

In the Supreme Court of the United States

JAMES LEBLANC; PERRY STAGG; ANGELA GRIFFIN,
Applicants,

v.

JESSIE CRITTINDON; LEON BURSE; EDDIE COPELIN; PHILLIP DOMINICK, III;
DONALD GUIDRY,
Respondents.

**APPLICATION TO EXTEND TIME TO FILE
A PETITION FOR WRIT OF CERTIORARI**

JEFF LANDRY
LOUISIANA ATTORNEY GENERAL
ELIZABETH B. MURRILL
SOLICITOR GENERAL
Counsel of Record
SHAE MCPHEE
DEPUTY SOLICITOR GENERAL
MORGAN BRUNGARD
ASSISTANT SOLICITOR GENERAL
PHYLLIS E. GLAZER
ASSISTANT ATTORNEY GENERAL
Office of the Attorney General
Louisiana Department of Justice
1885 N. Third St.
Baton Rouge, LA 70802
Tel: (225) 326-6766
murrille@ag.louisiana.gov

To the Honorable Samuel A. Alito Jr., as Circuit Justice for the United States Court of Appeals for the Fifth Circuit:

The Louisiana Attorney General, on behalf of James M. LeBlanc, Secretary of the Louisiana Department of Public Safety and Corrections (DPSC), and DPSC employees Perry Stagg and Angela Griffin, respectfully request an additional 60 days to file a certiorari petition to review the Fifth Circuit’s final judgment issued June 10, 2022, (App. A) from which rehearing *en banc* was denied on January 31, 2023 (App. B). This would extend the deadline from May 1, 2023, to June 30, 2023. This application is being filed over 10 days before the petition’s current due date. *See* U.S. Sup. Ct. Rule 13.5. This Court has jurisdiction to review the Fifth Circuit’s judgment under 28 U.S.C. § 1254.

BACKGROUND

The Fifth Circuit’s decision in this case involves questions of exceptional importance. This case is one of many by former prisoners claiming that state DPSC officials should be held personally liable for alleged over-detentions in Louisiana parish jails, despite the fact that “Louisiana state law is *undisputedly* clear that [the independently elected parish] sheriff has absolute authority over [those] inmate[s] *without any control whatsoever exercised by the DPSC.*” App. A at A-36 (Oldham, J., dissenting) (emphasis added). Indeed, as explained below, oral arguments in two of those cases are scheduled at the Fifth Circuit the day after this petition is currently due, and Secretary LeBlanc’s opening brief in another such case is due the very next week.

By concluding that the plaintiffs’ claims are not barred by *Heck v. Humphrey*, 512 U.S. 477 (1994)—under which the availability of relief through habeas corpus bars 42 U.S.C. § 1983 suits—and rejecting the DPSC defendants’ qualified immunity defense, the majority opened the door for Louisiana DPSC officials to incur massive personal liability for “actions by other parties over which DPSC has no authority or control.” App. A at A-32 (Oldham, J., dissenting). The majority thus “turne[d] the three DPSC defendants into scapegoats for the State’s problems writ large.” *Id.* at A-33. (Oldham, J., dissenting). And it did so while failing to identify any case in which an officer acting under similar circumstances was held to violate the Constitution, contravening the “clearly established law” requirement for overcoming qualified immunity. *See White v. Pauly*, 137 S. Ct. 548, 552 (2017); App. A at A-41–42 (Oldham, J., dissenting).

Moreover, this all occurred in a case that is barred by *Heck*, meaning that the plaintiffs lack a cause of action. And so, the majority’s decision is “no less advisory than the opinion the first Supreme Court refused to give President Washington in 1793.” App. A at A-27 (Oldham, J., dissenting) (cleaned up). The scapegoating that decision nonetheless accomplishes is both contrary to this Court’s precedents and deeply unjust. Seeking to right this wrong, the DPSC defendants sought rehearing by the *en banc* Fifth Circuit, but were denied rehearing by a close vote of 9-7.¹ App. B at B-1–2. So, intervention by this Court is necessary.

¹ In the *en banc* poll, Judges Jones, Smith, Ho, Duncan, Engelhardt, Oldham, and Wilson voted in favor of rehearing. Judges Richman, Stewart, Elrod, Southwick, Haynes, Graves, Higginson, Willet, and Douglas voted against rehearing. App. B at B-1–2.

REASONS FOR GRANTING AN EXTENSION OF TIME

Applicants request an additional 60 days to file a certiorari petition for the following reasons. As noted above, the day after this petition is currently due, the undersigned attorneys have two oral arguments scheduled at the Fifth Circuit in cases raising the same issues present here against many of the same state officials. *See Hicks v. LeBlanc*, No. 22-30184 (5th Cir.) (oral argument set for May 2, 2023); *Parker v. LeBlanc*, No. 21-30446 (5th Cir.) (same). In another similar case, Secretary LeBlanc's opening brief is due to the Fifth Circuit the very next week. *See Buchicchio v. LeBlanc*, No. 23-30116 (5th Cir.) (opening brief due May 12, 2023). The State also has many impending deadlines and obligations in other cases. For instance, the State and at least one of its attorneys in this case have two other oral arguments at the Fifth Circuit in cases involving DPSC scheduled for the same day that this petition is currently due. *See Fontenot v. Bd. of Supervisors of La. State Univ.*, No. 22-30483 (5th Cir.) (oral argument scheduled May 1, 2023); *Landor v. La. Dep't of Corr.*, No. 22-30686 (5th Cir.) (same).

Considering this confluence of deadlines—particularly in cases implicating the exact same issues present here and therefore demanding the attention and appearance of the same attorneys responsible for drafting this petition—there is good cause to extend the deadline for the State to prepare a certiorari petition by 60 days.

This 60 day extension will not prejudice the plaintiffs. After the Fifth Circuit's 9-7 denial of rehearing *en banc*, the mandate issued on February 8, 2023. *See Crittendon v. LeBlanc*, No. 20-30304 (5th Cir.); ECF No. 111. The district court then granted the plaintiffs' unopposed motion to lift the administrative stay that had been

in place pending appeal and issued a new scheduling order, with a bench trial set for August of 2023. *See Crittindon v. Gusman*, No. 3:17-CV-00512 (M.D. La.), ECF No. 184. Extending the due date for the State's certiorari petition will not affect that scheduling order. The district court litigation will continue uninterrupted regardless of any filing extension this Court may grant.

Respectfully submitted,

JEFF LANDRY
LOUISIANA ATTORNEY GENERAL

/s/ Elizabeth B. Murrill _____
ELIZABETH B. MURRILL
SOLICITOR GENERAL
Counsel of Record
SHAE MCPHEE
DEPUTY SOLICITOR GENERAL
MORGAN BRUNGARD
ASSISTANT SOLICITOR GENERAL
PHYLLIS E. GLAZER
ASSISTANT ATTORNEY GENERAL
Office of the Attorney General
Louisiana Department of Justice
1885 N. Third St.
Baton Rouge, LA 70802
Tel: (225) 326-6766
murrille@ag.louisiana.gov