
In The
SUPREME COURT OF THE UNITED STATES
October Term 2022

David Sosa,

Applicant/Petitioner,

v.

Martin County, Florida,

Respondent.

**Application for Extension of Time Within
Which to File for a Petition for a Writ of Certiorari to the
Court of the Appeals for the Eleventh Circuit**

**ADDITIONAL APPLICATION TO THE HONORABLE JUSTICE
CLARENCE THOMAS AS CIRCUIT JUSTICE**

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APPLICATION FOR AN EXTENSION OF TIME

Pursuant to Rule 13.5 of the Rules of this Court, Applicant David Sosa hereby requests a 30-day extension of time within which to file a petition for a writ of certiorari up to and including Wednesday, June 21, 2023.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The judgment for which review is sought is *Sosa v. Martin County, Florida*, 57 F.4th 1297 (11th Cir. 2023) (en banc) (Exh. 1). The prior panel decision is available at *Sosa v. Martin County, Florida*, 13 F.4th 1254 (11th Cir. 2021) (Exh. 2), and the district court decision is available at *Sosa v. Snyder*, 2020 WL 6385696 (S.D. Fla. June 25, 2020) (Exh. 3).

JURISDICTION

This Court will have jurisdiction over any timely filed petition for certiorari in this case pursuant to 28 U.S.C. § 1254. Under Rules 13.1, 13.3, and 30.1 of the Rules of this Court, a petition for a writ of certiorari was due to be filed on or before April 20, 2023. In accordance with Rule 13.5, this application is being filed more than 10 days in advance of the filing date for the petition for a writ of certiorari.

REASONS JUSTIFYING AN EXTENSION OF TIME

Applicant respectfully requests a 30-day extension of time within which to file a petition for a writ of certiorari seeking review of the decision of the Eleventh Circuit Court of Appeals in this case, up to and including June 21, 2023.

In *Baker v. McCollan*, 443 U.S. 137 (1979), this Court held that “detention pursuant to a valid warrant but in the face of repeated protests of innocence . . . deprive[s] the accused of ‘liberty . . . without due process of law.’” *Id.* at 145. That is, detaining an innocent person just because the government has mistaken them for a wanted one violates the Constitution under some circumstances—especially where they protested their innocence.

Mr. Sosa here did protest his innocence. When Martin County officers arrested him in 2018 on a nearly 30-year-old warrant, he informed them that he had almost nothing in common with the wanted man, other than a shared common name. The dates of birth and social security numbers differed. The heights and weights differed. The warrant said that the wanted David Sosa had tattoos; Petitioner does not. Mr. Sosa knew about these differences because he had been arrested on this same warrant before.

Despite all this, Mr. Sosa was detained for three days. He filed suit, but the trial court dismissed his over-detention claims. *Sosa v. Snyder*, 2020 WL 6385696 at *5 (S.D. Fla. June 25, 2020). The Eleventh Circuit reversed, citing *Baker* and denying qualified immunity. *Sosa v. Martin County, Florida*, 13 F.4th 1254, 1260 (11th Cir. 2021). But the court, sitting en banc, ultimately reversed that decision, and affirmed the district court’s dismissal. *Sosa v. Martin County, Florida*, 57 F.4th 1297, 1298–99 (11th Cir. 2023) (en banc).

Federal courts span a wide spectrum of approaches to claims like Mr. Sosa's. On one end lies the Eleventh Circuit, which read *Baker* to create a per se rule of non-liability whenever a plaintiff, initially arrested pursuant to a valid warrant, is detained for three days or fewer despite multiple pertinent differences between the individual arrested and the individual identified in the warrant. *Id.* at 1300.

On the other hand, the Ninth Circuit has rejected the kind of categorical time-based analysis used by the Eleventh Circuit. A claim can proceed even where the time of detention is unclear, *Garcia v. County of Riverside*, 817 F.3d 635, 643 (9th Cir. 2016), or where the time of detention is just for *one day*. *Lee v. City of Los Angeles*, 250 F.3d 668, 684 (9th Cir. 2001). Still other courts adopt a totality-of-the-circumstances approach.

Furthermore, courts are divided on where claims for over-detention arise. Several courts situate *Baker* claims under the Fourth Amendment. *See, e.g., Russo v. City of Bridgeport*, 479 F.3d 196, 208–09 (2d Cir. 2007). On the other hand, the Eleventh Circuit, among others, examines *Baker* cases under the Fourteenth Amendment's substantive due process clause. But doing so arguably conflicts with more recent Supreme Court case law, which instructs that the Fourth Amendment is the "explicit textual source of constitutional protection" for pre-trial rights. *Graham v. Connor*, 490 US. 386, 395 (1989). Finally, this case potentially poses questions concerning qualified immunity—whether the defense should be available as a matter of law and whether, given the facts and circumstances, it is applicable here.

Given the complexity and importance of the legal issues at hand, an extension of time will allow counsel to properly analyze the reasoning for the divergent decisions in various courts and thereby present a thorough and coherent petition.

2. Applicant has requested that the Northwestern Appellate Advocacy Center prepare his petition, alongside counsel for him in the Eleventh Circuit proceedings, Randall Kallinen and Alex Johnson. An extension of time will afford the time necessary to complete a cogent and well-researched petition, while navigating graduation and convocation (May 12), the submission of spring semester grades (June 2), and the onboarding of summer interns and fellows.

3. The extension of time is also necessary because of the press of other client business. In the coming six weeks, Xiao Wang, Director of the Northwestern Appellate Advocacy Center, has several overlapping commitments in this Court and the federal circuit courts. These include, over the next month, serving as counsel of record in an opposition brief in *Hicks v. Perry* (5th Cir.) (22-40755); in oral argument in *Spillard v. Ivers* (9th Cir.) (21-16772); and in oral argument in *Dyer v. Fulgam* (6th Cir.) (22-5608). The Center also has pending petitions for writ of certiorari in *Brown v. United States* (22-6389).

Additionally, co-counsel Randall Kallinen has been slowed down because of a pressing health concern. His firm, comprising himself and Mr. Johnson, has been unusually busy with several upcoming matters in the Fifth Circuit, including briefs and argument in *Zavala v. Harris* (22-20611); *Matthews v. Green* (23-10178); *Zinsou v. Fort Bend County* (22-20423); *Espinal v. City of Houston* (22-20075); *Cameron v. Tyler*

County, Texas (22-40604); and *McClelland v. Katy Independent School District* (21-20625). Mr. Kallinen and Mr. Johnson also have several dispositive motion responses and other time-sensitive litigation in the Southern and Eastern Districts of Texas.

CONCLUSION

For the foregoing reasons, Applicant respectfully requests that this Court grant an additional extension of 30 days, up to and including June 21, 2023, within which to file a petition for a writ of certiorari in this case.

Respectfully submitted,

/s/ Xiao Wang_____

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