No. _____

IN THE

Supreme Court of the United States

N.S., ONLY CHILD OF DECEDENT, RYAN STOKES, BY AND THROUGH HER NATURAL MOTHER AND NEXT FRIEND, BRITTANY LEE; NARENE JAMES,
Petitioners,

v.

KANSAS CITY BOARD OF POLICE COMMISSIONERS; MICHAEL RADER; LELAND SHURIN; ANGELA WASSON-HUNT; ALVIN BROOKS; MAYOR SLY JAMES; DARRYL FORTE; RICHARD SMITH; WILLIAM THOMPSON; AND DAVID KENNER,
Respondents.

APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A 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, ASSOCIATE JUSTICE OF THE UNITED STATES SUPREME COURT AND CIRCUIT JUSTICE FOR THE EIGHTH CIRCUIT:

Pursuant to Rule 13.5 of the Rules of this Court, Applicants N.S. and Narene James respectfully request an extension of time of 60 days, up to and including December 11, 2022, within which to file a petition for a writ of certiorari. Applicants seek review of the Eighth Circuit's judgment in *N.S. v. Kansas City Bd. of Police Comm'rs*, 35 F.4th 1111 (8th Cir. 2022).

In support of this request, undersigned counsel states as follows:

1. On May 31, 2022, the Court of Appeals issued its opinion affirming the district court's grant of summary judgment against Applicants. *See* Ex. 1. Applicants timely filed a petition for panel rehearing and rehearing en banc, which the Court of Appeals denied on July 14, 2022. *See* Ex. 2. The current deadline for filing a petition for a writ of certiorari is October 12, 2022. This application is filed more than 10 days before that deadline.

2. This Court's jurisdiction is based on 28 U.S.C. § 1254(1).

3. Good cause exists for the requested extension. This case presents substantial and important questions of law that call out for this Court's review. In particular, the decision of the Court of Appeals conflicts with the precedent of this Court, splits with decisions from other Circuits, and presents important questions on the scope, application, and continuing validity of the doctrine of qualified immunity.

a. Ryan Stokes was shot and killed by Respondent Kansas City Police Officer William Thompson. Mr. Stokes was unarmed, presented no threat to the police officers at the scene, and tried to surrender peacefully. But that did not stop Officer

Thompson from shooting Mr. Stokes in the back without any warning. Mr. Stokes succumbed to his gunshot wounds and died.

Applicants—who are surviving family members of Mr. Stokes (his daughter, N.S., and his Mother, Narene James)—brought this action against Respondents Officer Thompson, the Chief of Police of the Kansas City, Missouri Police Department, the Kansas City Board of Police Commissioners, and individual members of the Kansas City Board of Police Commissioners under 42 U.S.C. § 1983, alleging (among other claims) that Respondents used excessive force against Mr. Stokes in violation of the Fourth Amendment.

Respondents moved for summary judgment principally on the ground that they were entitled to immunity from suit. In 2018, the district court originally denied that motion in relevant part, concluding that Officer Thompson was not entitled to qualified immunity because "a genuine issue of material fact exists as to whether [Officer Thompson's] use of force was reasonable such that a violation of a constitutional right occurred." *See N.S. v. Kansas City, Mo. Bd. of Police Comm'rs*, No. 4:16-cv-843, 2018 WL 10419344, at *3 (W.D. Mo. Feb. 9, 2018).

On appeal, the Court of Appeals vacated the district court's judgment and remanded the case for a "second look." *N.S. v. Kansas City Bd. of Police Comm'rs*, 933 F.3d 967, 970 (8th Cir. 2019). In particular, the Court of Appeals directed the district court to "identify[] the plaintiff-friendly version of the disputed facts" and "then evaluate whether [Officer] Thompson … violated clearly established law when he shot Stokes." *Id.*

On remand, the district court concluded that Officer Thompson was entitled to qualified immunity. *See N.S. v. Kansas City Bd. of Police Comm'rs*, No. 4:16-cv-843, 2020 WL 641728, at *1 (W.D. Mo. Feb. 11, 2020). The district court held that Officer Thompson did not violate Mr. Stokes's constitutional rights and that, even if he did, the right at issue was not clearly established. *Id.* at *6-7.

b. Applicants appealed, and the Court of Appeals affirmed. Ex. 1. The panel held that Officer Thompson deserved qualified immunity because Eighth Circuit precedent was not sufficiently clear to put him on fair notice that his conduct (shooting an unarmed, surrendering man accused of a low-level crime in the back without warning) was unconstitutional. *Id.* To support that conclusion, the Court of Appeals relied exclusively on *Thompson v. Hubbard*, 257 F.3d 896 (8th Cir. 2001). *See* Ex. 1. Notably, the panel admitted that *Hubbard* was different from this case for several reasons—including because *Hubbard*, unlike this case, involved a "much more serious crime" and because the officer in *Hubbard*, unlike Officer Thompson, gave a warning before using deadly force. *See id.* Despite these critical differences, the Court of Appeals determined that *Hubbard* created enough uncertainty to grant Officer Thompson qualified immunity. *Id.* In reaching that conclusion, the Court of Appeals distinguished (in cursory fashion) several relevant, on-point precedents from this Court and the Eighth Circuit on the ground that the facts of those cases were not similar enough to those confronting Officer Thompson. *Id.* (attempting to distinguish *Tennessee v. Garner*, 471 U.S. 1 (1985); *Nance v. Sammis*, 586 F.3d 604 (8th Cir. 2009); *Ngo v. Storlie*, 495 F.3d 597 (8th Cir. 2007)).

c. The Eighth Circuit's erroneous decision deepens a growing and acknowledged circuit split regarding the level of factual similarity with prior precedent that plaintiffs must identify to demonstrate that their rights are "clearly established" for purposes of qualified immunity. *Compare* Ex. 1; *Morrow v. Meachum*, 917 F.3d 870, 874-75 (5th Cir. 2019) (demanding high level of "specificity and granularity" to establish "fair notice"); *Gordon v. Bierenga*, 20 F.4th 1077, 1082 (6th Cir. 2021) (cert pending) (same) *with Kane v. Barger*, 902 F.3d 185, 195 (3d Cir. 2018) ("[W]e do not require a case directly mirroring the facts at hand, so long as there are sufficiently analogous cases that should have placed a reasonable official on notice that his actions were unlawful." (cleaned up)); *Dean ex rel. Harkness v. McKinney*, 976 F.3d 407, 419 (4th Cir. 2020) (declining to "absolve[] [officer] of liability solely because the court has not adjudicated the exact circumstances of his case"); *Lopez v. Sheriff of Cook Cty.*, 993 F.3d 981, 988 (7th Cir. 2021) ("The prong-two clearly-established law assessment does not require a case with identical factual circumstances, lest qualified immunity become absolute immunity."); *Orn v. City of Tacoma*, 949 F.3d 1167, 1179-80 (9th Cir. 2020) (holding that a plaintiff need not "identify prior cases that are 'directly on point'"). As this division of authority shows, "courts of appeals are divided—intractably—over precisely what degree of factual similarity must exist" to put an officer on fair notice. *Zadeh v. Robinson*, 928 F.3d 457, 479 (5th Cir. 2019) (Willett, J., concurring in part, dissenting in part).

d. In addition to further entrenching an acknowledged circuit split, the Eighth Circuit's decision presents a clean vehicle for this Court to reconsider the

proper scope and ongoing viability of the qualified immunity doctrine. As Members of this Court and a growing number of circuit judges have acknowledged, qualified immunity rests on shaky foundations and must be reexamined. *See Ziglar v. Abbasi*, 137 S. Ct. 1843, 1869-72 (2017) (Thomas, J., concurring in part and concurring in the judgment); *McKinney v. City of Middletown*, No. 19-1765, 2022 WL 4454475, at *21 (2d Cir. Sept. 26, 2022) (Calabresi, J., dissenting) (appendix collecting opinions and scholarship showing that "qualified immunity cannot withstand scrutiny").

4. An extension of time is further warranted because undersigned counsel was not involved in the lower court proceedings. An extension is therefore needed to provide undersigned counsel with sufficient time to review the voluminous summary judgment record and familiarize himself with the lengthy procedural history of this case involving years of pre-trial litigation and discovery, including 46 depositions. In addition, an extension would provide law students who are enrolled in the Howard University School of Law Civil Rights Clinic to gain valuable experience by working closely with counsel for Applicants to prepare the petition for certiorari in this case.

5. Finally, an extension of time is also necessary because of the press of other client business. Counsel for Applicants have several litigation deadlines in the weeks leading up to and following the current deadline for the petition for certiorari, including:

a. An amicus brief in the U.S. Court of Appeals for the D.C. Circuit in *Blassingame v. Trump*, No. 22-5069; *Swalwell v. Trump*, No. 22-7030; and *Thompson v. Trump*, No. 22-7031, due on September 30, 2022.

b. An amicus brief in the U.S. Court of Appeals for the Eleventh Circuit in *Fulton County Special Purpose Grandy Jury v. Graham*, No. 22-12696, due on October 7, 2022.

c. An amicus brief in the New York Supreme Court, Appellate Division (Second Department) in *Fossella v. Adams,* No. 2022-05794, due on October 11, 2022.

d. An appellate brief in the Missouri Court of Appeals, Western District in *Templeton v. Orth et al.*, No. WD85405, due on October 14, 2022.

e. An oral argument in the U.S. Court of Appeals for the Second Circuit in *Burns v. Schell*, No. 20-3883, on November 8, 2022.

f. A sentencing hearing in *State of California v. Floyd Munoz* in California Superior Court, on December 15, 2022.

6. For the foregoing reasons, Applicants hereby request that this Court grant a 60-day extension of time, up to and including December 11, 2022, within which to file a petition for a writ of certiorari.

Respectfully submitted,

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September 30, 2022