

No. 19A-___

In the Supreme Court of the United States

AMY CORBITT,

Applicant,

v.

MICHAEL VICKERS

Respondent.

**APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO
FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE ELEVENTH CIRCUIT**

TO THE HONORABLE CLARENCE THOMAS, ASSOCIATE JUSTICE AND CIRCUIT JUSTICE FOR
THE ELEVENTH CIRCUIT:

Pursuant to 28 U.S.C. § 2101(c) and Rule 13.5 of the Rules of this Court, applicant Amy Corbitt, individually and as parent and guardian of her minor child, S.D.C., respectfully requests a 59-day extension of time, to and including December 6, 2019, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit. The Eleventh Circuit issued its decision on July 10, 2019. Unless extended, the time to file a petition for a writ of certiorari will expire on October 8, 2019. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1).

A copy of the Eleventh Circuit's opinion is attached.

1. This case arises from a shooting that took place in Coffee County, Georgia on July 10, 2014. The incident began when a group of police officers, including

respondent, attempted to apprehend a suspect who had wandered into applicant's front yard. Slip op. 2-3.

As the officers moved onto applicant's property, they demanded that everyone in the yard, one adult and six minor children—"including [applicant]'s ten-year-old child SDC and two other children under the age of three"—get down on the ground. Slip op. 3. While everyone was on the ground and obeying respondent's commands, respondent shot twice at the family dog "without necessity or any immediate threat or cause." *Ibid.* The officer missed the dog, but the second bullet struck S.D.C. in the back of his knee, resulting in severe pain and mental trauma. Slip op. at 3-4. The child had been lying face-down on the ground, per respondent's orders, "a mere eighteen inches from [respondent] at the time the shot was fired." Slip op. 39 (Wilson, J., dissenting).

2. Applicant brought suit under 42 U.S.C. § 1983, asserting that respondent's actions had deprived applicant and S.D.C. of their Fourth and Fourteenth amendment rights. Slip op. 4. As relevant here, the district court denied respondent's motion to dismiss, rejecting his claim of qualified immunity. Slip op. 5-6.

3. The court of appeals reversed, "hold[ing] that [respondent]'s action of intentionally firing at the dog and unintentionally shooting SDC did not violate any clearly established Fourth Amendment rights." Slip op. 19. That was so because "[n]o case capable of clearly establishing the law for this case holds that a temporarily seized person—as was SDC in this case—suffers a violation of his Fourth Amendment rights when an officer shoots at a dog—or any other object—and accidentally hits the

person.” Slip op. 27. The court of appeals therefore remanded with instructions to dismiss the case. Slip op. 37.

Judge Wilson dissented, observing that “[b]ecause no competent officer would fire his weapon in the direction of a nonthreatening pet while that pet was surrounded by children, qualified immunity should not protect [respondent].” Slip op. 38 (Wilson, J., dissenting).

4. The petition for certiorari will demonstrate that review is warranted on at least the following question: whether the doctrine of qualified immunity should be narrowed or revisited entirely.

Indeed, there is “growing concern” about the lawfulness of qualified immunity among judges, scholars, and Justices of the Court. *Ziglar v. Abbasi*, 137 S. Ct. 137 S. Ct. 1843, 1870 (2017) (Thomas, J., concurring in part); see also, *e.g.*, *id.* at 1872 (“Until we shift the focus of our inquiry to whether immunity existed at common law, we will continue to substitute our own policy preferences for the mandates of Congress. In an appropriate case, we should reconsider our qualified immunity jurisprudence.”); *Zadeh v. Robinson*, 902 F.3d 483, 498 (5th Cir. 2018) (Willett, J., concurring *dubitante*) (“I add my voice to a growing, cross-ideological chorus of jurists and scholars urging recalibration of contemporary immunity jurisprudence and its real world implementation.”) (quotation marks omitted), revised on petition for rehearing en banc, 928 F.3d 457 (5th Cir. 2019) (Willett, J., dissenting in part); William Baude, *Is Qualified Immunity Unlawful?*, 106 Cal. L. Rev. 45, 46-49 (2018) (answering that question in the affirmative); Joanna C. Schwartz, *The Case Against Qualified*

Immunity, 93 Notre Dame L. Rev. 1797, 1799 (2018) (“If the Court did find an appropriate case to reconsider qualified immunity * * * the Court could not justify the continued existence of the doctrine in its current form.”).

5. Good cause exists for an extension of time to prepare a petition for a writ of certiorari in this case. Undersigned counsel of record was retained only recently and has not yet had an opportunity to familiarize himself with the full record and issues involved. Undersigned counsel also has several other matters with proximate due dates before this Court, including a reply in support of certiorari due on September 23, 2019, in *Nasrallah v. Barr*, No. 18-1432; a petition for a writ of certiorari due on October 3, 2019, in *Texas Brine Company v. Florida Gas Transmission Company, et al.*, No. 19A-106; oral argument on October 16, 2019, in *Kansas v. Garcia*, No. 17-834; and a merits reply brief due on November 20, 2019, in *Guerrero-Lasprilla v. Barr*, No. 18-776, and *Ovalles v. Barr*, No. 18-1015.

For the foregoing reasons, the application for a 59-day extension of time, to and including December 6, 2019, within which to file a petition for a writ of certiorari in this case should be granted.

September 16, 2019

Respectfully submitted.



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