to the Honorable Anthony M. Kennedy,
Associate Justice of the Supreme Court of the United States and Circuit Justice for the
Ninth Circuit

Christopher J. Kerley, WSBA #16489
*Mr. Kerley is not admitted to the bar
of the Supreme Court of the United States*
EVANS, CRAVEN & LACKIE, P.S.
818 W. Riverside Ave., Ste. 250
Spokane, WA 99201
Telephone: (509) 455-5200
Email: ckerley@ecl-law.com

*Counsel for Petitioner-Defendant
City of Clarkston*

Robert L. Christie, WSBA #10895
Counsel of Record
Thomas P. Miller, WSBA #34473
Ann E. Trivett, WSBA #39228
CHRISTIE LAW GROUP, PLLC
2100 Westlake Avenue N., Ste. 206
Seattle, WA 98109
Telephone: (206) 957-9669
Email: bob@christielawgroup.com

*Counsel for Petitioner-Defendants
Asotin County, Joseph Snyder, and
Gary Snyder*

James E. Lobsenz, WSBA #8787
Counsel of Record
CARNEY BADLEY SPELLMAN, P.S.
701 Fifth Avenue, Suite 3600
Seattle, WA 98104
Telephone: (206) 622-8020
Email: lobsenz@carneylaw.com

Counsel for Respondent-Plaintiff
Ryan J. Bonivert

To the Honorable Anthony M. Kennedy, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Ninth Circuit:

In accordance with 28 U.S.C. § 2101(c) and Supreme Court Rules 13.5, 22, and 30.2-3, petitioner-defendants Asotin County, Joseph Snyder, Gary Snyder, and the City of Clarkston (collectively “Applicants”) respectfully request a 60-day extension of time to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit. Respondent-plaintiff Ryan J. Bonivert also requests an extension because the parties will be mediating this matter on July 16, 2018, which if successful, would obviate the need to petition this Court to review the Ninth Circuit’s decision. A 60-day extension would make any petition for a writ of certiorari due by September 8, 2018.

A. Judgment Sought to Be Reviewed and Basis for Jurisdiction.

On February 26, 2018, the Court of Appeals for the Ninth Circuit reversed the district court’s grant of summary judgment on qualified immunity for Fourth Amendment claims of unlawful entry and excessive force. A copy of the Ninth Circuit’s opinion is available at 883 F.3d 865, and is also appended hereto in accordance with Supreme Court Rule 13.5 (App. A). On March 9, 2018, the City of Clarkston petitioned for rehearing *en banc*. On March 12, 2018, Asotin County, Joseph Snyder, and Gary Snyder separately petitioned for rehearing *en banc*. Asotin County, Joseph Snyder, and Gary Snyder also joined the City of Clarkston’s petition for rehearing *en banc*.

On April 11, 2018, the court of appeals denied Applicants’ petitions for rehearing *en banc* (App. B). In accordance with Supreme Court Rule 13.1 & 3, the time to file a petition for a writ of certiorari is by Tuesday, July 10, 2018. This application for extension of time to file a petition

for a writ of certiorari has been filed at least 10 days before the date a petition would be due, and is requested by all parties. Sup. Ct. R. 13.5. The Court has jurisdiction to review this case under 28 U.S.C. § 1254(1).

B. Reasons An Extension of Time is Justified.

First, good cause for an extension exists because this case is scheduled for mediation on July 16, 2018 in Seattle, Washington. The parties worked collaboratively to select a mediation date sooner than July, but given various scheduling issues, that was not possible. This July 16, 2018 mediation date is six days after the current deadline to file a petition for a writ of certiorari. If successfully mediated, the parties would not seek review by this Court of the Ninth Circuit's decision. If required to seek review in advance of mediation, however, the time, expense, and cost associated with a petition for a writ of certiorari would work as a barrier to amicable resolution. It would also likely consume judicial resources that could ultimately prove unnecessary.

Second, a 60-day extension is justified because the petitioner-defendants Asotin County, Joseph Snyder, Gary Snyder, and the City of Clarkston anticipate filing a joint petition for a writ of certiorari in accordance with Supreme Court Rule 12.4 (if mediation is unsuccessful). This will require substantial coordination. In addition, two of the attorneys representing Asotin County, Joseph Snyder, and Gary Snyder have a separate trial in the United States District Court for the Western District of Washington, scheduled to begin on July 9, 2018: *Hunter v. City of Federal Way et al.*, Cause No. 2:16-cv-01445 MJP. All three attorneys representing the Asotin County defendants also have a professional conference, at which they will have significant responsibilities, scheduled from July 29, 2018 until August 4, 2018, which will limit availability to work and coordinate on this matter (if mediation is unsuccessful) prior to August 2018.

Third, this case presents a substantial and important question about the application of qualified immunity and “clearly established” law after *Georgia v. Randolph*, 547 U.S. 103, 126 S. Ct. 1515 (2006) and *White v. Pauly*, 137 S. Ct. 548, 196 L. Ed. 2d 463 (2017) (per curiam). In *White*, the Court observed that it has (in the last five years) issued a number of opinions reversing federal courts in qualified immunity cases. *White v. Pauly*, 137 S. Ct. 548, 551 (2017) (per curiam) (citing *City and County of San Francisco v. Sheehan*, 575 U.S. ___, ___, n.3, 135 S. Ct. 1765 (2015) (collecting cases)). The Court found this necessary because qualified immunity is important to society as a whole, and immunity is effectively lost if a case is erroneously permitted to go to trial. *Id.* at 551-52 (internal citations omitted).

Here, the district court granted summary judgment on qualified immunity grounds on Fourth Amendment claims for unlawful entry and excessive force, arising from a multi-agency police response to a domestic dispute, and the Court of Appeals for the Ninth Circuit reversed. *Bonivert v. City of Clarkston*, 883 F.3d 865, 870-71 & 881 (9th Cir. 2018). Applicants contend the Ninth Circuit erred in reversing qualified immunity, misapplied *Randolph* including whether conduct constitutes “express refusal” into a home (after consent by a fellow occupant), and also misapplied the integral participant doctrine for late-arriving officers from a different agency in light of *White*. Respondent-plaintiff Ryan Bonivert argues the Ninth Circuit correctly decided the case, while the district court erred.

Petitioner-defendants Asotin County, Joseph Snyder, Gary Snyder, and the City of Clarkston, as well as respondent-plaintiff Ryan J. Bonivert, respectfully request an order extending the time to file a petition for a writ of certiorari for 60 days, which would make any petition due by September 8, 2018. An extension will give the parties the greatest chance of success at

mediation and the best opportunity to present this Court with significant and important questions if negotiations fail.

Dated: June 27, 2018

Respectfully submitted,

Robert L. Christie, WSBA #10895
Counsel of Record
Thomas P. Miller, WSBA #34473
Ann E. Trivett, WSBA #39228
CHRISTIE LAW GROUP, PLLC
2100 Westlake Avenue N., Suite 206
Seattle, WA 98109
Telephone: (206) 957-9669
Email: bob@christielawgroup.com

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EVANS, CRAVEN & LACKIE, P.S.
818 W. Riverside Ave., Ste. 250
Spokane, WA 99201
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James E. Lobsenz, WSBA #8787
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CARNEY BADLEY SPELLMAN, P.S.
701 Fifth Avenue, Suite 3600
Seattle, WA 98104
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