

No. ____

In the Supreme Court of the United States

CHARLES WADE, Applicant,

v.

GORDON LEWIS, Respondent.

**APPLICATION FOR EXTENSION OF TIME 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:

Applicant Charles Wade respectfully requests that the time to file a petition for a writ of certiorari in this case be extended for 30 days, to and including January 18, 2022. The Eleventh Circuit issued and entered its opinion on September 17, 2021 (App., *infra*). Applicant filed no application for rehearing. Without an extension of time, the petition would be due on December 16, 2021. Applicant files this application more than 10 days before that date. S. Ct. R. 13.5. This Court will have jurisdiction pursuant to 28 U.S.C. § 1254(1).

Background

Charles Wade spent time as a federal prisoner at the United States Penitentiary in Atlanta, Georgia. App. 3. While he was there, he suffered a 1.34-inch laceration to his right hand that partially severed a tendon and went all the way down to the bone. *Id.* at 3–4, 7. Instead of arranging for medical treatment,

however, Acting Captain Gordon Lewis handcuffed Wade and escorted him to the Special Housing Unit (“SHU”) on suspicion that Wade had fought with another inmate. *Id.* at 4.

Wade was “leaking blood all over” and left “a path of blood” on the ground as Lewis took him to the SHU. *Id.* at 5. But when Wade asked whether Lewis would “take [him] to medical,” Lewis responded, “don’t ask me how to be a captain and [I] won’t tell [you] how to be an inmate.” *Ibid.* Wade followed up by saying, “okay . . . you know, I’m bleeding all over . . . the place.” *Ibid.* Yet Lewis remained unmoved. The captain placed Wade in an SHU holding cell, left him in handcuffs, and departed. *Ibid.*

Wade renewed his request for medical treatment while in the holding cell but was told by SHU officers that he needed to wait. *Id.* at 5–6. He continued to “bleed[] all that time.” *Id.* at 6. Finally, up to seven hours later, a nurse ushered Wade to an examination room where she cleaned the wound and bandaged it. *Id.* at 6 & 22 n.8. Wade noticed swelling in his hand the next morning and again requested medical attention to no avail. *Id.* at 6. He eventually got the attention of an officer passing by the following day, and a nurse determined his “deep laceration” was serious enough to transport him to Atlanta Medical Center. *Id.* at 6–7. An x-ray revealed that Wade “had a broken bone in his hand,” and the treating physician observed that the open wound combined with the delay in treatment increased the risk of infection to Wade’s hand. *Id.* at 7–8. The doctor performed surgery, and Wade returned to the penitentiary where he received medication for pain. *Ibid.*

Proceeding *pro se*, Wade timely sued Lewis and other prison officials alleging deliberate indifference in violation of the Eighth Amendment. *Id.* at 8. The district court appointed counsel on Wade’s behalf, and Lewis moved for summary judgment on grounds of qualified immunity. *Id.* at 8–9. A magistrate judge recommended denying Lewis’s motion, and the district court agreed. *Id.* at 9–10. The district court determined that Wade had produced enough evidence to demonstrate to a jury that his injury was serious, that Lewis deliberately ignored it, and that Lewis caused the treatment delay by failing to tell medical staff what had happened. *Ibid.* The district court also determined that *Aldridge v. Montgomery*, 753 F.2d 970 (11th Cir. 1985) (per curiam)—which involved a similar delay in treating a prisoner’s bleeding injury—clearly established that the facts viewed in the light most favorable to Wade amounted to a constitutional violation. App. 10.

Lewis filed an interlocutory appeal. As required by this Court’s decision in *Johnson v. Jones*, 515 U.S. 304 (1995), Lewis “d[id] not challenge the district court’s determination that genuine disputes of material fact precluded summary judgment,” arguing instead that “the district court erred when it determined that it was clearly established that his actions violated Wade’s constitutional rights.” App. 12–13. The Eleventh Circuit recognized that Lewis could not succeed if the law at the time of his deliberate indifference gave him “fair warning that his conduct was unconstitutional.” *Id.* at 15 (citing *Hope v. Pelzer*, 536 U.S. 730, 741 (2002)). Yet a two-judge majority found that *Aldridge* gave Lewis insufficient warning based on factual distinctions including the location of the injury, the length of time Lewis

observed the injury, and the amount of blood at the scene. *Id.* at 19–22. Judge Tjoflat wrote separately to express disagreement with the majority’s granular distinctions between *Aldridge* and this case based on “where the injury was or how much the inmate bled over the course of the day.” *Id.* at 30.

Reasons for Granting an Extension of Time

The time to file a petition for a writ of certiorari should be extended for 30 days for the following reasons:

1. Since the decision below was issued, Applicant has been considering whether to seek this Court’s review and only recently decided to petition for certiorari. Furthermore, the undersigned counsel of record only recently became involved in this case. Additional time is necessary to study the record below and the legal issues in the case and to prepare a petition. This is particularly true given the ongoing dialogue about qualified immunity in this country, the emerging scholarship on the subject, recent and conflicting cases in the courts of appeals, and relevant decisions from this Court that postdate the Eleventh Circuit’s ruling. Moreover, the petition is currently due on December 16, 2021, shortly after the Thanksgiving holiday and closely followed by the Christmas and New Year holidays. The attorneys representing Applicant in this case—including the newly involved counsel of record—have previously scheduled family obligations over the holiday season.

2. No prejudice would arise from the requested extension. If the petition were granted, the Court would hear oral argument in this case in the October 2022 Term regardless of whether an extension is allowed.

3. There is a reasonable prospect that this Court will grant the petition. The Eleventh Circuit's decision rests entirely on the assertion that minor differences including the location of injury (a "one and a half inch cut above [the] right eye" in *Aldridge* compared to a 1.34-inch, bone-deep cut to the right hand here) and the quantity of blood (a "pool . . . on the floor approximately the size of two hands" in *Aldridge* compared to a "path of blood" that was "leaking . . . all over" here) deprived Lewis of the requisite notice that his conduct violated the Constitution. Yet this Court has recently and repeatedly emphasized that such fine-grained distinctions do not insulate officials from liability. *See Taylor v. Riojas*, 141 S. Ct. 52, 53–54 & n.2 (2020) (summarily reversing court of appeals' decision in Eighth Amendment case that granted qualified immunity based in part on a distinction between three and six days of confinement); *McCoy v. Alamu*, 141 S. Ct. 1364 (2021) (mem.) (granting, vacating, and remanding where court of appeals applied qualified immunity based on a distinction between a "single use of pepper spray" and more frequent uses of force); *see also Hope*, 536 U.S. at 736, 740–41 (reversing Eleventh Circuit's decision in Eighth Amendment case that granted qualified immunity based on a determination that "analogous" precedents were not "materially similar," and observing that "notable factual distinctions" do not prevent prior decisions from providing "reasonable warning that the conduct . . . at

issue violated constitutional rights” (quotation marks omitted)). These cases, coupled with the importance of the issue and an ideal vehicle to present it, create a reasonable possibility that the Court will grant the petition.

Conclusion

For these reasons, the time to file a petition for a writ of certiorari should be extended 30 days to and including January 18, 2022.

Respectfully submitted,

/s/ Adam H. Charnes _____
ADAM H. CHARNES
Counsel of Record
KILPATRICK TOWNSEND &
STOCKTON LLP
2001 Ross Avenue
Suite 4400
Dallas, TX 75201
(214) 922-7106
acharnes@kilpatricktownsend.com

Counsel for Applicant Charles Wade

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