

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

TIMOTHY GRAY,
Applicant,

v.

CRAIG WHITE, ET. AL.,
Respondents.

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

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March 10, 2022

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To the Honorable Samuel A. Alito, Jr., Associate Justice of the United States and Circuit Justice for the Fifth Circuit:

Pursuant to 28 U.S.C. § 2101(c) and Supreme Court Rules 13.5 and 22, applicant Timothy Gray respectfully requests a 30-day extension, to and including April 20, 2022, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit. The Fifth Circuit denied Mr. Gray's petition for rehearing en banc on December 21, 2021. Unless extended, the time to file a petition for a writ of certiorari will expire on March 21, 2022.

1. Mr. Gray, who is incarcerated at the Elayn Hunt Correctional Center in Louisiana, alleged he was subjected to excessive force at the hands of prison officials, and brought suit under 42 U.S.C. § 1983. As relevant here, the district court granted summary judgment to the defendants, determining that Gray's claims were barred

by *Heck v. Humphrey*, 512 U.S. 477 (1994), because they could not be accepted without contradicting the findings of the prison disciplinary board, which had found Gray guilty of counts of defiance and aggravated disobedience, resulting in the loss of good-time credit. The Fifth Circuit remanded for further proceedings, in which the district court should consider whether the factual findings of the disciplinary board on those violations are necessarily in conflict with the version of the facts alleged in Mr. Gray's § 1983 complaint.

2. This case presents an important question of federal law: Can the results of a prison disciplinary proceeding create a *Heck* bar for a § 1983 suit alleging excessive force by prison officials?

3. A number of the federal courts of appeals find § 1983 claims to be *Heck* barred in such situations, but those decisions are both dead-wrong based on this Court's *Heck* decision and its progeny, and reflect a hopeless disarray in terms of how to determine what types of claims are *Heck*-barred, and what happens once the bar applies.

4. Good cause exists for an extension of time to prepare a petition for a writ of certiorari in this case due to the press of business on numerous other matters. Substantial commitments of counsel of record during the relevant time period include:

- A reply brief in the United States Court of Appeals for the Sixth Circuit in *Williams v. Hall*, No. 21-5540, due April 1, 2022.
- An opening brief in the United States Court of Appeals for the Seventh Circuit in *Smallwood v. Williams*, No. 21-3-47, due April 6, 2022;

- An oral argument in the United States Court of Appeals for the Sixth Circuit in *Williams v. Hall*, No. 21-5540, on April 19, 2022;

5. In addition, counsel of record has a preplanned vacation from April 11 through April 15, 2022.

6. An extension of time is further justified because it would permit undersigned counsel to provide the sort of comprehensive analysis that would aid this Court in determining whether to grant certiorari. Furthermore, undersigned counsel did not represent Mr. Gray below and, in light of the deadlines above, requires additional time to review the record in this case and conduct the analysis that would assist this Court in proper resolution of this case.

7. Mr. Gray has not previously sought an extension of time from this Court.

8. For the foregoing reasons, the application for a 30-day extension of time, to and including April 20, 2022, within which to file a petition for a writ of certiorari in this case should be granted.

Respectfully submitted,

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