

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

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

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IFRAH YASSIN,

*Applicant,*

v.

HEATHER WEYKER,

*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, Applicant respectfully requests that the time to file her petition for a writ of certiorari be extended for 58 days, up to and including Friday, December 9, 2022. The Court of Appeals issued its opinion on July 14, 2022 (Exhibit A). Absent an extension of time, the petition would be due on October 12, 2022. The jurisdiction of this Court is based on 28 U.S.C. 1254(1).

### **Judgment Sought to Be Reviewed**

This case presents an important question on the application of 42 U.S.C. 1983 to state officers working on task forces as cross-deputized federal officers: Whether a law enforcement officer's membership in a joint state-federal task force managed, in part, by a federal agency precludes her from acting "under color of state law." There is circuit confusion over this issue, and it is increasingly important given the growing use of state-federal task forces and the restriction of the available claims under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 400 U.S. 388 (1971), for constitutional violations committed under color of federal law. See *Egbert v. Boule*, 142 S. Ct. 1793 (2022).

Respondent Heather Weyker is a St. Paul, Minnesota, police officer. Between 2010 and 2014, she was also cross-deputized as a federal marshal. During that time, Weyker fabricated an interstate crime ring involving a group of Somali refugees that eventually resulted in thirty indictments in the Middle District of Tennessee.

Of those charged as part of Weyker's scheme, only nine were tried, and each was acquitted. See *United States v. Fahra*, 643 Fed. Appx. 480, 481–483 (6th Cir. 2016); *Ahmed v. Weyker*, 984 F.3d 564, 565 (8th Cir. 2020).

In 2011, Applicant Ifrah Yassin and her friends, Hamdi Mohamud and Hawo Ahmed, were unaware of Weyker's investigation. Ahmed and another girl, Muna Abdulkadir, had a spat, which resulted in Abdulkadir attacking the girls. Brandishing a knife, Abdulkadir smashed the windshield of Ahmed's car and struck Yassin. The girls called 911, and Abdulkadir fled to a neighbor's apartment where she hid and phoned Weyker. Unbeknownst to the girls, Abdulkadir was a witness Weyker was cultivating for her case. "Worried about the possibility of losing a witness, Weyker sprang into action," *Ahmed*, 984 F.3d at 566, framing Yassin and her friends to protect Abdulkadir.

Weyker first contacted Minneapolis police on the scene. She identified herself as a St. Paul police officer and told officers that she had "information and documentation" that Yassin and her friends "had been actively seeking out Abdulkadir" in an effort "to intimidate" her for cooperating in a police investigation. "It was true that Abdulkadir was a federal witness, but everything else Weyker said was false." Ex. A. at 3. She had no information or documentation. She just wanted to shield Abdulkadir from arrest to encourage her continued participation in Weyker's investigation. The plan worked. Minneapolis police arrested Yassin, Mohamud, and Ahmed for witness tampering under Minnesota law.

More than a year later, Weyker’s crime-ring case fell apart, and a jury acquitted Yassin and Ahmed. In separate lawsuits, Yassin, Mohamud, and Ahmed brought constitutional claims against Weyker under *Bivens*—alleging she acted under color of federal law—and under Section 1983—alleging she acted under color of state law. In both cases, Weyker claimed but was denied qualified immunity. See, e.g., *Farah v. Weyker*, 926 F.3d 492, 503 (8th Cir. 2019) (“[A] reasonable officer would know that deliberately misleading another officer into arresting an innocent individual to protect a sham investigation is unlawful.”). By happenstance, Mohamud’s case (consolidated with Ahmed’s) went before the Eighth Circuit on whether Weyker could be sued under *Bivens*, while Yassin’s case went before the court on whether Weyker could be sued under Section 1983.

In Mohamud’s case, the Eighth Circuit held that Weyker could not be sued under *Bivens* because the facts, which were not “exactly” like *Bivens*, presented a new context for which “special factors” counseled against permitting a claim. *Ahmed*, 984 F.3d at 568–571. To ameliorate the harsh outcome of the ruling, Judge Stras offered for the court: “Just because a *Bivens* remedy is off the table does not mean the plaintiffs’ cases are over. If the district court determines on remand that Weyker was acting under color of *state* law, their section 1983 claims may proceed.” *Id.* at 571. That was December 23, 2020. This Court denied certiorari in Mohamud’s case, No. 21-187, on June 21, 2022.

On July 14, the Eighth Circuit decided Yassin’s case below. In another opinion by Judge Stras, the court held Weyker cannot be sued under Section 1983 ei-

ther. According to the court, Weyker was acting under the exclusive color of federal law when she framed the girls because, “[a]t the time, she was . . . working on a federal task force . . . [a]nd the witness she was trying to protect . . . was only on her radar because she was assigned to a federal investigation.” Ex. A at 7. Never mind that Weyker identified herself as a St. Paul officer, used a St. Paul police form to advise Abdulkadir of her *Miranda* rights, filed a St. Paul incident report, the girls were first charged under Minnesota law, and so on. *Id.* at 8. The Eighth Circuit reflexively placed Weyker under the color of federal law, where it has also held she cannot be sued.

### **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 30, 2022, Applicant retained new, pro bono representation to file a petition. The undersigned counsel were not previously involved in litigating this case, and they require additional time to familiarize themselves with the record and prepare the petition. There is also the press of business in several other matters, including:

- Ongoing drafting of a petition for a writ of certiorari in this Court in *Novak v. City of Parma*, 6th Cir. Case No. 21-3290;
- Ongoing drafting of a petition for a writ of certiorari in this Court in *Anilao v. Spota*, 2d Cir. Case No. 19-3949;
- Ongoing drafting of a petition for a writ of certiorari in this Court in *J.T.H. v. Cook*, 8th Cir. Case No. 21-2433;
- Oral argument on September 21 in the Eighth Circuit in *Pollreis v. Marzolf*, 8th Cir. Case No. 21-3267;

- Ongoing drafting of a petition for rehearing en banc in the Fifth Circuit in *Gonzalez v. Trevino*, 5th Cir. Case No. 21-50276;
- Ongoing briefing in the Fifth Circuit in *Bailey v. Iles*, 5th Cir. Case No. 22-30509;
- Ongoing drafting and briefing in the Northern District of California in *Quiñonez v. Does 1 through 5*, N.D. Cal. Case No. 3:22-CV-03195.

Counsel of record also has a preplanned vacation from September 9 through September 16.

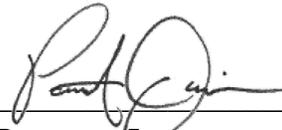
Applicant has not previously sought an extension of time from this Court.

### **Conclusion**

Applicant requests that the time to file a writ of certiorari in the above-captioned matter be extended 58 days to and including Friday, December 9, 2022.

August 31, 2022

Respectfully submitted,



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