

No. \_\_\_\_\_

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**In The  
Supreme Court of the United States**

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J.T.H.; H.D.H.,

*Applicants,*

v.

SPRING COOK,

*Respondent.*

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**On Application for an Extension of Time to File Petition for a Writ of  
Certiorari to the United States Court of Appeals for the Eighth Circuit**

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To the Honorable Brett Kavanaugh, as Circuit Justice for the United States Court of Appeals for the Eighth Circuit:

In accordance with this Court's Rules 13.5, 22, 30.2, and 30.3, applicants J.T.H. and H.D.H. respectfully request that the time to file their petition for a writ of certiorari be extended for 60 days, up to and including Monday, November 28, 2022. The Court of Appeals issued its opinion on July 1, 2022 (Exhibit A). Absent an extension of time, the petition would be due on Thursday, September 29, 2022. The jurisdiction of this Court is based on 28 U.S.C. 1254(1). This request is unopposed.

### **Background**

This case presents an important question of retaliation jurisprudence: whether the First Amendment prohibits government officials from subjecting individuals to harassment campaigns—including retaliatory investigations and administrative proceedings—on the basis of constitutionally protected speech. The circuit courts are split over this issue. The Sixth Circuit, for instance, recognized such a First Amendment retaliation claim, involving an administrative hearing against septic system installers. *Meadows v. Enyeart*, 627 Fed. Appx. 496 (2015). Similarly, in the Ninth Circuit, a disciplinary employment investigation resulted in an actionable First Amendment retaliation claim. *Coszalter v. City of Salem*, 320 F.3d 968 (2003); see also *Mulligan v. Nichols*, 835 F.3d 983 (9th Cir. 2016) (discussing a First Amendment right to be free from retaliation in the form of threatened legal sanctions and other types of coercion or intimidation). But five circuits, including the Eighth Circuit with its decision below, disagree.

In September 2018, applicants J.T.H. and H.D.H. threatened a lawsuit against Scott County, Missouri, for hiring Deputy Sheriff Brandon Cook, who sexually assaulted applicants' 15-year-old son. Several weeks after this threat, Scott County Children's Division manager, respondent Spring Cook—who worked hand-in-glove with Scott County—came to the applicants' house and, based on a tip provided to her through an anonymous hotline call, accused applicants of child neglect. Applicants' pleas to appoint an investigator from another county went unanswered and respondent Cook remained in charge of the investigation, during which she threatened to revoke the applicant J.T.H.'s peace license (he was a deputy sheriff at the time) and applicants were asked to consent to a genital and rectum inspection of their sexually abused son. In addition, one of the county's juvenile officers, during an invasive interrogation of the son, told the boy that he could be charged as an adult with sex crimes and perjury if he was not forthcoming in his answers.

On January 7, 2019, respondent Cook made findings of child neglect, which would have placed applicants into the permanent Missouri Child Abuse and Neglect Registry. To avoid this, applicants requested a formal administrative review. At the first step, it was respondent Cook who got to review—and uphold—her own findings. At the second step, the matter was placed before Missouri's Child Abuse and Neglect Review Board, which concluded that respondent Cook's findings of neglect were unsubstantiated. After applicants were cleared, they were contacted by the FBI, based on a complaint about their son. The complaint's language mirrored respondent Cook's

findings of neglect. The FBI interviewed one of the applicants' daughters and stopped its investigation after that conversation.

On October 16, 2020, applicants filed a civil rights lawsuit against respondent Cook and Missouri Department of Social Services. At this certiorari stage, the only relevant claim is against respondent Cook in her individual capacity for First Amendment retaliation. According to applicants, respondent Cook launched an investigation—which resulted in an administrative proceeding and also led to an FBI inquiry—in order to intimidate and punish applicants for threatening to sue the county based on its hiring of an officer who sexually assaulted their son. Had it not been for the threat of a lawsuit, this harassment campaign would have never happened.

The trial court agreed with applicants and denied Cook's claim of qualified immunity at the motion to dismiss stage (Exhibit B). The Court of Appeals for the Eighth Circuit reversed. According to the unanimous panel opinion, the Eight Circuit "ha[s] never recognized a retaliatory investigation claim of this kind," and neither has the Fifth, Seventh, Tenth, or Eleventh Circuit. "It makes no difference," said the court, that "as a general matter, the First Amendment prohibits government officials from subjecting an individual to retaliatory actions . . . on the basis of . . . constitutionally protected speech." In its view, respondent Cook was entitled to qualified immunity.

### **Reasons Why an Extension of Time Is Warranted**

Good cause exists for an extension of time to prepare a petition for a writ of certiorari in this case. On August 2, 2022, applicants retained new, *pro bono* representation for the purposes of filing a petition. The undersigned counsel were not

previously involved in litigating this case, and they require additional time to familiarize themselves with the trial and appellate records and to prepare the petition.

There is also the press of business on numerous other matters, including:

- Ongoing drafting of a petition for rehearing or rehearing *en banc* in the Fifth Circuit in *Gonzalez v. Trevino*, Fifth Cir. Case No. 21-50276;
- Ongoing drafting of a petition for certiorari in the United States Supreme Court in *Novak v. City of Parma*, Sixth Cir. Case No. 21-3290;
- Ongoing drafting of a petition for a writ of certiorari in the United States Supreme Court in *Yassin v. Weyker*, Eighth Cir. Case No. 20-3299;
- Ongoing drafting of a petition for a writ of certiorari in the United States Supreme Court in *Anilao v. Spota*, Second Cir. Case No. 19-3949;
- Ongoing litigation in the Northern District of California in *Quinonez et al v. Does 1 through 5*, N.D. Cal. Case No. 3:22-cv-03195.

Applicants have not previously sought an extension of time from this Court.

### Conclusion

Applicants request that the time to file a writ of certiorari in the above-captioned matter be extended 60 days to and including Monday, November 28, 2022.

August 8, 2022

Respectfully submitted,



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